

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

Senate Bill 3 (Senator Getty)
Finance

State Minimum Wage Rate - Exceptions - Social Service Nonprofit Organizations

This bill authorizes a nonprofit organization that provides social services to State residents and has an annual operating budget of \$250,000 or less to pay wages that are the greater of \$7.25 or 85% of the State minimum wage.

The bill takes effect July 1, 2015.

Fiscal Summary

State Effect: General fund expenditures for the Department of Labor, Licensing, and Regulation (DLLR) increase by \$5,400 in FY 2016 due to information technology and printing needs. The bill does not apply to the State as an employer. Revenues are not materially affected.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	5,400	0	0	0	0
Net Effect	(\$5,400)	\$0	\$0	\$0	\$0

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

Local Effect: None. The bill does not apply to local governments as employers.

Small Business Effect: Minimal overall, but potential meaningful to nonprofit organizations with a budget of \$250,000 or less that provide social services to State residents and employ minimum wage workers.

Analysis

Current Law: The Maryland Wage and Hour Law is the State complement to the federal Fair Labor Standards Act (FLSA) of 1938. State law sets minimum wage standards to provide a maintenance level consistent with the needs of the population. State law specifies that an employee must be paid the greater of the federal minimum wage, which is currently \$7.25 per hour, or \$8.00 per hour. The State minimum wage is scheduled to increase on an incremental basis over four years to:

- \$8.25 per hour as of July 1, 2015;
- \$8.75 per hour as of July 1, 2016;
- \$9.25 per hour as of July 1, 2017; and
- \$10.10 per hour as of July 1, 2018.

However, an employer may pay an employee a wage that equals 85% of the State minimum wage for the first six months that the employee is employed if the employee is younger than age 20. Additionally, an employer of an amusement or a recreational establishment, including a swimming pool, that meets specified conditions may pay an employee a wage that equals the greater of \$7.25 or 85% of the State minimum wage. Exceptions to the minimum wage requirement also exist for training wages and disabled employees of a sheltered workshop. The State and local governments are considered employers under the Wage and Hour Law.

The Maryland Wage and Hour Law, and minimum wage requirements, do not apply to certain categories of employees, including those defined as administrative, executive, or professional; certain seasonal employees; part-time employees younger than age 16; salesmen and those who work on commission; an employer's immediate family; drive-in theater employees; employees training in a special education program in a public school; employees of an establishment that sells food and drink for on-premises consumption and has an annual gross income of \$400,000 or less; employees employed by an employer who is engaged in canning, freezing, packing, or first processing of perishable or seasonal fresh fruits, vegetables, poultry, or seafood; and certain farm workers.

Employers are required to pay an overtime wage of at least 1.5 times the usual hourly wage. This requirement does not apply to an employer that is subject to federal rail laws; a nonprofit concert promoter, legitimate theater, music festival, music pavilion, or theatrical show; or specified amusement or recreational establishments. It also does not apply to an employee for whom the U.S. Secretary of Transportation sets qualifications and maximum hours of service under federal law; a mechanic, parts person, or salesperson, under certain conditions; drivers employed by a taxicab operator; or specified air carrier employees under certain conditions. An employer has to compute the wage for overtime on the basis

of each hour over 40 hours that an employee works during one work week. Specific exemptions apply for farm work, bowling establishments, and infirmaries.

The base wage for a tipped employee in the State is set at \$3.63. The employer of a tipped employee is allowed a tip credit that can be applied against the direct wages paid by the employer. The employee can be paid tipping wages so long as the wages plus the tips received equal at least the minimum wage, the employee retains all tips, and the employee customarily receives more than \$30 a month in tips. The tip credit is equal to the State minimum wage, less \$3.63. Thus, the tip credit increases as the minimum wage increases, and the wage paid by employers to tipped employees remains \$3.63, as long as their wages plus tips equal the minimum wage.

If an employer pays less than the wages required, the employee may bring an action against the employer to recover (1) the difference between the wages paid to the employee and the wages required; (2) an additional amount equal to the difference as liquidated damages; and (3) legal fees. The court must award these differences in wages, damages, and counsel fees if the court determines that an employee is entitled to recovery. However, if an employer shows to the satisfaction of the court that the employer acted in good faith and reasonably believed that the wages paid to the employee were not less than the required wages, then the court must award liquidated damages of an amount less than the difference in wages or no liquidated damages.

A person who violates the State's Wage and Hour Law is guilty of a misdemeanor and on conviction is subject to a fine of up to \$1,000.

Fair Labor Standards Act

With some exceptions, similar to State law, FLSA requires that a worker be paid a minimum hourly wage and that overtime compensation be paid to employees who work more than 40 hours in a week. There are two ways in which an employee can be covered by FLSA: "enterprise coverage" and "individual coverage."

Enterprise Coverage: Employees who work for certain businesses or organizations are covered by FLSA. These enterprises, which must have at least two employees, are (1) those that have an annual dollar volume of sales or business done of at least \$500,000 or (2) hospitals, businesses that provide medical or nursing care, schools and preschools, and government agencies.

