

Chapter 736

(House Bill 581)

AN ACT concerning

**Labor and Employment – Employment Standards During an Emergency
(Maryland Essential Workers’ Protection Act)**

FOR the purpose of ~~requiring the Maryland Health Benefit Exchange to provide for a special enrollment period for health insurance coverage for certain essential workers during certain emergencies; requiring an essential employer to give a written statement regarding certain hazard pay paid to certain essential workers at certain intervals; requiring the Maryland Emergency Management Agency and a local organization of emergency services to periodically evaluate and determine whether an emergency is occurring or has occurred and make a certain announcements under certain circumstances; requiring an each essential employer to take certain actions related to occupational safety and health during an emergency; authorizing providing that an essential worker has the right to refuse to fulfill perform a certain responsibility under certain circumstances~~ task as provided under certain provisions of law; prohibiting an essential employer from retaliating or taking other adverse action against an essential worker or other worker for certain actions; requiring an essential worker to notify the Commissioner of Labor of Industry of certain information within a certain time period for a certain purpose; providing for the enforcement of certain provisions this Act; requiring an essential employer to comply with certain standards, protocols, and procedures established by the Commissioner; requiring essential employers to prepare a certain plan and take certain actions with regard to the plan; requiring essential employers to take certain steps to minimize the risk of transmission of an infectious disease under certain circumstances; requiring an essential employer to pay costs associated with for certain testing except under certain circumstances; requiring essential employees employers to report certain test results to the Maryland Department of Health in a certain manner; requiring the Maryland Department of Health to collect certain test results, categorize the results in a certain manner, and publish the results in a certain format; requiring essential employers to provide essential workers with certain bereavement and health public health emergency leave on a certain date; requiring an essential employer to provide public health emergency leave in a certain manner and in certain amounts; requiring an essential employer to allow an essential worker to use public health emergency leave for certain reasons; authorizing an essential employer to require an essential worker who uses public health emergency leave to provide certain documentation and to refuse to pay an essential worker for certain public health emergency leave under certain circumstances; requiring essential employers to provide certain essential workers with certain hazard pay in a certain manner; prohibiting an essential employer from lowering certain pay for a certain purpose; requiring essential employers to provide certain financial assistance during an emergency under certain circumstances and in a certain manner; prohibiting certain financial assistance from being counted towards an essential worker's

~~eligibility for State means tested benefit programs; prohibiting an essential employer from knowingly misclassifying an essential worker; requiring and authorizing the Commissioner to adopt certain regulations; requiring the Commissioner to enforce certain occupational safety and health requirements for certain essential workers; prohibiting an employer from discharging or otherwise discriminating against an employee because the employee is an essential worker who files a complaint or exercises a right under certain provisions of law; defining certain terms; requiring the Secretary of Labor to adopt a certain Emergency Temporary Standard within a certain period of time; requiring the Secretary to set a certain standard to expire at a certain time; requiring that a certain standard remain in effect whether or not it becomes the subject of federal litigation; requiring that a certain standard require employers to take certain actions; requiring the Maryland Department of Health, in consultation with the Maryland Department of Labor and local health departments, to develop a template health emergency preparedness plan for responding to a catastrophic health emergency on or before a certain date; specifying the contents of the health emergency preparedness plan; requiring the Maryland Department of Health, in consultation with the Maryland Department of Labor and local health departments, to report to the General Assembly on or before a certain date on recommendations for certain legislation; requiring Maryland Occupational Safety and Health to report to the General Assembly on or before a certain date; requiring the Commissioner to adopt certain regulations as soon as practicable after a certain date; requiring each essential employer to provide certain public health emergency paid leave to each essential worker on a certain date; providing for the application of certain provisions of this Act; making this Act an emergency measure; providing for the termination of certain provisions of this Act; and generally relating to employment standards during an emergency.~~

~~BY repealing and reenacting, with amendments,
 Article – Insurance
 Section 31-108(b)(6)
 Annotated Code of Maryland
 (2017 Replacement Volume and 2020 Supplement)~~

~~BY repealing and reenacting, with amendments,
 Article – Labor and Employment
 Section 3-504
 Annotated Code of Maryland
 (2016 Replacement Volume and 2020 Supplement)~~

BY adding to
 Article – Labor and Employment
 Section 3-1601 through ~~3-1612~~ 3-1609 to be under the new subtitle “Subtitle 16. Maryland Essential Workers’ Protection Act”; and 5-205(p)
 Annotated Code of Maryland
 (2016 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, with amendments,

Article – Labor and Employment

Section 5–604

Annotated Code of Maryland

(2016 Replacement Volume and 2020 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

~~Article – Insurance~~

~~31-108.~~

~~(b) In compliance with § 1311(d)(4) of the Affordable Care Act, the Exchange shall:~~

~~(6) provide for initial, annual, and special enrollment periods, in accordance with guidelines adopted by the Secretary under § 1311(e)(6) of the Affordable Care Act, INCLUDING A SPECIAL ENROLLMENT PERIOD DURING AN EMERGENCY, AS DEFINED UNDER § 3-1601 OF THE LABOR AND EMPLOYMENT ARTICLE, FOR AN ESSENTIAL WORKER, AS DEFINED IN § 3-1601 OF THE LABOR AND EMPLOYMENT ARTICLE, WHO IS NOT INSURED UNDER A GROUP HEALTH BENEFIT PLAN SPONSORED BY THE EMPLOYER;~~

Article – Labor and Employment

~~3-504.~~

~~(a) An employer shall give to each employee:~~

~~(1) at the time of hiring, notice of:~~

~~(i) the rate of pay of the employee;~~

~~(ii) the regular paydays that the employer sets; and~~

~~(iii) leave benefits;~~

~~(2) for each pay period[.];~~

~~(H) a statement of the gross earnings of the employee and deductions from those gross earnings; and~~

~~(I) IF APPLICABLE, A WRITTEN STATEMENT OF HAZARD PAY EARNED UNDER SUBTITLE 16 OF THIS TITLE; AND~~

~~(3) at least 1 pay period in advance, notice of any change in a payday or wage.~~

~~(b) This section does not prohibit an employer from increasing a wage without advance notice.~~

SUBTITLE 16. MARYLAND ESSENTIAL WORKERS' PROTECTION ACT.

3-1601.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) "EMERGENCY" MEANS:

~~(1) THE IMMINENT THREAT OR OCCURRENCE OF SEVERE OR WIDESPREAD LOSS OF LIFE, INJURY, OR OTHER HEALTH IMPACTS, PROPERTY DAMAGE OR DESTRUCTION, SOCIAL OR ECONOMIC DISRUPTION, OR ENVIRONMENTAL DEGRADATION FROM NATURAL, TECHNOLOGICAL, OR HUMAN MADE CAUSES; OR~~

~~(2) AN INCIDENT, OCCURRENCE, OR OUTBREAK THAT IS THE SUBJECT OF:~~

~~(I) AN EXECUTIVE ORDER;~~

~~(II) AN EXECUTIVE DECLARATION UNDER § 14-107 OF THE PUBLIC SAFETY ARTICLE; OR~~

~~(III) A CATASTROPHIC HEALTH EMERGENCY, AS DEFINED UNDER § 14-3A-01 OF THE PUBLIC SAFETY ARTICLE, THAT IS THE SUBJECT OF AN EXECUTIVE PROCLAMATION UNDER § 14-3A-02 OF THE PUBLIC SAFETY ARTICLE AND IS RELATED TO A COMMUNICABLE DISEASE.~~

(C) (1) "ESSENTIAL EMPLOYER" MEANS A PERSON THAT EMPLOYS AN ESSENTIAL WORKER.

(2) "ESSENTIAL EMPLOYER" INCLUDES A UNIT OF STATE OR LOCAL GOVERNMENT.

(D) ~~(1)~~ "ESSENTIAL WORKER" MEANS AN INDIVIDUAL WHO:

(1) PERFORMS A DUTY OR WORK RESPONSIBILITY DURING AN EMERGENCY THAT CANNOT BE PERFORMED REMOTELY OR IS REQUIRED TO BE COMPLETED AT THE WORK SITE; AND

(2) PROVIDES SERVICES THAT THE ESSENTIAL EMPLOYER DETERMINES TO BE ESSENTIAL OR CRITICAL TO ITS OPERATIONS.

