

Department of Legislative Services  
 Maryland General Assembly  
 2016 Session

FISCAL AND POLICY NOTE  
 Third Reader - Revised

House Bill 580  
 Economic Matters

(Delegate Clippinger, *et al.*)

Finance

Labor and Employment - Maryland Healthy Working Families Act

This bill requires an employer with more than 14 employees to have a sick and safe leave policy under which an employee (who regularly works 8 or more hours per week) earns at least 1 hour of *paid* sick and safe leave, at the same rate as the employee normally earns, for every 30 hours an employee works. An employer with 14 or fewer employees, based on the average monthly number of employees during the preceding year, must have a sick and safe leave policy that provides an employee (who regularly works 8 or more hours per week) with at least 1 hour of *unpaid* sick and safe leave for every 30 hours an employee works. An employer is not required to allow an employee to earn or carry over more than 56 hours of earned sick and safe leave in a year, use more than 80 hours of earned leave in a year, accrue more than 80 hours at any time, or use earned sick and safe leave during the first 90 calendar days worked or first 480 hours worked, whichever is shorter.

The bill takes effect January 1, 2017.

Fiscal Summary

**State Effect:** Expenditures increase (all funds), potentially by several million dollars, to provide contractual employees throughout State government with earned sick and safe leave. General fund expenditures increase by \$406,900 in FY 2017 due to additional staffing needs for the Department of Labor, Licensing, and Regulation (DLLR) to enforce the bill and due to programming costs within the Department of Budget and Management (DBM). Out-year expenditures reflect annualization, elimination of contractual staff and one-time start-up costs, and inflation. General fund revenues increase minimally as a result of the bill’s monetary penalty provision from cases heard in the District Court.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
GF Revenue	-	-	-	-	-
GF Expenditure	\$406,900	\$410,400	\$374,800	\$389,600	\$405,000
GF/SF/FF Exp.	-	-	-	-	-
Net Effect	(\$406,900)	(\$410,400)	(\$374,800)	(\$389,600)	(\$405,000)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

**Local Effect:** Local government expenditures increase significantly for certain local jurisdictions to allow temporary or part-time employees to earn sick and safe leave. **This bill may impose a mandate on a unit of local government.**

**Small Business Effect:** Meaningful.

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## Analysis

### Bill Summary:

#### *Eligibility*

An “employer” includes the State or local governments and a person who acts directly or indirectly in the interest of another employer with an employee. The bill does not apply to specified independent contractors, specified associate real estate brokers and real estate salespersons, individuals younger than age 18 before the beginning of the year, workers in a specified agricultural sector, or construction workers (not including specified employees) covered in a collective bargaining agreement. The bill defines who qualifies as a “family member.”

#### *Use and Accrual of Leave*

Earned sick and safe leave begins to accrue the later of January 1, 2017, or the date that an employee begins employment with the employer.

An employer must allow an employee to use earned sick and safe leave:

- to care for or treat the employee’s mental or physical illness, injury, or condition;
- to obtain preventive medical care for the employee or employee’s family member;
- to care for a family member with a mental or physical illness, injury, or condition; and
- for specified circumstances due to domestic violence, sexual assault, or stalking committed against the employee or the employee’s family member.

An employer is not required to compensate an employee for unused earned sick and safe leave when the employee leaves the employer’s employment. An employer who rehires an employee within nine months after leaving employment is required to reinstate any unused earned sick and safe leave that had accrued at the time of separation unless the employer voluntarily paid out the unused earned sick and safe leave. The bill does not require an employer to modify an existing equivalent paid leave policy or affect specified

workers' compensation benefits. The bill does not affect any other law that provides more generous sick and safe leave benefits. The bill does not prevent an employer from establishing a policy that allows employees to voluntarily exchange assigned work hours. The bill may not be construed to prohibit an employer from adopting a policy that limits an employee to using earned sick and safe leave only for the reasons listed under the bill.

The bill includes processes and conditions, including notice and verification requirements, under which an employee may accrue and use earned leave.

The bill applies only prospectively and may not be interpreted to apply or have any effect on or application to any bona fide collective bargaining agreement entered into before June 1, 2016, for the duration of the contract term, excluding any extensions, options to extend, or renewals of the term of the original agreement.

