



COMMITTEE ON PAID LEAVE POLICY

Final Report

Delivered on: November 28, 2017



EXECUTIVE SUMMARY

In December 2016, Governor Larry Hogan unveiled the Commonsense Paid Leave Act, which would have required larger employers to provide paid leave benefits for their employees, and encouraged small businesses to do so by providing tax incentives to offset the costs of these additional benefits. The Maryland General Assembly instead passed [House Bill 1 \(HB1\)](#), the Maryland Healthy Working Families Act, in April 2017. This bill was vetoed by Governor Hogan in May 2017. Simultaneous with his veto, Governor Hogan issued an executive order forming the Committee on Paid Leave Policy, and tasked the committee with conducting a comprehensive field study and a thorough review of the issue in its entirety to evaluate the

The Committee on Paid Leave Policy was tasked with conducting a comprehensive field study and a thorough review of the paid leave issue in its entirety to evaluate the positive and negative impacts of implementing the bill.

positive and negative impacts of implementing the bill. The committee was comprised of leaders within the Departments of Labor, Commerce, and Human Services, and the Governor's Office of Small, Minority and Women Business Affairs. Over the course of six months, the committee members gathered information in a meaningful way to develop this report, in the hope and expectation that the report will be useful in creating quality public policy moving forward.

After months of conducting in-person interviews across the state with a wide variety of stakeholders, this report concludes in part that there is not a single, definitive answer to the issue of employee benefits, primarily because there is not a single, definitive problem. Rather, our research has identified several distinct problems and a multitude of opportunities to offer meaningful and timely solutions.

The committee's first priority was to identify the magnitude of the problem of inadequate paid sick leave benefits. Proponents of HB1 claimed that 750,000 Marylanders would benefit from the passage of HB1, which was widely interpreted to mean 750,000 more than are currently receiving comparable benefits from their employer. The committee was unable to verify that number, both as a base number of employees lacking paid leave benefits, nor as a population that would be helped by HB1, particularly given the significant number of exemptions in the legislation.

The committee identified an important group of workers who would benefit from additional resources as they move into the world of employment: Maryland Temporary Assistance for Needy Families (TANF) recipients. The committee met with several individuals who are currently receiving state assistance through the Department of Human Services (DHS). Each of these employees had a life story that was touching in many ways, but when the conversation was elevated to a level of identifying how HB1's provisions would resolve their hardships, it became clear that HB1 was not going to solve their problems. A few cases to consider:



A young mother trying everything in her power to keep herself and her son safe and happy, and to create the possibility of a bright future for them both. They are victims of domestic abuse. The mother is also involved in ongoing addiction recovery, as is attending therapy sessions for herself and her four-year old son several times a month. She is committed to recovery and to being the best mother that she can be. She trained to be a teacher and currently works as a daycare provider so that she can have some flexibility with her daily schedule. She currently receives paid time off provided by her employer, but the 40 hours proposed by HB1 would never cover the time that her small family needs to get healthy - it may only cover one month's appointments. Fortunately, the center offers Saturday and evening appointments, but as the following report details, those appointment options may be limited due to HB1.

A young single mother with an autistic child in elementary school receiving TANF benefits through DHS. She talked about needing some flexibility at work so that when she received a call from the school during a bad day, she could pick up her child. Additionally, there are days when the child is not capable of attending school at all. This happens several times a month. HB1 does not address her needs.

...it was determined that there is not one problem, but many problems that need to be addressed: lack of life/job skills, lack of child care and lack of transportation... HB1 cannot resolve these problems.

Local Department of Social Services (DSS) case managers, through the coordination of DHS, spoke to the committee about their clients who receive benefits and why it is important for them to have paid time off. After several hours of meetings and conversations, it was determined that there is not one problem, but many problems that need to be addressed: lack of life/job skills, lack of child care, and lack of transportation, particularly in rural areas. HB1 cannot resolve these problems.

RECOMMENDATION

The committee recommends that the governor continue to explore meaningful workforce training opportunities through the combined efforts of the Departments of Labor and Human Services. The recently submitted state workforce development plan is a positive way to move to a coordinated plan that includes multiple departments in this effort. In addition to the training opportunities, the state should look to incentivise those employers who are providing a higher level of benefits to their employees, particularly those that are receiving state subsidies.

HB1 exempts over 720,000 workers in key low- to middle-income jobs. There is reason to question the number and types of exemptions, however not all exemptions were created equally. Some of the exemptions are expected and anticipated, such as the exemption of independent contractors, a classification of employee that has clear direction in Maryland statute and regulations. However, there is no precedent in Maryland employment law that draws a



distinction between a union employee and non-union employee. HB1 exempts construction employees only if they are members of a union with a current collective bargaining agreement. The committee has not found any collective bargaining agreement in the construction trades that identifies paid sick leave as a negotiated benefit.

The problem with exempting one type of employee in the construction industry over another is that there will most certainly be an inequity when it comes to the cost of labor. For those companies that hire union employees, they will have no added cost to labor rates. However, those that do not hire union employees will need to increase their hourly labor rates on bids to accommodate the additional costs due to HB1 requirements. The committee has not been able to identify any other areas of law that so clearly favors one business relationship over another.

RECOMMENDATION

The committee recommends extending the exemption to the entire construction industry. Many workers within the trades work for more than one employer in a given year, depending on the type of job that they are working on, and the length of time to completion. There is considerable turnover of employees within the industry sector as employees often “jump from job to job” in order to stay employed during all four seasons.

An area of great concern to Maryland’s tourism and hospitality industries is the amount of time a seasonal employee has before collecting on their accumulated paid sick leave hours. Over the course of months of research, this industry sector has reported the highest number of concerns from both employers and employees. This group is most prevalent on the Eastern Shore, but the seasonal worker relationship exists across the entire state and in a wide variety of jobs, including restaurants, lifeguards, golf course, ski lodges, and park services.

HB1 provides the employer with a cushion of 106 days before the employee is eligible to receive paid sick leave benefits. The committee received information that the drafters of the bill agreed upon this number based on the average number of days between Memorial Day and Labor Day. However, research shows that a seasonal employee will frequently begin work prior to Memorial Day (often by participating in a training program), and continue to work sporadically after Labor Day. Ocean City, for example, has many large events after Labor Day - well into late September and early October. College students may continue their employment throughout this time on a limited basis, but will be technically employed while they are away at school.

Additionally, businesses in Ocean City are the largest employers of international students working in the U.S. on J-1 visas due to the high demand for workers during peak seasons that cannot be accommodated by the local workforce. There are more than 11,000 students in Maryland with a J-1 work visa, and roughly 5,500 of them work in Ocean City during the summer months. Under federal law, student workers with J-1 visas are eligible to stay in the U.S. for 120 days. Employers are concerned that the seasonal J-1 worker will work for 106 days, and expend their earned paid sick leave near the end of their contracts, while the business still needs to service their customers.



RECOMMENDATION

Given the hardship to seasonal employers, and to maintain continuity in service to the Maryland tourism, the committee recommends extending the number of days worked before collecting benefits to at least 120.

While there are many examples where specific industries have concerns about HB1, there are areas within the proposed legislation that are universally challenging to all industry sectors that the committee interviewed. Among these challenges, employers – and many employees – most frequently referenced administrative tracking, part-time employment, and punitive damages.

The administrative functions within businesses, both large and small, will be challenging to maintain with the very prescriptive nature of HB1. The committee spoke to large, nationally recognized payroll companies who will not develop updated modules for Maryland businesses until they know exactly what requirements they will need to address. Employers risk manually tracking employee hours, which according to a multitude of human resource specialists, will be a full-time job.

This tracking is particularly difficult to manage for part-time employees. According to HB1, employees who work regularly less than 12 hours per week are not eligible to receive paid sick leave. The definition of “regularly” is confusing and subject to debate. An issue arises when a part-time worker does not work the same hours every week, but may work sporadically given the need for their services. Employers will need to have an HR professional tracking hours specifically for this purpose. In many small businesses, there is no human resource division or personnel. The owners of the company are often responsible for payroll matters, in addition to their many other responsibilities.

Performing administrative functions is certainly part of owning a business, and some are expected as a normal course of operation. The difficulty with the highly onerous provisions in HB1 is that there are very stiff penalties for a business that has made any type of error while accounting for hours in any given pay period. The degree of punitive damages that an employer faces is above and beyond any other area within Maryland employment law, which causes a great deal of stress to small businesses who do not have the revenue to spend on additional administrative services. This aspect of the bill will certainly increase both the cost and risk of doing business in Maryland.

RECOMMENDATION

The committee recommends streamlining the legislation to eliminate all reference to part-time status that will provide parity to employees, as well as streamlined operations for the employer. Additionally, altering the damages section of HB1 to mirror the damages placed in the recently crafted minimum wage statute would provide clear direction for employer who desire to be in full compliance.

The six months of interviews with employers and employees conducted by the committee was successful in elucidating many of the issues surrounding paid sick leave policy, as well as the specific concerns raised by HB1, among a wide variety of industry sectors. The intention of this report is to provide the basis for a continued conversation about how to achieve the best public policy outcomes for all Maryland employers and employees.