~~(2) "ESSENTIAL WORKER" INCLUDES A CONTRACTOR OR SUBCONTRACTOR.~~

3-1602.

THIS SUBTITLE APPLIES ONLY TO ESSENTIAL EMPLOYERS IN THE FOLLOWING INDUSTRIES AND SECTORS: IDENTIFIED BY THE GOVERNOR OR A FEDERAL OR STATE AGENCY AS CRITICAL TO REMAIN IN OPERATION DURING THE EMERGENCY.

~~(1) THE CHEMICAL SECTOR, INCLUDING CHEMICAL MANUFACTURERS, PHARMACEUTICAL MANUFACTURERS, AND DISTRIBUTORS OF CHEMICALS AND PHARMACEUTICALS;~~

~~(2) THE COMMERCIAL SECTOR, INCLUDING:~~

~~(I) ARBORISTS;~~

~~(II) AUTOMOBILE SALES AND SERVICES;~~

~~(III) COMMERCIAL AND RESIDENTIAL CONSTRUCTION COMPANIES;~~

~~(IV) COMPANIES THAT SELL SUPPLIES AND MATERIALS FOR THE MAINTENANCE OF COMMERCIAL AND RESIDENTIAL BUSINESSES, INCLUDING HOME IMPROVEMENT SUPPLY STORES;~~

~~(V) ENVIRONMENTAL SERVICES COMPANIES;~~

~~(VI) EXTERMINATORS;~~

~~(VII) JANITORIAL FIRMS;~~

~~(VIII) LANDSCAPERS;~~

~~(IX) LAUNDROMATS, DRY CLEANERS, AND LAUNDRY SERVICE COMPANIES;~~

~~(X) LODGING, BUILDING, AND PROPERTY MAINTENANCE COMPANIES;~~

~~(XI) PLUMBERS, ELECTRICIANS, AND HEATING, VENTILATION, AIR CONDITIONING, AND REFRIGERATION CONTRACTORS AND THE DISTRIBUTORS OF SUPPLIES THAT SUPPORT THOSE PROFESSIONS;~~

~~(XII) ROOFERS; AND~~

~~(XIII) SELF-STORAGE FACILITIES;~~

~~(3) THE COMMUNICATIONS SECTOR, INCLUDING:~~

~~(I) BROADCASTING COMPANIES AND STATIONS;~~

~~(II) CABLE TELEVISION COMPANIES;~~

~~(III) CELLULAR AND LANDLINE TELEPHONE COMPANIES; AND~~

~~(IV) INTERNET SERVICE PROVIDERS;~~

~~(4) THE CRITICAL MANUFACTURING SECTOR, INCLUDING:~~

~~(I) MANUFACTURERS OF:~~

~~1. CLEANING AND SANITATION EQUIPMENT AND SUPPLIES;~~

~~2. ENGINES, MOTORS, TURBINES, GENERATORS, AND POWER TRANSMISSION EQUIPMENT;~~

~~3. LAND, AIR, AND WATER VEHICLES AND RELATED PARTS;~~

~~4. MEDICAL EQUIPMENT;~~

~~5. PARTS FOR WATER, ELECTRIC, AND TELECOMMUNICATIONS UTILITY INFRASTRUCTURE;~~

~~6. PERSONAL PROTECTIVE EQUIPMENT; AND~~

~~7. STEEL, IRON, AND ALUMINUM PRODUCTS;~~

~~(II) COMPANIES THAT RESEARCH, DEVELOP, MANUFACTURE, OR INTEGRATE WEAPONS, DEFENSE, OR INTELLIGENCE SYSTEMS OR ASSETS;~~

~~(III) THE DEFENSE INDUSTRIAL BASE SECTOR; AND~~

~~(IV) PRIVATE CONTRACTORS THAT SUPPORT DEFENSE AND INTELLIGENCE AGENCIES;~~

~~(5) THE EMERGENCY SERVICES SECTOR, INCLUDING:~~

~~(I) CORRECTIONAL INSTITUTIONS;~~

~~(II) EMERGENCY MANAGEMENT;~~

~~(III) EMERGENCY MEDICAL SERVICES;~~

~~(IV) FIRE AND RESCUE SERVICES;~~

~~(V) LAW ENFORCEMENT; AND~~

~~(VI) PRIVATE AMBULANCE COMPANIES;~~

~~(6) THE ENERGY SECTOR, INCLUDING:~~

~~(I) COMPANIES ENGAGED IN THE GENERATION OF ELECTRICITY, EXCLUDING HYDROELECTRIC ENERGY COMPANIES AND NUCLEAR ENERGY COMPANIES;~~

~~(II) COMPANIES ENGAGED IN THE PRODUCTION, REFINING, STORAGE, TRANSPORTATION, DISTRIBUTION, OR SALE OF OIL, GAS, AND PROPANE PRODUCTS, INCLUDING GAS STATIONS AND TRUCK STOPS; AND~~

~~(III) COMPANIES THAT PROVIDE UTILITY MAINTENANCE SERVICES;~~

~~(7) THE FOOD AND AGRICULTURE SECTOR, INCLUDING:~~

~~(I) ALCOHOLIC BEVERAGES RETAILERS AND DISTRIBUTORS, BREWERIES, DISTILLERIES, AND WINERIES;~~

~~(II) COMPANIES THAT MANUFACTURE OR SUPPORT THE MANUFACTURE OF PAPER PRODUCTS;~~

~~(III) CONVENIENCE STORES;~~

- ~~(IV) FARMS;~~
- ~~(V) FARMER'S MARKETS;~~
- ~~(VI) GROCERY STORES;~~
- ~~(VII) INSTITUTIONAL FOOD SERVICE AND SUPPLY COMPANIES;~~
- ~~(VIII) FOOD MANUFACTURERS AND PROCESSORS;~~
- ~~(IX) PET SUPPLY STORES; AND~~
- ~~(X) VETERINARY HOSPITALS, CLINICS, AND KENNELS;~~
- ~~(8) THE GOVERNMENT FACILITIES SECTOR, INCLUDING:~~
 - ~~(I) BAIL BONDSMEN;~~
 - ~~(II) COURT REPORTERS; AND~~
 - ~~(III) LAWYERS AND LAW FIRMS;~~
- ~~(9) THE HEALTH CARE AND PUBLIC HEALTH SECTOR, INCLUDING:~~
 - ~~(I) BEHAVIORAL HEALTH FACILITIES AND PROFESSIONALS, INCLUDING PSYCHOLOGISTS, MENTAL HEALTH COUNSELORS, AND SUBSTANCE ABUSE COUNSELORS;~~
 - ~~(II) DIAGNOSTIC FACILITIES, INCLUDING RADIOLOGY, IMAGING, AND LABORATORY FACILITIES;~~
 - ~~(III) FUNERAL HOMES AND CREMATORIUMS;~~
 - ~~(IV) HEALTH CARE SYSTEMS AND CLINICS;~~
 - ~~(V) HEALTH INSURANCE CARRIERS, PAYORS, AND BILLING COMPANIES;~~
 - ~~(VI) HOME HEALTH CARE COMPANIES;~~
 - ~~(VII) HOSPITALS;~~

~~(VIII) MANUFACTURERS AND DISTRIBUTORS OF MEDICAL EQUIPMENT AND SUPPLIES;~~

~~(IX) MEDICAL CANNABIS GROWERS, PROCESSORS, AND DISPENSARIES;~~

~~(X) OFFICES OF HEALTH CARE PROVIDERS, INCLUDING PHYSICIANS AND DENTISTS;~~

~~(XI) PHARMACIES AND PHARMACISTS;~~

~~(XII) OCCUPATIONAL THERAPISTS, PHYSICAL THERAPISTS, AND SPEECH THERAPISTS;~~

~~(XIII) REHABILITATION FACILITIES; AND~~

~~(XIV) SENIOR LIVING FACILITIES, INCLUDING INDEPENDENT LIVING, ASSISTED LIVING, AND SKILLED NURSING;~~

~~(10) THE INFORMATION TECHNOLOGY SECTOR, INCLUDING:~~

~~(I) COMPANIES THAT DESIGN, DEVELOP, DISTRIBUTE, HOST, SELL, AND SUPPORT INFORMATION TECHNOLOGY SOFTWARE AND HARDWARE; AND~~

