



## **HOUSE ECONOMIC MATTERS COMMITTEE**

### **House Bill 581**

#### **Labor & Employment – Employment Standards during Emergency**

**February 5, 2021**

#### **Urging an Unfavorable Report**

**Andy Clark, Assistant Vice Chancellor, Government Relations**

Chair Davis, Vice Chair Dumais, and members of the committee, thank you for the opportunity to share our thoughts regarding House Bill 581. The bill contains a sweeping set of new rules applicable to an incredibly broad group of employees, including contractors and subcontractors, working in a multitude of public and private industries and sectors, including the University System of Maryland (USM) institutions. It appears intended to address some of the concerns of those employees who reported to worksites during the pandemic. Unfortunately, it is not sufficiently targeted to reasonably address those concerns requiring a nexus between the emergency condition and the work being performed by an employee. Instead, HB 581 would extend these broad new protections and benefits to every worker reporting to a physical worksite during an emergency, regardless of whether the emergency actually places the employee at any objective risk while working. In addition, HB 581 overlaps provisions contained in worker's compensation statutes, occupational safety and health regulations, local public health regulations and practices, existing sick and bereavement leave policies, the Maryland Tort Claims Act, and collective bargaining laws, thereby creating confusion over its interaction with those other legal requirements.

House Bill 581 would have a significant impact on the USM institutions. The bill conflicts with the existing statutorily prescribed collective bargaining process, which authorizes an exclusive bargaining representative to negotiate with the institution over wages, hours, and other terms and conditions of employment, including health and safety measures. It requires "hazard" pay of \$3 per hour for all employees working at the worksite, *retroactive* to the beginning of the emergency. This Bill imposes costly and unnecessary terms that the parties might not otherwise have reached on their own. For example, under the Bill, the universities would have to provide workers three days of "bereavement leave" and 14 days of "health leave," when the same amount of bereavement leave and a greater amount of sick leave is already provided to these employees through policy and/or the collectively bargained MOUs. Additionally, by providing an "essential worker" with the right to refuse to fulfill work responsibilities under subjective circumstances (when the worker "fears" for their life or health), the bill promotes the potential for large-scale work stoppage in violation of the State collective bargaining laws). The allocation of significant

leave amounts coupled with refusals to work could create significant hardship in staffing and in maintaining the effective and efficient operations of the USM institutions.

Another concern is that the legislation shifts to the institutions responsibility to provide significant “financial assistance” to employees who get sick or injured as a result of an emergency, regardless of whether the employee was exposed or injured at work or not. As with the current pandemic, it may be impossible to establish the linkage between a worksite and an exposure or injury. These costs, should they be imposed, include paying or reimbursing employees for co-pays, insurance premiums, out-of-pocket medical expenses, and out-of-pocket transportation costs, in addition to assisting essential workers who do not have health insurance obtain and pay for coverage. These costs are abundant and unsustainable, especially when considering the health leave benefits already offered to employees by the universities.

As drafted, House Bill 581 contains redundancies, inconsistencies, vague and unclear language, and unreasonable expectations that will undoubtedly create confusion and hardship in implementation. For example, the employer is considered to have created an unsafe work environment by failing to notify workers of “illnesses, broken or improperly functioning equipment, or any other dangerous or hazardous conditions which represent a reasonable threat to the essential worker’s health or safety,” but an employer cannot provide notification of such things unless these conditions are first known to the employer. Also, the Bill’s definition of “emergency” is ambiguous, since it does not appear to require any declaration by a governmental authority and therefore leaves open the question of who has the authority to declare said emergency. As such, it will be impossible for the employer to determine when these worker protections and benefits kick-in.

Finally, the bill creates a new complaint process that could unreasonably impose on the institutions not only civil penalties of up to \$1,000 per employee, per occurrence, but compensatory damages, back pay, and attorney’s fees, as well.

For these reasons, the USM respectfully urges an unfavorable report on House Bill 581.