TABLE OF CONTENTS

Executive Summary	i
Committee Background	1
Data Collection and Outreach	1
Survey Participation	2
Legislator Outreach	3
Department of Human Services (DHS) Outreach	3
Committee Meetings	4
HB1 - Healthy Working Families Act Analysis	5
Comparison with Governor Hogan’s Commonsense Paid Leave Act	5
Sick Leave Accrual Rates	5
HB1 Exemptions	6
Employee Does Not Include	6
Employer Does Not Include	8
Employee Does Include	8
Developmental Disabilities Administration and Behavioral Health Administration Exemptions	9
Substance Abuse Providers Not Included in Exemption	9
HB1 vs Existing Labor Laws	10
Presumption of Violation	10
Employee Complaint Process and Commissioner Authority	11
Court-Awarded Damages	11
Minimum Wage Exemption for Seasonal Employers	12
Paid Leave Data Reliability	12
750,000 Marylanders Without Access to Paid Leave is Misleading	13
HB1 Employee Exemption Estimates	15
Comparison to Existing Paid Sick Leave Laws	16
Lessons Learned from Rhode Island	16
Additional Areas of Concern	18
Confidentiality	18
Hardship Exemptions	18
Not Exempted - Railroad Employees	19
INDUSTRY SECTORS	20
Cross Sector Concerns	20
Overall Business Community Sentiment	20



Part-Time Workers.....	21
Availability of Part-Time Jobs Will Decrease	22
No Other State Establishes a Part-Time Worker Threshold	23
Preemption	23
Maryland Businesses Potentially Subjected to Five Sick and Safe Leave Laws...24	
Administrative Tracking and Presumption of Guilt.....	25
Payroll Costs Increase.....	25
Leave Increments	26
Industry Specific Concerns	28
Restaurant/ Hospitality.....	28
Employer Good-Will Examples in the Restaurant Industry	28
Specific HB1 Industry Concerns	31
Flexible Scheduling	31
Seasonal Workers and J-1 Visas	31
Employee Perspective.....	33
Rehire Provision.....	33
Childcare Facilities, Nursing Homes, and Hospitals	33
Hospital Medicare Reimbursement Rates.....	34
Manufacturing Industry	35
Competition for Qualified Workers	35
Competition from Surrounding States	35
Employer Good-Will Examples in the Manufacturing Industry.....	36
Specific Manufacturing Industry Concerns	36
Advance Notice of Taking Leave	36
Construction Industry.....	37
Collective Bargaining Agreement Exemptions	38
Nonprofit Sector.....	39
Government Contracts	40
Employee Impact	41
County Government Employees	41
Temporary Assistance for Needy Families (TANF) Recipients.....	42
TANF and Sick Leave	43
Addressing the TANF Questions	44
Promising Practice: Career Pathways for TANF Recipients	44
Workers Opportunity Tax Credit (WOTC).....	45
WOTC Background	45
Maryland WOTC Potential	47



Conclusion48
Appendix 1 – Letter to Legislators50
Appendix 2 – Committee Stakeholder Meetings51
Appendix 3 – HB1/HB382 Comparison Chart53
Appendix 4 – Multi-Jurisdiction Sick Leave Example.....57
Appendix 5 – Personal Statement from an Employee in a Seasonal Ocean City Job61
Appendix 6 – Additional Paid Leave Executive Orders63



COMMITTEE BACKGROUND

Citing a lack of reliable data as to how mandated leave policies would impact the Maryland workforce, Governor Larry Hogan established the Committee on Paid Leave Policy to assess Maryland workers' access to paid leave and the extent to which such leave would impose burdens and hardships on Maryland businesses. [Executive Order 01.01.2017.08](#), signed upon the veto of HB1, the Maryland Healthy Working Families Act, recognized that a comprehensive study of the needs and proposed policies for paid leave in Maryland should be done in consultation with all relevant employer and employee stakeholders in order to make policy recommendations to the governor.

To collect this data, Governor Hogan directed the committee to survey employers and workers across Maryland, engaging a cross section of industries and employees representative of the overall economy, to understand the needs, challenges, and opportunities of expanding paid leave benefits. By December 1, 2017, the committee shall develop recommendations for policy, regulations, or legislation that would achieve an optimal balance of providing access to and enforcing paid leave without causing detrimental economic effects that could cost Maryland workers their jobs or deprive them of other beneficial economic opportunities.

Committee members traveled across Maryland, from Oakland to Ocean City, meeting with employers and employees to hear first-hand the impact of mandated sick and safe leave as prescribed in HB1. The goal of the committee, as directed by Governor Hogan, was to go straight to employers and employees to gather real-world examples of how HB1 would affect employers, as well as to understand challenges faced by those employees who lack access to paid sick leave.

Data Collection and Outreach

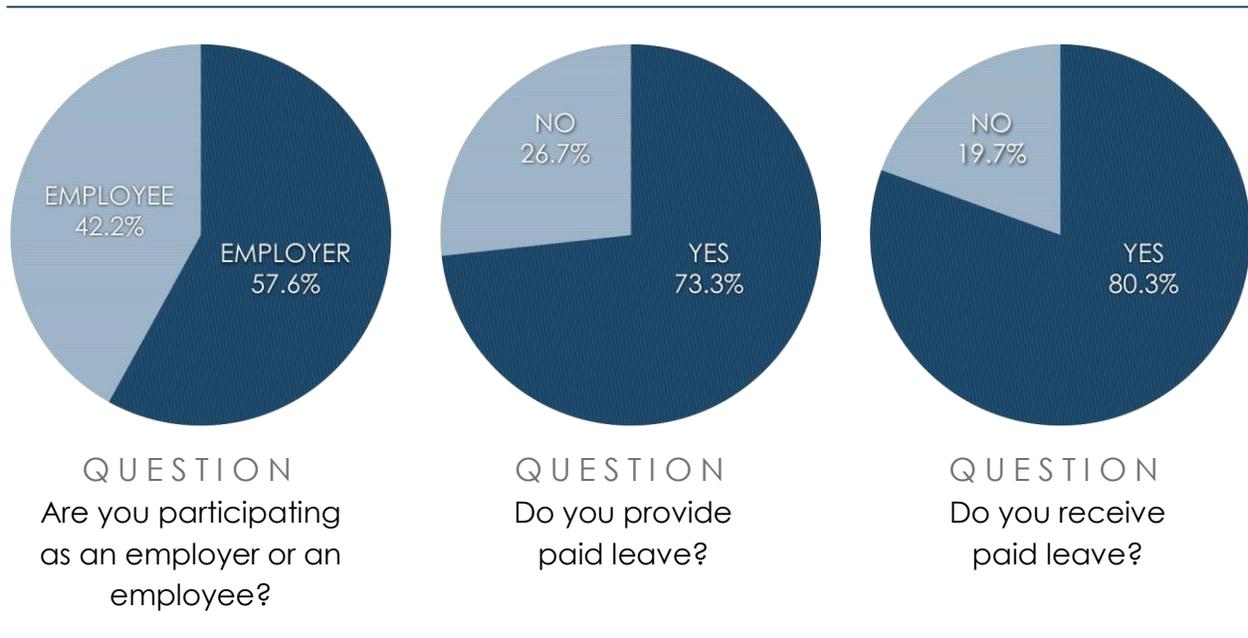
The Committee on Paid Leave Policy consisted of the Department of Labor, Licensing and Regulation, the Department of Commerce, and the Department of Human Services, in consultation with staff from the Office of the Governor and Lieutenant Governor, including the Governor's Office of Small, Minority & Women Business Affairs (formerly the Governor's Office of Minority Affairs). Upon organization, Labor Secretary Kelly M. Schulz directed staff to develop ways to reach out to all stakeholders in a coordinated manner. Labor staff created an online survey tool to capture contact information of businesses and employees wishing to share information with the committee. The survey tool, which went live on June 12, 2017, can still be found at www.dllr.state.md.us/paidleave. To date, more than 940 employers and employees wishing to participate in meetings and discussions have responded to the survey. The survey was not an opinion survey; rather, it captured contact information from those who were interested in meeting with the committee.



Survey Participation

The committee’s online survey gave interested stakeholders the means to meet with the committee and share information about the impact of mandated paid leave. The online survey asked for name, employer name, contact information, and whether the individual received or provided paid leave.

The following charts and graphs show survey participation by question and location. (Current as of 11/27.)



	RESPONSE TOTAL	RESPONSE PERCENT
Allegany County	56	6%
Anne Arundel County	150	16%
Baltimore City	65	7%
Baltimore County	77	8%
Calvert County	8	1%
Caroline County	1	0%
Carroll County	56	6%
Cecil County	6	1%
Charles County	18	2%
Dorchester County	10	1%
Frederick County	23	2%



	RESPONSE TOTAL	RESPONSE PERCENT
Garrett County	31	3%
Harford County	28	3%
Howard County	80	9%
Kent County	6	1%
Montgomery County	60	6%
Prince George's County	44	5%
Queen Anne's County	21	2%
Somerset County	2	0%
St. Mary's County	68	7%
Talbot County	41	4%
Washington County	28	3%
Wicomico County	29	3%
Worcester County	32	3%
Total Respondents <i>(for this question)</i>	940	100%

Legislator Outreach

Shortly after Governor Hogan formed the committee, Secretary Schulz sent a letter to all Maryland legislators asking their assistance in identifying employers and employees in each legislative district with whom the committee should meet. The letter was sent electronically and in hard copy on June 12, 2017. Labor was notified by several legislators that they distributed the information broadly to their constituents via email and social media. (A copy of this letter is available in Appendix 1.)

Department of Human Services (DHS) Outreach

In addition to the online survey and legislator outreach, Maryland Department of Human Services (DHS) Secretary Lourdes Padilla coordinated paid leave committee meetings with DHS clients to ensure all stakeholders were engaged and afforded an opportunity to participate. Many of the DHS clients who participated in these committee meetings lack access to paid leave, and thus the means to take time off of work to travel to Annapolis to testify before the legislature. Through these meetings, committee members were able to work around the DHS clients' schedules to afford them the opportunity to be heard. DHS arranged for the committee to contact about 20 clients in geographically diverse areas of the state.



