



March 9, 2026

The Honorable Pamela Beidle, Chair  
Senator  
Maryland General Assembly  
3 East Miller Senate Office Building  
Annapolis, MD 21401

The Honorable Antonio Hayes, Vice Chair  
Senator  
Maryland General Assembly  
3 East Miller Senate Office Building  
Annapolis, MD 21401

RE: Opposition to S.B. 0857 - Labor and Employment - Civic and Related Activities - Protection  
(Maryland Employee Civic Activity and Lawful Expression Protection Act)

Dear Chair Beidle, Vice Chair Hayes, and Members of the Committee:

On behalf of the Maryland SHRM State Council (MD SHRM), I respectfully submit this testimony in opposition to Senate Bill 0857. While we support employees' rights to engage in lawful activities outside the workplace, the bill as drafted is overly broad, creates substantial legal uncertainty, and establishes a damages framework that is disproportionate and inconsistent with existing Maryland law.

As the trusted authority on all things work, the Society for Human Resource Management (SHRM) is the foremost expert, researcher, advocate, and thought leader on issues and innovations impacting today's evolving workplaces. MD SHRM serves as the liaison and support organization that links Maryland's local SHRM chapters with SHRM's regional and national organizations, representing thousands of HR professionals and employers across the State who are responsible for implementing workplace policies and managing workforce impacts of legislative changes.

We have some major concerns with the draft bill, including and not limited to:

1. The Bill's Core Concept is Overly Broad and Impractical  
The legislation attempts to prohibit adverse employment action based on an employee's participation in "lawful activity." However, the bill does not clearly define how employers are expected to evaluate situations where an activity begins as lawful but later becomes unlawful.

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For example, if an employee is participating in what initially appears to be lawful picketing but is later arrested for assaulting a police officer during that activity, it is unclear whether the employee's conduct would still qualify as protected "lawful activity." Further, employees, especially in various leadership roles at organizations, are held to Codes of Conduct and similar policies at organizations, which often hold employees to certain standards. Employees in certain leadership roles may be more public-facing, and organizations must react to off-duty behaviors violating internal codes of conduct, when reputation is on the line. The bill provides no guidance on how employers should assess such circumstances, creating uncertainty and exposing employers to potential liability for reasonable workplace decisions.

Without clearer definitions and limitations, employers could face litigation even when responding to legitimate workplace or safety concerns.

## 2. The Definition of "Employer" is Unclear and Potentially Overreaching

Proposed Section 3-1901(E) defines an employer to include: "A person that acts directly or indirectly in the interest of another employer with an employee."

This language is vague and difficult to interpret in practice. It is unclear what factual scenario the provision is intended to address or how broadly it could apply. As written, it could potentially sweep in individuals or entities who have only indirect or tangential relationships to an employment decision.

Ambiguous statutory language increases litigation risk and makes compliance difficult for employers attempting to follow the law in good faith.

## 3. The Bill Attempts to Alter Maryland Class Certification Standards

Section 3-1905(A)(3)(ii) directs courts to "liberally construe" class certification.

However, Maryland Rule 2-231 already establishes the procedural standards for class certification. Statutory language directing courts to alter or "liberally construe" those standards is problematic and risks creating conflicts with established court rules governing civil procedure.

This provision raises significant legal concerns and may create confusion regarding how courts should apply existing procedural rules.

## 4. The Damages Provisions Are Excessive and Disproportionate



The damages framework in Section 3-1905(B) goes far beyond remedies available under Maryland's existing employment statutes, including the State's anti-discrimination laws.

Specifically, the bill:

- Requires a minimum award of three times lost wages plus one full year of wages, regardless of circumstances.
- Prohibits courts from considering mitigation of damages, preventing reduction of awards based on interim earnings or reasonable efforts to find other employment.
- Allows recovery of uncapped emotional distress damages.
- Applies a lower standard for punitive damages than currently required under Maryland law.
- Creates an internal inconsistency by mandating treble damages for lost wages while also making treble damages discretionary.
- Establishes a rebuttable presumption of causation if an adverse employment action occurs within 120 days of protected activity.
- Allows for expungement of disciplinary records without limitation, potentially erasing legitimate performance or conduct documentation.

Taken together, these provisions create a damages scheme that is significantly more punitive than remedies available under existing Maryland employment laws.

#### 5. The Bill Creates Remedies That Exceed Those in Maryland Anti-Discrimination Law

Under Maryland's anti-discrimination statutes, codified in Maryland State Government Code §20-1009 and Maryland State Government Code §20-1013, courts may award back pay and compensatory damages but must apply caps on combined emotional distress and punitive damages ranging from \$50,000 to \$300,000, depending on employer size.

Additionally, those statutes require courts to reduce back pay awards by interim earnings or amounts that could have been earned with reasonable diligence.

SB 857 would provide far greater damages and fewer safeguards than Maryland provides for claims involving unlawful discrimination—one of the most serious violations of employment law. This imbalance raises significant policy concerns.

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While protecting lawful employee activity is an important objective, SB 857 introduces broad and ambiguous standards that would expose employers to significant litigation risk while creating remedies that far exceed those provided under Maryland's existing employment laws.

For these reasons, we respectfully urge the Committee to issue an unfavorable report on this legislation.

If you have questions regarding SHRM's position on S.B. 857 or other policies impacting the workplace, please contact Paige Boughan (MD SHRM – [paige.boughan@fmb1919.bank](mailto:paige.boughan@fmb1919.bank)).

Thank you for your consideration.  
Sincerely,

Paige Boughan  
Maryland SHRM State Council  
Legislative Director

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