

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1376 (Delegate Cox, *et al.*)

Health and Government Operations and
Economic Matters

Labor and Employment - COVID-19 Vaccinations - Exemption Process (No Jobs
for Jobs)

This bill requires an employer to establish a process that allows for an employee to obtain a vaccination exemption if the employer requires or is mandated to require an employee to provide proof of vaccination against COVID-19 as a condition of employment. If an employee is terminated or forced to resign as a result of an employer's violation of the bill, it must be considered a cause of necessitous and compelling nature for unemployment compensation purposes, and the employee has a cause of action against the employer. Additionally, an employee may bring a cause of action against an employer for actual and punitive damages for injuries or illness caused by a vaccination or medicinal treatment program intended to treat or prevent a COVID-19 infection if the employer required the vaccine or medicinal treatment program as a condition of employment. **The bill takes effect July 1, 2022.**

Fiscal Summary

State Effect: State expenditures (all funds) may increase beginning in FY 2023 from litigation costs. Nonbudgeted Unemployment Insurance Trust Fund expenditures and revenues are likely not materially affected, as discussed below. The Maryland Department of Labor (MDL) can respond to inquiries and investigate any complaints resulting from the bill with existing budgeted resources. Federal fund revenues and expenditures are potentially at risk, as discussed below.

Local Effect: Local expenditures may increase beginning in FY 2023 from litigation costs. The circuit courts can likely handle any increase in cases with existing resources. Federal fund revenues and expenditures are potentially at risk, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The exemption process required under the bill must include the option for an employee to provide a negative COVID-19 molecular diagnostic test result every two weeks or proof of immunity from COVID-19 that is certified every three months by a licensed health care provider, and an employer may authorize additional exemptions as well. If multiple testing options are available, the employee may choose which test to take. An employee may provide test results that are obtained outside the employer or a licensed health care provider. An employer is not responsible for costs incurred by the employee for the required exemptions.

An employer may not terminate an employee for failing to provide proof of COVID-19 vaccination if the employee complies with the exemption process established under the bill. If an employee is terminated or forced to resign as a result of an employer's violation of the bill, the employee has a cause of action against the employer and may seek injunctive or other equitable relief, specified damages, and reasonable attorney's fees.

The bill applies to the State and local governments as employers, but it does not apply to an agency or department of the federal government or an entity employed by the federal government on a contractual basis; likewise, it does not apply to employees of such federal government entities or those under contract with the federal government.

Current Law: In general, the Commissioner of Labor and Industry within MDL may conduct an investigation to determine whether a provision of Title 3 of the Labor and Employment Article (in which the bill's provisions appear) has been violated. The investigation may be carried out on the commissioner's own initiative, or the commissioner may require a written complaint. However, the commissioner is not authorized to otherwise enforce the bill's provisions.

Vaccination and Employment

According to [guidance](#) provided by the U.S. Equal Employment Opportunity Commission specific to the COVID-19 pandemic, an employer may require its employees to receive a COVID-19 vaccine. The guidance includes information for employers who do so to ensure compliance with other applicable federal laws, such as the Americans with Disabilities Act and Title VII of the Civil Rights Act of 1991, which generally allow for medical and religious objection exemptions.

Maryland imposed a vaccine requirement, effective September 1, 2021, for all staff of residential facilities operated by the Maryland Department of Health (MDH) or a local health department (LHD), State correctional facilities, State facilities operated by the Department of Juvenile Services, Charlotte Hall Veterans Home, other State congregate

living facilities, and all nursing homes and hospitals. Employees must show proof of vaccination or adhere to strict face covering requirements and submit to regular, ongoing COVID-19 testing. In addition, State colleges and universities require all students, faculty, and staff to be vaccinated to be on campus.

In November 2021, the federal Centers for Medicare and Medicaid Services (CMS) issued an interim final rule with comment period establishing COVID-19 vaccination requirements for staff at specified Medicare- and Medicaid-certified providers and suppliers. Noncompliant providers and suppliers are potentially subject to enforcement remedies available under federal law, including loss of federal funding.