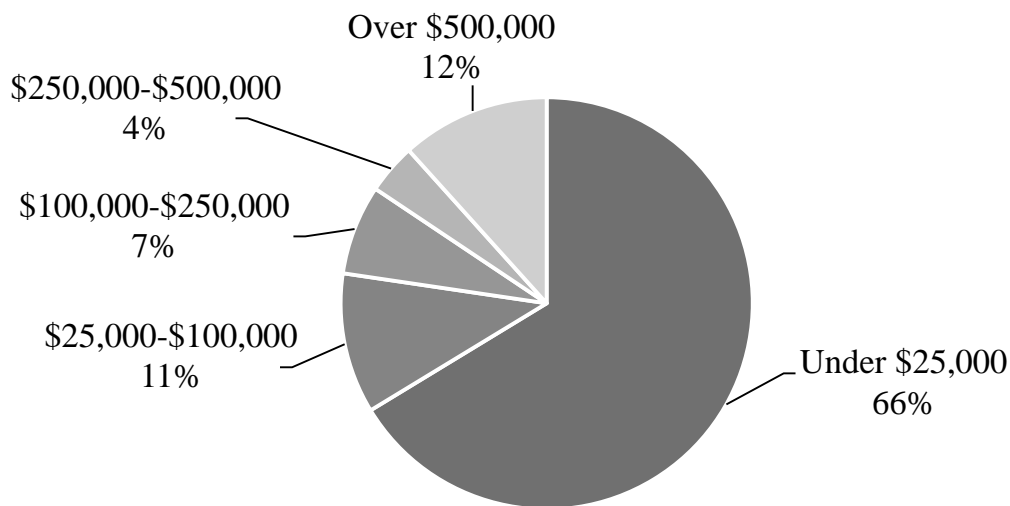
Individual Coverage: Even where there is no enterprise coverage, employees may be covered by FLSA if their work regularly involves them in interstate commerce. FLSA covers individual workers who are engaged in commerce or in the production of goods for commerce. Examples of employees who are involved in interstate commerce include those

who (1) produce goods that will be sent out of state; (2) regularly make telephone calls to persons located in other states; (3) handle records of interstate transactions; (4) travel to other states for work; or (5) perform janitorial work where goods are produced for shipment to another state. Also, domestic service workers (*i.e.*, housekeepers, full-time baby sitters, and cooks) are normally covered by FLSA. However, many agricultural workers are not subject to FLSA minimum wage and overtime standards.

Background: The U.S. Bureau of Labor Statistics reports 66,000 workers in Maryland earned wages equal to or less than the federal minimum wage in 2013, representing 4.9% of all hourly paid workers.

There are approximately 24,000 nonprofits in the State that employ about 263,000 residents. As shown in **Exhibit 1**, 84% of nonprofits had an annual income of \$250,000 or less in 2012.

Exhibit 1
Maryland Nonprofits by Annual Income
2012



Source: Maryland Nonprofits

As shown in **Exhibit 2**, based on national Internal Revenue Service data, only 2.5% of nonprofit employees worked for nonprofit organizations with total revenue of under \$500,000 in tax year 2010. As the bill affects only nonprofits with revenues of \$250,000 or less, an even smaller number of employees are affected.

Exhibit 2
Nonprofit Employees by Annual Income of Their Employer
2010

<u>Nonprofits by Revenue</u>	<u>% of Nonprofit Employees</u>
Under \$100,000	0.2%
\$100,000-\$500,000	2.3%
\$500,000-\$1,000,000	2.6%
\$1,000,000-\$10,000,000	17.3%
\$10,000,000-\$50,000,000	22.1%
Over \$50,000,000	55.5%

Source: Internal Revenue Service

State Expenditures: To the extent that there are additional complaints under the bill, DLLR investigators must determine whether the organization is a “social service” nonprofit organization, and the investigator must verify the organization’s operating budget. Despite the additional steps for an investigator to verify that an organization is eligible for the minimum wage exception, DLLR does not anticipate receiving many additional complaints under the bill, so DLLR can investigate complaints with existing resources. However, general fund expenditures for DLLR increase \$5,400 in fiscal 2016 for information technology and printing changes to the outreach program.

Small Business Effect: Nonprofit organizations with a budget of \$250,000 or less that provide social services to State residents and employ minimum wage workers benefit by paying these employees the greater of \$7.25 or 85% of the State minimum wage. Thus, eligible nonprofit organizations may pay a worker an hourly rate of \$7.25 in fiscal 2016, \$7.44 in fiscal 2017, \$7.86 in fiscal 2018, and \$8.59 in fiscal 2019 and thereafter, as shown in **Exhibit 3**.

Assuming 84% of nonprofits have an annual income of \$250,000 or less, approximately 20,000 nonprofit organizations could benefit from lower payroll costs, but not all of these nonprofit organizations employ workers. It is unknown how many employees work for a nonprofit organization that provides social services to residents and has an annual operating budget of \$250,000 or less, and of those workers, how many are paid minimum wage. However, since about 2.5% of the 263,000 nonprofit employees work for a nonprofit organization with total revenue of less than \$500,000, significantly fewer than 6,600 employees are likely impacted by the bill, especially since some of these workers may already be paid above minimum wage.

Exhibit 3
Difference in State and Nonprofit Organization Minimum Wage Rates

<u>Year</u>	<u>State Minimum Wage Rate</u>	<u>Nonprofit Minimum Wage Rate</u>	<u>Rate Difference</u>
FY 2016	\$8.25	\$7.25	\$1.00
FY 2017	8.75	7.44	1.31
FY 2018	9.25	7.86	1.39
FY 2019	10.10	8.59	1.51

Source: Department of Legislative Services

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; Bureau of Labor Statistics; Maryland Nonprofits; Internal Revenue Service; Department of Legislative Services

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