

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1084 (Delegate Martinez, et al.)
Economic Matters

Employee Autoimmune Disorder Protection Act

This bill prohibits an employer, including a governmental unit, from requiring an employee to work on site at the employer’s workplace if the employee’s duties may reasonably be fulfilled at the employee’s home and the employee provides documentation that (1) the employee has been diagnosed with an autoimmune disorder or any other qualifying illness, and (2) on-site work or travel to and from the workplace would be unsafe for the employee. However, the bill does not apply to an employer in an essential industry, as defined by the bill. The Maryland Department of Labor (MDL) must enforce the bill and adopt regulations to implement the bill by June 1, 2025.

Fiscal Summary

State Effect: General fund expenditures for MDL increase by \$340,100 in FY 2025. Future years reflect annualization, inflation, and elimination of one-time costs. General fund revenues increase minimally from fines beginning in FY 2025. State expenditures (all funds) may increase further from fines imposed by the bill and from potential teleworking expenses (not reflected below).

Table with 6 columns: (in dollars), FY 2025, FY 2026, FY 2027, FY 2028, FY 2029. Rows include GF Revenue, GF Expenditure, and Net Effect.

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

Local Effect: Local expenditures may increase from expenses relating to teleworking and from fines imposed by the bill beginning in FY 2025. The circuit courts can likely handle any increase in litigation with existing resources.

Small Business Effect: Meaningful.

Analysis

Bill Summary: The bill defines an “autoimmune disorder” as a condition in which the body’s immune system attacks and destroys healthy body tissue, and the bill lists conditions that it includes.

The Commissioner of Labor and Industry may conduct an investigation to determine whether provisions of the bill have been violated on receipt of a written complaint by an employee. The bill specifies the complaint, investigation, and enforcement processes, which include requiring the Commissioner of Labor and Industry to file a complaint in the circuit court if the commissioner determines that an employer has violated the bill. Additionally, the bill establishes civil penalties up to \$10,000, with lower penalties for employers with 20 or fewer employees.

Current Law:

Unlawful Discrimination

State law generally prohibits an employer with at least 15 employees from discharging, failing or refusing to hire, or otherwise discriminating against any individual with respect to the individual’s compensation, terms, conditions, or privileges of employment because of race, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, genetic information, or disability. Employers are expressly prohibited from, among other things, failing or refusing to make a reasonable accommodation for the known disability of an otherwise qualified employee or an applicant for employment. The State and local governments are considered employers.

The federal Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person’s race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability, or genetic information. It is also illegal to discriminate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. Most employers with at least 15 employees are covered by EEOC laws (20 employees in age discrimination cases). Most labor unions and employment agencies are also covered. Antidiscrimination laws apply to all types of work situations, including hiring, firing, promotions, harassment, training, wages, and benefits.

The Americans with Disabilities Act (ADA) requires employers with 15 or more employees to provide reasonable accommodation for qualified applicants and employees with disabilities. EEOC guidance advises that allowing an individual with a disability to

work at home may be a form of reasonable accommodation. Reasonable accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to apply for a job, perform a job, or gain equal access to the benefits and privileges of a job. The ADA does not require an employer to provide a specific accommodation if it causes undue hardship, *i.e.*, significant difficulty or expense. Under ADA, accommodations are typically determined through an interactive process between the employer and employee.

Conditions that affect the immune system that substantially limits one or more major life activities are considered a disability under the ADA Amendments Act of 2008.

Business Telework Assistance Grant Program

Chapter 696 of 2021 established the Office of Telework Assistance (OTA) and the Business Telework Assistance Grant Program in the Department of Commerce and required the Governor to include \$1.0 million annually in the State budget for the program (the mandate became effective beginning in fiscal 2023).

The purpose of the program is to assist and support businesses in implementing telework policies for their employees. A grant awarded through the program may be used to purchase hardware, software, and other technical equipment or technical services necessary for a business to implement a telework policy. To qualify for a grant, a business must develop a policy that conforms to the best practices established by OTA. In awarding a grant, Commerce must prioritize small businesses and consider the number of employees in the business and the assistance needed for the business to implement a telework policy. In practice, the program provides grants of up to \$25,000.