#### *Requirements for the Commissioner of Labor and Industry*

The commissioner may adopt implementing regulations and investigate violations upon receiving a written complaint by an employee. The commissioner must, to the extent practicable, keep the complainant's identity confidential unless the employee waives confidentiality.

#### *Notice to Employees*

An employer must notify its employees that they are entitled to earned sick and safe leave by providing specified notice to employees. The Commissioner of Labor and Industry must create and make available a poster and a model notice that may be used by employers, which includes specified information on earned sick and safe leave and the rights of employees.

#### *Enforcement*

The bill preempts the authority of a local jurisdiction to enact a law on or after January 1, 2016, that regulates sick and safe leave provided by an employer other than the local jurisdiction.

An employer must keep relevant records for at least three years, and the commissioner may inspect an employer's records regarding earned sick and safe leave. It is presumed that an employer has violated the earned sick and safe leave provisions if the employer fails to either keep records or allow the commissioner to inspect records.

If an employee believes that an employer has violated a provision of the bill, the employee may file a written complaint with the commissioner. The commissioner must conduct an

investigation and attempt to resolve the issue informally through mediation within 90 days of the written complaint. If the commissioner is unable to resolve the issue through mediation and determines that an employer has violated a provision of the bill, the commissioner must issue an order, subject to the hearing and notice requirements of specified governmental administrative procedures. The order must describe the violation and direct the payment of the full monetary value of any unpaid earned sick and safe leave and any actual economic damages. The order may, in the commissioner's discretion, direct the payment of an additional amount of up to three times the value of the employee's hourly wage for each violation and assess a civil penalty of up to \$1,000 for each employee for whom the employer is not in compliance with provisions of the bill. If an employer does not comply with an order within 30 days of the issuance of the order, the commissioner may, with the employee's written consent, ask the Attorney General to bring an action on behalf of the employee or bring an action to enforce the order for a civil penalty in the county where the employer is located.

In addition, within three years of the order, an employee may bring an action to enforce the order in the county where the employer is located. If an employee prevails in such an action to enforce an order, the court must award three times the value of the employee's unpaid earned sick and safe leave, punitive damages in an amount determined by the court, reasonable legal fees, injunctive relief if appropriate, and any other appropriate relief.

A person may not interfere with the exercise of, or the attempt to exercise, any right given under the bill. An employer may not take adverse action or discriminate against the employee because the employee exercised in good faith the rights granted by the bill. Additionally, an employer may not interfere with, restrain, or deny an employee exercising rights provided under the bill or apply a specified absence control policy that could lead to adverse action. An employee who mistakenly, but in good faith, alleges a violation under the bill is protected. An employee may not, in bad faith, file a complaint with the commissioner alleging a violation, bring an action, or testify in an action regarding earned sick and safe leave. An employee who violates these provisions is guilty of a misdemeanor and on conviction is subject to a maximum \$1,000 fine.

**Current Law:** Maryland law does not require private-sector employers to provide employees with paid or unpaid sick leave.

#### *Federal Family and Medical Leave Act of 1993*

The Federal Family and Medical Leave Act of 1993 (FMLA) requires covered employers to provide eligible employees with up to 12 work weeks of unpaid leave during any 12-month period under the following conditions:

- the birth and care of an employee's newborn child;

- the adoption or placement of a child with an employee for foster care;
- to care for an immediate family member (spouse, child, or parent) with a serious health condition;
- medical leave when the employee is unable to work due to a serious health condition; or
- any qualifying circumstance arising out of the fact that the employee’s spouse, son, daughter, or parent is a covered military member on “covered active duty.”

Generally, an FMLA-covered employer is an entity engaged in commerce that employs at least 50 employees. Public agencies and public or private elementary or secondary schools are considered to be covered employers regardless of the number of individuals they employ.

An eligible employee is an individual employed by a covered employer who has been employed for at least 12 months; however, these may be nonconsecutive months. Among other criteria, the individual must have been employed for at least 1,250 hours of service during the 12-month period.

#### *Maryland Flexible Leave Act*

A private-sector employer who provides paid leave to its employees must allow an employee to use earned paid leave to care for immediate family members, including a child, spouse, or parent, with an illness. An employer is prohibited from taking action against an employee who exercises the rights granted or against an employee who files a complaint, testifies against, or assists in an action brought against the employer for a violation of these provisions.