~~(II) COMPANIES THAT PROVIDE NETWORK ROUTING, ACCESS, AND CONFIGURATION SERVICES;~~

~~(11) THE MOTOR CARRIER INDUSTRY, INCLUDING:~~

~~(I) CARRIERS OF MARINE FREIGHT, INCLUDING OCEAN CARRIERS AND INLAND CARRIERS;~~

~~(II) COURIER, PACKAGE DELIVERY, MAIL SERVICE, AND MAIL MANAGEMENT COMPANIES;~~

~~(III) MARINE, RAIL, TRUCK, AND INTERMODAL TERMINALS AND OPERATORS; AND~~

~~(IV) STEVEDORES, LONGSHOREMEN, BAGGAGE HANDLERS, AND OTHERS WHO HANDLE CARGO AT TRANSPORTATION HUBS;~~

~~(12) THE SERVICE SECTOR, INCLUDING CHILDCARE PROVIDERS AND STAFF, ELDER CARE PROVIDERS AND STAFF, AND PERSONAL SERVICES PROVIDERS;~~

~~(13) THE TRANSPORTATION SYSTEMS SECTOR, INCLUDING:~~

~~(I) AIRLINES AND OPERATORS OF MANNED AND UNMANNED COMMERCIAL AIRCRAFT, AIRPORTS, AIR STRIPS, HELIPORTS, AND SEAPLANE BASES; AND~~

~~(II) RAILROADS;~~

~~(14) THE WAREHOUSING AND DISTRIBUTION SECTOR, INCLUDING:~~

~~(I) COMPANIES THAT SUPPLY PARTS OR PROVIDE MAINTENANCE AND REPAIR SERVICES FOR TRANSPORTATION ASSETS AND INFRASTRUCTURE, INCLUDING AIRCRAFT, MARINE VESSELS, LOCOMOTIVES, RAIL CARS, TRUCKS, BUSES, CARS, HEAVY EQUIPMENT, ROADS, BRIDGES, AND TUNNELS;~~

~~(II) LESSORS OF TRANSPORTATION ASSETS, INCLUDING RAILCARS AND TRUCK TRAILERS; AND~~

~~(III) PIPELINE OWNERS, OPERATORS, AND MAINTENANCE COMPANIES; AND~~

~~(15) PERSONNEL OF ANY OTHER INSTITUTION OR INDUSTRY ORDERED TO REMAIN OPEN DURING THE EMERGENCY.~~

~~3-1603.~~

~~(A) IN THIS SECTION, "AGENCY" MEANS:~~

~~(1) A LOCAL ORGANIZATION FOR EMERGENCY MANAGEMENT, AS DEFINED IN § 14-101.1 OF THE PUBLIC SAFETY ARTICLE; OR~~

~~(2) THE MARYLAND EMERGENCY MANAGEMENT AGENCY.~~

~~(B) EACH AGENCY SHALL PERIODICALLY EVALUATE AND DETERMINE WHETHER AN EMERGENCY IS OCCURRING OR HAS OCCURRED.~~

~~(C) (1) IF AN AGENCY DETERMINES THAT AN EMERGENCY IS OCCURRING OR HAS OCCURRED, THE AGENCY SHALL ANNOUNCE PUBLICLY IN WRITING THAT THE EMERGENCY IS OCCURRING OR HAS OCCURRED AND THAT ESSENTIAL EMPLOYERS ARE REQUIRED TO COMPLY WITH §§ 3-1605, 3-1608, AND 3-1609 OF THIS SUBTITLE.~~

~~(2) ONCE THE EMERGENCY HAS SUBSIDED, THE AGENCY THAT MADE THE ANNOUNCEMENT UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL~~

~~ANNOUNCE PUBLICLY IN WRITING THAT ESSENTIAL EMPLOYERS NO LONGER NEED TO:~~

~~(I) ALLOW AN ESSENTIAL WORKER TO REFUSE TO FULFILL WORK RESPONSIBILITIES UNDER § 3-1605 OF THIS SUBTITLE;~~

~~(II) PROVIDE HEALTH LEAVE OR BEREAVEMENT LEAVE UNDER § 3-1608 OF THIS SUBTITLE; OR~~

~~(III) PROVIDE ASSISTANCE WITH HEALTH INSURANCE COSTS UNDER § 3-1609 OF THIS SUBTITLE.~~

~~3-1604.3-1603.~~

DURING AN EMERGENCY, EACH ESSENTIAL EMPLOYER SHALL:

(1) PROVIDE WORKING CONDITIONS THAT COMPLY WITH APPLICABLE SAFETY STANDARDS ADOPTED BY A FEDERAL OR STATE AGENCY;

~~(I) REDUCE PHYSICAL HARM AND MENTAL DISTRESS AND DETRIMENT; AND~~

~~(II) ENSURE PHYSICAL HEALTH AND SAFETY;~~

(2) SUBJECT TO AVAILABILITY, PROVIDE NECESSARY AMOUNTS OF PERSONAL PROTECTIVE SAFETY EQUIPMENT RECOMMENDED FOR USAGE DURING THE EMERGENCY AT NO COST TO ESSENTIAL WORKERS;

(3) CREATE AND MAINTAIN ADOPT, MAINTAIN, AND POST WRITTEN PROTOCOLS TO ENFORCE ANY NECESSARY HYGIENIC PRACTICES OR DISEASE MITIGATION MEASURES AT A WORKSITE ENSURE AN ESSENTIAL WORKER’S ACCESS TO INFORMATION REGARDING THE APPLICABLE SAFETY STANDARDS IN EFFECT DURING THE EMERGENCY; AND

(4) PROVIDE OR IMPLEMENT ANY OTHER MEASURES OR REQUIREMENTS SET BY THE GOVERNOR OR A FEDERAL OR STATE AGENCY TO ENSURE THE GENERAL HEALTH AND SAFETY OF ESSENTIAL WORKERS.

~~3-1605.~~

~~(A) (1) IN THIS SECTION, “UNSAFE WORK ENVIRONMENT” MEANS ANY CIRCUMSTANCE PRESENT AT A WORKSITE THAT RENDERS AN ESSENTIAL WORKER UNABLE TO PERFORM REQUIRED DAILY DUTIES BECAUSE THE PHYSICAL CONDITION~~

~~OF THE WORKSITE REPRESENTS A REASONABLE THREAT TO A WORKER'S HEALTH OR SAFETY.~~

~~(2) "UNSAFE WORK ENVIRONMENT" INCLUDES:~~

~~(I) UNSANITARY CONDITIONS IN THE WORKPLACE;~~

~~(II) AN ESSENTIAL EMPLOYER'S FAILURE TO PROVIDE PERSONAL PROTECTIVE EQUIPMENT;~~

~~(III) LACK OF EMPLOYER ADHERENCE TO FEDERAL AND STATE HEALTH AND SAFETY STANDARDS RELATED TO THE EMERGENCY;~~

~~(IV) AN ESSENTIAL EMPLOYER'S FAILURE TO DEVELOP AND ENFORCE HEALTH AND SAFETY PROTOCOLS RELATED TO THE EMERGENCY; AND~~

~~(V) AN ESSENTIAL EMPLOYER'S FAILURE TO NOTIFY WORKERS OF ILLNESSES, BROKEN OR IMPROPERLY FUNCTIONING EQUIPMENT, OR ANY OTHER DANGEROUS OR HAZARDOUS CONDITIONS WHICH REPRESENT A REASONABLE THREAT TO THE ESSENTIAL WORKER'S HEALTH OR SAFETY.~~

~~(B) SUBJECT TO THE REQUIREMENTS SET FORTH IN SUBSECTION (D) OF THIS SECTION, IF AN ESSENTIAL WORKER FEARS FOR THE ESSENTIAL WORKER'S LIFE OR HEALTH DURING AN EMERGENCY DUE TO THE NATURE OF THE WORK BEING PERFORMED, AN ESSENTIAL WORKER MAY REFUSE TO FULFILL A RESPONSIBILITY THAT:~~

~~(1) IS REQUIRED OR ENCOURAGED BY AN ESSENTIAL EMPLOYER; AND~~

~~(2) RELATES TO AN UNSAFE WORK ENVIRONMENT.~~

~~(C) AN ESSENTIAL EMPLOYER MAY NOT RETALIATE AGAINST AN ESSENTIAL WORKER OR ANY OTHER WORKER IN THE FORM OF DISCHARGE, DISCIPLINARY ACTION, OR OTHER ADVERSE ACTION FOR:~~

