

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1143
 Economic Matters

(Delegate W. Fisher, *et al.*)

Labor and Employment - Employment Contracts - Employment After Contract Termination

This bill prohibits an employer from disqualifying an individual who is employed under a contract with the employer for subsequent employment if the individual was unable to fulfill the duration of the time specified in the contract due to pregnancy, the birth or adoption of a child, or a serious illness of an immediate family member. The Commissioner of Labor and Industry has enforcement duties under the bill, and an individual may also bring a civil action in the appropriate State court to enforce the bill. The bill applies prospectively and has no effect on any cause of action arising before its October 1, 2020 effective date.

Fiscal Summary

State Effect: General fund expenditures for the Maryland Department of Labor (MDL) to enforce the bill increase by \$50,000 in FY 2021. Out-year expenditures reflect annualization and the elimination of one-time start-up costs. General fund revenues increase minimally beginning in FY 2021 due to penalties imposed under the bill.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
GF Revenue	-	-	-	-	-
GF Expenditure	\$50,000	\$58,300	\$59,500	\$61,400	\$63,400
Net Effect	(\$50,000)	(\$58,300)	(\$59,500)	(\$61,400)	(\$63,400)

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

Local Effect: The bill does not materially affect local finances or operations.

Small Business Effect: Minimal.

Analysis

Bill Summary: An employer includes the State and local governments. The court may enjoin an act or a practice that violates the bill and may order equitable relief. Whenever the Commissioner of Labor and Industry determines that the bill has been violated, the commissioner must try to resolve the issue informally or ask the Attorney General to bring an action on behalf of the applicant or employee. The Attorney General may bring an action in the county where the violation allegedly occurred for injunctive relief, damages, or other relief. An employer who violates the bill is subject to a civil penalty of up to \$5,000.

Current Law: The Maryland Commission on Civil Rights enforces the State's laws against employment discrimination and on reasonable accommodation found in Title 20 of the State Government Article. The State's laws regarding discrimination in employment generally apply to employers with at least 15 employees, including the State. Disabilities caused or contributed to by pregnancy or childbirth are temporary disabilities for all job-related purposes and must be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions of leave, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan must be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

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.

State Revenues: General fund revenues increase, likely minimally, beginning in fiscal 2021 as a result of the bill's penalty provision.

State Expenditures: MDL estimates having to investigate 25 additional complaints on an annual basis as a result of the bill. Thus, general fund expenditures for MDL increase by \$50,039 in fiscal 2021, which accounts for the bill's October 1, 2020 effective date. This estimate reflects the cost of hiring one wage and hour investigator to answer inquiries and investigate complaints stemming from the bill. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1
Salary and Fringe Benefits	\$41,860
Operating Expenses	<u>8,179</u>
Total FY 2021 MDL Expenditures	\$50,039

Future year expenditures reflect a full salary with annual increases and employee turnover, and ongoing operating expenses.

The bill generally codifies existing practice for the State as an employer. Pregnancy, the birth or adoption of a child, or a serious illness of an immediate family member does not justify terminating a contractual employee with prejudice under current law. Since the individual is not terminated with prejudice, the individual is not disqualified from future employment.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Association of Counties; Maryland Municipal League; Judiciary (Administrative Office of the Courts); University System of Maryland; Department of Budget and Management; Maryland Department of Labor; Maryland Department of Transportation; Department of Legislative Services

Fiscal Note History: First Reader - March 1, 2020
rh/mcr

Analysis by: Heather N. MacDonagh

Direct Inquiries to:

(410) 946-5510

(301) 970-5510