Through these meetings, the committee was able to identify and develop recommendations specific to challenges and opportunities facing DHS clients related to paid leave.

Committee Meetings

The committee used the contact information generated through the online survey tool, legislator recommendations, and DHS outreach to identify employers and employees to meet with across the state. Staff from the Departments of Labor and Commerce sent emails to all survey respondents in a selected county based on the upcoming meeting schedule. The email thanked the respondent for providing their contact information, let them know the committee would be in their jurisdiction soon, and requested a meeting with Labor Secretary Kelly Schulz to discuss paid sick leave. Those survey respondents who replied in the affirmative were scheduled for a meeting. Occasionally someone could not meet in person and requested a telephone call, or emailed their thoughts on the subject and indicated no meeting was necessary. Meetings with employers were at their office, and meetings with employees were often at local DHS offices or in coffee shops or restaurants.

Throughout the summer and fall, the committee met with more than 100 individual stakeholders in 15 jurisdictions, including: Allegany County, Anne Arundel County, Baltimore City, Baltimore County, Carroll County, Charles County, Frederick County, Garrett County, Harford County, Howard County, Montgomery County, Prince George's County, St. Mary's County, Washington County, and Worcester County. A complete list of employers and employees the committee met with is provided in Appendix 2.

Each meeting lasted 30 minutes, on average. The respondents found the meeting length to be very helpful. Many had experienced the hurried process of testifying in front of a legislative committee where they received a scant three minutes to express their concerns. There were several meetings, however, that lasted much longer than 30 minutes, particularly those involving DHS participants. Secretary Schulz typically utilized this time to gather more information on a variety of issues impacting the participant's employment barriers. Information and personal stories gathered at these meetings were used to generate this report and policy recommendations.



HB1 - HEALTHY WORKING FAMILIES ACT ANALYSIS

Comparison with Governor Hogan's Commonsense Paid Leave Act



KEY FINDING: Employers and employees have a difficult time tracking and complying with various employment standards regulations. The intricate and prescriptive nature of HB1 will make compliance difficult for employers, as well as making it difficult for employees to understand their rights.

To help businesses and employees understand HB1 and the governor's Commonsense Paid Leave Act (HB 382), the committee developed a comparison chart that can be found in Appendix 3.

Sick Leave Accrual Rates

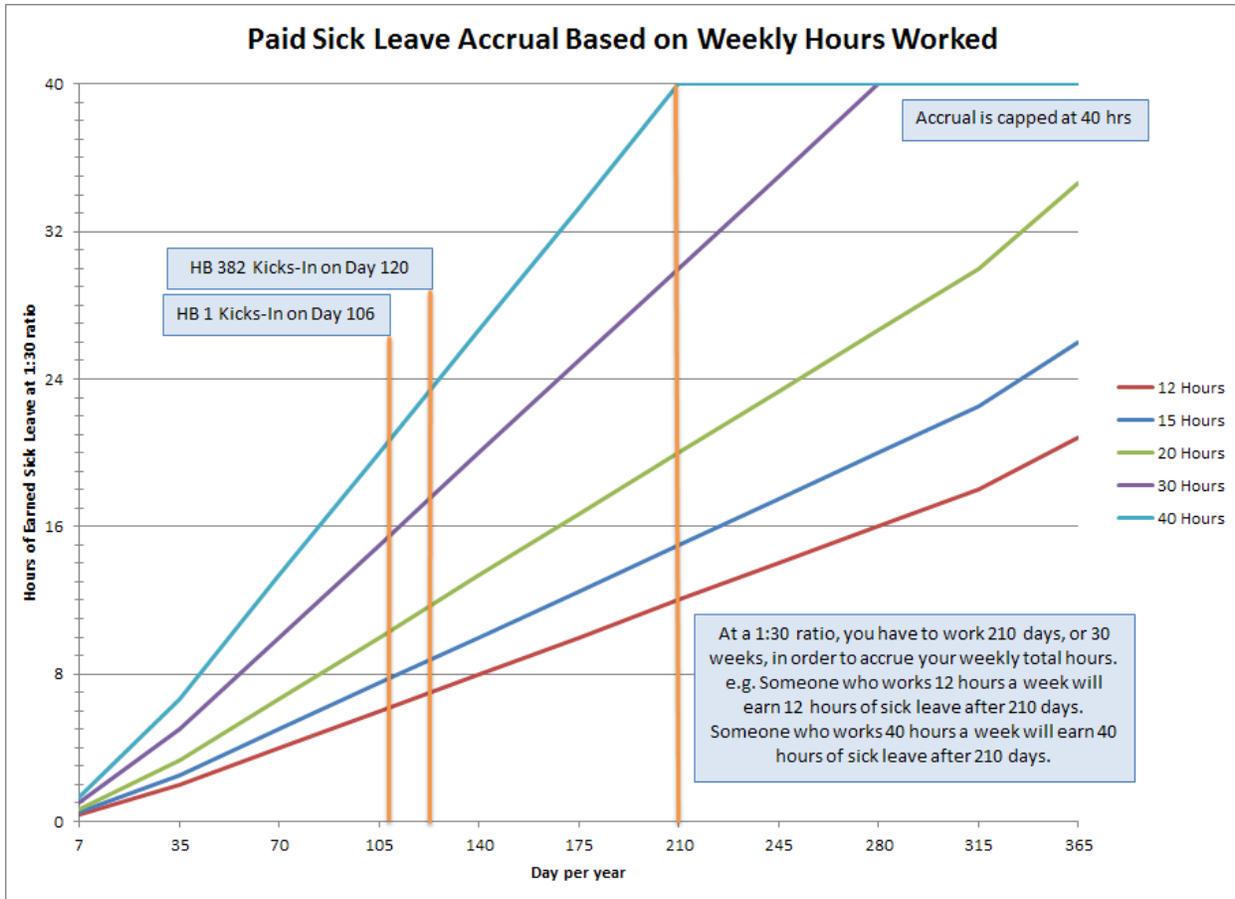


KEY FINDING: At an accrual rate of 1:30, a part-time worker will need more than two-thirds of a year to accrue the equivalent of two shifts of paid leave.

HB1 accrues paid leave at a rate of one hour of leave for every 30 hours worked.¹ At that rate, on the 107th day of employment when leave can be used under HB1, someone would have earned just six hours if they work 12 hours a week on average, and 20 hours if they work 40 hours on average.

As the chart below shows, at a rate of 1:30, it will take someone 210 days to accrue an amount of leave equal to their average weekly working hours. After one year of employment, a part-time worker working 12 hours a week qualifies for 1.7 paid shifts, not even a full two shifts, and a 40-hour per week employee receives one full week paid sick leave.

¹ HB1, §3-1304(B)



HB1 Exemptions



KEY FINDING: HB1 exemptions include more employment categories than any other labor law. There continues to be a great deal of confusion with employers and employees about who HB1 actually covers, or a clear understanding of the rationale for the exemptions.

HB1 exempts industry sectors and employees from the act in different ways. The bill defines the term “employee” by defining who is NOT an employee in §3-1301, excludes certain employers in §3-1302, excludes certain employees from coverage under §3-1303, and denies leave to some employees in §3-1305.

Employee Does Not Include

Under §3-1301, the term “employee” does not include:



- (1) an individual who is an independent contractor *for Unemployment Insurance purposes*² under §8-205;
 - This exclusion for independent contractors only includes individuals who are independent contractors for Unemployment Insurance (UI) purposes, not for workers' compensation or the comptroller's purposes. The UI division applies the ABC test (the same test used for purposes of the Workplace Fraud Act) to determine whether an individual is an employee or an independent contractor for UI purposes, whereas workers' compensation and the comptroller follow a common law test (similar to the IRS test) to determine whether an individual is an employee or an independent contractor. Different tests, for different purposes, can result in different classifications.
- (2) an individual who is not a covered employee *for workers' compensation purposes* under §9-222 because the individual is a real estate agent or broker;
- (3) an individual who is under 18-years old as of the preceding December 31 ("before the beginning of the year");
- (4) an individual employed in the agricultural sector on an agricultural operation;
 - "Agricultural operation" means an operation for the processing of agricultural crops or on-farm production, harvesting, or marketing of any agricultural, horticultural, silvicultural, aquacultural, or apicultural product that has been grown, raised, or cultivated by the farmer.³
- (5) employed by a temporary services agency to provide temporary staffing services to another person if the temporary services agency does not have day-to-day control over the work assignments and supervision of the individual while the individual is providing temporary staffing services; or
 - This industry comprises establishments primarily engaged in supplying workers to clients' businesses for limited periods of time to supplement the working force of the client. The individuals provided are employees of the temporary help service establishment. However, these establishments do not provide direct supervision of their employees at the clients' work sites.
 - A temporary worker is someone employed on a contract lasting more than one month but less than a year. This is different from a day worker. A day worker is someone employed on a contract of less than a month.
- (6) is directly employed by an employment agency to provide part-time or temporary services to another person.
 - This industry comprises establishments primarily engaged in one of the following: 1) listing employment vacancies and referring or placing applicants for employment; or 2) providing executive search, recruitment, and placement services.

² Emphasis added

³ See Md. Code Ann., Cts. & Jud. Proc., §5-403(a)(2)



- These also include establishments primarily engaged in:
 - Temporary Help Services - supplying their own employees for limited periods of time to supplement the working force of a client's business;
 - Professional Employer Organizations - providing human resources and human resource management services to clients;
 - Management Consulting Services - providing advice and assistance on human resource and personnel policies, practices, and procedures; and employee benefits and compensation systems; and
 - Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures - representing models, entertainers, athletes, and other public figures as their agent or manager.