~~(1) WITNESSING A CONDITION CAUSING AN UNSAFE WORK ENVIRONMENT;~~

~~(2) NOTIFYING THE ESSENTIAL EMPLOYER OR A GOVERNMENTAL ENTITY OF THE UNSAFE WORK ENVIRONMENT; OR~~

~~(3) FILING A FORMAL OR INFORMAL COMPLAINT.~~

~~(D) (1) IN ORDER TO BE PROTECTED UNDER SUBSECTION (C) OF THIS SECTION, AN ESSENTIAL WORKER SHALL PROMPTLY NOTIFY THE COMMISSIONER IN WRITING WITHIN 3 DAYS AFTER THE DATE ON WHICH THE ESSENTIAL WORKER BECAME AWARE OF THE CONDITION CAUSING AN UNSAFE WORK ENVIRONMENT.~~

~~(2) THE COMMISSIONER SHALL:~~

~~(I) PROMPTLY NOTIFY THE ESSENTIAL EMPLOYER OF THE CONTENT OF THE WRITTEN COMPLAINT; AND~~

~~(II) IN ITS DISCRETION, SET FORTH REQUIREMENTS THAT THE ESSENTIAL EMPLOYER SHALL MEET TO EFFECTIVELY AND IMMEDIATELY REMEDY THE UNSAFE WORK ENVIRONMENT.~~

~~(3) (I) IF AN ESSENTIAL EMPLOYER DOES NOT REMEDY THE CONDITION CAUSING THE UNSAFE WORK ENVIRONMENT, THE COMMISSIONER SHALL ASSESS A CIVIL PENALTY OF NOT MORE THAN \$50 FOR EACH DAY THAT THE CONDITION CAUSING THE UNSAFE WORK ENVIRONMENT IS NOT REMEDIED.~~

~~(II) THE AMOUNT OF A PENALTY ASSESSED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH MAY NOT EXCEED \$1,000 PER OCCURRENCE.~~

~~(III) IF THE COMMISSIONER DETERMINES THAT AN EMPLOYER HAS VIOLATED THE PROVISIONS OF THIS SECTION, THE COMMISSIONER:~~

~~1. SHALL ISSUE AN ORDER COMPELLING COMPLIANCE;~~
~~AND~~

~~2. MAY, IN THE COMMISSIONER'S DISCRETION, ASSESS A PENALTY OF UP TO \$1,000 FOR EACH APPLICANT FOR EMPLOYMENT FOR WHOM THE EMPLOYER WAS NOT IN COMPLIANCE.~~

~~(IV) IN DETERMINING THE AMOUNT OF THE PENALTY, THE COMMISSIONER SHALL CONSIDER:~~

- ~~1. THE GRAVITY OF THE VIOLATION;~~
- ~~2. THE SIZE OF THE EMPLOYER'S BUSINESS;~~
- ~~3. THE EMPLOYER'S GOOD FAITH; AND~~
- ~~4. THE EMPLOYER'S HISTORY OF VIOLATIONS UNDER THE SECTION.~~

~~(4) IF THE COMMISSIONER ASSESSES A PENALTY UNDER PARAGRAPH (3)(H) OF THIS SUBSECTION, THE PENALTY SHALL BE SUBJECT TO THE NOTICE AND HEARING REQUIREMENTS OF TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.~~

~~(5) THE COMMISSIONER SHALL ADOPT REGULATIONS TO CARRY OUT THIS SUBSECTION.~~

~~(E) IN ADDITION TO THE REQUIREMENTS OF THIS SUBTITLE, AN ESSENTIAL EMPLOYER SHALL COMPLY WITH ANY STANDARDS, PROTOCOLS, OR PROCEDURES THAT THE COMMISSIONER REQUIRES, INCLUDING ANY EMERGENCY OR TEMPORARY STANDARD.~~

~~3-1606.~~

~~(A) EACH ESSENTIAL EMPLOYER SHALL:~~

~~(1) PREPARE A HEALTH EMERGENCY PREPAREDNESS PLAN FOR RESPONDING TO A CATASTROPHIC HEALTH EMERGENCY AS DEFINED UNDER § 14-3A-01 OF THE PUBLIC SAFETY ARTICLE; AND~~

~~(2) ANNUALLY REVIEW THE HEALTH EMERGENCY PREPAREDNESS PLAN AND SUBMIT ANY CHANGES TO THE DIRECTOR OF THE MARYLAND EMERGENCY MANAGEMENT AGENCY.~~

~~(B) THE HEALTH EMERGENCY PREPAREDNESS PLAN REQUIRED UNDER SUBSECTION (A) OF THIS SECTION SHALL CONTAIN THE FOLLOWING PROVISIONS:~~

~~(1) STEPS AN ESSENTIAL WORKER MAY TAKE IF AN ESSENTIAL EMPLOYER ENGAGES IN RETALIATION OR OTHER UNLAWFUL EMPLOYMENT PRACTICES;~~

~~(2) PROCEDURES THAT GOVERN THE USE AND MAINTENANCE OF PERSONAL PROTECTIVE EQUIPMENT;~~

~~(3) WORK HOURS AND SHIFTS THAT WOULD TAKE EFFECT DURING THE CATASTROPHIC HEALTH EMERGENCY;~~

~~(4) SANITATION PROCEDURES;~~

~~(5) TELEWORKING CAPABILITIES, IF APPLICABLE;~~

~~(6) ANY CHANGES IN PAY AND BENEFITS; AND~~

~~(7) MECHANISMS FOR NOTIFYING ESSENTIAL WORKERS OF POSITIVE TEST RESULTS FOR ILLNESS.~~

~~(c) EACH ESSENTIAL EMPLOYER SHALL:~~

~~(1) DISPLAY THE MOST RECENT HEALTH EMERGENCY PREPAREDNESS PLAN IN A COMMON AREA WHERE IT IS VISIBLE TO ALL ESSENTIAL WORKERS; AND~~

~~(2) ON OR BEFORE DECEMBER 31 EACH YEAR, SUBMIT THE HEALTH EMERGENCY PREPAREDNESS PLAN TO THE MARYLAND EMERGENCY MANAGEMENT AGENCY AND THE EMERGENCY MANAGEMENT DIRECTOR FOR EACH COUNTY IN WHICH THE ESSENTIAL EMPLOYER HAS AN OFFICE LOCATION.~~

~~3-1607.~~

3-1604.

AN ESSENTIAL WORKER HAS A RIGHT TO REFUSE TO PERFORM AN ASSIGNED TASK AS PROVIDED UNDER § 5-604 OF THIS ARTICLE AND COROLLARY REGULATIONS.

3-1605.

(A) DURING AN EMERGENCY, IF AN ESSENTIAL WORKER OR ANY OTHER WORKER HAS CONTRACTED ~~AN INFECTIOUS DISEASE~~ THE COMMUNICABLE DISEASE THAT IS THE SUBJECT OF THE EMERGENCY AT A WORK SITE, THE ESSENTIAL EMPLOYER SHALL TAKE PROACTIVE STEPS TO MINIMIZE THE RISK OF TRANSMISSION, INCLUDING:

~~(1) INFORMING ESSENTIAL WORKERS THAT THEY MAY HAVE BEEN EXPOSED; AND~~

~~(2) EVACUATING THE WORKSITE UNTIL IT HAS BEEN PROPERLY SANITIZED~~ EXPOSED.

(B) (1) ~~IF EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, IF AN ESSENTIAL WORKER'S HEALTH INSURANCE COVERAGE OR OTHER BENEFITS DO NOT COVER THE COST OF TESTING FOR A CONTAGIOUS ILLNESS OR THE COMMUNICABLE DISEASE, DURING THAT IS THE SUBJECT OF THE EMERGENCY, DURING AN EMERGENCY, THE ESSENTIAL EMPLOYER SHALL PAY ALL COSTS ASSOCIATED WITH THAT TESTING~~ FOR TESTING FOR THE COMMUNICABLE DISEASE.

(2) AN ESSENTIAL EMPLOYER IS NOT SUBJECT TO THE REQUIREMENT UNDER PARAGRAPH (1) OF THIS SUBSECTION IF AN ESSENTIAL WORKER IS ABLE TO OBTAIN TESTING FREE OF CHARGE.

