

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 841 (Delegate Otto)
Economic Matters

Labor and Employment - Maryland Wage and Hour Law - Agricultural Stands,
Retail Farms, and Farmers' Markets

This bill specifically exempts from the Maryland Wage and Hour Law an individual employed at an agricultural stand, a retail farm, or a farmers' market that primarily sells agricultural products that the employer has produced. Thus, an employer does not have to pay that individual the State minimum wage or overtime wages.

Fiscal Summary

State Effect: None. The bill generally pertains to private-sector employees, and the Maryland Department of Labor can update materials and handle any additional inquiries or complaints with existing resources. Revenues are not affected.

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Current Law: For an overview of the State's Wage and Hour Law, please see the **Appendix – Maryland Wage and Hour Law**.

Small Business Effect: A small business that employs individuals at an agricultural stand, a retail farm, or a farmers' market that sells agricultural products that the employer has produced may benefit from being able to pay employees lower wages. The business would still have to adhere to requirements of the federal Fair Labor Standards Act, including the

federal minimum wage. Although some portion of these businesses *may* already fall under existing exemptions, the bill ensures that all such businesses are exempt.

In 2017, there were 1,347 farms that sold directly to consumers and approximately 147 farmers' markets in the State. In addition, the Maryland Department of Agriculture advises that 220 farm stands have voluntarily registered for the department's promotion program, Maryland's Best.

Additional Information

Prior Introductions: SB 403 of 2020 passed the Senate as amended. The bill was referred to the House Economic Matters Committee, but no further action was taken. Its cross file, HB 1123, received a hearing in the House Economic Matters Committee, but no further action was taken.

Designated Cross File: SB 502 (Senator Carozza, *et al.*) - Finance..

Information Source(s): Maryland Department of Agriculture; Maryland Department of Labor; Department of Legislative Services

Fiscal Note History: First Reader - February 17, 2021
an/mcr

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Appendix – Maryland Wage and Hour Law

The Maryland Wage and Hour Law is the State complement to the federal Fair Labor Standards Act, which specifies minimum wage and overtime requirements for employers and employees in the State. Chapters 10 and 11 of 2019 increase the State minimum wage rate for employers with 15 or more employees in increments until the full phase-in of \$15.00 per hour on January 1, 2025. For employers with 14 or fewer employees, the wage rate reaches full phase-in on July 1, 2026.

The Board of Public Works (BPW), however, may temporarily suspend one scheduled increase in the State minimum wage for one year between October 1, 2020, and October 1, 2024, if it determines that the seasonally adjusted total employment is negative as compared with the previous six-month period. If total adjusted employment is negative, BPW may also consider the recent performance of State revenues in making its determination.

The Acts specify that, unless the federal minimum wage is set at a higher rate, the State minimum wage for employers with 15 or more employees is as follows:

- \$11.75 per hour as of January 1, 2021;
- \$12.50 per hour as of January 1, 2022;
- \$13.25 per hour as of January 1, 2023;
- \$14.00 per hour as of January 1, 2024; and
- \$15.00 per hour as of January 1, 2025.

The State minimum wage for an employer that employs 14 or fewer employees is as follows:

- \$11.60 per hour as of January 1, 2021;
- \$12.20 per hour as of January 1, 2022;
- \$12.80 per hour as of January 1, 2023;
- \$13.40 per hour as of January 1, 2024;
- \$14.00 per hour as of January 1, 2025;
- \$14.60 per hour as of January 1, 2026; and
- \$15.00 per hour as of July 1, 2026.

An employer may pay 85% of the State minimum wage rate to employees younger than age 18.

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.

Under Maryland's Wage and Hour Law, an employer is required to pay an overtime wage of at least 1.5 times the usual hourly wage for each hour over 40 hours that an employee works during one work week. 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; a driver employed by a taxicab operator; or specified air carrier employees under certain conditions. Also, specific exemptions apply for farm work, bowling establishments, and infirmaries.

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 wage paid to the employee and the wage 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 Maryland Wage and Hour Law is guilty of a misdemeanor and on conviction is subject to a fine of up to \$1,000.