

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 923 (Delegate Pena-Melnyk)
 Economic Matters

Labor and Employment – Worker Safety and Health – Injury and Illness
 Prevention Program

This bill requires each employer in the State with 10 or more employees, or whose rate of work-related injury and illness exceeds the average incidence rate of all industries in the State, as determined by the Commissioner of Labor and Industry, to develop and implement a health and safety committee to promote health and safety in the workplace. The bill also requires each employer in the State, regardless of size, to establish, implement, and maintain an injury and illness prevention program that meets specified requirements. The bill creates additional responsibilities for the commissioner related to workplace illness and injury regulations, data, and reporting. **The bill takes effect July 1, 2021.**

Fiscal Summary

State Effect: Special fund expenditures by the Maryland Department of Labor (MDL) increase by \$572,800 in FY 2022 to enforce the bill; out-years reflect ongoing operating expenditures and the elimination of one-time costs. State expenditures (all funds) *may* increase for Executive Branch agencies to implement the bill, while general fund expenditures increase, likely significantly, for the Judiciary to do so. Revenues are not directly affected.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	-	-	-	-	-
SF Expenditure	572,800	514,100	528,800	547,300	566,200
GF/SF/FF/HE/NonBud Exp.	-	-	-	-	-
Net Effect	(-)	(-)	(-)	(-)	(-)

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

Local Effect: Local government expenditures increase, potentially significantly, to establish and administer the committees and programs required by the bill. Revenues are not affected. **This bill may impose a mandate on a unit of local government.**

Analysis

Bill Summary:

Health and Safety Committees

A health and safety committee established under the bill must be composed of an equal number of managerial employees and nonmanagerial employees and must be established in accordance with any applicable collective bargaining agreement. An employee member of the committee must be paid the regular rate of pay for time spent on committee activities. The bill establishes selection criteria for nonmanagerial members and requirements related to meeting frequency and recordkeeping. A committee must:

- conduct periodic inspections of a workplace and review the results of the inspections;
- review investigations by the commissioner related to occupational accidents and causes of incidents resulting in injury, illness, or exposure to hazardous substances and submit prevention suggestions to management;
- review employee complaints of alleged hazardous conditions and take action on those complaints, as specified;
- submit recommendations to assist in the evaluation of employee safety suggestions;
- at the request of the commissioner, verify abatement actions taken by an employer in relation to citations issued by the commissioner; and
- establish procedures for sharing ideas with the employer related to specified workplace safety issues.

Injury and Illness Prevention Programs

If an employer has 10 or more employees, its injury and illness prevention program must be established in consultation with the health and safety committee for that workplace. Regardless, each employer in the State must establish, implement, and maintain a program that:

- is established in writing, in a language that a majority of employees of the employer understand;
- identifies the individuals with the authority and responsibility for implementing the program;

- includes specified processes related to compliance with workplace safety programs and communications with employees;
- includes periodic inspections and procedures for identifying and evaluating workplace hazards;
- includes methods or procedures for correcting unsafe and unhealthy working conditions, work practices, and work procedures in a timely manner, based on severity; and
- provides training and instruction relating to the program, as specified.

The commissioner, each employee of the employer, a collective bargaining agent, and members of the public have the right (and must be given the opportunity) to examine or receive a copy of a program within two business days after a request is made, at no cost to the party making the request. The copy must include specified information about the employer and the program, including detailed inspection and maintenance reports.

Limitations

The bill may not be construed to diminish the collective bargaining rights of employees, including the right to bargain over health and safety conditions as a mandatory subject of bargaining under federal law or other applicable collective bargaining law.

Maryland Department of Labor Responsibilities

By January 1 each year, the Commissioner of Labor and Industry must adopt or update regulations that establish standards specific to hazards that contribute to work-related injuries and illnesses that exceed the average incidence rate of all industries in the State during the immediately preceding fiscal year. By August 1 each year, the commissioner must report data on these types of injuries and illnesses to the General Assembly, as specified.

The commissioner must also publish and maintain data relating to incidents of work-related injury and illness and the average rate of work-related injury and illness on MDL's website.

Current Law: The Division of Labor and Industry within 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. MOSH applies to the State and local governments as employers.

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.

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 of Labor and Industry 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 files 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.