Unemployment Insurance

Generally, an individual who would otherwise be eligible to receive unemployment insurance (UI) benefits is disqualified from receiving benefits if the Secretary of Labor finds that unemployment results from voluntarily leaving work without good cause. The Secretary may find that a cause for voluntary leaving is for good cause only under specified circumstances (*e.g.*, when the cause is directly attributable to the individual or a member of the individual's immediate family being a victim of domestic violence and meets other specified requirements).

A circumstance for voluntarily leaving work is valid only if it is:

- a substantial cause that is directly attributable to, arising from, or connected with conditions of employment or actions of the employing unit;
- of such necessitous or compelling nature that the individual has no reasonable alternative other than leaving the employment; or
- caused by the individual leaving employment to follow a spouse who serves in the United States military or is a civilian employee of the military or of a federal agency involved in military operations and is transferred.

State/Local/Small Business Expenditures: Some employees are required to be vaccinated as a condition of employment, so State agencies, local governments, and small businesses may need to make operational changes to comply with the bill (for employees who are not eligible for current exemptions), although these changes likely have minimal or no fiscal effect. An employer is not responsible for the employee's COVID-19 tests or proof of immunity. To the extent that an employer, including the State, ceases existing employer-sponsored testing programs for employees, the employer recognizes a savings.

However, employers, particularly public colleges and universities, may face increased legal expenses from current or former employees pursuing legal action if an employee is terminated or forced to resign as a result of the employer violating the bill or if an employee

is injured or becomes ill as a result of a vaccination or medicinal treatment program required by the employer. Thus, State (all funds), local government, and small business expenditures may increase beginning in fiscal 2023 if the employer requires proof of COVID-19 vaccination. Assuming employer compliance with the bill, litigation costs for violations are not realized. Also, to the extent that employers are not liable for injuries or illnesses stemming from vaccinations required for employment if they offer the exemptions required by the bill, litigation costs may be less. The Department of Legislative Services (DLS) assumes the courts can handle the additional workload with existing resources.

For employees that are terminated or forced to resign due to an employer violating provisions of the bill, the bill may result in more claimants applying for and receiving UI benefits. A voluntary resignation for valid circumstances is considered a quit attributable to the employer, so employers are charged for these benefits. The additional payments increase the experience rating for contributory employers (which could increase the rate at which these employers are taxed) and directly require reimbursing employers (such as the State and local governments) to cover 100% of the UI benefits paid to their employees. However, any such impact depends on the employer violating the bill. Assuming compliance with the bill, there is no fiscal impact from this provision of the bill.

The Department of Budget and Management advises that most State agencies do not require employees to be vaccinated against COVID-19; however, based on recent federal vaccination requirements for staff at Medicare- and Medicaid-certified providers and suppliers, certain employees of MDH at medical facilities have been required to be vaccinated against COVID-19.

DLS advises that federal funding to State and local health care facilities is potentially at risk to the extent that the bill results in noncompliance with federal vaccination requirements for Medicare- and Medicaid-certified providers. Thus, federal fund revenues and expenditures for MDH and LHDs potentially decrease as early as fiscal 2023. Any such impact, however, cannot be reliably predicted at this time. Further, small businesses, such as home health agencies, may likewise come out of compliance due to the bill.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Prince George’s County; Maryland Association of Counties; Maryland Municipal League; Judiciary (Administrative Office of the Courts); University System of Maryland; Office of the Attorney General; Department of Budget and Management; Maryland Department of Health; Maryland Department of Labor; Maryland Department of Transportation; U.S. Equal Employment Opportunity Commission; Department of Legislative Services

Fiscal Note History: First Reader - March 13, 2022
fnu2/mcr

Analysis by: Heather N. MacDonagh

Direct Inquiries to:
(410) 946-5510
(301) 970-5510