(C) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, EACH ESSENTIAL EMPLOYER SHALL REPORT ALL POSITIVE TEST RESULTS TO THE MARYLAND DEPARTMENT OF HEALTH.

(2) WHEN REPORTING TO THE MARYLAND DEPARTMENT OF HEALTH, THE ESSENTIAL EMPLOYER SHALL:

(I) INCLUDE DEMOGRAPHIC INFORMATION ABOUT THE ESSENTIAL WORKER; AND

(II) REDACT ANY PERSONAL IDENTIFYING INFORMATION TO PROTECT THE IDENTITY OF THE ESSENTIAL WORKER.

(D) THE MARYLAND DEPARTMENT OF HEALTH SHALL COLLECT POSITIVE TEST RESULTS, CATEGORIZE THE RESULTS BY INDUSTRY, AND PUBLISH THE RESULTS IN A FORMAT THAT IS READILY ACCESSIBLE TO THE GENERAL PUBLIC.

(E) THE COMMISSIONER SHALL ADOPT REGULATIONS AS NECESSARY TO CARRY OUT THIS SECTION.

~~3-1608.~~ **3-1606.**

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

~~**(2) “BEREAVEMENT LEAVE” MEANS PAID LEAVE THAT AN ESSENTIAL EMPLOYER PROVIDES TO AN ESSENTIAL WORKER DURING AN EMERGENCY DUE TO THE DEATH OF A FAMILY MEMBER THAT RESULTED FROM THE EMERGENCY.**~~

~~**(3)**~~ **(2) “FAMILY MEMBER” MEANS:**

(I) A BIOLOGICAL CHILD, AN ADOPTED CHILD, A FOSTER CHILD, OR A STEPCHILD OF THE ESSENTIAL WORKER;

(II) A CHILD FOR WHOM THE ESSENTIAL WORKER HAS LEGAL OR PHYSICAL CUSTODY OR GUARDIANSHIP;

(III) A CHILD FOR WHOM THE ESSENTIAL WORKER STANDS IN LOCO PARENTIS, REGARDLESS OF THE CHILD’S AGE;

(IV) A BIOLOGICAL PARENT, AN ADOPTIVE PARENT, A FOSTER PARENT, OR A STEPPARENT OF THE ESSENTIAL WORKER OR OF THE ESSENTIAL WORKER’S SPOUSE;

(V) THE LEGAL GUARDIAN OR WARD OF THE ESSENTIAL WORKER OR OF THE ESSENTIAL WORKER’S SPOUSE;

(VI) AN INDIVIDUAL WHO ACTED AS A PARENT OR STOOD IN LOCO PARENTIS TO THE ESSENTIAL WORKER OR THE ESSENTIAL WORKER’S SPOUSE WHEN THE ESSENTIAL WORKER OR THE ESSENTIAL WORKER’S SPOUSE WAS A MINOR;

(VII) THE SPOUSE OF THE ESSENTIAL WORKER;

(VIII) A BIOLOGICAL GRANDPARENT, AN ADOPTED GRANDPARENT, A FOSTER GRANDPARENT, OR A STEPGRANDPARENT OF THE ESSENTIAL WORKER;

(IX) A BIOLOGICAL GRANDCHILD, AN ADOPTED GRANDCHILD, A FOSTER GRANDCHILD, OR A STEPGRANDCHILD OF THE ESSENTIAL WORKER; OR

(X) A BIOLOGICAL SIBLING, AN ADOPTED SIBLING, A FOSTER SIBLING, OR A STEPSIBLING OF THE ESSENTIAL WORKER.

~~(4) “HEALTH LEAVE” MEANS PAID LEAVE THAT AN ESSENTIAL~~

~~(3) “PUBLIC HEALTH EMERGENCY LEAVE” MEANS PAID LEAVE THAT AN ESSENTIAL EMPLOYER PROVIDES TO AN ESSENTIAL WORKER DURING AN EMERGENCY DUE TO THE ESSENTIAL WORKER’S ILLNESS OR OTHER HEALTH NEEDS RELATED TO THE EMERGENCY AS REQUIRED UNDER SUBSECTION (D) OF THIS SECTION.~~

~~(B) EACH ESSENTIAL EMPLOYER SHALL PROVIDE AN ESSENTIAL WORKER WITH AT LEAST:~~

~~(1) 3 DAYS OF BEREAVEMENT LEAVE; AND~~

~~(2) 14 DAYS OF HEALTH LEAVE.~~

(B) THIS SECTION APPLIES ONLY IF THE FEDERAL OR STATE GOVERNMENT PROVIDES FUNDING THAT CAN BE USED FOR PUBLIC HEALTH EMERGENCY LEAVE.

(C) AN ESSENTIAL EMPLOYER SHALL PROVIDE AN ESSENTIAL WORKER WITH PUBLIC HEALTH EMERGENCY LEAVE ON THE DATE THE FUNDING IS MADE AVAILABLE TO THE ESSENTIAL EMPLOYER.

(D) AN ESSENTIAL EMPLOYER SHALL PROVIDE PAID PUBLIC HEALTH EMERGENCY LEAVE:

(1) IN ADDITION TO ANY OTHER LEAVE OR BENEFIT, INCLUDING EARNED SICK AND SAFE LEAVE UNDER SUBTITLE 13 OF THIS TITLE; AND

(2) IN THE FOLLOWING AMOUNTS:

(I) IF SPECIFIED IN A FEDERAL PROGRAM, ORDER, LAW, OR REGULATION, THE AMOUNT PROVIDED FOR UNDER THE PROGRAM, ORDER, LAW, OR REGULATION; OR

(II) IF NOT SPECIFIED IN A FEDERAL PROGRAM, ORDER, LAW, OR REGULATION:

1. FOR FULL-TIME ESSENTIAL WORKERS WHO REGULARLY WORK 40 OR MORE HOURS PER WEEK, 112 HOURS;

2. FOR PART-TIME ESSENTIAL WORKERS WHO REGULARLY WORK LESS THAN 40 HOURS PER WEEK, AN AMOUNT OF HOURS EQUIVALENT TO THE AVERAGE HOURS WORKED DURING A TYPICAL 4-WEEK WORKING PERIOD;

3. FOR ESSENTIAL WORKERS WHOSE SCHEDULES AND AMOUNT OF HOURS WORKED VARY FROM WEEK TO WEEK, THE AVERAGE NUMBER OF HOURS THAT THE ESSENTIAL WORKER WAS SCHEDULED PER WEEK OVER THE 6-MONTH PERIOD ENDING ON THE DATE ON WHICH THE EMERGENCY IS DECLARED OR PROCLAIMED; OR

4. IF THE ESSENTIAL WORKER DID NOT WORK DURING THE 6-MONTH PERIOD ENDING ON THE DATE ON WHICH THE EMERGENCY IS DECLARED OR PROCLAIMED, THE REASONABLE EXPECTATION OF THE ESSENTIAL WORKER AT THE TIME OF HIRING OR THE AVERAGE NUMBER OF HOURS PER WEEK THAT THE WORKER WOULD NORMALLY BE SCHEDULED TO WORK, WHICHEVER IS GREATER.