State Risk Management Program

Executive Order 01.01.2008.03 established a State employee risk management program that required each Executive Branch agency to, among other things, (1) develop and implement a proactive employee safety and health risk management program for State employees; (2) establish safety and health committees to review programs and conduct safety inspections; and (3) conduct safety and health training for all employees.

State Expenditures:

Maryland Department of Labor Enforcement

The bill creates substantial new enforcement responsibilities for MDL and specifically for MOSH by requiring employers in the State to establish injury and illness prevention programs and health and safety committees and by requiring MOSH to enforce the related requirements. MDL anticipates each of its worksite visits, inspections, and investigations to be prolonged to ensure that the programs and committees are operating in the manner required by the bill. Moreover, MDL advises that its inspectors currently apply a performance-based approach that focuses on direct measurable hazards, but the bill requires more detailed inspections of indirect programmatic requirements associated with the committees and programs (*e.g.*, the bill's employer recordkeeping requirements and committee activity requirements), further increasing inspection times.

MDL advises that its compliance officers are currently able to conduct about 60 inspections per year but will only be able to conduct about 48 inspections per year under the bill because enforcement duties related to the bill are expected to extend the time devoted to each inspection. Therefore, to maintain its enforcement levels in compliance with federal standards, MOSH needs additional staff.

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 \$572,750 in fiscal 2022 for MDL to hire (1) five safety and health compliance officers to conduct visits, inspections, and investigations; (2) one safety and health supervisor to oversee the new compliance officers; and (3) one safety and health secretary to provide administrative support. The estimate assumes that staff begin concurrent with the bill's effective date, on July 1, 2021, as MDL is likely to receive many questions as employers begin to establish committees and programs. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses; any additional travel expenses due to more compliance officers being in the field are minimal and absorbable.

New Positions	7.0
Salaries and Fringe Benefits	\$514,095
Operating Expenses	<u>58,655</u>
Total FY 2022 MDL Expenditures	\$572,750

Future year expenditures reflect annual increases and employee turnover and ongoing operating expenses.

Costs to the State as an Employer

As noted above, [Executive Order 01.01.2008.03](#) required Executive Branch agencies to establish employee safety and health risk management programs; accordingly, the Maryland Department of Transportation advises that the program it has established pursuant to that executive order can be modified to meet the bill's requirements at minimal to no additional cost. It is likely that many other Executive Branch agencies are able to meet the bill's requirements at minimal to no additional cost in the same manner; however, doing so may be challenging for some State agencies, particularly smaller agencies with fewer staff. These types of agencies may experience additional costs if overtime is needed for employees to participate in the various required committee activities and, in some cases, additional staff may be needed to meet the bill's requirements.

The Judiciary anticipates potentially significant costs to implement the bill because it is one employer but controls 72 different workplaces through the State (and is not subject to the executive order). To implement the bill, the Judiciary could either establish one health

and safety committee to oversee all of its worksites, or 72 different committees, one for each location. If one committee is established, committee members would need to occasionally travel the entire State to, among other things, conduct workplace inspections and verify any MDL abatement orders, as required by the bill. Given the number of worksites and considerable committee responsibilities, the Judiciary would likely need additional staff to handle the committee responsibilities. If 72 different committees are established, the operational impact is likely to be significant as many staff will spend a substantial amount of time on the bill's requirements instead of performing their normal job duties. In either case, the Judiciary may experience significant costs to pay overtime for employees participating in the committees or require additional staff.

The Department of Legislative Services can meet the bill's requirements using existing resources.

Local Expenditures: Similar to the effect discussed above for Executive Branch agencies and the Judiciary, local governments may experience potentially significant additional costs to implement the bill. Any such cost largely depends on whether a local government has any existing workplace safety program and how that program compares to the various requirements of the bill and, therefore, a precise impact cannot be reliably estimated at this time.

Small Business Effect: All employers, including small businesses, must establish an injury and illness prevention program and many small businesses are likely to be required to establish a health and safety committee. Similar to the effect discussed above for smaller Executive Branch agencies, small businesses are likely to experience additional costs (likely in the form of overtime pay for employees or additional staff) to fully implement the bill and meet its requirements.

Small businesses that provide workplace safety and health training and consultant services are likely to experience a significant increase in business under the bill.

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.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 728 (Senator Feldman) - Finance.

Information Source(s): Maryland Department of Labor; Judiciary (Administrative Office of the Courts); Maryland Department of Transportation; Prince George's County; Department of Legislative Services

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