

House Bill 1326

Date: March 2, 2021
Committee: House Economic Matters Committee
Bill Title: Maryland Healthy Working Families Act – Revisions and Public Health
Emergency Leave
Re: Letter of Information

The Maryland Department of Labor (MDL) respectfully submits this letter of information on House Bill 1326 - Maryland Healthy Working Families Act – Revisions and Public Health Emergency Leave, which changes the MHWFA in four significant ways, several of which are significant changes.

The bill removes the exemption for on-call/as-needed employees in the health and human services industry. Those employees, commonly known as “PRN’s”, can accept or reject a shift when offered without penalty. Extending sick leave to on-call employees could result in an employer paying leave to multiple employees for the same shift and still not having an employee available to work the shift.

The change in definition of “adverse action” to bifurcate the fourth definition into “*any other retaliatory action that results in a change to the terms or conditions of employment **OR** that would dissuade a reasonable employee from exercising a right under this subtitle*” essentially adds “*any other retaliatory action that would dissuade a reasonable employee...*” as an independent clause, without the need to show a change to the terms or conditions of employment. Under this newly expanded definition an employer could be found in violation of the anti retaliation provisions for incentive programs that reward employees who do not use some or all of their sick and safe leave, paying employees for unused sick leave, having group rewards if a unit’s employees do not utilize sick leave for a certain time period, rewarding employees who provide documentation even if not required, etc. Additionally, as worded an employer could be in violation whether or not an employee actually alleges a perceived feeling of dissuasion. The company policy or actions alone, without an employee allegation, could render the employer in violation.

Finally, the bill proposes to add §3-1306 to the subtitle which provides that in the event of a defined public health emergency, an employer, *regardless of size or length of employment*, must provide on the date the emergency is declared paid sick and safe leave (emergency sick and safe leave) that is in addition to the sick and safe leave provided for in LE §3-1304(a).

The bill requires emergency sick and safe leave required to be provided is as follows:

- 112 hours of leave for all full time employees working 40 hours per week or more;

- For employees who work fewer than 40 hours per week, the greater of the average amount of hours the employee typically works in a two or four week period *Note: This section of the bill may create conflicts and is interpreted to mean if an employee works 35 hours every week, the average amount of hours the employee works in a four week period is 140 which is greater than 112 hours provided for full time employees;* and
- For employees whose work schedule is less than 40 hours per week and whose schedule varies from week to week, the average amount of hours worked in a two week period is determined by looking at the hours worked (or that the employee could reasonably be expected to work) in the six month period preceding the public health emergency, including any leave.

The emergency sick leave must be paid regardless of the employee's length of employment or the number of employees an employer has. An employee is allowed to use the leave for up to three weeks *after* the public health emergency has ended. An employee may use emergency SSL before regular earned SSL. And an employee is not required to provide documentation for use of emergency SSL.

The impact of this emergency paid leave on small employers may be significant. The current law recognizes that paid leave impacts small businesses differently than large businesses. Employers with less than 15 employees are only required to provide *unpaid leave* under the MHWFA. Requiring employers to provide 14 days of paid sick leave without any state or federal monetary support would be challenging for most employers to afford. A public health emergency such as the COVID-19 emergency has already put financial strain on many small businesses. The additional leave required by this law without any funding subsidy for the businesses may result in many employers being unable to comply with the law and it is anticipated it will result in significant complaints for noncompliance.