

**SB727– MARYLAND HEALTHY WORKING FAMILIES ACT –
REVISIONS AND PUBLIC HEALTH EMERGENCY LEAVE**

TESTIMONY BY

**MARC ENGEL, COUNSEL TO THE BOARD, THE GREATER BETHESDA CHAMBER OF COMMERCE
EMPLOYMENT ATTORNEY & PRINCIPAL, LERCH, EARLY & BREWER**

BEFORE THE SENATE FINANCE COMMITTEE

MARCH 17, 2021

POSITION: UNFAVORABLE REPORT

Good afternoon. My name is Marc Engel, Employment Attorney and Principal of the law firm Lerch, Early & Brewer here on behalf of The Greater Bethesda Chamber of Commerce in **OPPOSITION to SB727**.

Although we understand the concerns which the legislation attempts to address, this bill is unnecessary as a practical matter and will unintentionally create substantial hurdles and challenges for employers. It will likely not have the anticipated beneficial impact upon employees and may actually have a number of unintended adverse consequences. It also leaves open a myriad of unanswered questions that will undoubtedly require either major revisions to the existing legislation.

As one who has been counseling employers of all sizes during the entire pandemic, my experience has been that employers have overwhelmingly attempted to address leave and other issues associated with the pandemic by relaxing sick and safe leave policies; relaxing paid time off policies; allowing PTO leave accounts to be replenished; paying for health insurance for employees who have been laid off or furloughed; and otherwise attempting to work in a collaborative fashion with employees when they are unable to work due, in whole or in part, to COVID.

My clients do not seem to be experiencing an unusual number of situations where employees claim that they do not have the requisite leave to take.

To some extent, the leave issues were ameliorated by the FFCRA which required many employers to provide employees with paid sick leave under the Emergency Paid Sick Leave Act, and expanded family and medical leave under the Emergency Family and Medical Leave Expansion Act.

Employers in Montgomery County (which has its own Sick and Safe Leave Law which is more generous to employees than the MHWFA), in particular, must already navigate a complex leave structure. The sick and safe leave provided by the MHWFA is generous in my experience in comparison to other states.

Taken together, MHWFA, along with paid time off accounts which employers establish, and in conjunction with leave provided under the FFCRA (and Family and Medical Leave Act) provide ample leave payments and protections to employees.

In terms of employees who are required to quarantine, many employers have either allowed employees to use PTO, or simply paid for the time away without requiring that employees tap into their PTO accounts.



SB 727 Will Create Numerous Challenges (Financial and Otherwise) for Employers and May Not Benefit Employees as Anticipated

- As a practical matter, mandating that employers provide enhanced leave to employees will likely result in employers making changes elsewhere in their benefit package and in the manner in which they compensate employees. Unlike the FFCRA, which allowed employers to obtain a tax credit in certain situations for funding the cost of enhanced leave, no such credit exists under SB727.
- What I have seen repeatedly is that some employers may adjust the PTO which they provide to employees to account for the fact that they were required to provide sick and sick leave. Ultimately, this often does not benefit employees.
- In addition, employers may evaluate whether and, if so, to what extent raises should be provided when employers are faced with mounting costs associated with additional leave.
- Employers who are required to provide costly leave/benefits may curtail hiring and, perhaps more likely, prohibit overtime work.
- In summary, the existing mosaic of leave laws adequately addresses leave issues associated with emergencies in many, if not most, instances. In other instances where leave balances may fall short, many if not most employers, mindful of the importance of retaining good employees, have been relaxing leave policies and taking other measures to attempt to ensure that employees are paid to the greatest extent practicable under these historic circumstances.
- Some employers are concerned that providing employees with additional leave may not promote the safety practices which governmental authorities are urging to mitigate the impact and spread of the virus.
- Finally, the urgency for SB727 seems to have waned significantly in light of the enhanced vaccination which is occurring.

SB 727 leaves open a myriad of unanswered questions that will undoubtedly require either major revisions to the existing legislation and/or comprehensive regulations.

As written, SB727 leaves numerous unanswered questions and poses a number of problems, including the following:

- Unlike the FFCRA, the proposed SB727 does not require that employees be employed with the employer for a certain period of time before they are entitled to utilize leave under the Act.
- The bill, by its terms, applies retroactively which creates all manner of practical and financial problems for employers.



THE GREATER BETHESDA
CHAMBER of COMMERCE
Smart Business, Bright Future



Allie Williams, IOM, President & CEO
7910 Woodmont Avenue, Suite 1204
Bethesda, MD 20814
T (301) 652-4900 F (301) 657-1973
awilliams@greaterbethesdachamber.org
www.greaterbethesdachamber.org

- SB727 does not describe the nature and extent of the Public Health Emergency which must exist in order to trigger the new law. It is one thing to sanction the leave in a situation where there is a pandemic, yet quite another where there is a Public Health Emergency that may last, for example, for a week.
- There are no certification requirements included in the new law in terms of employees having to make representations about the need for the leave. This is an important accountability feature.
- SB 727 extends protection to temporary and staffing employees. Not only will this likely prove very costly for staffing companies, but will likely be difficult to administer because employees are often placed with different employers throughout a year.
- It also seems likely that staffing companies forced to provide such leave and absorb the associated costs may consider (i) reducing the amount of other paid time off available and (ii) passing along those costs to clients.
- The net effect may be that SB727 hurts local staffing companies at the expense of larger, national companies which may be able to more readily absorb these costs.

The federal government issued numerous regulations and guidances to address the blizzard of questions raised about the FFCRA. Bottom line, SB 727 will either need to be rewritten or supported by a comprehensive set of regulations.

For these reasons, we ask that you vote **unfavorable on SB727**. Thank you.