

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 994
 Finance

(Senator Benson)

Maryland Predictable Scheduling Act

This bill generally requires employers in the food service, hospitality, or retail industries with at least 500 employees or that are franchisees to pay an employee 50% of the employee’s regular rate of pay for scheduled work hours that the employer cancels or reduces after the work schedule has been provided or after the employee reports to work. An affected employer generally must pay an employee one hour at the employee’s regular rate of pay for each time that the employer adds one or more hours of work to the employee’s work schedule or changes the date, time, or location of a shift. However, specified exceptions are provided for both pay provisions. An affected employee has the right to decline to work hours that generally begin or occur during the 11 hours following the end of a shift; however, if an employee agrees in writing to work the hours, the employer must pay the employee the greater of: (1) time and a half for those hours or (2) four hours of regular pay. An employer must provide work schedules to employees as specified, among other requirements. The bill includes enforcement and reporting provisions.

Fiscal Summary

State Effect: General fund expenditures increase by \$643,500 in FY 2025 for the Maryland Department of Labor (MDL), and reimbursable revenues and expenditures increase by \$121,000 for the Office of Administrative Hearings (OAH). Out-year expenditures reflect annualization, inflation, and elimination of one-time start-up costs. General fund revenues increase minimally from fines.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
GF Revenue	-	-	-	-	-
ReimB. Rev.	\$121,000	\$132,200	\$138,000	\$143,900	\$150,200
GF Expenditure	\$643,500	\$636,000	\$663,600	\$691,900	\$721,500
ReimB. Exp.	\$121,000	\$132,200	\$138,000	\$143,900	\$150,200
Net Effect	(\$643,500)	(\$636,000)	(\$663,600)	(\$691,900)	(\$721,500)

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 and does not have a material effect on local income tax revenues. The circuit courts can likely handle any increase in litigation with existing resources.

Small Business Effect: Minimal.

Analysis

Bill Summary: A food service establishment is considered an affected employer if it employs at least 500 employees and is a part of a chain of at least 30 restaurants nationally or globally or is a franchisee.

Affected employers must provide a new employee no later than the date of the employee's first shift with the employee's first work schedule that covers the consecutive 7-day period beginning with the first shift's date. At least 14 days before the start of any 7-day work schedule, an employer must conspicuously display the work schedule at work sites and distribute the work schedule to each employee. A work schedule must list all current employees at a respective worksite, and an affected employer may provide the work schedule electronically under specified conditions. A work schedule includes regular and on-call shifts.

An affected employer must promptly notify an employee in writing about a work schedule change and post a revised work schedule within 24 hours of the change. An employee may decline to work hours not included in an original or revised work schedule, and if an employee consents, the consent must be in writing.

Before beginning a shift, an employee may submit an oral, written, or electronic request to an employer to adjust the employee's work schedule. Upon this request, the employer must engage with the employee in an interactive process to discuss the request and may grant or deny the employee's request for any lawful or *bona fide* business reason.

The bill details recordkeeping and notification requirements for employers. The Commissioner of Labor and Industry must develop and make available online model written notices that employers may use to comply with provisions of the bill, and the commissioner may adopt regulations to implement the bill.

The Commissioner of Labor and Industry must enforce the bill as specified, which includes investigating complaints, issuing letters and orders, and filing actions in the circuit courts. Orders may include civil penalties and any other appropriate relief. Information relating to complaints, investigations, and orders must be posted on MDL's website by February 1 each year. The bill describes the rights and procedures for employers to respond to letters

and orders, which include requesting an administrative hearing to appeal an order and requesting judicial review of a final order.

Any person may bring an action for a violation of the bill in a court of competent jurisdiction as specified, and the bill specifies what the court may award.

An employer may not retaliate against an employee for declining to work hours not included in an initial work schedule or exercising the employee's rights under the bill or for mistakenly, but in good faith, alleging a violation under the bill. A person may not interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under the bill.