Employer Does Not Include

Under §3-1302, sick and safe leave provisions do not apply to employers with a paid leave policy that does not reduce employee compensation for an absence due to sick or safe leave.

- This amendment potentially exempts adjunct and part-time faculty at institutions with the required leave policy.

Employee Does Include

Under §3-1303, sick and safe leave provisions do not apply to the following employees:

- (1) an employee who regularly works less than 12 hours a week;
- (2) an employee who works in the construction industry AND is covered under a collective bargaining agreement in which the requirements of HB1 are expressly waived in clear and unambiguous terms;
 - The committee cannot find any collective bargaining agreements in the construction industry that offer paid sick leave as a benefit to their members or that expressly waive these requirements.
 - Additionally, HB1 exempts all collective bargaining agreements entered into before June 1, 2017, for the duration of the contract term, excluding any extensions, options to extend, or renewals of the term of the original agreement.
- (3) an employee who works on an as-needed basis in a health or human services industry *if⁴* the employee is free to accept or reject the shift offered by the employer, is not guaranteed that they will be called on to work by the employer, and is not employed by a temporary staffing agency.
 - This includes employees of a nursing referral service for instance, if the three criteria are met and is separate to and above the independent contractor exemptions in §3-1301.

⁴ Emphasis added



Developmental Disabilities Administration and Behavioral Health Administration Exemptions

Under §3-1305, private employers licensed by the Developmental Disabilities Administration (DDA) or the Behavioral Health Administration (BHA) may deny requests for sick and safe leave if the leave is foreseeable, the employer is unable to find a suitable replacement, and if the employee's absence will cause a disruption of service to at least one individual with a developmental or mental illness.

There are 159⁵ employers licensed under Title 7 by DDA to provide developmental disability services who employ an estimated 22,000 Marylanders. All employers licensed by DDA would be eligible to deny leave requests if the conditions are met.

There are 638⁶ employers licensed under Title 10 by BHA, including 434 substance use disorder (SUD) providers licensed under COMAR 10.47 and 288 mental health (MH) providers licensed under COMAR 10.21. Some SUD providers offer mental health "counseling" as part of their service, but clients have a primary diagnosis of substance abuse disorder. Likewise, some MH providers offer substance abuse counseling. Additionally, some providers offer both SUD and MH services and are approved under COMAR 10.21 Mental Health and COMAR 10.47 Substance Use Disorder and as such, may provide treatment to anyone who walks in their door, regardless of their primary diagnosis.

Substance Abuse Providers Not Included in Exemption

Despite substance abuse providers being licensed under Title 10, HB1 limits the exemption to licensed service providers for mentally ill individuals. According to the Maryland Department of Health, someone with a substance use disorder may or may not have a mental disorder. Substance use disorder providers may provide some mental health treatment in relation to the treatment provided to someone receiving substance use disorder services, but clients that present to a substance use disorder program have a primary diagnosis of substance use where under COMAR 10.21 (community-based mental health), the client must have a primary diagnosis of mental illness. To further cloud this exemption, some substance abuse providers are also licensed to provide mental health services.

As such, the 434 employers licensed to provide substance abuse services would not qualify for the exemption unless they *also* were licensed to provide services for mental disorders. And the only employees that would qualify for the exemption are those providing services to someone with a mental disorder (regardless of whether that person also has a substance-related disorder). Although the statutes and regulations sometimes refer to a "primary diagnosis" of either mental illness or substance abuse, HB1 has no such limitation. As long as the person receiving the services has a diagnosis of a mental disorder (primary or not), the providing employee could be exempted from receiving paid leave.

⁵ A complete list of DDA providers can be found at <https://dda.health.maryland.gov/Pages/providers.aspx>

⁶ Count generated specifically for this report and is not public

HB1 vs Existing Labor Laws



KEY FINDING: One major area of concern to the business community is the ability to comply with very different standards within Maryland's labor laws. There was a deep level of concern as to the desire to be in compliance, but due to the confusing, and oftentimes contradictory laws and regulations, they face substantial damages should they be accused of noncompliance and not be able to prove their innocence.

This section makes the comparison between Employment Standards and Conditions laws. Specifically, comparisons are made between HB1 and the Workplace Fraud Act, the wage and hour laws governing minimum wage, and the Maryland Wage Payment and Collection laws governing payment of all wages. The most recent major changes in Maryland employment law were made to the wage and hours laws governing minimum wage. The new standards for minimum wage became law in 2013, and similar to HB1, had been heavily debated by the General Assembly for a number of years. Similar workgroups by both the House and the Senate occurred, with outcomes that appear to be very different from HB1, an issue raised by most business owners that the committee met with.

Presumption of Violation



KEY FINDING: Employers are concerned that inaccurate records, whether from simple administrative tracking errors or from malice and gross negligence, create a rebuttable presumption that the employer has violated HB1.

HB1 establishes a presumption that the employer has violated the Maryland Healthy Working Families Act for failure to keep accurate records or refusal to let the commissioner inspect records.⁷ The only labor law to include a presumption clause is the Maryland Workplace Fraud Act, which relates to the employer-employee relationship, not a presumption of violation.⁸ The Workplace Fraud Act only applies to the construction and landscaping industries, and includes a rebuttable presumption that an employer-employee relationship exists between the parties if the individual works for the employer for remuneration. To overcome the presumption that an employer-employee relationship exists, the employer must provide evidence that the individual is an "exempt person" as defined under the Workplace Fraud Act, or an independent contractor based on an application of the ABC test. In summary, an employee is presumed to be an employee unless the employer proves the employee is an independent contractor.

⁷ HB1, §3-1307(C)(1)

⁸ Md. Code Ann., Lab. & Emp. §3-903.1(c)



Employee Complaint Process and Commissioner Authority



KEY FINDING: Employees lose the ability to pursue legal action independent of filing a complaint with the commissioner of Labor and Industry, and employers can be subject to commissioner-issued penalties.

For employees, HB1 specifies that a complaint must be filed with the commissioner and, only after the commissioner investigates and if an order is issued, may legal action may be pursued. In wage and hour⁹ and wage payment and collection^{10/11} cases, an employee may file a complaint with the commissioner or independently file a civil action in court.

For employers, HB1 authorizes the commissioner to assess a civil penalty of up to \$1,000 for each violation and assess an additional amount up to three times the value of the employee's hourly wage. The commissioner is not authorized to assess penalties in wage and hour or wage payment and collection cases.

Court-Awarded Damages



KEY FINDING: HB1 expands a court's ability to award penalties and damages far beyond what is currently authorized under wage and hour laws.

Under HB1, if an employee or the commissioner brings a suit to enforce the commissioner's order, the court may award treble damages, punitive damages, injunctive relief, legal fees, and any other relief that the court deems necessary.

Under the wage and hour law, if the employee or the commissioner bring suit, the court may award the employee the difference between the wage paid to the employee and the wage required, an additional amount equal to the difference between the wage paid to the employee and the wage required as liquidated damages, and reasonable counsel fees and other costs.¹² Under Maryland Wage Payment and Collection laws, if the employee or commissioner brings suit, the court may award treble damages and reasonable counsel and fees and other costs.^{13/14}

RECOMMENDATION

Streamline the HB1 complaint, enforcement, and damages sections to mirror existing wage and hour laws.

⁹ Md. Code Ann., Lab. & Emp. §3-427

¹⁰ Md. Code Ann., Lab. & Emp. §3-507(a)

¹¹ Md. Code Ann., Lab. & Emp. §3-507.2(a)

¹² Md. Code Ann., Lab & Emp. §3-427(d)

¹³ Md. Code Ann., Lab. & Emp. §3-507(b)

¹⁴ Md. Code Ann., Lab. & Emp. §3-507.2(b)



Minimum Wage Exemption for Seasonal Employers



KEY FINDING: The Maryland General Assembly chose to exempt some seasonal businesses from the minimum wage law.

Another difference between the wage and hour law and HB1 is the number of exemptions. Although limited, there are exemptions to the state’s minimum wage law. For instance, seasonal employers are exempt from the minimum wage law if the employer is an amusement ride owner/operator or owner/operator of a recreational establishment, including a swimming pool.¹⁵ Chapter 262 of the Acts of 2014 exempted a company that operates for no more than seven months in a calendar year and generates at least two-thirds of their average receipts during any six months of the preceding year and less than one-third of their average receipts during the remaining six months.¹⁶

Based on a review of legislative committee testimony, and further action from the General Assembly in response to the testimony, it can be concluded that there was definite legislative intent during negotiations with the minimum wage legislation that certain seasonal employers be exempted from extensive employment standards due to the limited time in which they are able to generate revenue over the course of a year.

Paid Leave Data Reliability



KEY FINDING: Data used to estimate employees who lack paid sick leave benefits has been found to be underreported and inaccurate by the U.S. Bureau of Labor and Statistics, and has since been revised upwards.

The leading online source for employee benefit data, such as access to earned paid leave, is the U.S. Bureau of Labor Statistics (BLS). Policy organizations and governments routinely use BLS as a trusted and reliable data-reporting service. BLS data was used in part by the Institute for Women’s Policy Research (IWPR) to publish Maryland-specific studies on access to sick and safe leave in 2015¹⁷ and 2017¹⁸; advocates often cite this data. The data is also used by the National Federation of Independent Businesses¹⁹ (NFIB), which is often cited by opponents.

