

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 317 (Delegate Davis, *et al.*)
Economic Matters

Labor and Employment - Wages and Benefits - Preemption of Local Authority

This bill prohibits a county or municipality from enacting a law that regulates the wages or benefits provided by an employer other than the county or municipality. Any provision of law enacted by a county or municipality that does so may not be enforced if the provision was enacted on or after January 1, 2017. Subject to these provisions, the Commissioner of Labor and Industry must enforce a local minimum wage law and has the same powers and duties in enforcing a local minimum wage law as the commissioner has in enforcing the Maryland Wage and Hour Law.

The bill takes effect June 1, 2017.

Fiscal Summary

State Effect: Prohibiting a county or municipality from enacting a law that regulates the wages or benefits provided by an employer does not materially affect State finances. The Department of Labor, Licensing, and Regulation (DLLR) can continue to enforce local minimum wage laws with existing resources.

Local Effect: Prohibiting a county or municipality from enacting a law that regulates the wages or benefits provided by an employer other than the county or municipality is not expected to have an effect on local finances because the bill does not restrict the authority of a county or municipality to regulate the wages or benefits of its own employees. Foregone future minimum wage increases by counties and municipalities may affect local income tax revenues; the net effect is expected to be negligible in that any increased payments by individuals would likely have been offset by decreased payments by businesses.

Small Business Effect: Potential meaningful.

Analysis

Current Law: The Commissioner of Labor and Industry must enforce a local minimum wage law. The commissioner has the same powers and duties in enforcing a local minimum wage law as the commissioner has in enforcing the State's Wage and Hour Law. The commissioner, on his own initiative or on receipt of a written complaint, may investigate whether a local minimum wage law has been violated. Additionally, the commissioner may delegate any power or duty of the commissioner to enforce a local minimum wage law.

Maryland Wage and Hour 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 \$8.75 per hour. Under Chapter 262 of 2014, the State minimum wage is scheduled to increase on an incremental basis over the next two years to \$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 a training wage and a disabled employee of a sheltered workshop under specified conditions.

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.

Background: Maryland counties operate under three forms of government: commission; charter home rule; and code home rule. Commission counties cannot enact local laws in areas where the General Assembly has not expressly granted authority, while charter counties have the authority to enact local laws. Code counties have authority to enact some

local laws, but their power is not as extensive as charter home rule so the General Assembly must pass some local laws for code counties.

Charter counties have the authority to regulate local wages and benefits under the Express Powers Act. The act grants a charter county council the authority to pass any ordinance, resolution, or bylaw, not inconsistent with State law, which may aid in executing and enforcing powers under the Express Powers Act or may aid in maintaining the peace, good government, health, and welfare of the county. A charter county may exercise these powers to the extent that the powers are not preempted by or in conflict with public general law. Currently, 11 counties exercise charter home rule.

Counties that exercise commission or code home rule have not been delegated the police power that charter counties have, so they lack the legal authority to establish a local minimum wage. Baltimore City has police power, so it can establish and enforce a local minimum wage rate. **Exhibit 1** shows the form of government for each Maryland county.

Exhibit 1
Forms of County Governments in Maryland

<u>Charter</u>	<u>Commission</u>	<u>Code</u>
Anne Arundel	Calvert	Allegany
Baltimore	Carroll	Caroline
Cecil	Garrett	Charles
Dorchester	St. Mary's	Kent
Frederick	Somerset	Queen Anne's
Harford	Washington	Worcester
Howard		
Montgomery		
Prince George's		
Talbot		
Wicomico		

Source: Department of Legislative Services

Maryland has 156 municipalities with home rule powers under Article XI-E of the Maryland Constitution. A municipality has the following powers and no others: (1) those granted in express words; (2) those necessarily or fairly implied in or incident to the powers expressly granted; and (3) those essential to the accomplishment of the declared objects and purposes of the corporation. A municipality may adopt ordinances to assure the good government of the municipality; protect and preserve the municipality's rights, property,

and privileges; preserve peace and good order; secure persons and property from danger and destruction; and protect the health, comfort, and convenience of the residents of the municipality.

Local Laws on Employee Wages and Benefits

Montgomery County and Prince George's County passed local minimum wage laws in 2013 – Montgomery County Bill 27-13 and Prince George's County Bill CB-94-2013. Both bills phase in minimum wage increases over four years. The bills increase the minimum wage to \$8.40 per hour beginning October 1, 2014; \$9.55 per hour beginning October 1, 2015; \$10.75 per hour beginning October 1, 2016; and \$11.50 per hour beginning October 1, 2017. The county minimum wages for Montgomery and Prince George's counties do not apply to an employee who is exempt from the minimum wage requirements of the Maryland Wage and Hour Law or the federal FLSA or to an employee who is younger than age 19 and is employed no more than 20 hours in a week. The Montgomery County Executive recently vetoed legislation that would have increased the minimum wage in Montgomery County to \$15.00 per hour by 2020.

Baltimore City enacted a city minimum wage rate in 1964, which was challenged in the State Court of Appeals in *Mayor of Baltimore v. Sitnick*, 254 Md. 303, 255 A.2d 376 (1969). The court found that the State's minimum wage rate did not preempt Baltimore's minimum wage law since Baltimore's law supplemented the State law by setting a higher rate. Baltimore City still has its own minimum wage statute with an enforcement commission, which currently enforces the State minimum wage rate in the city. Legislation was introduced in 2016 to raise the minimum wage in Baltimore City to \$15.00 per hour by fiscal 2021, but the legislation did not pass.

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. An employer with 5 or more employees must provide paid leave, while an employer with less than 5 employees must provide 32 hours of paid leave and 24 hours of unpaid leave in a year. A person who regularly works in Montgomery County more than 8 hours each week, including a domestic worker, for an employer that employs one or more persons in the county in addition to the owners is covered. An employer includes the county government, but not the federal, State, or any other local government. The law does not cover an independent contractor or a person who does not have a regular work schedule.

Other States

The following 24 states have laws that prevent local governments from enacting a higher minimum wage than the state statute requires: Alabama, Colorado, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, and Wisconsin. Arizona, as well as 13 of those other states, has laws that prevent local governments from regulating other employment benefits.

Small Business Effect: Small businesses within jurisdictions that are considering legislation to regulate private-sector employee wages or benefits may benefit from the prohibition against new local laws regulating employee wages or benefits. By prohibiting new local laws on employee wages and benefits, the bill prevents potential increased payroll expenses and administrative burdens associated with complying with those laws. DLLR advises that employers and employees are often confused over the application of existing minimum wage laws when employees travel or work temporarily in jurisdictions with different rules, so prohibiting new local laws on employee wages and benefits may prevent further confusion.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City; Montgomery and Prince George's counties; Maryland Association of Counties; Maryland Municipal League; Department of Labor, Licensing, and Regulation; *The Washington Post*; Department of Legislative Services

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