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FISCAL AND POLICY NOTE
 First Reader

Senate Bill 434
 Finance

(Senator McCray, *et al.*)

Labor and Employment - Occupational Safety and Health - Heat Stress Standards

This bill requires employers to develop, implement, and maintain an effective excessive heat-related illness prevention plan for employees. The Commissioner of Labor and Industry must adopt regulations by October 1, 2022, that include a standard establishing heat stress levels for employees that, if exceeded, trigger action to protect employees from heat-related illness and ensure all employers comply with requirements relating to occupational exposure to excessive heat. An employer must provide annual training to its employees and keep records as specified in the bill.

Fiscal Summary

State Effect: Special fund and general fund expenditures increase beginning in FY 2021 for State agencies to implement heat-related illness prevention plans and train employees. Special fund expenditures for enforcing the bill increase by \$529,800 in FY 2021; out-year expenditures reflect annualization and the elimination of contractual staff and one-time start-up costs. General fund revenues increase minimally beginning in FY 2021 due to increased application of existing penalties.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
GF Revenue	-	-	-	-	-
SF Expenditure	\$529,800	\$575,000	\$541,600	\$543,500	\$561,300
GF/SF Exp.	-	-	-	-	-
Net Effect	(\$529,800)	(\$575,000)	(\$541,600)	(\$543,500)	(\$561,300)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill has an operational and potential fiscal impact on local governments beginning in FY 2021. Revenues are not affected.

Small Business Effect: Meaningful.

Analysis

Bill Summary: “Excessive heat” means levels of exposure to heat that exceed a person’s capacities to maintain normal body functions and may cause heat-related injury, illness, or fatality. “Heat stress” means the net load to which a worker is exposed from the combined contributions of metabolic heat, environmental factors, and clothing worn that results in the body storing more heat, causing body temperatures to rise to sometimes dangerous levels.

The excessive heat-related illness prevention plan must be developed and implemented with the meaningful participation of specified stakeholders, tailored and specific to hazards in the place of employment, in writing in a language the majority of employees understand, and available upon request.

The plan must include procedures and methods for addressing heat exposure as specified in the bill.

The commissioner must require an employer to provide annual training and education to employees who may be exposed to high heat levels. In addition, an employer must provide training and education to supervisors on proper procedures to follow with respect to preventing employee exposure to excessive heat, recognizing high-risk situations, and proper procedures to follow when an employee exhibits signs or reports symptoms consistent with possible heat-related illness.

The education and training must be provided by an employer for each new employee before starting a job assignment, provide employees specified participation opportunities, be provided in-person by an individual with knowledge of heat-related illness prevention and the employer’s plan, and be appropriate in terms of language, educational level, and literacy to employees.

Each employer must maintain at all times records related to the employer’s plan, data on all heat-related illnesses and deaths that have occurred at the place of employment, and data on environmental and physiological measurements related to heat. The records and data must be made available on request to employees, their representatives, and the Commissioner of Labor and Industry.

Each employer must adopt a policy prohibiting any person from discriminating or retaliating against an employee for exercising the employee’s rights or reporting violations. Likewise, an employer may not discriminate or retaliate against an employee for reporting a heat-related illness concern or seeking assistance or intervention with respect to heat-related health symptoms, or exercising any other rights of the employee under the bill.

The bill may not be construed to diminish the rights, privileges, or remedies of any employee under a collective bargaining agreement.

Current Law: The Division of Labor and Industry within the Maryland Department of Labor (MDL) administers the Maryland Occupational Safety and Health (MOSH) program. The requirements of the MOSH program are codified by the MOSH Act. In general, these requirements parallel the safety standards established by the federal Occupational Safety and Health Administration (OSHA) within the U.S. Department of Labor. OSHA specifies that states may elect to assume the responsibility for development and management of a state occupational safety and health program as long as the standards under the state program are “at least as effective as” OSHA standards. OSHA does not have a specific standard that covers working in hot environments. Nonetheless, under the Occupational Safety and Health Act, employers have a duty to protect workers from recognized serious hazards in the workplace, including heat-related hazards.

Employers must provide each employee with employment and a place of employment that are safe and healthful and free from each recognized hazard that is causing or likely to cause death or serious physical harm to the employee. MDL reports that MOSH utilizes this standard for instances of heat-stress related hazards when necessary. MOSH also evaluates heat stress during inspections when warranted.

Employers must keep their employees informed of their protections and duties under the MOSH program by posting notice where notices to employees normally are posted or using other appropriate means. The commissioner may require an employer to keep records of work-related deaths, illness, and injury (other than minor injuries). An employer must report to the commissioner an employment accident within eight hours after it occurs if the accident results in an employee’s death or the hospitalization of at least three employees.

An employer or other person may not discharge or discriminate against an employee because the employee filed a complaint, brings an action or causes an action to be brought, testifies, or exercises a right relating to the MOSH program. An employee who believes that an employer or other person has retaliated against the employee may submit a complaint to the commissioner, and the commissioner may investigate it.

Background: In 2019, MOSH logged 35 phone calls related to excessive heat, responded to 31 complaints filed that resulted in no inspection, and conducted at least 15 inspections where heat stress was evaluated.

When the U.S. Congress passed the Occupational Safety and Health Act of 1970 (Public Law 91-596), it established the National Institute for Occupational Safety and Health (NIOSH) and charged NIOSH with recommending occupational safety and health standards and describing exposure levels that are safe for various periods of employment.

