

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 258 (Delegate Stewart, *et al.*)
 Economic Matters

Employment Standards - Seating for Employees (Right to Sit Act of 2022)

This bill requires an employer with 15 or more employees to provide a suitable seat for an employee if the employee can reasonably perform the work while seated. An employer with fewer than 15 employees must provide a suitable seat for each employee who requests a seat if the work can be performed while seated and doing so would not cause an undue hardship to the employer. An employer with 15 or more employees, for a newly constructed facility or as part of a major renovation, may not design a workspace that requires an employee to stand while working if the workspace can reasonably be designed to allow seated work. The Commissioner of Labor and Industry must adopt regulations to establish criteria on whether an employee can reasonably perform work while seated, and the bill establishes a private right of action for employees.

Fiscal Summary

State Effect: General fund expenditures increase by \$330,100 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. The bill does not apply to the State as an employer. Revenues are not affected.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	330,100	312,300	171,000	175,200	179,700
Net Effect	(\$330,100)	(\$312,300)	(\$171,000)	(\$175,200)	(\$179,700)

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: If an employer does not provide an employee with seating as required under the bill, an employee may bring an action against the employer to recover damages of up to \$100 per pay period for an initial violation and up to \$200 per pay period for a subsequent violation. If a court determines that the employee is entitled to recovery, the court must award those damages. On written request of an employee who is entitled to bring an action, the Commissioner of Labor and Industry may take an assignment of the claim in trust for the employee, ask the Attorney General to bring an action on behalf of the employee, and consolidate claims against an employer.

Current Law: Title I of the Americans with Disabilities Act of 1990 (ADA) prohibits private employers, state and local governments, employment agencies, and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment. The ADA covers employers with 15 or more employees, including state and local governments.

The ADA requires an employer to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment, except when such accommodation would cause an undue hardship.

Maryland Occupational Safety and Health

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. OSHA does not have a specific standard that requires private-sector employers to provide a suitable seat for an employee.

Employers must provide each employee with employment and a place of employment that is 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 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, or the employee filed a complaint or exercises a right relating to essential worker rights. 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 Expenditures: The bill creates additional responsibilities for the Division of Labor and Industry within MDL. MDL must adopt regulations to establish criteria for determining whether the nature of an employee’s work reasonably allows the employee to perform the work while seated. Additionally, MDL may conduct investigations and take an assignment of claim in trust for an employee upon request. 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 develop regulations, respond to inquiries, investigate complaints, and ready cases for legal action prompted by the bill.

MDL anticipates receiving more than 800 complaints initially and, therefore, anticipates needing one wage and hour investigator and three contractual wage and hour investigators to respond to and manage the additional workload. Additionally, an assistant Attorney General is needed to promulgate regulations and handle legal proceedings. 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 two full-time permanent positions.

Accordingly, general fund expenditures increase by \$330,101 in fiscal 2023, which accounts for the bill’s October 1, 2022 effective date. This estimate reflects the cost of hiring one regular and three contractual wage and hour investigators to investigate and process complaints, and one assistant Attorney General to develop the regulations and handle 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	2
Contractual Positions	3
Regular Salaries and Fringe Benefits	\$115,682
Contractual Salary and Fringe Benefits	90,149
Operating Expenses	<u>124,270</u>
Total FY 2023 State Expenditures	\$330,101

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 bill is not expected to materially affect the workload of the District Court.

Small Business Effect: Small businesses with at least 15 employees that require an employee to stand may need to provide an employee with a suitable seat if the work can reasonably be performed while seated. Small businesses with 14 or fewer employees must do so only upon request by the employee if doing so would not cause an undue hardship to the employer. An employer with 15 or more employees will need to consider an employee's ability to sit while working when designing a workspace for a newly constructed facility or as part of a major renovation.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Maryland Department of Labor; U.S. Equal Employment Opportunity Commission; Department of Legislative Services

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