Despite being a trusted data source, BLS recently became aware of possible data errors in estimates of access to paid sick leave benefits covering a six-year period.²⁰ BLS reported, “During the preparation of the ‘Employee Benefits in the United States — March 2017’ news

¹⁵ Md. Code Ann., Lab. & Emp. §3-413(d)(2)

¹⁶ Id.

¹⁷ <https://iwpr.org/wp-content/uploads/wpallimport/files/iwpr-export/publications/B348-update.pdf>

¹⁸ <https://iwpr.org/wp-content/uploads/2017/02/B364-MD-Paid-Sick-Time-Access-6.pdf>

¹⁹ http://www.nfib.com/assets/BSIM_MD_HB1-002.pdf

²⁰ <https://www.bls.gov/bls/errata/ebs-errata-07212017.htm>



release, the Bureau of Labor Statistics identified a possible error in estimates of access to paid sick leave benefits for March 2010 through March 2016.”

On November 6, 2017, BLS corrected estimates of access to paid sick leave benefits for March 2013 through March 2016 in the BLS database. Because of these corrections, the estimates as originally published of access to paid sick leave for all civilian workers were revised upwards by two to three percentage points.²¹ As such, all previous policy reports estimating the number of employees without access to paid leave need revision to show that more people than previously reported have access to paid leave.

750,000 Marylanders Without Access to Paid Leave Is Misleading



KEY FINDING: 750,000 is not an accurate estimate of the number of Marylanders who lack access to paid leave benefits and cannot be independently verified.

Paid sick leave advocates in Maryland have recently cited 750,000 as the number of Marylanders lacking access to paid sick leave. However, a closer look at how the number was generated shows it is misleading and inaccurate.

In their January 2017 briefing paper “Access to Paid Sick Time in Maryland,”²² IWPR relies on BLS data as well as 2013-2015 National Health Interview Survey (NHIS) and IPUMS (Integrated Public Use Microdata Series, Version 5.0) American Community Survey (ACS) data for much of their analysis. However, the briefing paper does not specify the method of how they got 750,381. Likewise, in their January 2015 briefing paper “Valuing Good Health in Maryland: The Costs and Benefits of Earned Sick Days,” no citations are referenced at all to arrive at the statement that “in Maryland, approximately 723,000 private sector workers currently lack earned sick time.” However, the report clarifies that statement by offering that among these employees, 420,000 actually receive some type of paid time off. Most employers that the committee interviewed provide a lump sum of paid time off (PTO) at the beginning of the calendar year to allow the employee flexibility to manage their vacation and family needs. According to a Department of Labor legal review of HB1, employers are in compliance of the intent of the law (for HB1) if they offer any type of paid time off as long as it is within the amount accrued as prescribed by HB1. Thus, according to IWPR’s reported numbers, the advocates’ estimated number of employees in Maryland lacking access to any paid time off should be 330,000.²³

A footnote on a similar IWPR briefing paper²⁴ sheds some light on their methodology but also serves to further cloud their data estimates by admitting that the numbers are likely overestimated. Paid sick leave access in their study is determined by employee responses to a

²¹ <https://www.bls.gov/bls/errata/ebs-errata-07212017.htm>

²² <https://iwpr.org/wp-content/uploads/2017/02/B364-MD-Paid-Sick-Time-Access-6.pdf>

²³ <https://iwpr.org/wp-content/uploads/wpallimport/files/iwpr-export/publications/B348-update.pdf>

²⁴ <http://www.nationalpartnership.org/research-library/work-family/psd/workers-access-to-paid-sick-days-in-the-states.pdf>



national survey, which is then used to model worker access based on industry, occupation, and demographic data. This model is then applied to state level data to determine access in each state. The report cautions that “since some employees may not be aware of their workplace policies, estimates in this table may overestimate the number of workers without access.”²⁵

Unlike the IWPR report, BLS and the Department of Labor report employment figures and estimates based solely on industry recognized North American Industry Classification System (NAICS) codes, the most recent being for 2016. However, ACS data, the data IWPR used, is from 2015 and does not use NAICS codes but instead uses models to generate employment numbers by occupation. According to BLS officials, there are no crosswalks between NAICS codes and occupations that would allow sector employment to be translated into occupation employment. Consequently, employment data cannot be used to dissect IWPR data to estimate or verify the number of Marylanders who lack access to paid leave, as it does not represent consistent measurement data.

In its efforts to clearly define the problem, the committee researched all known data in the attempt to provide reasonable estimates of the number of employees without access to paid sick leave. BLS employee benefits data, republished November 6, 2017, estimates that 74% of employees in the mid-Atlantic have access to paid sick leave.²⁶ Likewise, the U.S. Census Bureau's Quarterly Workforce Indicators (QWI) data reports that in 2016, there were roughly 2.4 million employees in Maryland between 19-99²⁷ years old, meaning that an estimated 1.8 million employees have a specific set of benefits for paid sick leave. This does not, however, take into consideration the ability of an employer to offer paid time off (PTO) to their employees to be used for personal or family sick leave. The U.S. Department of Labor, in answering questions regarding compliance with their paid sick leave bill, authorizes use of a standard PTO policy:

“A contractor’s existing PTO policy can fulfill the paid sick leave requirements of the EO as long as it provides employees with at least the same rights and benefits that the Final Rule requires if the employee chooses to use that PTO for the purposes covered by the EO. In other words, if a contractor provides 56 hours of PTO that meets the requirements described in the Order and the Final Rule but employees can use the leave for any purpose, the contractor does not have to provide separate paid sick leave even if an employee uses all of the time for vacation or any other non-sick leave purpose.”²⁸

Based on this estimate from the nationally recognized expert on this issue, plus IWPR’s estimate that 56% of their estimated population has access to some paid leave, it is reasonable to extrapolate that approximately 264,000 employees in Maryland do not have access to any type of paid time off, and thus, would benefit from HB1, unless they work within an industry that has been exempted by HB1.

²⁵ Id.

²⁶ https://www.bls.gov/ncs/ebs/errata_07212017.xlsx

²⁷ <https://qwexplorer.ces.census.gov/static/explore.html#x=0&g=0>

²⁸ <https://www.dol.gov/whd/govcontracts/eo13706/faq.htm#APSL1>

HB1 Employee Exemption Estimates



KEY FINDING: Questions remain about the number of employees impacted by HB1.

To estimate the number of employees exempted by the terms of HB1, NAICS codes for the exempted industry sectors can be used to generate the number of worker classifications exempted within HB1. Based on NAICS codes for those industries, the employment numbers for Maryland in those categories are as follows:

- Agriculture industry - 4,995²⁹
- Construction industry (NAICS Code 23) - Total: 161,014 - Estimated with CBA³⁰ - 22,541
- Licensed real estate brokers, associate brokers and sales agents - 41,084³¹
- Independent contractors³² - 237,015
- Workers 14-18 years old³³ - 54,455
- Temporary workers (NAICS Code 56132)³⁴ - 44,593
- Employment agency workers (NAICS Code 56131) - 3,734
- DDA licensed provider employees - 22,000³⁵
- BHA licensed provider employees - 40,000³⁶
- Members of a union - 310,000³⁷
- Part-time/adjunct faculty - 5,607 at community colleges and 6,000 at USM campuses

Estimated number of Marylanders specifically exempted from HB1 = 769,483

Although these numbers are estimates - for example, it is impossible to accurately determine the number of exempt real estate agents or construction workers covered by a CBA - it serves to highlight the difficulty in being able to verify advocates' consistent messaging that 750,000 Marylanders lack access to paid sick leave.

²⁹ Derived from multiple NAICS codes including NAICS 111 (Crop Production), NAICS 112 (Animal Production and Aquaculture), NAICS 1151 (Support Activities for Crop Production), 1152 (Support Activities for Animal Production)

³⁰ <https://www.bls.gov/news.release/pdf/union2.pdf>

³¹ 4,285 Brokers, 2,995 Associate brokers, 33,804 Salespersons

³² This figure illustrates households with self-employment income (meaning the house either has a business or obtaining some income through some self-employment means)

³³ Link: qwiexplorer.ces.census.gov/exp-r/feb7d.html

³⁴ Both Temporary Help Services and Employment Placement and Executive Search are not industry sectors in themselves, as per NAICS, but are quasi-industry sectors (or establishments) that include workers from almost all main industry sectors and occupations. However, because temporary help services activities are generally prevalent in NAICS: 56 - Administrative and support and waste management and remediation services, they are given, in most instances, NAICS Code 56 for easy recognition and description purpose.

³⁵ DDA estimate of provider employees to be trained on new IT software

³⁶ Estimate based on comparing BHA providers to the number of DDA licensed providers and their employment estimate

³⁷ <https://www.bls.gov/news.release/pdf/union2.pdf>

COMPARISON TO EXISTING PAID SICK LEAVE LAWS



KEY FINDING: HB1 is far more prescriptive in most policy areas than other states with paid sick leave mandates.

- Connecticut became the first state to mandate sick and safe leave, which applies only to companies in the service sector with 50 or more employees, and accrues at a 1:40 rate.
- California limits use of paid sick leave to 24 hours or 3 days per year.
- Georgia recently expanded its sick leave policy to allow employees to care for immediate family members for up to five days who work for employers that already offer sick leave.
- Oregon exempts employees who receive paid sick time under federal law, independent contractors, a participant in a work-study program or work training program administered under a state or federal assistance program, railroad workers exempt under the federal Railroad Unemployment Insurance Act, and individuals employed by that individual's parent, spouse, or child.
- Chicago requires employees wait 180 days before they can use earned sick leave.
- New York City requires employees wait 120 days before they can use earned sick leave.
- Seattle requires employees wait 180 days before they can use earned sick leave.
- Washington, D.C. has three size tiers of companies, with less accrual for smaller companies 1:87 than larger ones 1:37.

