

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 582
Economic Matters

(Delegate Vogel, *et al.*)

Labor and Employment - Exemptions From Overtime Pay - Administrative,
Executive, or Professional Capacity

This bill alters an exemption for specified executive, administrative, or professional (EAP) employees (EAP exemption) from the Maryland Wage and Hour Law. The bill changes the salary threshold above which EAP employees are exempt from the law's overtime requirements from the threshold established under regulation (which refers to 29 C.F.R. § 541.600) to (1) \$1,128 per week (equivalent to a \$58,656 annual salary) or (2) if higher, 29 C.F.R. § 541.600. The bill codifies the federal rules for duties required for an individual to be considered a *bona fide* EAP employee.

Fiscal Summary

State Effect: No effect on State compensation for employees as the overtime provision of the Maryland Wage and Hour Law does not apply to the State as an employer. Enforcement can be handled with existing budgeted resources. Revenues are not materially affected.

Local Effect: The bill does not materially affect local governments. The overtime provision of the Maryland Wage and Hour Law does not apply to local governments as employers. The bill 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: Meaningful.

Analysis

Current Law:

Maryland Wage and Hour Law

The Maryland Wage and Hour Law is the State complement to the federal Fair Labor Standards Act (FLSA). 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. The Maryland Wage and Hour Law does not apply to several categories of employees, including those defined as EAP. State law does not delineate salary thresholds for overtime pay, but State regulations that define EAP capacities are established by cross-referencing to federal regulations. For a general overview of Maryland's Wage and Hour Law, please see the **Appendix – Maryland Wage and Hour Law**.

Fair Labor Standards Act

FLSA establishes, among other things, the federal minimum wage and overtime pay requirements affecting employees in the private and public sectors. It requires that overtime compensation be paid to employees who work more than 40 hours in a week at a rate not less than one and one-half times the regular rate of pay. Some workers are exempt from the FLSA minimum wage and overtime protections, including *bona fide* EAP employees (EAP exemption). To fall under the EAP exemption, an employee generally must (1) be paid a salary; (2) be paid at least a specified weekly salary amount; and (3) primarily perform executive, administrative, or professional duties. There is also an alternative test for determining EAP exemption status for highly compensated employees (HCE) where their salary threshold is higher, and they primarily perform office or nonmanual work while also doing at least one of the specified EAP duties but not otherwise satisfying other certain criteria for EAP.

On April 23, 2024, the U.S. Department of Labor (USDOL) issued a final rule that updated and revised the salary thresholds used to determine if an employee falls under the EAP exemption. Under the old framework, the standard salary level required that an employee be paid at least \$684 weekly (\$35,568 per year), and the HCE earnings threshold was \$107,432 annually. As of July 1, 2024, the new rule increased the standard salary level and the HCE earnings threshold to at least \$844 weekly (\$43,888 annually) and \$132,964 annually, respectively. Beginning on January 1, 2025, additional increases for calculating these levels would have taken effect, where the standard salary level would be \$1,128 weekly (\$58,656 annually) and the HCE earnings threshold would be \$151,164 annually. The rule also provided that these levels would be updated every three years to reflect current earnings data, with the first update occurring on July 1, 2027.

On November 15, 2024, the U.S. District Court for the Eastern District of Texas vacated the USDOL's 2024 final rule. Consequently, with regard to enforcement, USDOL is applying the 2019 rule's minimum salary level of \$684 per week (\$35,568 per year) and total annual compensation requirement for highly compensated employees of \$107,432 per year. Lawsuits regarding the 2024 final rule are currently pending in two other federal District Courts, and the United States has filed a notice of appeal from the November 15 decision.

State Expenditures: The overtime provisions of the Maryland Wage and Hour Law do not apply to the State as an employer.

USDOL estimates that increasing the EAP exemption to \$1,128 per week affects 2.6% of total employed workers. Thus, while the bill may result in additional complaints and investigations for overtime pay violations, Maryland Department of Labor can handle any additional complaints, along with developing guidance for employers and workers and conducting outreach on the change, with existing resources.

Small Business Effect: Small businesses that employ EAP employees earning annual compensation between \$35,568 (the current exemption threshold) and \$58,656 may incur additional personnel costs as a result of these EAP employees being entitled to overtime pay.

To the extent that the federal rule increases the EAP exemption to \$58,656 or more, the bill has no effect as current law regarding the EAP exemption cross-references to federal regulations.

Additional Information

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

Designated Cross File: None.

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

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km/mcr

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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; specified minor league baseball players; 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 pays or agrees to pay less than the required wages is guilty of a misdemeanor and on conviction is subject to a fine of up to \$1,000.