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## SB 241

### Labor and Employment – Maryland Healthy Working Families Act – Applicability Hearing of the Senate Finance Committee February 13, 2020

#### POSITION: OPPOSE

The Public Justice Center (PJC) is a not-for-profit civil rights and anti-poverty legal services organization which seeks to advance social justice, economic and racial equity, and fundamental human rights in Maryland. Our Workplace Justice Project works to expand and enforce the right of low-wage workers to receive an honest day's pay for an honest day's work through litigation and public policy. The PJC **OPPOSES SB 241** and requests an **UNFAVORABLE** report.

**Denying School System Employees Earned Sick and Safe Leave Would Undermine the Purpose of the Healthy Working Families Act and Threaten Public Health.** The Healthy Working Families Act ensures that employees do not have to choose between a paycheck and caring for themselves or a family member. It is also designed to limit "presenteeism," where individuals who cannot afford to take time off show up for work ill, are less productive, and spread their illnesses to co-workers.<sup>1</sup> Presenteeism is particularly problematic in situations where employees interface with the public, such as in school systems. Like other school employees, substitutes also work in classrooms, nurses' offices, drive school buses, and clean our schools both during and at the end of the day. The same concerns that motivate access to earned sick and safe leave for other employees also apply to the employees who substitute, and Maryland should not adopt policies that would force *any* school employees (regular or substitute) to show up for work sick. Just as teachers and other school staff need to be able to take time to care for themselves and their family, so too do employees in an "on call" status.

**SB 241 is Unnecessary.** The Healthy Working Family Act was passed after six years of compromise with the issues of all businesses and employers appropriately considered and balanced. One of those compromises is a provision that exempts any employee who "regularly works less than 12 hours a week for an employer." LE § 3-1303(a)(1). In other words, individuals who generally only work one or two days per week are not covered by the new law. Thus, daily substitutes employed by county boards of education who work just one day a week, as well as those who usually substitute just one day a week but occasionally work more, are exempt. The Attorney General's opinion on the issue of school substitutes recognized that this compromise invariable exempts some

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<sup>1</sup> See, e.g., "Presenteeism, a Public Health Problem," Widera, Eric, et. al, Journal of General Internal Medicine (November 2010), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2947637/>.

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substitutes. See 103-18 Op. of Attorney Gen. (Dec. 4, 2018) (noting that some daily substitute teachers unquestionably fall within the exception)<sup>2</sup>. Moreover, the recent reports submitted to the Maryland State Department of Education suggested that several school systems have begun to comply with the HWFA where substitutes are concerned, and they should be encouraged to continue to do so. Finally, earlier data demonstrating what was *actually paid out* for sick leave use – as opposed to doomsday predictions – revealed that those jurisdictions “incurred little or no fiscal impact in providing required leave.” Dep’t. of Legislative Serv. M.D. Senate Reg. Sess., *Revised Fiscal and Policy Note HB 0001* (2017) at 13.<sup>3</sup> In sum, the current exemption reflects a good balance between enabling substitutes with more regular contact with the school community to earn leave, while exempting those who don’t regularly work much, and data suggests that compliance is neither too burdensome nor too costly.

**Other States Guarantee Sick and Safe Leave to Daily Substitutes.** The motivating concern behind SB 241 seems to be the costs to the school systems. Yet cost alone is not a reason to deny the ability of substitute school employees to earn sick leave given the public health implications. Nor does it appear that other school systems have suffered by affording leave even to their substitutes. Indeed, Oregon, California and Washington have each recognize that daily substitutes need sick and safe leave. See, e.g., Riverside Unified Sch. Dist., *Substitute Teacher Handbook*, at 18 (April 2017).<sup>4</sup>

**SB 241 is Untimely.** The Healthy Working Families Act was passed after years of hearings and significant debate. The exemptions adopted by the legislature took into account all other factors and provisions (pros and cons) in the bill. Local school systems had years to timely raise concerns about on call employees, yet they did not. Efforts to open the door to additional exemptions at this point would be both untimely and unfair, particularly where the law has only been in effect for a year.

For the foregoing reasons, the PJC **OPPOSES SB 241** and urges an **UNFAVORABLE** report. Should you have any questions, please call Tyra Robinson at 410-625-9409 ext. 223.

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<sup>2</sup><https://www.courtlistener.com/opinion/4570557/public-schools-sick-and-safe-leave-statutory-construction-whether/>.

<sup>3</sup> [http://mgaleg.maryland.gov/2017RS/fnotes/bil\\_0001/HB0001.pdf](http://mgaleg.maryland.gov/2017RS/fnotes/bil_0001/HB0001.pdf)

<sup>4</sup> [http://www.riversideunified.org/UserFiles/Servers/Server\\_580721/File/Departments/Personnel/Substitute%20Handbook%2016-17%20rev.%204-13-17.pdf](http://www.riversideunified.org/UserFiles/Servers/Server_580721/File/Departments/Personnel/Substitute%20Handbook%2016-17%20rev.%204-13-17.pdf).

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