

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 79

(Senator Kramer)

Finance

Appropriations

State Personnel – Education and Transportation – Grievance Procedures

This bill requires the grievance policies and procedures of the Maryland Department of Transportation (MDOT) and public State institutions of higher education to be consistent with those that apply for other State employees and to include a redress of any violation of an employee's rights related to wages and payroll, including the award and payment of damages. The bill also expressly authorizes a grievance to be filed by an employee of MDOT or of a public State institution of higher education (or the employee's exclusive representative) when payroll information is not reported in a timely or accurate manner to the Central Payroll Bureau (CPB).

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) and higher education expenditures increase to the extent that the bill results in additional grievances filed and related damages paid. Any such impact cannot be reliably estimated without actual experience under the bill but is anticipated to be minimal, as discussed below. Reimbursable expenditures and reimbursable revenues increase to the extent that additional grievance cases are referred to and adjudicated by the Office of Administrative Hearings (OAH).

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill:

- expressly applies the right of an employee or an employee's exclusive representative to initiate a grievance procedure related to payment of wages for

employees of the University System of Maryland (USM), Morgan State University (MSU), St. Mary's College of Maryland (SMCM), Baltimore City Community College (BCCC), and MDOT;

- generally requires the personnel systems and/or grievance policies and procedures for the aforementioned agencies to include provisions for the redress of any violation of an employee's wage and pay rights, as specified, including the award and payment of damages;
- requires that grievances concerning wages be filed within 20 days after the failure to pay; and
- requires MDOT regulatory procedures related to the redress of grievances concerning wages to be consistent with those that apply for other State employees.

Current Law:

Payment of State Employee Wages

CPB, within the Office of the State Comptroller, is responsible for the payment of all wages to each officer and employee of the State who is paid from funds appropriated by the General Assembly and each officer and employee of BCCC, MSU, SMCM, and USM. "Wage" means all compensation that is due to an employee; it includes a bonus, commission, fringe benefit, overtime wages, premium pay, or any other remuneration promised for service.

Each appointing authority must accurately and timely calculate and report to CPB the payroll information for each employee. If an appointing authority does not report the payroll information in the manner required, (often resulting in a failure to pay or incorrect pay of the employee) the employee or employee's exclusive representative may initiate a grievance with the deadlines and procedures established by State law.

Grievance Procedures

Title 12 of the State Personnel and Pensions Article establishes grievance procedures that apply to State employees in the State Personnel Management System (SPMS) within the Executive Branch and independent personnel systems, subject to specified exemptions. Agencies with independent personnel systems, such as MDOT and the various institutions of higher education, generally have their own grievance procedures as well. The following provisions relate to the grievance procedures for SPMS employees.

A grievance is a dispute between an employee and the employee's employer about the interpretation of and application to the employee of (1) a personnel policy or regulation adopted by the Secretary of Budget and Management; (2) any other policy or regulation over which management has control; or (3) any term or condition of a memorandum of

understanding between the State and the exclusive representative. State law specifies that a grievance is not a dispute about a pay grade or range for a class, the amount or effective date of statewide pay increase, the establishment of a class or assignment of a class to a service category, the establishment of classification standards, a mid-year performance appraisal, or an oral reprimand or counseling.

Resolution of a grievance is a three-step process consisting of (1) initiation of the grievance; (2) an appeal to the head of the principal unit; and (3) an appeal to the Secretary of Budget and Management. If the Secretary does not resolve the grievance, it is referred to OAH for a final administrative decision. Any costs incurred by OAH for the appeal of a grievance to OAH must be paid by the principal unit that employs the grievant.

Generally, a grievance must be initiated by an employee or the employee's exclusive representative within 20 days after a failure to pay occurred. However, if the failure to pay is not known to, or discovered by, the employee within 20 days after the failure to pay occurs, a grievance may be initiated no later than six months after the date on which the failure to pay occurred. An employee is entitled to wages and damages if a grievance is initiated, unless the wage is withheld due to a bona fide dispute. Damages may not begin until at least one regular pay period has elapsed since the employee was not paid, and they increase 30% of the unpaid wage each pay period. Even so, total damages may not exceed three times the amount of the unpaid wage.

State Fiscal Effect: TTF and higher education expenditures increase to the extent that the bill results in additional grievances filed by the employees of MDOT and public State institutions of higher education related to the timely and accurate payment of wages and as any subsequent damages are paid. However, any financial impact depends wholly on how many additional grievances are filed and the ultimate disposition of any future grievances, which cannot be reliably estimated or predicted in the absence of actual experience. Under the assumption that most affected agencies regularly provide accurate and timely payroll information to CPB, the impact is generally anticipated to be minimal. However, if an error occurs that affects many employees' wages, the cost to the affected agency could be significant.

Reimbursable revenues and expenditures for OAH increase correspondingly as additional cases are referred and adjudicated. As noted above, agencies pay OAH on a per-case basis to cover the costs associated with adjudication. Any such impact, however, depends on the number of referred cases under the bill and cannot be reliably estimated at this time. The Department of Budget and Management estimates that it costs approximately \$227,800 for OAH to hear 50 cases, averaging \$4,556 per case.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 184 (Delegate Solomon) - Appropriations.

Information Source(s): University System of Maryland; Baltimore City Community College; Department of Budget and Management; Maryland Department of Transportation; State Labor Relations Board; State Higher Education Labor Relations Board; Office of Administrative Hearings; Department of Legislative Services

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