

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 219

(Senator Cassilly)

Judicial Proceedings

Employers of Ex-Offenders - Liability for Negligent Hiring or Inadequate
Supervision - Immunity

This bill establishes that an “employer” may not be held liable for negligently hiring or failing to adequately supervise an “employee” based on evidence that the employee has received probation before judgment for an offense or has been convicted of an offense if the employee meets specified criteria and performs specified types of work for the employer. The bill defines “employer” as a person engaged in a business, industry, profession, trade, or other enterprise in the State. “Employer” does not include the State, a county, or a municipality in the State.

The bill applies prospectively to causes of action arising on or after the bill’s October 1, 2019 effective date. The bill’s provisions do not limit or abrogate any immunity from civil liability or defense available to a person under any other provision of the Maryland Code or at common law.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances.

Local Effect: The bill is not expected to materially affect local finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: Under the bill, an “employee” is an individual other than an independent contractor who performs services for compensation for an employer under an oral contract for hire, whether express or implied, or a written contract. “Employee” does not include a person who contracts to perform work or provide a service for the benefit of another and who is (1) paid by the job, rather than by the hour or some other time-measured basis; (2) free to hire as many helpers as the person desires and to determine what each helper will be paid; and (3) free to work for other contractors, or to send helpers to work for other contractors, while under contract to the hiring employee.

An employer may not be held liable for negligently hiring or failing to adequately supervise an employee based on evidence that the employee has received probation before judgment for an offense or has been convicted of an offense if (1) the employee has completed the term of imprisonment or probation for the offense or has been released on parole for the offense and (2) the employee performs work for the employer in the manufacturing industry, in the shipping and receiving industry (excluding work requiring the operation of a motor vehicle on a public highway or street), in the warehousing industry, on the construction of new structures, or on the rehabilitation or demolition of unoccupied structures.

Current Law: Employers may be held liable for the actions of their employees under a variety of legal principles, including negligent hiring. Negligent hiring is a cause of action in tort in which an employer may be held liable for damages to an injured party as a result of the actions of an employee if (1) the employer owed a duty of care to the injured party (*e.g.*, providing a safe working environment for employees or a duty of care to a member of the public who could reasonably come into contact with the employee); (2) the employer breached this duty by failing to conduct a reasonable investigation into the employee’s fitness for the position or duties; (3) the employer’s failure to conduct this reasonable investigation resulted in the hiring of the employee; and (4) there is a causal relationship between the hiring of the employee and the plaintiff’s injuries, resulting in damages to the plaintiff. Negligent hiring actions are not limited to the actions of an employee with a criminal record.

Factors a court considers when evaluating a negligent hiring claim include the availability of or access to employee background information, whether a reasonable investigation would have revealed information needed to evaluate an employee’s potential danger or harm to others, and the nature of the employee’s position and/or duties.

Maryland courts have held that an employer is ordinarily not required to investigate the criminal record of a potential employee. *Evans v. Morsell*, 284 Md. 160, 167 (1978). Maryland courts have also recognized that "...there is a rebuttable presumption that an employer uses due care in hiring an employee..." *Evans* at 165, citing *Norfolk and Western Railroad Co. v. Hoover*, 79 Md. 253, 263 (1894). With respect to intentional torts committed by an employee, the critical inquiry is "...whether the employer knew or should have known that the individual was potentially dangerous." *Evans* at 165.

Negligent supervision actions are typically centered on the inadequate supervision of an employee, resulting in injury to the plaintiff, rather than the process the employer used when hiring the employee.

State Expenditures: The bill is not expected to materially affect State finances. The bill specifically excludes the State from the definition of "employer." The Treasurer's Office has historically advised that the State does provide some liability coverage for subcontractors hired by the State for the types of claims affected by the bill. However, while the Treasurer's Office advises that the bill does not affect State finances due to the exclusion of the State from the definition of "employer," the office did not respond to a request to verify whether the extension of liability coverage to contractors is still valid.

Local Expenditures: Assuming that local governments do not extend liability coverage to contractors or subcontractors for the types of claims affected by the bill, the bill is not expected to materially affect local finances. The bill's definition of "employer" specifically excludes a county or a municipality in the State. Many local governments obtain insurance coverage through the Local Government Insurance Trust (LGIT). LGIT advises that the bill has no effect on local governments.

Small Business: The bill may have a meaningful impact on small businesses that avoid lawsuits and/or civil judgments as a result of the bill's immunity provisions.

Additional Information

Prior Introductions: SB 55 of 2017 received an unfavorable report from the Senate Judicial Proceedings Committee. Its cross file, HB 440, received an unfavorable report from the House Economic Matters Committee.

Cross File: None.

Information Source(s): Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of

Public Safety and Correctional Services; Local Government Insurance Trust; Department of Legislative Services

Fiscal Note History: First Reader - February 4, 2019
an/kdm

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510