There is a rebuttable presumption that the employer violated the bill if the employer retaliates, as defined, against an employee within 90 days after an employee files a complaint with the commissioner or takes other specified actions.

The bill does not (1) discourage or prohibit an employer from adopting or retaining policies that are more beneficial to employees; (2) diminish an employer's obligation to comply with a contract, a collective bargaining agreement, an employment benefit plan, or any other agreement that establishes more beneficial policies for an employee; or (3) preempt, limit, or otherwise affect the applicability of any other law, policy, or standard establishing scheduling policies that provide additional employee rights or protections.

Current Law: In general, an employee in a retail establishment may choose a day of rest unless the employee is a managerial, professional, or part-time employee; Wicomico County allows part-time employees to choose a day of rest. An employee who desires a day of rest must provide the employer with written notice. While employed, the individual may change the day of rest by giving written notice to the employer at least 30 days prior to its effective date. If an employer compels an employee to work on his or her day of rest, the employee is entitled to bring a civil action against the employer to recover three times the regular rate of pay for the hours worked on that day. An employer may not discharge, discipline, discriminate against, or otherwise penalize an employee who chooses a day of rest. An employer also may not require an applicant who seeks a work week of at least 25 hours to answer any question that identifies the applicant's desired day of rest. An employer who violates the day of rest provisions is guilty of a misdemeanor and is subject to a fine of between \$250 and \$500. In Wicomico County, an offender is fined \$500 for the first offense and \$1,000 for each subsequent offense.

See the **Appendix – Maryland Wage and Hour Law** for more general information on minimum wage and overtime requirements for employers and employees in the State.

State Fiscal Effect: State income tax revenues are not materially affected, but general fund revenues increase minimally from fines imposed on employers.

Based on its experience with similar changes to the Wage and Hour Law, MDL estimates that it could receive 800 inquiries and 300 complaints alleging violations of the bill. MDL also anticipates it taking time to investigate complaints regarding trade shifts or retaliation. 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. Additionally, MDL must make changes to the complaint tracking database.

An employer against whom the commissioner issues an order for a violation of the bill may request an administrative hearing. OAH needs an administrative law judge to handle approximately 70 hearings that it expects to result from the bill. OAH estimates each hearing will last between half a day and one full day, and an additional day or longer will be spent issuing the written decision. Therefore, reimbursable expenditures increase for OAH by \$120,989 in fiscal 2025, which accounts for the bill's October 1, 2024 effective date. OAH bills MDL for these expenses, so reimbursable revenues for OAH increase correspondingly, and general fund expenditures increase further for MDL.

In addition, general fund expenditures increase for MDL by \$643,503 in fiscal 2025, which accounts for the bill's October 1, 2024 effective date. This estimate reflects the cost of hiring four full-time wage and hour investigators, one part-time wage and hour investigator, one wage and hour supervisor, and one assistant Attorney General to investigate complaints and enforce new requirements; it also includes the cost of reimbursing OAH for the increased caseload prompted by the bill. It includes salaries, fringe benefits, one-time start-up costs, programing costs, and ongoing operating expenses.

Positions	6.5
MDL Salaries and Fringe Benefits	\$365,771
MDL Programming Costs	89,800
MDL Other Operating Expenses	66,943
OAH Expenses	<u>120,989</u>
Total FY 2025 MDL Expenditures	\$643,503

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. To the extent that investigating complaints take longer than anticipated, the part-time wage and hour investigator may need to convert to a full-time position.

As noted above, reimbursable revenues and expenditures for OAH both increase by \$120,989 to hire one additional administrative law judge.

The bill does not apply to the State as an employer.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 345 and HB 349 of 2023 and SB 530 and HB 431 of 2022.

Designated Cross File: HB 1226 (Delegate Foley) - Economic Matters.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Department of Labor; Office of Administrative Hearings; Department of Legislative Services

Fiscal Note History: First Reader - March 8, 2024
km/mcr

Analysis by: Heather N. MacDonagh

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

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.