

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 66
 Finance

(Senator Patterson)

Labor and Employment - Hiring - Education Requirements (Give Me A Chance - Job Opportunities Act of 2022)

This bill generally prohibits an employer from (1) developing or implementing an application (or a hiring process) that uses a GED, high school diploma, or college or other higher education degree as a limitation for who can apply for a specified position; (2) using an applicant’s lack of a GED, high school diploma, or college or other higher education degree to deny an applicant the opportunity to apply for a position; (3) prohibiting an employee from applying for (or pursuing) internal advancement within the employer’s organization on the basis of an employee lacking a GED, high school diploma, or college or other higher degree; or (4) inquiring about an applicant’s lack of a GED, high school diploma, or college or other higher education degree during the interview process. Nevertheless, an employer may take such actions if a minimum educational qualification is necessary to obtain specified occupational or health licenses.

Fiscal Summary

State Effect: General fund expenditures increase by \$589,300 in FY 2023 for the Maryland Department of Labor (MDL) to enforce the bill and conduct outreach. Out-year expenditures reflect annualization, inflation, and elimination of contractual staff and one-time start-up costs. General fund revenues increase from fines imposed on employers. The bill does not apply to the State as an employer.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
GF Revenue	-	-	-	-	-
GF Expenditure	\$589,300	\$600,400	\$441,600	\$452,700	\$464,600
Net Effect	(\$589,300)	(\$600,400)	(\$441,600)	(\$452,700)	(\$464,600)

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

Local Effect: The bill does not apply to local governments as employers. Local revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: An employer may inquire as to the applicant's achievement of a GED, high school diploma, or college or higher education degree only after the employer makes an initial offer of employment. The bill prohibits an employer from rescinding an initial offer of employment based on the applicant's response to such an inquiry.

If an employer violates the bill's requirements, an affected applicant (or an employee) may bring an action against the employer (1) for injunctive relief and (2) to recover the greater of actual damages or special damages (of up to \$10,000).

The bill's requirements may not be construed to prohibit an applicant from *voluntarily* sharing information regarding the applicant's educational attainment.

If the Commissioner of Labor and Industry determines that an employer has violated the bill's requirements, the commissioner must issue an order compelling compliance and may (according to the commissioner's discretion) assess a penalty of up to \$1,000 for each applicant for whom the employer was not in compliance. In determining the amount of the penalty, the commissioner must consider specified factors, such as the gravity of the violation. If the commissioner assesses a penalty, the penalty is subject to the notice and hearing requirements set forth in State law.

Current Law: Maryland law does not prohibit private-sector employers from inquiring into the educational history of an applicant.

Except as otherwise specified, the commissioner may conduct an investigation to determine whether a provision of law related to employment standards and conditions has been violated – either on the commissioner's own initiative or after receiving a written complaint.

State Revenues: General fund revenues may increase modestly from penalties paid by employers who are found by MDL to be in violation of the bill.

State Expenditures: The bill creates additional responsibilities for the Division of Labor and Industry within MDL. MDL may conduct investigations and must issue orders compelling compliance. Although the bill gives the commissioner discretion to conduct investigations, this analysis assumes that the commissioner conducts authorized investigations on his or her authority and in response to employee complaints. MDL cannot absorb the additional workload within existing resources and requires additional staffing to respond to inquiries, investigate complaints, and issue orders prompted by the bill.

The Division of Labor and Industry anticipates receiving as many as 1,000 claims initially alleging violations under the bill, and, therefore, anticipates needing 6 permanent positions and 13 contractual positions to respond to and manage the additional workload. The Department of Legislative Services disagrees that 13 contractual employees are needed and assumes the bill can be implemented with 6 permanent and 4 contractual positions. Over time, it is anticipated that employer familiarity and compliance with the bill’s provisions increase, thereby reducing the need for the contractual employees by fiscal 2025 and allowing MDL to respond to inquiries and enforce the bill with the 6 full-time permanent positions.

Thus, general fund expenditures increase for MDL by \$589,296 in fiscal 2023, which accounts for the bill’s October 1, 2022 effective date. This estimate reflects the cost of hiring three regular and four contractual wage and hour investigators to investigate and process complaints, one wage and hour supervisor to oversee the investigators, one administrative officer to perform data entry and answer calls, and one assistant Attorney General to provide legal guidance and assist with orders and legal proceedings. It includes salaries, fringe benefits, one-time start-up costs (including reprogramming of MDL’s Employment Standards tracking system), and ongoing operating expenses (including travel and cell phones for the new investigators).

Regular Positions	6
Contractual Positions	4
Regular Salaries and Fringe Benefits	\$305,142
Contractual Salary and Fringe Benefits	120,199
Operating Expenses	<u>163,955</u>
Total FY 2023 State Expenditures	\$589,296

Future year expenditures reflect the elimination of contractual positions and full salaries with annual increases and employee turnover as well as annual increases in 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 Judiciary can handle any increase in caseloads resulting from the bill with existing budgeted resources.

The Office of Administrative Hearings (OAH) advises that it needs to create a mechanism to code and track this type of administrative case. In addition, OAH has to train its administrative law judges on the substantive provisions of the law. Nevertheless, OAH advises that it does not anticipate a significant increase in cases under the bill and can otherwise handle any cases with existing resources.

Small Business Effect: Small businesses in the State that require an applicant to have a GED, high school diploma, or college or other higher education degree for jobs that do not require a business or health occupational license may need to revamp their hiring practices and/or job advertisements to remove unnecessary requirements, as specified in the bill. MDL advises that the majority of posted job openings require some form of educational attainment ranging from a high school diploma to more advanced degrees. Thus, it is likely that most small business employers in the State may be meaningfully affected by the bill's requirements.

Additional Information

Prior Introductions: A similar bill, SB 191 of 2021, received a hearing in the Senate Finance Committee, but no further action was taken.

Designated Cross File: None.

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

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