An employer is considered a person that employs 15 or more individuals and is engaged in a business, industry, profession, trade, or other enterprise in the State, including a person who acts directly or indirectly in the interest of another employer. State and local governments are not included.

Employees who earn more than one type of paid leave from their employers may elect the type and amount of paid leave to be used in caring for their immediate family members.

#### *Maryland Parental Leave Act*

Firms with 15 to 49 employees are required to provide employees with unpaid parental leave benefits. An eligible employee may take unpaid parental leave up to a total of six weeks in a 12-month period for the birth, adoption, or foster placement of a child. During parental leave, the employer must maintain existing coverage for a group health

plan and, in specified circumstances, may recover the premium if the employee fails to return to work. State and local governments are not included.

To be eligible for the unpaid parental leave, an employee must have worked for the employer for at least one year and for 1,250 hours in the previous 12 months. An eligible employee does not include an independent contractor or an individual who is employed at a work site at which the employer employs fewer than 15 employees if the total number of employees employed by that employer within 75 miles of the work site is also fewer than 15. An eligible employee has to provide the employer with 30-day prior notice of parental leave. However, prior notice is not required if the employee takes leave because of a premature birth, unexpected adoption, or unexpected foster placement.

**Background:** According to the U.S. Bureau of Labor Statistics, in 2015, 61% of workers in private-industry businesses have paid sick leave, while 90% of workers in state and local governments have paid sick leave. Among employees of private-industry businesses with fewer than 100 workers, 52% earn paid sick leave. Private-industry businesses provided on average seven days of paid sick leave per employee in 2014.

The Institute for Women's Policy Research reported in 2013 that 40% of Maryland private-sector employees do not have paid sick days. Data from the 2011 National Health Interview Survey revealed that, when workers are limited to a maximum of 7 days of work loss, workers with paid sick days miss an average of 1.8 days annually for illness and injury excluding maternity leave. The survey also found that about half of all workers who are covered by paid sick leave plans do not take any days off for illness or injury in a given year. The Institute for Women's Policy Research reports that workers use an average of 2.8 days out of 7 days annually to care for their own medical needs, their families' needs, and for doctors' visits; and victims of domestic violence are expected to take the maximum number of earned sick days.

#### *Paid Sick Leave in Other Jurisdictions*

San Francisco became the first city to require private-sector employers to provide paid sick leave to their employees. Several other cities, such as the District of Columbia, Seattle, New York City, Jersey City, and Newark, have also enacted paid sick time laws. In 2011, Connecticut became the first state to require private-sector employers to provide paid sick leave to their employees, followed by California and Massachusetts, whose leave policies became effective in July 2015. Oregon enacted paid sick leave legislation in June 2015, and Vermont recently enacted legislation in March 2016 to provide paid sick leave.

Montgomery County enacted paid sick leave legislation in June 2015 (Montgomery County Bill 60-14), which generally requires employers in the county to provide 1 hour of

earned sick and safe leave for every 30 hours an employee works in the county, up to 56 hours in a calendar year.

### *Domestic Violence in Maryland*

According to the *2014 Uniform Crime Report*, 27,242 domestic violence crimes were reported in Maryland. Assault was by far the most frequently reported crime, with 24,485 incidents in calendar 2014. Of reported assaults, simple assaults comprised 19,697 incidents. There were 67 domestic violence homicides.

**State Revenues:** General fund revenues increase – likely minimally – as a result of the bill’s monetary penalty provisions from cases heard in District Court.

### **State Expenditures:**

#### *Administrative Costs:*

The Commissioner of Labor and Industry Employment Standards Service unit currently handles claims for unpaid sick leave. By creating a sick and safe leave policy for almost all employers, the bill creates additional enforcement responsibilities for DLLR’s Division of Labor and Industry. DLLR cannot absorb the additional workload within existing resources and requires additional staffing to respond to the increase in inquiries and complaints prompted by a sick and safe leave policy.