(E) EACH ESSENTIAL EMPLOYER SHALL ALLOW AN ESSENTIAL WORKER TO USE PUBLIC HEALTH EMERGENCY LEAVE PROVIDED UNDER SUBSECTION (C) OF THIS SECTION IN RELATION TO AN EMERGENCY:

(1) TO ISOLATE WITHOUT AN ORDER TO DO SO BECAUSE THE ESSENTIAL WORKER:

(I) HAS BEEN DIAGNOSED WITH THE COMMUNICABLE DISEASE THAT IS THE SUBJECT OF THE EMERGENCY; OR

(II) IS EXPERIENCING SYMPTOMS ASSOCIATED WITH THE COMMUNICABLE DISEASE THAT IS THE SUBJECT OF THE EMERGENCY AND IS AWAITING THE RESULTS OF A TEST TO CONFIRM THE DIAGNOSIS;

(2) TO SEEK OR OBTAIN A MEDICAL DIAGNOSIS, PREVENTIVE CARE, OR TREATMENT BECAUSE THE ESSENTIAL WORKER IS DIAGNOSED WITH THE COMMUNICABLE DISEASE THAT IS THE SUBJECT OF THE EMERGENCY;

(3) TO CARE FOR A FAMILY MEMBER WHO IS ISOLATING, WITHOUT AN ORDER TO DO SO, BECAUSE OF A DIAGNOSIS OF THE COMMUNICABLE DISEASE THAT IS THE SUBJECT OF THE EMERGENCY;

(4) DUE TO A DETERMINATION BY A PUBLIC HEALTH OFFICIAL OR HEALTH CARE PROFESSIONAL THAT THE ESSENTIAL WORKER'S PRESENCE AT THE PLACE OF EMPLOYMENT OR IN THE COMMUNITY WOULD JEOPARDIZE THE HEALTH OF OTHER INDIVIDUALS BECAUSE OF THE ESSENTIAL WORKER'S EXPOSURE TO, OR EXHIBITED SYMPTOMS ASSOCIATED WITH, THE COMMUNICABLE DISEASE THAT IS THE SUBJECT OF THE EMERGENCY, REGARDLESS OF WHETHER THE ESSENTIAL WORKER HAS BEEN DIAGNOSED WITH THE COMMUNICABLE DISEASE;

(5) TO CARE FOR A FAMILY MEMBER DUE TO A DETERMINATION BY A PUBLIC HEALTH OFFICIAL OR HEALTH CARE PROFESSIONAL THAT THE FAMILY MEMBER'S PRESENCE AT THE PLACE OF EMPLOYMENT OR IN THE COMMUNITY WOULD JEOPARDIZE THE HEALTH OF OTHERS BECAUSE OF THE FAMILY MEMBER'S EXPOSURE TO, OR EXHIBITED SYMPTOMS ASSOCIATED WITH, THE COMMUNICABLE DISEASE THAT IS THE SUBJECT OF THE EMERGENCY OR DUE TO SYMPTOMS EXHIBITED REGARDLESS OF WHETHER THE FAMILY MEMBER HAS BEEN DIAGNOSED WITH THE COMMUNICABLE DISEASE; OR

(6) TO CARE FOR A CHILD OR OTHER FAMILY MEMBER:

(I) WHEN THE CARE PROVIDER OF THE FAMILY MEMBER IS UNAVAILABLE DUE TO THE EMERGENCY; OR

(II) IF THE CHILD'S OR FAMILY MEMBER'S SCHOOL OR PLACE OF CARE HAS BEEN CLOSED BY A FEDERAL, STATE, OR LOCAL PUBLIC OFFICIAL OR AT THE DISCRETION OF THE SCHOOL OR PLACE OF CARE DUE TO THE EMERGENCY,

INCLUDING IF THE SCHOOL OR PLACE OF CARE IS PHYSICALLY CLOSED BUT PROVIDING INSTRUCTION REMOTELY.

~~(E)~~ (F) THIS SECTION MAY NOT BE CONSTRUED TO:

(1) REQUIRE AN ESSENTIAL EMPLOYER TO ~~ALLOW AN ESSENTIAL WORKER TO TAKE LEAVE UNDER SUBSECTION (B) OF THIS SECTION CONSECUTIVELY WITH EARNED SICK AND SAFE LEAVE UNDER SUBTITLE 13 OF THIS TITLE;~~ OR COMPENSATE AN ESSENTIAL WORKER FOR UNUSED PUBLIC HEALTH EMERGENCY LEAVE WHEN THE ESSENTIAL WORKER LEAVES EMPLOYMENT;

(2) PREEMPT, LIMIT, OR OTHERWISE AFFECT ANY OTHER LAW THAT PROVIDES FOR PUBLIC HEALTH EMERGENCY LEAVE BENEFITS THAT ARE MORE GENEROUS THAN REQUIRED UNDER THIS SECTION;

(3) PREEMPT, LIMIT, OR OTHERWISE AFFECT ANY WORKERS' COMPENSATION BENEFITS THAT ARE AVAILABLE UNDER TITLE 9 OF THIS ARTICLE;

(4) PROHIBIT AN ESSENTIAL EMPLOYER FROM ADOPTING AND ENFORCING A POLICY THAT PROHIBITS THE IMPROPER USE OF PUBLIC HEALTH EMERGENCY LEAVE, INCLUDING PROHIBITING A PATTERN OF ABUSE OF THE LEAVE;
OR

~~(2)~~ (5) PROHIBIT AN ESSENTIAL EMPLOYER FROM PROVIDING ADDITIONAL ~~BEREAVEMENT LEAVE, HEALTH LEAVE,~~ PUBLIC HEALTH EMERGENCY PAID LEAVE OR ANY OTHER TYPE OF LEAVE.

(G) (1) AN ESSENTIAL EMPLOYER MAY REQUIRE AN ESSENTIAL WORKER WHO USES PUBLIC HEALTH EMERGENCY LEAVE TO PROVIDE DOCUMENTATION OF THE NEED TO USE THE PUBLIC HEALTH EMERGENCY LEAVE.

(2) IF AN ESSENTIAL WORKER FAILS OR REFUSES TO PROVIDE DOCUMENTATION AS REQUIRED BY AN ESSENTIAL EMPLOYER UNDER PARAGRAPH (1) OF THIS SUBSECTION, AN ESSENTIAL EMPLOYER MAY REFUSE TO PAY THE ESSENTIAL WORKER FOR THE PUBLIC HEALTH EMERGENCY LEAVE.

(3) THE COMMISSIONER SHALL ADOPT REGULATIONS REGARDING THE FORMS OF DOCUMENTATION THAT AN ESSENTIAL EMPLOYER MAY REQUIRE UNDER PARAGRAPH (1) OF THIS SUBSECTION.

~~3-1609.~~

~~(A) (1) (i) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH AND SUBJECT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH, DURING AN EMERGENCY, EACH ESSENTIAL EMPLOYER SHALL PROVIDE AN ESSENTIAL WORKER WITH HAZARD PAY FOR EACH PAY PERIOD THAT THE ESSENTIAL WORKER WORKS, AT THE REGULAR INTERVAL IN WHICH THE ESSENTIAL WORKER IS PAID.~~

~~(ii) AN ESSENTIAL EMPLOYER IS NOT REQUIRED TO PROVIDE AN ESSENTIAL WORKER WITH HAZARD PAY IF THE ESSENTIAL EMPLOYER EARNS \$100,000 OR MORE PER YEAR.~~

~~(iii) THE AMOUNT OF HAZARD PAY PROVIDED UNDER SUBPARAGRAPH (i) OF THIS PARAGRAPH SHALL BE IN THE AMOUNT OF \$3.00 PER HOUR, UNLESS A COLLECTIVE BARGAINING AGREEMENT OR SIMILAR AGREEMENT PROVIDES FOR A HIGHER AMOUNT.~~

~~(2) AN ESSENTIAL WORKER IS ELIGIBLE FOR HAZARD PAY DATING BACK TO THE START OF THE EMERGENCY.~~

~~(3) AN ESSENTIAL EMPLOYER MAY NOT LOWER AN ESSENTIAL WORKER'S REGULAR RATE OF PAY TO ACCOMMODATE THE HAZARD PAY.~~

~~(4) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, HAZARD PAY MAY NOT BE COUNTED TOWARDS AN ESSENTIAL WORKER'S ELIGIBILITY FOR ANY STATE MEANS TESTED BENEFIT PROGRAMS.~~

~~(B) (1) DURING AN EMERGENCY, EACH ESSENTIAL EMPLOYER SHALL PROVIDE FINANCIAL ASSISTANCE FOR UNREIMBURSED HEALTH CARE COSTS TO EACH ESSENTIAL WORKER WHO BECOMES SICK OR IS INJURED IF THE SICKNESS OR INJURY IS RELATED TO THE EMERGENCY.~~

~~(2) (i) SUBJECT TO SUBPARAGRAPH (ii) OF THIS PARAGRAPH, EACH ESSENTIAL EMPLOYER SHALL SATISFY THE REQUIREMENT UNDER PARAGRAPH (1) OF THIS SUBSECTION FOR ESSENTIAL WORKERS WHO HAVE HEALTH INSURANCE COVERAGE BY REIMBURSING OR PAYING ANY CO-PAYS, INSURANCE PREMIUMS, OUT-OF-POCKET COSTS OF MEDICAL COVERAGE, OR OUT-OF-POCKET TRANSPORTATION COSTS INCURRED OR PAID BY THE ESSENTIAL WORKER.~~

