

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 900
Appropriations

(Delegate Solomon, *et al.*)

Employment Standards - Firefighters - Payment of Overtime and Payroll
Information

This bill requires a governmental unit that employs a firefighter to pay overtime wages for each hour over 168 hours that a firefighter works during a 28-day work period. In calculating these hours, the employer must include all regularly scheduled hours, regardless of whether earned or accrued leave was used. A county or municipality must provide a firefighter (1) at the time of hiring, notice of the firefighter's rate of pay, the regular pay periods, and the firefighter's overtime wages and (2) for each pay period, a statement of the firefighter's gross earnings and deductions. The bill specifies the grievance process if a county or municipality fails to provide this information. In specified circumstances, a firefighter is entitled to wages and damages as specified.

Fiscal Summary

State Effect: Special fund expenditures for the Transportation Trust Fund (TTF) are likely not materially affected, and the Maryland Department of Labor (MDL) can enforce overtime claims with existing resources, as discussed below. Revenues are not affected.

Local Effect: Local government expenditures may increase, potentially significantly in some jurisdictions, beginning in FY 2026 to pay additional overtime wages to firefighters or hire more firefighters.

Small Business Effect: None.

Analysis

Current Law: Under Maryland's Wage and Hour Law, an employer is required to pay an overtime wage of at least 1.5 times the usual hourly wage for each hour over 40 hours that

an employee works during one work week. However, the definition of “employer” in the Maryland’s Wage and Hour Law generally does not include units of government except for specific provisions, like the minimum wage requirement. Thus, a unit of government is not subject to overtime provisions under Maryland’s Wage and Hour Law. For additional related information, see the **Appendix – Maryland Wage and Hour Law**.

Federal Fair Labor Standards Act

Under Section 7(k) of the federal Fair Labor Standards Act (FLSA), employees engaged in fire protection or law enforcement may be paid overtime on a “work period” basis. The regulations establish the maximum allowable non-overtime hours as 212 hours per 28-day period for firefighters. Under certain prescribed conditions, a State or local government agency may give compensatory time, at a rate of not less than one and one-half hours for each overtime hour worked, in lieu of cash overtime compensation. Employees engaged in police and fire protection work may accrue up to 480 hours of compensatory time. When the state law differs from the federal FLSA, an employer must comply with the standard most protective to employees.

State Expenditures: The Maryland Aviation Administration (MAA) within the Maryland Department of Transportation employs 91 firefighters at the Baltimore/Washington International Thurgood Marshall Airport. These firefighters are scheduled to work seven 24-hour shifts in a 28-day period, totaling 168 hours in a 28-day period. Since firefighters are not scheduled to work more than 168 hours in a 28-day period, the bill has no immediate fiscal effect. To the extent that there are unscheduled absences, and firefighters are required to work more than 168 hours in a 28-day period, TTF expenditures may increase. However, MAA advises that it currently pays overtime when firefighters work more than 24 hours in a shift, so the bill does not substantially change existing practice.

Under current law, MDL investigates and enforces complaints regarding overtime pay. Under the bill, a firefighter employed by a county or municipality, or the firefighter’s exclusive representative, may file a grievance under any applicable grievance procedure or collective bargaining agreement if the county or municipality does not provide specified payroll information. This grievance process enables a firefighter to recover wages from failure to pay overtime wages, so some firefighters may opt to file grievances under this process instead of having MDL enforce overtime pay. However, to the extent that MDL receives additional complaints, MDL can likely investigate those complaints with existing resources.

Local Expenditures: The bill has no effect on local jurisdictions that do not employ firefighters, like Harford and Wicomico counties. However, if local jurisdictions employ firefighters, depending on how overtime for firefighters is currently calculated, overtime

expenditures may increase, potentially significantly, for local jurisdictions to pay overtime as specified in the bill for firefighters. Federal law generally requires governments to pay firefighters overtime wages after 212 hours are worked in a 28-day period, and under the bill, local jurisdictions must pay overtime wages after 168 hours are worked in a 28-day period.

A few local jurisdictions, such as Frederick and Montgomery counties, estimate their personnel costs increasing by millions of dollars as a result of paying additional overtime wages or hiring more firefighters to cover shifts. Expenditures may increase further if grievances are filed and damages are awarded.

Additionally, local jurisdictions with firefighters must comply with the bill's payroll reporting requirements. The Maryland Municipal League reports the payroll reporting requirement can likely be handled with existing resources for municipalities.

Additional Information

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

Designated Cross File: SB 1117 (Senator Kramer) - Rules.

Information Source(s): Baltimore City; Frederick, Harford, Montgomery, and Wicomico counties; Maryland Association of Counties; City of College Park; Maryland Municipal League; Maryland Department of Labor; Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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Appendix – Maryland Wage and Hour Law

The Maryland Wage and Hour Law is the State complement to the federal Fair Labor Standards Act, which specifies minimum wage and overtime requirements for employers and employees in the State. State law specifies that an employee must be paid the greater of the federal minimum wage (which is currently \$7.25 per hour) or \$15.00 per hour. However, an employer may pay 85% of the State minimum wage rate to employees younger than age 18.

The Maryland Wage and Hour Law and minimum wage requirements do not apply to certain categories of employees, including those defined as administrative, executive, or professional; certain seasonal employees; part-time employees younger than age 16; salesmen and those who work on commission; an employer's immediate family; drive-in theater employees; employees training in a special education program in a public school; employees of an establishment that sells food and drink for on-premises consumption and has an annual gross income of \$400,000 or less; employees employed by an employer who is engaged in canning, freezing, packing, or first processing of perishable or seasonal fresh fruits, vegetables, poultry, or seafood; certain farm workers; and covered employees under the Secure Maryland Wage Act.

Generally, the employer of a tipped employee is allowed a tip credit that can be applied against the direct wages paid by the employer. The employee can be paid tipping wages so long as the wages plus the tips received equal at least the minimum wage, the employee retains all tips, and the employee customarily receives more than \$30.00 a month in tips. The tip credit is equal to the State minimum wage, less \$3.63. Thus, the wage paid by employers to tipped employees is \$3.63, as long as their wages plus tips equal the minimum wage.

Under Maryland's Wage and Hour Law, an employer is required to pay an overtime wage of at least 1.5 times the usual hourly wage for each hour over 40 hours that an employee works during one work week. This requirement does not apply to an employer that is subject to federal rail laws; a nonprofit concert promoter, legitimate theater, music festival, music pavilion, or theatrical show; or specified amusement or recreational establishments. It also does not apply to an employee for whom the U.S. Secretary of Transportation sets qualifications and maximum hours of service under federal law; a mechanic, parts person, or salesperson, under certain conditions; a driver employed by a taxicab operator; or specified air carrier employees under certain conditions. Also, specific exemptions apply for farm work, bowling establishments, and infirmaries.

If an employer pays less than the wages required, the employee may bring an action against the employer to recover (1) the difference between the wage paid to the employee and the wage required; (2) an additional amount equal to the difference as liquidated damages; and (3) legal fees. The court must award these differences in wages, damages, and counsel fees if the court determines that an employee is entitled to recovery. However, if an employer shows to the satisfaction of the court that the employer acted in good faith and reasonably believed that the wages paid to the employee were not less than the required wages, then the court must award liquidated damages of an amount less than the difference in wages or no liquidated damages.

A person who violates the Maryland Wage and Hour Law is guilty of a misdemeanor and on conviction is subject to a fine of up to \$1,000.