Lessons Learned from Rhode Island

On September 28, 2017, Rhode Island became the eighth state to implement paid sick leave legislation. In this instance, paid sick leave advocates and opponents were able to compromise on a scaled down version of the original bill.

Key components of the Rhode Island sick and safe leave law that would represent a compromise for HB1:

- **Phase-In:** Employers with 18 or more employees must provide 24 hours of leave in calendar year 2018, 32 hours in calendar year 2019, and 40 hours per calendar year thereafter. Employers with less than 18 employees must provide equivalent amounts of unpaid leave.
- **Seasonal and Temporary Workers:** Seasonal workers must wait 150 calendar days; temporary workers must wait 180 calendar days.



- Preemption: No municipality shall establish, mandate, or otherwise require benefits in excess of the state bill.
- Lump Sum for Part-Time Workers: Employers may provide lump sum leave based on an employee's average working hours:
 - 37.5 to 40 hours per week provide eight hours per month for five months
 - 30 hours per week provide five hours per month for eight months
 - 24 hours per week provide four hours per month for 10 months
 - 16 hours provide three hours per month for 10 months
 - 10 hours per week provide two hours per month for 10 months
 - Five hours per week provide one hour per month for 10 months
 - In the case an employer whose regular work day for full-time employees is less than eight hours per day, if the employer provides five days of paid sick and safe leave consisting of the number of hours per day that constitute that full-time employee's work day and provides them at the beginning of the year, the employer shall be in compliance.
- Exemptions:
 - Employees employed by a municipality or the state;
 - Any employer in the construction industry classified by NAICS code with a collective bargaining agreement until 7/1/2018;
 - Any employee licensed to practice nursing;
 - Employee does not mean: independent contractor, subcontractors, work-study participants, apprenticeships, and interns.
- Documentation: Documentation required after missing three days, if leave is used within two weeks of scheduled termination date, cannot be used as an excuse to be late for work, and an employer may discipline an employee if committing fraud or abuse or exhibiting a clear pattern of using leave before or after a weekend, vacation, or holiday.
- Notification, enforcement, and damages provisions are the same as minimum wage laws.

ADDITIONAL AREAS OF CONCERN

Confidentiality



KEY FINDING: HB1 does not expressly treat employee documentation used to verify leave as confidential.

The Rhode Island sick and safe leave provides a specific confidentiality and nondisclosure provision that is absent in HB1. According to the Rhode Island bill:

An employer may not require disclosure of details relating to domestic violence, sexual assault, sexual contact or stalking, or the details of an employee's or an employee's family member's health information as a condition of providing paid sick and safe leave time under this chapter. If an employer possesses health information or information pertaining to domestic violence, sexual assault, sexual contact, or stalking about an employee or employee's family member, such information shall be treated as confidential and not disclosed except to the affected employee or with the permission of the affected employee unless required by existing regulation or statute.

The only reference in HB1 to confidentiality directs the commissioner of Labor and Industry to the extent practicable to keep the identity of an employee filing a complaint confidential.

Hardship Exemptions



KEY FINDING: Hardship exemptions exist in other laws, such as the Americans with Disabilities Act, and was a proposed amendment³⁸ to the HB1 cross-filed bill SB230 during debate in the Senate.³⁹

In the ADA, "undue hardship" is defined as an "action requiring significant difficulty or expense" when considered in light of a number of factors. These factors include the nature and cost of the accommodation in relation to the *size, resources, nature, and structure of the employer's operation*. Undue hardship is determined on a case-by-case basis. Where the facility making the accommodation is part of a larger entity, the structure and overall resources of the larger organization are considered, as well as the financial and administrative relationship of the facility to the larger organization. In general, a larger employer with greater resources is expected to make accommodations requiring greater effort or expense than would be required of a smaller employer with fewer resources.⁴⁰

³⁸ http://mgaleg.maryland.gov/2017RS/amds/bil_0000/sb0230_40352202.pdf

³⁹ <http://mgaleg.maryland.gov/webmga/frmMain.aspx?pid=flrvotepage&tab=subject3&id=sb0230,s-0550&stab=02&ys=2017RS>

⁴⁰ <https://www.ada.gov/employmt.htm>



The amendment to SB230 would have allowed an employer to apply to the Department of Labor, Licensing and Regulation for a hardship waiver from the requirements of providing sick and safe leave. The employer would have to demonstrate that a significant financial hardship would result from compliance, including evidence that compliance would create a risk that the employer would have to cease operations, terminate employees, and would place the employer at a competitive disadvantage to employers not subject to the bill.

Additionally, there has been recent concern at the state and local level regarding hardship on small businesses while increasing employment standards. Montgomery County recently passed the initiative to raise minimum wage in the county to \$15 per hour. However, recognizing that some businesses will have difficulty with the increased labor expenditures, they initiated a phase-in for small businesses due to a hardship assumption. Businesses with 51 or more employees must comply by 2021. Nonprofits and businesses with 11 to 50 employees must pay the wage by 2023. Businesses with 10 or fewer employees have until 2024 to come into compliance. Recognizing the hardship on businesses, one council member who voted against the original minimum wage bill reportedly changed her vote because the new bill allows small-businesses additional time to phase in the higher wage.⁴¹

Not Exempted - Railroad Employees



KEY FINDING: The First Circuit Court of Massachusetts has ruled railroad workers are exempt from state and local sick leave laws, but are not included in HB1 exemptions.

Railroad workers covered by the 1938 Railroad Unemployment Insurance Act (RUIA) is one exemption not in HB1 that is included in many state and local sick leave laws. In states where these workers are not being exempt, lawsuits are being generated. Oregon specifically exempts railroad workers as do local laws in Portland, Eugene, Seattle, Chicago, and Cook County. Likewise, this issue was challenged in California⁴² and Massachusetts.⁴³ In Massachusetts, a federal district court judge ruled in 2016 that the RUIA preempts state sick and safe leave laws. The Massachusetts Attorney General appealed the ruling. In June 2017, the First Circuit Court of Appeals partially affirmed the U.S. District Court's decision holding that the RUIA preempts the provision for an employee to be absent from work to care for the employee's own physical or mental illness, injury, or medical condition. However, the case was remanded back to District Court to determine whether other aspects of the Massachusetts law not within the preemptive reach of RUIA can be enforced.

⁴¹ https://www.washingtonpost.com/local/md-politics/montgomery-county-council-to-vote-on-latest-minimum-wage-bill/2017/11/06/38b088c8-c305-11e7-afe9-4f60b5a6c4a0_story.html?utm_term=.5954ad4dac63

⁴² <https://www.courthousenews.com/railroads-fight-new-california-labor-law/>

⁴³ <https://www.law360.com/articles/938094/1st-circ-nixes-part-of-mass-sick-law-for-railroad-workers>



INDUSTRY SECTORS

Participants in the committee’s online survey represented a wide variety of industry sectors. The committee scheduled meetings with participants regardless of industry representation; however, there was the intention to include a wide variety of industry representation. During the interviews, some trends were noted within these industry sectors and several that crossed into many or all sectors. The following section describes some common concerns among the sectors.

CROSS SECTOR CONCERNS



KEY FINDING: Employers shared concerns regarding rising labor costs, providing benefits to part-time workers, difficulty complying with the myriad of employment standards within Maryland and the region, tracking accrual of paid leave, and punitive enforcement and penalties.

Overall Business Community Sentiment

Throughout Maryland, employers cited that generous benefit packages set them apart from their competitors and help retain good workers. Given the current unemployment rate of 3.8%, and the shortage of a skilled workforce in many industries across the state, there is fear that HB1 will limit their options to compete for the best workers. Employers also cited rising labor costs for healthcare and, in some cases, minimum wage in adding to their fears of implementing mandated sick leave. Finally, business owners cited the need for consistency and predictability; the real impact of providing sick leave is unknown to them and could affect hiring and staffing decisions.

Rising labor costs also decrease the businesses’ regional competitiveness. For example, AIDA Bistro & Wine Bar in Howard County told the committee, “We compete against corporate chain restaurants with lower prices and bigger portions; we cannot afford to raise prices.” Likewise, Miller’s Food Market in Carroll County reported that, “Pennsylvania is four miles away where a Super Walmart pays \$7.25 an hour. It’s hard to compete with prices at Walmart.” The following additional quotes represent a sample from business owners on rising labor costs and the impact of HB1.

- *Norair Engineering Corp. in Prince George’s County:* “WCC and UI taxes are higher than other states and it’s hard to compete against West Virginia and Pennsylvania.”
- *Hard Times Cafe in Prince George’s County:* “Cost will come from somewhere - I may put off small remodeling projects that will increase revenue and tax receipts.”
- *Fishpaws MarketPlace in Anne Arundel County:* “Minimum wage just went up, I had to give everyone a 50-cent raise because of it. Health insurance is going up, too.”
- *Ristorante Firenze in Baltimore County:* “Labor is my number two cost. I would have to raise prices or make do with less people.”



One of the greatest fears for business owners is the fear of the unknown. Businesses consistently report that consistency and predictability are critical in making decisions to grow and expand. As the following quotes demonstrate, business owners believe that HB1 will lead to less predictability and that the chance of unintended consequences is great.