The regular staff needed to respond to and manage the additional workload created by the bill includes one assistant Attorney General, one administrator, two administrative officers, and one office clerk. Until June 30, 2018, DLLR needs one additional contractual administrative officer until the number of inquiries and complaints decreases due to greater employer awareness of the bill’s requirements. DLLR advises that inquiries into sick and safe leave violations are expected to increase significantly due to the bill because the State has never had such a policy before. DLLR estimates it could receive as many as 20,000 additional inquiries each year and 800 complaints alleging violations. Based on prior experience, DLLR advises that the majority of employers in violation will voluntarily come into compliance with the bill’s provisions after being contacted by division staff. However, a significant number of new formalized complaints must likely be investigated and processed each year by the division.

In addition to analyzing employer leave policies and processing complaints, DLLR advises that the additional staff will develop employee notification materials and conduct outreach efforts to inform employers of the new sick and safe leave policy. Additional administrative support is needed to handle phone and email inquiries, prepare and file wage orders, handle equipment and supplies, and manage complaint files. Legal staff is needed

to provide advice, review wage orders, and plead cases. DLLR advises that the Employment Standards database must be modified, increasing expenditures by \$150,000.

General fund expenditures increase for DLLR by \$386,910 in fiscal 2017, which assumes that DLLR staff are in place as of January 1, 2017, concurrent with the effective date of the bill. This estimate reflects the cost of hiring two regular and one contractual administrative officers, one office clerk, and one assistant Attorney General as well as one regular administrator to investigate complaints and enforce the State's sick and safe leave policy. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Regular Positions	5.0
Contractual Positions	1.0
Regular Salaries and Fringe Benefits	\$173,588
Contractual Salaries and Fringe Benefits	21,263
One-time Start-up Costs	181,178
Operating Expenses	<u>10,881</u>
<b>Total FY 2017 State Expenditures</b>	<b>\$386,910</b>

Future year expenditures reflect elimination of the contractual position, annual increases, and employee turnover as well as annual increases in ongoing operating expenses. If the volume of inquiries or complaints exceeds expectations, the contractual position could be extended or converted to regular status.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

Additionally, administrative expenses associated with recordkeeping, documentation, and notification requirements may increase. For example, DBM general fund expenditures increase by \$20,000 for programming costs to reconfigure its timekeeping system to track sick and safe leave time. Likewise, other agencies with their own independent personnel systems may incur additional costs to track sick and safe leave time.

The Office of Administrative Hearings can handle hearings on earned sick and safe leave with existing resources.

### *Labor Costs*

The Department of Legislative Services (DLS) assumes the State will expand and modify its existing sick leave policies to comply with the bill rather than implement sick and safe leave in addition to existing sick leave policies.



State employees in both the State Personnel Management System (SPMS) and the Maryland Department of Transportation (MDOT) Transportation Service Human Resources System currently accrue paid sick leave at the rate of 1.5 hours for every 26 hours worked in nonovertime status, which exceeds the bill's minimum requirement. Employees earn a maximum of 15 days or 120 hours of sick leave each year. Employees may use paid sick leave for the following:

- for illness or disability of the employee;
- for death, illness, or disability of the employee's immediate family member;
- following the birth of the employee's child;
- when a child is placed with the employee for adoption; or
- for a medical appointment of the employee or the employee's immediate family member.

The bill expands the possible uses of earned sick and safe leave, particularly for leave related to domestic violence and related crimes, and defines a "family member" more broadly. As a result of the expanded authorization to use earned sick and safe leave for all SPMS employees, sick and safe leave may be used more frequently, which could disrupt some State operations, affect productivity, and/or require additional expenditures for overtime.

Providing earned sick and safe leave to State employees who currently do not receive any leave benefits increases expenditures (all funds) significantly. For example, DBM estimates that expanding earned sick and safe leave to contractual, seasonal, and temporary employees within SPMS who currently do not earn leave could increase expenditures by as much as \$7.0 million. Likewise, the Judiciary estimates expenditures could increase by up to \$1.0 million for employees currently ineligible for paid leave. The actual impact depends on how many additional hours of earned sick and safe leave State employees use.

The University System of Maryland (USM) reports various categories of contractual short-term or intermittent employees do not receive leave benefits, including Contingent Category I (temporary) employees, adjunct faculty who are typically hired to teach a single course for a term, and student employees. In addition, Contingent Category II (typically longer-term contractual) employees only receive limited leave benefits, including three days of sick leave at many institutions. Providing seven days of earned sick and safe leave to these employees will increase USM expenditures – potentially significantly.