Occupational exposure to heat can result in injuries, disease, reduced productivity, and death. To address this hazard, NIOSH has evaluated the scientific data on heat stress and hot environments in the [Criteria for a Recommended Standard: Occupational Exposure to Hot Environments](#). NIOSH recommends that worker exposure to heat stress in the workplace be controlled by complying with all sections of the recommended standards found in this criteria document.

Since 2011, OSHA has raised awareness of the dangers associated with working in extreme temperatures through its [Heat Illness Prevention Campaign](#). Through training sessions, outreach events, informational sessions, publications, social media messaging, and media appearances, OSHA has taught workers and employers how to protect workers from heat.

OSHA was petitioned in 2011 to promulgate an emergency temporary standard for a heat stress threshold and a subsequent permanent heat stress standard, but OSHA denied the [request](#) in 2012 on the basis that heat stress did not pose a grave danger. However, OSHA has increased its focus on heat as a hazard during its inspections.

State Revenues: General fund revenues increase, likely minimally, beginning in fiscal 2021 from MOSH issuing citations to employers who are in violation of the bill.

State Expenditures: All State agencies must develop, implement, and maintain a tailored excessive heat-related illness prevention plan with input from employees and labor representatives. Additionally, State agencies must keep records and train supervisors and employees who may be exposed to high heat levels. Thus, the bill places an administrative, and potentially fiscal, burden on all State agencies. The actual costs will depend on regulations adopted by MDL and the actual excessive heat-related illness prevention plans developed by State agencies.

Multiple agencies, including the Maryland Department of the Environment, the Department of Juvenile Services, the Department of General Services, the Department of Natural Resources, and the Maryland Department of Transportation anticipate an increase in general and/or special funds of between \$35,000 and \$90,000 each to develop a plan (often with the assistance of contractors) and provide training (often using a third-party trainer).

Enforcement Costs

The bill creates additional responsibilities for MOSH within MDL by requiring employers to develop, implement, and maintain an excessive heat-related illness prevention plan and train employees. MDL cannot absorb the additional compliance monitoring and enforcement workload within existing resources and requires additional staff to respond to inquiries and enforce the bill.

MDL estimates issuing 1,400 citations under the bill since MOSH enforcement does not provide warnings and must issue a citation with a penalty for each serious hazard identified during an inspection. One assistant Attorney General, one compliance officer, three industrial hygienists, one supervisor, one administrative officer, and one contractual industrial hygienist are needed to implement regulations, investigate complaints, evaluate situations of alleged heat stress exposure, process cases, approve citation recommendations, and assist with legal challenges.

The cost of administering the MOSH program is covered through an appropriation from the Workers' Compensation Commission (WCC). Thus, special fund expenditures for MDL increase by \$529,759 in fiscal 2021, which accounts for the bill's October 1, 2020 effective date. This estimate reflects the cost of hiring seven regular employees and one contractual employee to implement the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Regular Positions	7
Contractual Position	1
Regular Salaries and Fringe Benefits	\$374,343
Contractual Salary and Fringe Benefits	46,523
Operating Expenses	<u>108,893</u>
Total FY 2021 MDL Expenditures	\$529,759

Future year expenditures reflect the elimination of the contractual position, full salaries with annual increases and employee turnover, and ongoing operating expenses.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

The Office of Administrative Hearings can hear cases stemming from the bill with existing resources.

Local Expenditures: The bill has an operational and potential fiscal impact on local governments beginning in fiscal 2021. Charles County notes that the bill has a minimal effect on the county because it has instructors that are able to train employees and supervisors as required by the bill. Likewise, Frederick County does not anticipate any fiscal impact.

Meanwhile, Montgomery County anticipates expenditures increasing by over \$50,000 to develop a plan, train employees, and for additional contractual services, materials, testing, and remediation, as needed. The City of Havre de Grace anticipates a potential increase in operating costs stemming from training and providing supplemental equipment.

Small Business Effect: All employers must develop, implement, and maintain an effective excessive heat-related illness prevention plan for employees with input on the plan from employees, employee representatives, and collective bargaining representatives.

Small businesses may need to procure thermometers, cooling garments, and heat and humidity monitoring, and other safety equipment. Employers may need to monitor testing equipment, interpret sampling results, train employees, and maintain records if the employer works in surroundings that could potentially cause heat-related illnesses. Thus, business expenses for small businesses may increase.

Additional Comments: To the extent that current revenues for WCC are insufficient to cover the administrative costs described above, WCC may need to increase employer assessments to cover the costs, resulting in a special fund revenue increase for WCC and additional expenditures for the State, local governments, and small businesses as employers. As it is unclear whether additional assessments are needed, this analysis does not include any potential revenue or expenditure increases, but it is assumed that any such increases approximate the cost of MDL implementing the bill.

Also, the bill does not require regulations establishing heat stress standards to be adopted until October 2022, but the bill takes effect October 2020, which means that MOSH must start enforcing the bill on that date. It is unclear on what basis MOSH is required to conduct enforcement activities until the regulations are adopted, but this analysis assumes that MOSH requires the additional enforcement personnel on the bill's effective date.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 722 (Delegate Charkoudian, *et al.*) - Economic Matters.

Information Source(s): Anne Arundel, Charles, Frederick, and Montgomery counties; Maryland-National Capital Park and Planning Commission; cities of Frederick and Havre de Grace; Judiciary (Administrative Office of the Courts); Maryland Department of Agriculture; Maryland Department of the Environment; Department of General Services; Department of Juvenile Services; Maryland Department of Labor; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Office of Administrative Hearings; Workers' Compensation Commission; U.S. Department of Labor; Centers for Disease Control and Prevention; Department of Legislative Services

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