

House Bill 923

Date: March 5, 2021
Committee: Economic Matters Committee
Bill Title: Labor and Employment – Worker Safety and Health – Injury and Illness
Prevention Program
Re: Letter of Information

The Maryland Department of Labor (MDL) respectfully submits this letter of information on House Bill 923 - Labor and Employment – Worker Safety and Health – Injury and Illness Prevention Program, which creates a new subtitle within Title 5, Occupational Safety and Health, “Injury and Illness Prevention Program”.

Section 5-1302 provides for a prescribed health and safety committee created and implemented by each employer with 10 or more employees. Additionally, employers with less than 10 employees must also establish the prescribed committee if the employer’s rate of work-related injury and illness exceeds the average incidence rate of all industries in the State as determined by the Commissioner. The health and safety committee must meet a long list of required actions, and if the company falls short on any of the elements, they are subject to citation from Maryland Occupational Safety and Health (MOSH). MOSH law already requires employers to train employees on safety and health hazards, but a mandated health and safety committee is a “one-size-fits-all” approach that may be impractical or impossible for small employers.

This bill prescribes additional, and sometimes conflicting, requirements to implement in a *prescriptive* manner these same covered items that are regulated in a *performance* manner. MOSH does not mandate safety committees, but they are generally encouraged in industries and workplaces where such a structure would be beneficial. The requirements of this bill are very specific and will require MOSH to enforce heavily detailed committee activity, training, program implementation, and extensive recordkeeping for indirect factors that influence safety and health.

Employers with less than 10 employees are not required by OSHA law to maintain injury and illness logs and those employers may be unfamiliar with proper recording. Additionally, upon initial implementation, employers with fewer than 10 employees may not have a year’s worth of data (fiscal or calendar) to compare with and be unable to determine if a committee is required. This will present challenges for enforcement as well if an employer does not retroactively have the data to evaluate.

A committee for a small employer or one that does not operate at a central location may find it difficult to organize a safety committee and comply with the requirements of this bill with either few or distanced employees.

Employers in low hazard industries, such as accounting, engineering, daycare, coffee shops, etc. may not readily realize the bills requirements and are generally unfamiliar with the vast majority of MOSH/OSHA requirements.

The bill also has a requirement for the Commissioner of Labor & Industry to collect and publish data relating to incidents of work-related injury and illness and the average rate of work-related injury and illness in the State for the immediately preceding fiscal year. MOSH collects data through the Bureau of Labor Statistics (BLS), but this data is collected on a calendar year basis. BLS data is collected after the calendar year ends, processed, vetted and reviewed for accuracy, compiled, and distributed in an official format typically almost two years after the data is borne. For example the calendar year 2019 is the “current” data available. It is unclear which data an employer or MOSH should use for triggering a safety committee if less than 10 employees: the comparable annual data from 2 years prior, the current fiscal year’s data, etc. There is no mechanism in place that would collect the data fast enough to satisfy the requirements of this bill.