Executive, Legislative, and Judicial Branches of Government

Specifically for State employees, each appropriate official for all three branches of government and public institutions of higher education must, to the extent practicable, maximize the number of eligible employees participating in a telework program.

Beginning in fiscal 2023, each appropriate official must also negotiate criteria for designated telework positions if the affected employees are covered by collective bargaining.

In developing telework guidelines, the appropriate official must ensure the adequacy of information and security protection for information and information systems used while teleworking, and the appropriate official for each agency in the Executive Branch must coordinate with the Department of Information Technology. An eligible employee must receive and acknowledge the guidelines before participating in a telework program. By

December 1 of each year, the Department of Budget and Management must report to the General Assembly on the number of eligible and participating employees in its telework program.

Local Governments

Each governing body of a county or municipality, or the governing body’s designee, must establish a countywide or municipality-wide telework program and adopt related policies and guidelines. The head of a local government entity may designate the positions for which an employee would be eligible to telework. Each local government entity, in its discretion, may maximize the number of eligible employees participating in a telework program.

State Revenues: General fund expenditures may increase minimally from civil penalties imposed by the bill beginning in fiscal 2025.

State /Local Expenditures:

Maryland Department of Labor

MDL estimates that approximately 600,000 individuals in the workplace in Maryland may have an autoimmune disease. Assuming only a small fraction of these individuals work in a nonessential industry and file a complaint, MDL anticipates receiving approximately 300 complaints annually that will need to be investigated. MDL cannot absorb the additional workload within existing resources and requires additional staffing to enforce the bill and respond to the increase in inquiries and complaints prompted by the bill.

Thus, general fund expenditures increase by \$340,119 in fiscal 2025, which accounts for the bill’s October 1, 2024 effective date. This estimate reflects the cost of hiring three administrative officers, one administrative specialist, and one assistant Attorney General to investigate new complaints, process claims, develop regulations, provide guidance, and represent MDL in legal proceedings. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	5.0
Salaries and Fringe Benefits	\$292,701
Operating Expenses	<u>47,418</u>
Total FY 2025 State Expenditures	\$340,119

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

The State and Local Governments as Employers

The bill has an operational impact on all governmental agencies that are deemed nonessential. Under ADA, employees with autoimmune disorders that qualify as a disability may currently request reasonable accommodations, such as teleworking. However, the process is an interactive process between the employer and the employee. An employer is not obligated to adopt an employee's preferred or requested accommodation and may instead offer alternate accommodations as long as they would be effective. Under the bill, the employer may not require an eligible employee to work on site if the duties of the employee may reasonably be fulfilled at the employee's home, thus more employees may be entitled to telework full-time.

The bill does not define "reasonably" for determining whether an employee's duties may be performed off site. The Department of Legislative Services assumes if a governmental agency would incur significant costs to enable an employee to telework (such as hiring additional personnel to provide coverage), then the employee's duties cannot be reasonably fulfilled at the employee's home. Thus, most State and local agencies can likely implement the bill using existing budgeted resources. Nevertheless, some agencies may experience increased costs (including for more equipment) or operational disruptions, along with being subject to civil penalties for violations.

The circuit courts can likely handle any increase in litigation with existing resources.

Small Business Effect: The bill has an operational, and potential fiscal impact, on small businesses that are not in essential industries. Small businesses may see an increase in administrative and operational costs to supply eligible employees with teleworking equipment and from being subject to civil penalties and appropriate relief that is ordered by the circuit court.

Additional Information

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

Designated Cross File: SB 1061 (Senator Ellis) - Finance.

Information Source(s): Anne Arundel, Baltimore, and Montgomery counties; Maryland Association of Counties; City of Havre de Grace; Maryland Municipal League; Judiciary (Administrative Office of the Courts); University System of Maryland; Department of Budget and Management; Maryland Department of Health; Maryland Department of Labor; Maryland Department of Transportation; U.S. Equal Employment Opportunity Commission; Department of Legislative Services

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