- *GANTECH Inc. in Howard County*: “Taking away an employer’s flexibility and decision-making power could lead to employees paying more for healthcare premiums or reduce year-end bonuses.”
- *Trivergent Health Alliance MSO in Washington County*: “This will ultimately impact patient care and satisfaction.”
- *QualiTax in Anne Arundel County*: “The H&R Blocks of the world will have to raise fees, hurting the most vulnerable who need help.”
- *Terry’s Tag & Title Service serving Baltimore, Howard, and Carroll Counties*: “Sick leave is an unknown that will prevent hiring.”
- *Berry Patch Early Learning Center in Carroll County*: “How hard you work doesn’t matter anymore because they all get the same benefits.”

Virtually every company the committee met with provides full-time employees with paid leave benefits that exceed the minimum requirements in HB1 as an incentive to recruit and retain good employees. For example, the owner of Noel’s Fire Protection LLC, located in Washington County, told the committee that there are “not enough skilled workers available, the benefits package attracts and retains good workers.” Continental Realty Corporation, serving customers throughout the greater Baltimore region, commented that they face a “war for talent.” To keep and retain good workers, Fire-X Sales and Service Corp. from Washington County told the committee, “We invest in employees to keep them. For instance, we pay for all licensing and certifications.”

Part-Time Workers



KEY FINDING: Across the state and in every industry sector, tracking accrual and providing paid leave benefits to the 12-20 hour a week part-time employees is the greatest concern for employers; it will have the greatest impact and the greatest unintended consequence on the labor market.

Most of the companies the committee met with provide paid leave benefits to part-time workers on a prorated basis who work more than 20 hours a week. However, very few companies provide part-time paid leave benefits to those working less than 20 hours a week. HB1 establishes the threshold for part-time workers as those who work regularly less than 12 hours per week, but because the legislation does not define the term “regularly,” employers and employees are confused about its interpretation. Many part-time employees in the hospitality industry, as well as other industries such as nursing, the nonprofit sector, and child care, work one or two shifts a



week for twelve hours a day, which may fluctuate more or less depending on the availability of work each week.

Confusion surrounding tracking part-time hours could lead to increased complaints and erode employee morale. Additionally, as has been witnessed with the Affordable Care Act, employers will respond by cutting available hours for employees to keep them under the 12-hour per week threshold. This unintended consequence will erode employee morale and decrease take-home pay. The administrative burden of tracking the data is a very real concern, especially considering the risk of damages stated in HB1. (See Administrative Tracking and Presumption of Guilt on page 25.)

Availability of Part-Time Jobs Will Decrease

Many employees, including retirees, college students, and parents of small children are attracted to part-time work for the flexibility and ability to work on their schedule when a full-time job is not possible or available. Under HB1, the availability of part-time jobs will decrease and the ability for those looking for a few extra hours will become more difficult. The committee met with many employers who hire part-time workers around 12 hours a week who indicated they would revisit that decision or would turn to temp agencies for staff, with many employers indicating they would be better off hiring one full-time employee as opposed to two part-time employees.

Many examples of the unintended consequences on part-time workers under HB1 were collected by the committee. For example, at The Arc of Howard County and many hospitals, part-time workers are hired to cover odd shifts early in the morning or late at night. Restaurants will hire part-time workers to fill shifts when full-time employees are not available. Hub Labels in Hagerstown employs retired part-time workers to clean and do odd jobs because it does not require a full-time position. The Fish Market Restaurant and Soup Co. in Clinton hires retired federal workers a few nights a week to staff the liquor store attached to the restaurant. DRD Pools in Baltimore County employs lifeguards that only work a couple shifts a week.

The following are direct quotes from various employers speaking about their part-time staff:

- *Noel's Fire Protection LLC in Washington County*: "If HB1 passes, we'd be better off with one more full-time employee and would lay off two part-time workers."
- *Harford Community College in Harford County*: "The savings and attraction of part-time employees is no benefits. Giving them equal benefits isn't worth it; we'll hire full-time employees."
- *Trivergent Health Alliance MSO in Washington County*: "We would turn to temp agencies to fill gaps or have full-time employees work overtime, raising expenses but nursing skills are tough to match up."
- *The Arc of Howard County in Howard County*: "We would like to replace part-time staff with full-time, but have a hard time finding full-time staff to fill early and late shifts."
- *Omni House, Inc. located in Anne Arundel County*: "Since our fee schedule is controlled by the Maryland Behavioral Health Administration (we participate in the public mental



health system), and therefore we cannot arbitrarily raise our rates, we would have to eliminate one part-time job to keep our already tight budget whole.”

- Note: The committee discussed with both The Arc of Howard County and Omni House, Inc. that they are somewhat exempt from HB1 in that, since they are licensed by the DDA and BHA, they can deny leave if it is foreseeable and will cause a disruption to service.

No Other State Establishes a Part-Time Worker Threshold



KEY FINDING: No other state or local government has established a part-time threshold in sick or safe leave laws.

HB1 is unique among other sick and safe leave laws around the country in that the committee found no other law in any other jurisdiction that specifies a part-time worker threshold. The committee examined District of Columbia, California, Oregon, Rhode Island, Connecticut, Montgomery County, Maryland, and Seattle laws. In these jurisdictions, part-time workers accrue leave at the same rate as for full-time workers.

RECOMMENDATION

Remove part-time status completely from future legislation.

Preemption



KEY FINDING: Employers reported that complying with different employment standards in multiple jurisdictions is becoming increasingly difficult and costly.

HB1 allows the Montgomery County Earned Sick and Safe Leave to remain effective, but prevents jurisdictions from enacting new sick and safe leave laws after January 1, 2017. This lack of preemption is creating a human resources headache for companies who work in multiple jurisdictions around the state in trying to track accrual, especially the construction industry. The Montgomery County law affects employers with five or more employees, and allows up to 56 hours of paid leave.⁴⁴ For companies with fewer than five employees, leave accrues at the same 1:30 rate but only 32 hours may accrue.⁴⁵

On October 17, 2017, in a rush to beat the preemption deadline, the Prince George’s County Council introduced their own earned sick and safe leave legislation, CB-87-2017. Interestingly however, the legislation does not allow employees to use earned sick and safe leave for illness;

⁴⁴ Montgomery County Code, §27-7 and §27-8

⁴⁵ Montgomery County Code, §27-77(c)



leave may only be used for domestic violence, sexual assault, or stalking.⁴⁶ This law would apply to companies with 15 or more employees,⁴⁷ and leave would accrue at a 1:30 rate up to 40 hours annually.⁴⁸ If an employee is rehired within 12 months, previous leave will be reinstated.⁴⁹ If passed by the County Council, the bill would become effective 45 days after *Sine Die* of the 2018 Maryland General Assembly.

According to the Prince George’s County senior legislative auditor, “The Bill will have a fiscal impact on employers in the county who are required to provide earned sick and safe leave. [...] Small businesses who find the benefits too costly may decide to relocate or discontinue their business in the county. Furthermore, businesses could choose to reduce the hours of its employees, which could cause underemployment issues and indirectly affect spending in the local economy and impact sales and income taxes.”⁵⁰

Maryland Businesses Potentially Subjected to Five Sick and Safe Leave Laws

Along with Montgomery County and now possibly Prince George’s County, Washington, D.C. and the federal government have their own sick and safe leave laws that are each unique and disparate that many Maryland-based employers will have to comply with. Reliable Contracting Co. Inc., who works in Montgomery County, Prince George’s County, Washington D.C., and for the federal government, presented a four-page chart at a meeting with the committee. The chart, developed by their attorneys, showed the various requirements of each of the sick and safe leave laws the company must comply with. This chart is included in Appendix 4, with permission from the company. Reliable Contracting Co. Inc. cannot simply use one jurisdiction’s policy to satisfy the others; they have to take the most stringent bits and pieces of each and piece together their own policy that satisfies all the minimum requirements.

In the District of Columbia for example, leave is accrued based on company size, and all accrued leave may be carried over. Federal contractors must allow earned leave to be used immediately, but in Montgomery County, you have to wait 90 days. A representative of Darden Restaurants, Inc., who owns restaurants across the country, said developing one sick and safe leave policy for the whole company is “like playing whack-a-mole.” The owner of the Howard County-based The HR Team, which does HR consulting for businesses of all sizes throughout the state and region, told the committee, “I don’t believe counties should be able to pass their own employment standards in such a small state.”

RECOMMENDATION

Create one sick and safe leave standard in Maryland that meets the needs of employees in all jurisdictions.

⁴⁶ CB87-2017, §13A-123(a)

⁴⁷ CB87-2017, §13A-120(a)(7)

⁴⁸ CB87-2017, §13A-121(b)

⁴⁹ CB87-2017, §13A-122(e)

⁵⁰ Fiscal Impact Statement, CB-087-2017 Earned Sick and Safe Leave - <https://princegeorgescountymd.legistar.com/View.ashx?M=F&ID=5510188&GUID=8884D750-F421-4193-8454-627BECC0FE74>

Administrative Tracking and Presumption of Guilt



KEY FINDING: Employers in every industry expressed strong concern for the presumption of guilt clause in HB1, and fear the excessive penalties from inadvertent tracking errors.

Employer concern rises from the fact that no other labor law in Maryland places such a heavy burden on employers to prove their innocence while being subjected to nine different forms of penalties.

The following are quotes from employers on the enforcement of HB1:

- *GANTECH Inc. in Howard County:* “Recordkeeping is a problem. An honest mistake on one out of 95 employees leads to treble damages and private right of action.”
- *The Dough Roller in Worcester County:* “Payroll system can garnish wages but it’s not always correct.”
- *Miller’s Food Market in Carroll County:* “What happened to innocent until proven guilty?”
- *Ristorante Firenze in Baltimore County:* “I don’t know how to track this, and if I’m wrong by an hour, I lose an hour researching it plus treble damages.”
- *Hard Times Café in Prince George’s County:* “The trickle-down is my concern. It’s a little bit scary; this is why I was interested in meeting with you [the Committee on Paid Leave Policy] guys.”
- *The HR Team in Howard County:* “There are companies who aren’t going to do this no matter what, with a ‘come and get me, state’ mindset. There will be companies who say they can’t afford this but have high turnover. There are good companies that give good benefits... Point is, legislation won’t change business behavior.”