~~(ii) IF AN ESSENTIAL WORKER IS RECEIVING MEDICAL BENEFITS UNDER THE MARYLAND WORKERS' COMPENSATION ACT, THE ESSENTIAL EMPLOYER SHALL BE CONSIDERED TO HAVE SATISFIED THE REQUIREMENT UNDER PARAGRAPH (1) OF THIS SUBSECTION WITH REGARD TO THAT ESSENTIAL WORKER.~~

~~(3) EACH ESSENTIAL EMPLOYER SHALL SATISFY THE REQUIREMENT UNDER PARAGRAPH (1) OF THIS SUBSECTION FOR ESSENTIAL WORKERS WHO DO~~

~~NOT HAVE HEALTH INSURANCE COVERAGE BY ASSISTING THE ESSENTIAL WORKER IN OBTAINING AND PAYING FOR HEALTH INSURANCE COVERAGE, SUCH AS THROUGH COVERAGE OBTAINED THROUGH THE MARYLAND HEALTH BENEFIT EXCHANGE DURING A SPECIAL ENROLLMENT PERIOD INITIATED AS A RESULT OF THE EMERGENCY.~~

~~(4) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, FINANCIAL ASSISTANCE PROVIDED FOR HEALTH CARE COSTS MAY NOT BE COUNTED TOWARDS AN ESSENTIAL WORKER'S ELIGIBILITY FOR ANY STATE MEANS TESTED BENEFIT PROGRAMS.~~

~~3-1610. 3-1607.~~

~~AN ESSENTIAL EMPLOYER MAY NOT INTENTIONALLY OR UNINTENTIONALLY KNOWINGLY MISCLASSIFY AN ESSENTIAL WORKER AS AN INDEPENDENT CONTRACTOR OR OTHER CLASSIFICATION IN ORDER TO AVOID PAYING AN ESSENTIAL WORKER THE HAZARD PAY REQUIRED UNDER § 13-1609 OF THIS SUBTITLE OR ANY OTHER~~ ANY BENEFITS DUE DURING AN EMERGENCY UNDER THIS SUBTITLE.

~~3-1611.~~

~~(A) (1) A PERSON THAT ALLEGES A VIOLATION OF THIS SUBTITLE MAY FILE A COMPLAINT WITH THE COMMISSIONER WITHIN 2 YEARS AFTER THE DATE THE PERSON KNEW OR SHOULD HAVE KNOWN OF THE ALLEGED VIOLATION.~~

~~(2) ON RECEIVING A COMPLAINT, THE COMMISSIONER SHALL INVESTIGATE THE COMPLAINT.~~

~~(3) THE COMMISSIONER OR THE COMMISSIONER'S DESIGNEE MAY OPEN AN INVESTIGATION ON THE COMMISSIONER'S OWN INITIATIVE.~~

~~(4) AN ESSENTIAL EMPLOYER THAT IS UNDER INVESTIGATION SHALL COMPLY WITH ANY REQUESTS FROM THE COMMISSIONER TO PROVIDE EVIDENCE OR INFORMATION AS A PART OF THE INVESTIGATION.~~

~~(5) (i) THE COMMISSIONER SHALL KEEP THE IDENTITY OF A COMPLAINANT CONFIDENTIAL UNLESS DISCLOSURE IS NECESSARY TO RESOLVE THE INVESTIGATION OR IS OTHERWISE REQUIRED BY LAW.~~

~~(ii) TO THE EXTENT PRACTICABLE, BEFORE DISCLOSING A COMPLAINANT'S IDENTITY, THE COMMISSIONER SHALL NOTIFY THE COMPLAINANT OF THE NEED TO DISCLOSE.~~

~~(B) IF THE COMMISSIONER DETERMINES THAT AN ESSENTIAL EMPLOYER HAS VIOLATED THIS SUBTITLE, THE COMMISSIONER:~~

~~(1) SHALL ISSUE AN ORDER COMPELLING COMPLIANCE; AND~~

~~(2) MAY:~~

~~(I) IMPOSE A CIVIL PENALTY OF NOT MORE THAN \$1,000; AND~~

~~(II) GRANT AN ESSENTIAL WORKER CURRENTLY OR FORMERLY EMPLOYED BY THE ESSENTIAL EMPLOYER:~~

~~1. COMPENSATORY DAMAGES AND ANY OTHER RELIEF NECESSARY TO MAKE THE INDIVIDUAL WHOLE;~~

~~2. RESCISSION OF ANY DISCIPLINE ISSUED IN VIOLATION OF THIS SUBTITLE;~~

~~3. REINSTATEMENT OF AN ESSENTIAL WORKER TERMINATED IN VIOLATION OF THIS SUBTITLE;~~

~~4. PAYMENT OF BACK PAY FOR ANY LOSS OF PAY OR BENEFITS RESULTING FROM RETALIATION OR OTHER ADVERSE ACTION; AND~~

~~5. REASONABLE ATTORNEY'S FEES.~~

~~(C) (1) FOR EACH VIOLATION, THE RELIEF AUTHORIZED UNDER THIS SECTION SHALL BE IMPOSED ON A PER ESSENTIAL WORKER AND PER INSTANCE BASIS;~~

~~(2) IN DETERMINING THE AMOUNT OF A CIVIL PENALTY, THE COMMISSIONER SHALL CONSIDER:~~

~~(I) THE GRAVITY OF THE VIOLATION;~~

~~(II) THE SIZE OF THE EMPLOYER'S BUSINESS;~~

~~(III) THE EMPLOYER'S GOOD FAITH; AND~~

~~(IV) THE EMPLOYER'S HISTORY OF VIOLATIONS UNDER THE SECTION;~~

~~(3) IF THE COMMISSIONER ASSESSES A PENALTY UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE PENALTY SHALL BE SUBJECT TO THE NOTICE AND HEARING REQUIREMENTS OF TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.~~

3-1608.

(A) IF AN ESSENTIAL WORKER BELIEVES THAT AN ESSENTIAL EMPLOYER HAS VIOLATED § 3-1604 OF THIS SUBTITLE:

(1) THE ESSENTIAL WORKER MAY SEEK ENFORCEMENT OF RIGHTS UNDER § 5-604 OF THIS ARTICLE; AND

(2) THE COMMISSIONER SHALL RESPOND IN ACCORDANCE WITH THE ENFORCEMENT PROVISIONS UNDER TITLE 5 OF THIS ARTICLE.

(B) (1) IF AN ESSENTIAL WORKER BELIEVES THAT AN ESSENTIAL EMPLOYER HAS VIOLATED § 3-1606 OF THIS SUBTITLE, THE ESSENTIAL WORKER MAY FILE A WRITTEN COMPLAINT WITH THE COMMISSIONER.

(2) WITHIN 90 DAYS AFTER THE RECEIPT OF A WRITTEN COMPLAINT, THE COMMISSIONER SHALL CONDUCT AN INVESTIGATION AND ATTEMPT TO RESOLVE THE ISSUE INFORMALLY THROUGH MEDIATION.

(3) (I) IF THE COMMISSIONER IS UNABLE TO RESOLVE AN ISSUE THROUGH MEDIATION DURING THE PERIOD STATED IN PARAGRAPH (2) OF THIS SUBSECTION AND THE COMMISSIONER DETERMINES THAT AN ESSENTIAL EMPLOYER HAS VIOLATED THIS SUBTITLE, THE COMMISSIONER SHALL ISSUE AN ORDER.

(II) AN ORDER ISSUED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH:

1. SHALL DESCRIBE THE VIOLATION;

2. SHALL DIRECT THE PAYMENT OF THE FULL MONETARY VALUE OF ANY UNPAID PUBLIC HEALTH EMERGENCY LEAVE AND ANY ACTUAL ECONOMIC DAMAGES;

3. MAY, IN THE COMMISSIONER'S DISCRETION, DIRECT THE PAYMENT OF AN ADDITIONAL AMOUNT OF UP TO THREE TIMES THE VALUE OF THE ESSENTIAL WORKER'S HOURLY WAGE FOR EACH VIOLATION; AND

4. MAY, IN THE COMMISSIONER'S DISCRETION, ASSESS A CIVIL PENALTY OF UP TO \$1,000 FOR EACH ESSENTIAL WORKER FOR WHOM THE EMPLOYER IS NOT IN COMPLIANCE WITH THIS SUBTITLE.

