

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 17 (Delegate Stewart)
 Economic Matters

Employment Standards - Retail Establishments - Seating for Employees

This bill requires specified retail establishment employers to provide suitable seats for employees if the nature of their work can be reasonably performed while seated. Additionally, such employers may not design workspaces at new or majorly renovated facilities that require employees to stand if the workspaces could reasonably be designed to allow for work to be performed while seated. The Commissioner of Labor and Industry must adopt regulations to establish criteria for determining whether the nature of the relevant work reasonably allows an employee to perform the work while seated. An employee may bring an action against an 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.

Fiscal Summary

State Effect: General fund expenditures increase by \$230,800 in FY 2024 to enforce the bill’s provisions. 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 2024	FY 2025	FY 2026	FY 2027	FY 2028
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	230,800	138,600	84,100	87,500	91,700
Net Effect	(\$230,800)	(\$138,600)	(\$84,100)	(\$87,500)	(\$91,700)

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.

Small Business Effect: Meaningful.

Analysis

Bill Summary: “Employer” for purposes of the bill means a person engaged in a retail establishment business in the State that has 20 or more retail employees for each working day in each of 20 or more calendar weeks in the current or preceding year. “Retail establishment” means a place of business with the primary purpose of selling goods to a consumer who is present at the place of business at the time of sale. It does not include a wholesaler or a restaurant. Certain employees are excluded from the bill: those covered under an equivalent or more generous employment policy, State and local government workers, and office workers.

If a covered employer does not provide an employee with seating as required under the bill, the employee may bring an action against the employer to recover damages. On written request of an employee who is entitled to bring such an action, the commissioner may (1) take an assignment of the claim in trust for the employee; (2) ask the Attorney General to bring an action on behalf of the employee; and (3) consolidate two or more claims against an employer.

If a court determines that an employee is entitled to recovery, the court must award up to \$100 per pay period for an initial violation and up to \$200 per pay period for a subsequent violation.

Current Law: Generally, the Commissioner of Labor and Industry may investigate all labor laws enacted in Title 3 of the Labor and Employment Article (to which the bill is drafted) on either the commissioner’s own initiative or may require a written complaint; however, some labor laws require a written complaint from an employee or applicant prior to investigation.

Americans with Disabilities Act

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 the Maryland Department of Labor (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.

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. MDL notes the difficulties in developing regulations that include subjective criteria.

Although the commissioner has discretion to conduct investigations related to the bill under current law, this analysis assumes that the commissioner does so, both 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 conducting approximately 400 investigations on an annual basis through fiscal 2025 and then approximately 200 investigations annually thereafter as businesses come into compliance. Based on that level of activity, MDL requires one permanent wage and hour investigator and one contractual wage and hour investigator through fiscal 2025. Additionally, a contractual assistant Attorney General is needed through fiscal 2024 to assist with implementation, promulgate regulations, and prepare case files for referral to the Attorney General.

Accordingly, general fund expenditures increase by \$230,838 in fiscal 2024, which accounts for the bill’s October 1, 2023 effective date. This estimate reflects the cost of hiring one regular and one contractual wage and hour investigator to investigate and process complaints, and one contractual assistant Attorney General to develop regulations and handle legal matters. 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 Position	1
Contractual Positions	2
Regular Salary and Fringe Benefits	\$54,571
Contractual Salaries and Fringe Benefits	96,250
Operating Expenses	<u>80,017</u>
Total FY 2024 State Expenditures	\$230,838

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 retail businesses with at least 20 employees that require an employee to stand must provide an employee with a suitable seat if the work can reasonably be performed while seated. Such businesses will also 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. Such considerations may involve paying for the services of design professionals with related expertise.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See HB 258 of 2022.

Designated Cross File: None.

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

Fiscal Note History: First Reader - January 23, 2023
km/mcr

Analysis by: Stephen M. Ross

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