HB 1326
Maryland Healthy Working Families Act – Revisions and Public Health Emergency Leave
Economic Matters Committee
Position: Unfavorable

Maryland AGC, the Maryland Chapter of the Associated General Contractors of America, provides professional education, business development, and advocacy for commercial construction companies and vendors, both open shop and union. AGC of America is the nation's largest and oldest trade association for the construction industry. AGC of America represents more than 26,000 firms, including over 6,500 of America's leading general contractors, and over 9,000 specialty-contracting firms, all through a nationwide network of chapters. Maryland AGC opposes HB 1326 and respectfully urges the bill be given an unfavorable report.

HB 1326 provides that all regular full-time employees of all public and private entities be given 112 hours (2 weeks) of earned sick and safe leave if appropriate officials declare a public health emergency. Part-time employees receive a pro-rated amount of leave. This leave is in addition to earned sick and safe leave under current law. The additional leave may be taken for a variety of reasons related to the emergency, including to care for persons not in the original Healthy Working Families Act. Employees are required to notify their employer as soon as practicable only if the need for paid sick leave is foreseeable and the employer's place of business has not been closed due to the public health emergency. Employers may not require documentation of the use of the additional sick and safe leave. Finally, under Section 3, the bill is given retroactive effect and requires employers to give the additional leave retroactively to the declaration of the COVID-19 emergency.

The first objection is the overbreadth of the leave provision. Two weeks leave is based on the current COVID-19 pandemic recommendations for quarantine. Technically, the bill would provide 2 weeks and 4 days (112 working hours) leave, since weekends or their equivalent are not paid work hours. This is excessive even under the current pandemic. However, the bill addresses a "public health emergency" generally, not just the current pandemic. The length of additional leave should be subject to the best science available and not set at 14 working days *a piori*. The official declaring the emergency should be given the latitude to set the length of additional leave up to and including 10 work days as part of the emergency declaration. Note that even under the current pandemic, the Centers for Disease Control and Prevention recognizes the value of shorter periods of quarantine. "Reducing the length of quarantine may make it easier for people to quarantine by reducing the time they cannot work. A shorter quarantine period also can lessen stress on the public health system, especially when new infections are rapidly rising."[1]

Second, employers should be allowed to require validation of an employee's reason for taking the additional medical emergency leave. While the vast majority of employees are honest and will not request leave for reasons not allowable, some employees will "cheat" on leave, whether out of unreasoning fear or simple opportunism. Existing law (§3-1311) recognizes that some employees will misbehave. It is a disservice to honest employees and their employers to allow these few bad actors to game the system.

[1] When to Quarantine - Options to reduce quarantine, https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/quarantine.html, accessed 2/25/2021, 4:49 p.m.

Third, employers who have managed to survive in the current pandemic should not suddenly find themselves saddled with the obligation to provide the additional leave retroactively. Many employers have bent over backwards to keep their workforce intact or nearly so at great expense to their businesses and to their personal financial solvency and well-being. Since the leave cannot be granted retroactively, the bill essentially mandates employers to pay two weeks wages for all their employees who took unpaid or partially paid leave – or claim that they would have taken leave - any time after March 5, 2020. Note that the employer under the provisions of §3-1306(F) is prohibited from requiring verification, so an employee's word that he or she would have taken leave is law. This is patently unfair. The goal should be to move forward and allow employers to use their resources to restore their businesses.

Accordingly, Maryland AGC respectfully urges the Committee to give HB 1326 an unfavorable report.

Champe C. McCulloch
McCulloch Government Relations, Inc.
Lobbyist for Maryland AGC