(4) THE ACTIONS TAKEN UNDER PARAGRAPHS (2) AND (3) OF THIS SUBSECTION ARE SUBJECT TO THE HEARING AND NOTICE REQUIREMENTS OF TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

(5) WITHIN 30 DAYS AFTER THE COMMISSIONER ISSUES AN ORDER, AN EMPLOYER SHALL COMPLY WITH THE ORDER.

(C) IF AN ESSENTIAL WORKER BELIEVES THAT AN ESSENTIAL EMPLOYER HAS VIOLATED ANY OTHER PROVISION OF THIS SUBTITLE:

(1) THE ESSENTIAL WORKER MAY FILE A WRITTEN COMPLAINT WITH THE COMMISSIONER; AND

(2) THE COMMISSIONER SHALL RESPOND IN ACCORDANCE WITH THE ENFORCEMENT PROVISIONS UNDER TITLE 5 OF THIS ARTICLE.

~~3-1612.~~ 3-1609.

THIS SUBTITLE MAY BE CITED AS THE MARYLAND ESSENTIAL WORKERS' PROTECTION ACT.

5-205.

(P) IN ADDITION TO ANY OTHER AUTHORITY THE COMMISSIONER MAY EXERCISE UNDER THIS TITLE, THE COMMISSIONER SHALL ENFORCE §§ 3-1603, 3-1605, AND 3-1607 OF THIS ARTICLE.

5-604.

(a) (1) An employer or other person may not discharge or otherwise discriminate against an employee on the basis of information gained through participation of the employee in group medical coverage.

(2) This title does not prevent an employer from using medical information that:

(i) has a direct, material, and timely relationship to the capacity or fitness of an employee to perform the job of the employee properly; or

(ii) differs substantially from medical information that the employee falsely provides in an application for employment.

(b) An employer or other person may not discharge or otherwise discriminate against an employee because the employee:

(1) files a complaint under or related to this title;

(2) brings an action under this title or a proceeding under or related to this title or causes the action or proceeding to be brought;

(3) has testified or will testify in an action under this title or a proceeding under or related to this title; [or]

(4) exercises, for the employee or another, a right under this title; OR

(5) IS AN ESSENTIAL WORKER WHO FILES A COMPLAINT OR EXERCISES A RIGHT UNDER § 3-1604 OF THIS ARTICLE.

(c) (1) (i) Subject to subparagraph (ii) of this paragraph, an employee who believes that an employer or other person has discharged or otherwise discriminated against the employee in violation of subsection (a) or (b) of this section may submit to the Commissioner a written complaint that alleges the discrimination and that includes the signature of the employee.

(ii) The Commissioner shall accept as timely an oral complaint made by the employee under the circumstances described in subparagraph (i) of this paragraph, provided the employee submits a written complaint within 7 business days of the oral complaint and that includes the signature of the employee.

(2) An employee shall file a complaint under this subsection within 30 days after the alleged discrimination occurs.

(d) (1) On receipt of a complaint under subsection (c) of this section, the Commissioner may investigate.

(2) If, after investigation, the Commissioner determines that an employer or other person has violated subsection (a) or (b) of this section, the Commissioner shall file a complaint to enjoin the violation, to reinstate the employee to the former position with back pay, or for other appropriate relief in the circuit court for:

(i) the county in which the alleged violation occurred;

(ii) the county in which the employer has its principal office; or

(iii) Baltimore City.

(3) Within 90 days after the Commissioner receives a complaint, the Commissioner shall notify the employee of the determination under this subsection.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) Within 2 weeks after the effective date of this Act, the Secretary of Labor shall:

(1) if the federal Occupational Safety and Health Administration has issued an applicable Emergency Temporary Standard related to COVID-19, adopt the Emergency Temporary Standard; or

(2) if the federal Occupational Safety and Health Administration has not issued an applicable Emergency Temporary Standard related to COVID-19, adopt a State Emergency Temporary Standard that:

(i) meets or exceeds the guidance provided in “Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace” published on January 29, 2021, by the federal Occupational Safety and Health Administration; and

(ii) complies with subsection (d) of this section.

(b) The Secretary of Labor shall set an Emergency Temporary Standard adopted under subsection (a) of this section to expire at the earlier of:

(1) the conclusion of the catastrophic health emergency declared by the Governor on March 5, 2020; or

(2) the adoption of a permanent aerosol transmissible disease standard by the federal Occupational Safety and Health Administration and the Secretary of Labor.

(c) If the Secretary of Labor adopts an Emergency Temporary Standard under subsection (a)(1) of this section, the Emergency Temporary Standard shall remain in effect whether or not it becomes the subject of federal litigation.

(d) If the Secretary of Labor adopts an Emergency Temporary Standard under subsection (a)(2) of this section, the Emergency Temporary Standard shall require each employer to:

(1) notify the Maryland Department of Health within 24 hours after the confirmation of a positive case of COVID-19;

(2) notify the Maryland Department of Health within 24 hours after the confirmation of three or more employees at a workplace testing positive for COVID-19 within a 14-day period;

(3) post in a location visible to employees at the work site:

- (i) information regarding COVID–19 symptoms;
 - (ii) protocols for an employee’s reaction to experiencing COVID–19 symptoms;
 - (iii) the minimum safety standards developed under the regulations;
 - and
 - (iv) the process for submitting a complaint to Maryland Occupational Safety and Health; and
- (4) comply with the prohibitions relating to terminating or discriminating against employees.

SECTION 3. AND BE IT FURTHER ENACTED, That:

(a) On or before August 1, 2021, the Maryland Department of Health, in consultation with the Maryland Department of Labor and local health departments, shall develop a template health emergency preparedness plan for responding to a catastrophic health emergency as defined under § 14–3A–01 of the Public Safety Article.

(b) The health emergency preparedness plan developed under subsection (a) of this section shall:

- (1) be consistent with any applicable federal and State standards;
- (2) incorporate input from employers; and
- (3) include the following provisions:
 - (i) a coordinated process for handling complaints related to unsafe working conditions due to a catastrophic health emergency; and
 - (ii) methods for raising public awareness about the process for filing a complaint about unsafe working conditions due to a catastrophic health emergency.

(c) In addition to the template health emergency preparedness plan, on or before October 1, 2021, the Maryland Department of Health, in consultation with the Maryland Department of Labor and local health departments, shall report to the General Assembly, in accordance with § 2–1257 of the State Government Article, on recommendations for potential legislation to enhance the agencies’ enforcement authority during a catastrophic health emergency.

SECTION 4. AND BE IT FURTHER ENACTED, That, on or before January 1, 2022, Maryland Occupational Safety and Health shall report to the General Assembly, in

accordance with § 2–1257 of the State Government Article, on enforcement actions related to COVID–19, including:

- (1) the number of formal and informal complaints received;
- (2) the number of site inspections conducted; and
- (3) information related to any citations issued to employers.

SECTION 5. AND BE IT FURTHER ENACTED, That the Commissioner of Labor and Industry shall adopt the regulations required under this Act, as soon as practicable after the effective date of this Act.

SECTION 6. AND BE IT FURTHER ENACTED, That:

(a) This Act shall be construed to apply only prospectively and may not be applied or interpreted to require an essential employer to pay an essential worker for leave taken before the effective date of this Act.

(b) Due to the declaration of a state of emergency by the Governor related to the COVID–19 pandemic, each essential employer shall provide the public health emergency paid leave required under § 3–1606, as enacted by Section 1 of this Act, to each essential worker on the date that federal or State funding for the public health emergency leave is made available to the employer.

~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to require the payment of hazard pay for work performed in an emergency before the effective date of this Act.~~

~~SECTION 7. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a ye and nay vote supported by three–fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted. Sections 2 and 3 of this Act shall remain effective until the date that is 6 months from the date on which the state of emergency declared by the Governor due to the COVID–19 pandemic ends under Title 14 of the Public Safety Article and, at the end of that period, Sections 2 and 3 of this Act, with no further action required by the General Assembly, shall be abrogated and of no further force and effect.~~

Enacted under Article II, § 17(c) of the Maryland Constitution, May 30, 2021.