

House Bill 581

Date: February 5, 2021
Committee: Economic Matters Committee
Bill Title: Labor and Employment - Employment Standards During an Emergency
(Maryland Essential Workers' Protection Act)
Re: Letter of Information and update on Federal OSHA guidance

The Maryland Department of Labor (MDL) respectfully submits this letter of information on House Bill 581 - Employment Standards During and Emergency (the Maryland Essential Workers' Protection Act).

Section 3-1603 requires that MEMA or a local organization for emergency management to periodically evaluate to determine whether an emergency is occurring or has occurred, and if so to publicly announce in writing at which point essential employers are required to comply with: -

- (1) 3-1605 (essential worker may refuse to work due to unsafe work environment);
- (2) 3-1608 (essential worker entitled to 3 days bereavement leave & 14 days health leave); and
- (3) 3-1609 (hazard pay of \$3 per hour for essential workers/contractors/subcontractors and to fully subsidize insurance costs, premiums, copays, etc.).

The proposed definition of "Emergency" includes imminent threat or occurrence of severe or widespread loss of life, injury or other health impacts, damage or destruction, social or economic disruption, or environmental degradation from natural, technological or human-made causes. This definition is without limitation or minimum effect levels, and includes non-traditional situations such as "economic disruption" or "environmental degradation" to qualify as an emergency triggering the full requirements of this bill.

Section 3-1605 establishes worker protections that are duplicative of some of the whistleblower protections offered under the MOSH laws, but by placing them in a different section of the Labor & Employment article, the MOSH staff would not enforce these protections. MDL would have to establish a new unit to investigate these claims.

The portion of the bill that allows an employee who believes their work environment is unsafe to refuse to perform their duties and be free from retaliation does not provide a remedy if the employee's belief is unfounded or unsustained after an investigation by the Commissioner. There is no mechanism for an employer to require the employee to return to work if the workplace is found to be safe. The employee could continue to claim they feel unsafe and receive their full pay indefinitely.

During the COVID-19 catastrophic health emergency and the state of emergency, we remain committed to working with our Maryland Department of Health (Health) colleagues and federal partners in implementing federal guidance, Governor Hogan's executive orders, and best practices on this subject.

Given recent federal action, we believe that HB581 may cause confusion to Maryland workers and businesses and part of it may be preempted by OSHA actions ordered by President Biden on January 21. The President's [executive order on "Protecting Worker Health and Safety"](#) directed OSHA to update COVID-19 safety recommendations for businesses within the next two weeks, review its enforcement efforts, and study whether an emergency temporary standard is necessary. The agency must issue their emergency standard by mid-March. OSHA released updated guidance on Friday, January 29, that is available here: <https://www.osha.gov/coronavirus/safework>. Sections 3-1604, 3-1606 and 3-1607 of this bill dealing with worker protections may be preempted by the impending federal OSHA guidance.