The impact is greater for agencies with 24/7 operations because the expanded leave opportunities may increase overtime costs. Agencies with 24/7 operations include MDOT and, within SPMS, the Department of General Services, the Department of Health and

Mental Hygiene, the Department of Juvenile Services, the Department of State Police, the Department of Natural Resources, and the Department of Public Safety and Correctional Services. DBM estimates expenditures increase \$3.7 million in overtime for agencies within SPMS with 24/7 operations.

**Local Expenditures:** Many local jurisdictions do not offer seasonal, part-time, grant-funded, or contractual workers earned sick and safe leave, so many local jurisdictions incur significant increases in expenditures. For example, Dorchester County estimates expenditures could increase by approximately \$20,000 annually to provide 108 part-time employees with earned sick and safe leave. Additionally, as most local jurisdictions do not define family members as broadly as does the bill, they may only allow a portion of earned sick days to be used to care for sick family members. The Maryland Municipal League notes that there may be significant increased costs associated with increased absenteeism. Providing earned sick and safe leave to essential personnel may strain response systems, overburden other employees, and create additional overtime expenses for local jurisdictions. Additionally, administrative expenses associated with recordkeeping, documentation, and notification requirements increase for providing earned sick and safe leave.

However, some local jurisdictions only incur minimal or no fiscal impact for allowing earned safe leave, such as the City of Havre de Grace and Garrett County, since they provide the earned sick leave required by the bill. Since Montgomery County recently enacted an earned sick and safe leave law, it is not as significantly affected as most employees are covered under the county legislation.

**Small Business Effect:** The bill has a significant impact on small businesses. Based on U.S. Census data, DLS estimates that between 225,000 and 378,000 employees work for Maryland employers with 14 or fewer employees, so they could become eligible for unpaid sick leave under the bill, although about half of these employees likely already receive paid sick leave.

Less than 15% of businesses in the State have 15 or more employees, but they employ over 80% of workers. DLS estimates that more than 500,000 employees work for Maryland employers with at least 15 employees and do not receive paid sick leave. The U.S. Bureau of Labor Statistics reports the average employer cost to provide paid sick leave in 2012 was 25 cents per hour, or 0.9% of total compensation for private-industry workers. Assuming that providing earned sick and safe leave costs employers 0.9% of an employee's compensation, DLS estimates it could cost employers with more than 14 employees approximately \$445 per employee to provide new earned sick and safe leave to employees who do not already earn it.

Businesses may benefit by experiencing reduced turnover, increased productivity, and reduced spread of illnesses. The Institute for Women’s Policy Research estimates that a similar prior-year bill equates to a 26-cents-per-hour savings in wages for employees receiving new leave as a result of lower turnover and reduced spreading of illnesses in the workplace.

Employers in the service industries are likely to be the most affected by the bill because only 39% of service workers in private industry received paid sick leave in 2015. Additionally, employers who employ low-wage earners (average wage in the lowest quartile) are likely to be affected more than those employers who employ high-wage earners (average wage in the highest quartile), because only 31% of low-wage workers receive paid sick leave compared with 84% of high-wage workers in 2015.

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### **Additional Information**

**Prior Introductions:** Similar bills, SB 40 of 2015, SB 753 of 2014, and SB 698 of 2013, received a hearing in the Senate Finance Committee, but no further action was taken. HB 385 of 2015 and HB 968 of 2014, both cross files, received a hearing in the House Economic Matters Committee, but no further action was taken. HB 735 of 2013, another cross file, received a hearing in the House Economic Matters Committee and was subsequently withdrawn.

**Cross File:** SB 472 (Senator Pugh, *et al*) – Finance.

**Information Source(s):** Baltimore, Dorchester, Garrett, and Montgomery counties; Maryland Association of Counties; cities of Frederick and Havre de Grace; Maryland Municipal League; Judiciary (Administrative Office of the Courts); Department of Budget and Management; Department of Labor, Licensing, and Regulation; Maryland Department of Transportation; University System of Maryland; Institute for Women’s Policy Research; U.S. Department of Labor; U.S. Bureau of Labor Statistics; U.S. Small Business Administration; National Conference of State Legislatures; Department of Legislative Services

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