

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 224

(The President)(By Request - Office of the Attorney
General)

Finance

**Labor and Employment - Employment Standards and Conditions - Definition of
Employer**

This bill adds a standardized definition of “employer” to State laws that pertain to employment standards and conditions. The general definition of “employer” means “a person engaged in a business, industry, profession, trade, or other enterprise in the State that employs an individual in the State.” The definition also includes a person who “acts directly or indirectly in the interest of another employer with an employee.”

Fiscal Summary

State Effect: None. The bill does not directly affect governmental operations or finances, as discussed below.

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill repeals a duplicative definition of employer in some sections of the law within the State’s Labor and Employment Article. However, in other areas of the law, the general definition expands the applicability of the definition of “employer” to include a joint employer, meaning “a person who acts directly or indirectly in the interest of another employer with an employee.”

Altering Established Definitions

In order to maintain consistency with the general definition established by the bill, the definitions of employer are altered in the following sections of State law pertaining to employment standards and conditions:

- “Equal Pay for Equal Work” (Labor and Employment § 3-301);
- Maryland Wage and Hour Law (Labor and Employment § 3-401);
- Maryland Wage Payment and Collection Law (Labor and Employment § 3-501);
- “Lie Detector Tests” (Labor and Employment § 3-702);
- “Leave” (Labor and Employment § 3-801); and
- “Leave for illness of immediate family” (Labor and Employment § 3-802).

These changes conform the general definition of employer to the specific definitions established in various sections of law. Moreover, the bill repeals elements of the definition of employer in several sections that are redundant in light of the bill’s general definition.

Current Law: The definition of “employ” in regard to laws related to the employment standards and conditions in the State means “to engage an individual to work” and includes “allowing an individual to work” and “instructing an individual to be present at a work site.”

The following subtitles of Title 3 of the Labor and Industry Article include a joint employer in the definition of employer:

- Subtitle 3. Equal Pay for Equal Work;
- Subtitle 4. Wages and Hours;
- Subtitle 8. Leave;
- Subtitle 11. Lien for Unpaid Wages;
- Subtitle 12. Parental Leave Act;
- Subtitle 13. Healthy Working Families Act;
- Subtitle 15. Criminal History Screening; and
- Subtitle 16. Secure Maryland Wage Act.

The other subtitles of Title 3 of the Labor and Industry Article do not include a joint employer definition.

Background: The Office of the Attorney General notes that a series of federal District Court decisions have narrowed the definition of “employer” under the Maryland Wage Payment and Collection Law to exclude joint employers.

State Fiscal Effect: The State's laws pertaining to employment standards and conditions are interpreted to apply to the State and units of government only when the definition of an employer in a particular section specifies that such governmental employers are included in the definition. The bill's general definition does not include units of government. Thus, the applicability of the definition of employer as it pertains to units of government is unchanged by the bill.

The Maryland Department of Labor (MDL) notes that while the bill may affect who the Commissioner of Labor and Industry may hold liable in specified labor enforcement actions, MDL assumes private right of action, including class actions lawsuits, will be sought in joint employer or franchise situations instead, so the bill does not directly affect governmental operations.

Small Business Effect: By adding the phrase "acts directly or indirectly in the interest of another employer with an employee," the definition of employer under the bill results in expanded liability for third parties who act on behalf of an employer. For some violations, a third party (such as an employment agency or subcontractor) may be liable for an amount of damages that is three times higher than the wages owed to an employee. Thus, the impact on small businesses is meaningful to the extent that additional small businesses are exposed to greater legal liability under the bill.

Additional Information

Prior Introductions: A similar bill, SB 444 of 2011, received a hearing in the Senate Finance Committee and was referred to an interim study. The cross file, HB 693 of 2011, received a hearing in the House Economic Matters Committee, but no further action was taken.

Designated Cross File: HB 299 (The Speaker)(By Request - Office of the Attorney General) - Economic Matters.

Information Source(s): Office of the Attorney General; Judiciary (Administrative Office of the Courts); Maryland Department of Labor; Department of Legislative Services

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Analysis by: Heather N. MacDonagh

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