RECOMMENDATION

Remove the rebuttable presumption of violation clause and align enforcement with existing wage and hour provisions.

Payroll Costs Increase



KEY FINDING: Many employers, especially small businesses, expressed their preference for doing payroll in-house because it allows for quicker turnaround and lower costs. However, employers reported that labor laws are becoming too complex and they are being forced to outsource this function at significant cost to remain compliant.



Many small employers have one part-time worker handling payroll and human resources, and fear additional burdens from tracking HB1 will be too much for a part-time worker and will require full-time staff. Some of these employers have looked to third-party payroll providers such as ADP. Secretary Schulz met with an official at ADP who indicated there is no module for tracking HB1 and one would not be developed until the legislation becomes effective, which could take a year or more to develop and roll out to clients.

Whether payroll is in-house or outsourced, the employer will be responsible for recordkeeping and tracking paid leave accrual, adding significant burdens and costs that do not grow the business or benefit the customer, making Maryland less attractive to those businesses looking to expand or relocate to the state. As remarked by one HR professional consultant, “I don’t believe this will have the desired results, but I will make more money.” Additional examples of comments from employers on tracking HB1 are as follows:

- *Bennett Termite & Pest Solutions located in Worcester County:* “I don’t have time to police the type of leave, so I give them all personal leave.”
- *The Dough Roller in Worcester County:* “Tracking this would require a full-time six-month person for payroll; no way we could handle it and keep it in-house.”
- *DRD Pools in Baltimore County:* “The financial impact easily exceeds \$50,000, but I’m more concerned about the tracking, administrative, and punitive damages.”
- *QualiTax in Anne Arundel County:* “The administrative side of this is just a nightmare.”
- *Reliable Contracting Co. Inc. in Anne Arundel County:* “Just an HR pain in the neck.”
- *S.H. Tevis & Son, Inc. in Carroll County:* “Tracking 1:30 could span several pay periods and not sure how we would do that.”
- *Freedom Federal Credit Union in Harford County:* “I cringe because we have to track this.”
- *Ristorante Firenze in Baltimore County:* “For me it’s straightforward: it’s more work for me.”

RECOMMENDATION

Ease administrative tracking burdens to allow employers to keep human resource functions in house.

Leave Increments

HB1 permits an employee to take leave in the smallest increments that the employer’s payroll system uses to account for absences, and in increments not exceeding four hours.

Employers are concerned that allowing leave to be used in small increments will lead to abuse. For example, employees could use half-hour to hour increments of sick leave when running late



in the morning or leaving work early in the afternoon, and the employer is prevented from asking for verification, enforcing leave policies, and disciplining an employee for abusing leave.

RECOMMENDATION

Allow the employer flexibility to establish minimum leave increments up to and not exceeding four hours.

INDUSTRY SPECIFIC CONCERNS

Restaurant/Hospitality



KEY FINDING: No other industry was as concerned about the negative consequences of HB1 and was as eager to meet with the Committee on Paid Leave Policy as was the hospitality industry.

Concerns in the restaurant and hospitality industry conveyed to the committee ranged from day-to-day impacts to more long-term consequences, with concerns coming from both employees and employers. Concerns ranged from those mostly affecting employers, such as seasonal employment, part-time status, business size, administrative tracking, enforcement, reinstatement of leave benefits, and carry-over, to concerns affecting mostly employees, including less shift flexibility, fewer opportunities for additional hours, fewer opportunities for advancement, fewer employee perks, more expensive employee benefits, fewer pay raises, more tracking hours worked, and more required notification. Long-term consequences of HB1 raised by the industry include concerns about keeping the doors open and business viability, dwindling competitiveness, diminishing profits and profit margins, inability to reinvest in the business, and the inability to innovate and grow.

Long-term consequences of HB1 raised by the industry include concerns about keeping the doors open and business viability, dwindling competitiveness, diminishing profits and profit margins, inability to reinvest in the business, and the inability to innovate and grow.

Few positive comments regarding HB1 were mentioned by anyone the committee met with in the hospitality industry. Restaurant employees spoke favorably of how employers handle requests for time off, how the flexibility attracted them to the industry, how employers take care of their employees with perks and benefits, and how they feel the industry will be hurt by HB1. Employers mentioned time and time again the tough labor market and low unemployment rate, the difficulty finding qualified staff, the importance of retaining good employees with flexibility and benefits, that employees are more concerned about wages than leave benefits, and that they as employers have not experienced a groundswell of support for paid sick leave, if any at all.

Employer Good-Will Examples in the Restaurant Industry



KEY FINDING: Virtually every restaurant and hospitality company the committee met with had a story about how an employee or their family member got sick and had to take time off suddenly, or was diagnosed with cancer and had to take long-term leave but was still compensated and eventually returned to work. Employers expressed concern that an unintended



consequence of punitive and cumbersome paid sick leave laws like HB1 could diminish their ability to offer more personal and targeted programs that benefit their employees.

Many restaurant owners offered examples of how they go above and beyond the minimum requirements to keep and retain trained staff. Employers and employees agreed to share the following examples of how unexpected and long-term leave are handled and how some employers retain their employees.

- An employee at Blu Crabhouse & Raw Bar in Ocean City needs time off to care for her special needs child. Sometimes the leave is planned but most often it is not. Employees are eager to work with that employee to fill scheduling gaps and assist any way they can. Additional flexibility for the employee is available for her to pick up extra shifts to fit into the schedule.
- At King Kone in Ocean City, the week before Secretary Schulz met with the owner, an employee called out sick unexpectedly and the manager found a replacement to come in on the person's time off and the sick employee picked up a shift to make up for the lost time. Another employee cut her hand on the job and missed two shifts but the owner continued to pay salary.
- Also at King Kone, the owner offers employees "bird dog bonuses" for bringing a friend to work, and he will buy employees bike helmets, gift cards, pays bonuses, and will often personally cover shifts and still pay the employee as an incentive and bonus.
- The owner of The Dough Roller pays employees' healthcare premiums while they are on unemployment insurance during the winter months.
- A 30-year line cook at Fager's Island was diagnosed with cancer and got paid for three months while off work getting necessary chemotherapy.
- At Fishpaws MarketPlace in Arnold, there is no official leave policy but the owner pays full-time staff if they need time off due to an illness or emergency. Employees are also paid cash for unused vacation time at the end of the year, then receive 40 hours on January 1.
- The owner of a restaurant in Baltimore County voluntarily paid an employee's legal bills when the person needed it.
- A manager at Hard Times Cafe in Prince George's County was paid for three months while out on maternity leave, even though there is no formal policy.
- An employee at the Fish Market Restaurant and Soup Co. in Clinton was out for several months and still received her salary. The restaurant has had three employees in the last five years deliver babies. The pregnant employees were moved to more comfortable jobs during the pregnancy and returned to work after a few months off. Another employee tragically lost his brother and unexpectedly needed time off and the owner found a replacement to cover his shift.
- Darden Restaurants, Inc., a national corporation with a variety of operations within Maryland, offers an employee assistance fund called "Darden Dimes" that has helped



employees and their families with more than 2,800 grants nationwide totaling about \$1.6 million in 2016 for disaster and unexpected relief.

- A Darden server in Nottingham posted a comment on July 28, 2017, on Glassdoor.com, a website that allows employees to comment on their company's benefits, that read, "Hourly staff gets company match up to the first 6% of employee contribution into 401(k). But the good perk is that Darden basically profits shares even to hourly employees through the 401(k). They bump up their contribution when the company shows a profit.... nice!"⁵¹
- The Darden Restaurants, Inc. Foundation (Foundation) works to support charitable organizations across the country as well as the volunteer involvement of their employees. The Foundation does this by focusing its philanthropic efforts on the following key program areas: access to postsecondary education, preservation of natural resources, and good neighbor grants. In 2016, the Foundation awarded more than \$1.7 million to nearly 900 nonprofit organizations in communities across the U.S. and Canada as part of its Darden Restaurants Community Grants Program. The local grants program helps support nonprofit organizations in the hundreds of communities they serve. Each restaurant had the opportunity to help award a \$1,000 grant to a nonprofit organization in its local community.
- Plamondon Hospitality Partners, operating in Frederick and Montgomery Counties, offers their employees tuition reimbursement and pays for driver training. Any employee that works an average of 15 hours per week is eligible for this benefit, which includes a reimbursement equal to \$95 per credit hour for an "A," and \$85 per credit hour for "B."

Employers emphasized the importance of keeping and retaining staff, and going above and beyond to help employees in a time of crisis or when they need just a few hours off to care for themselves or a loved one.

Employers said the following about competitive benefits packages:

- *AIDA Bistro & Wine Bar in Howard County*: "Once you find good employees, you have to keep them. It's hard to get good employees because there are so many restaurants."
- *Former Wendy's franchisee operating throughout Maryland*: "The industry doesn't look to remove trained employees and replace with untrained employees."
- *Ristorante Firenze in Baltimore County*: "You want to retain good people. Hiring new people is no fun."
- *Hard Time Café in Prince George's County*: "I offer lots of little perks not required to keep employees happy and keep them. Sports tickets for example from our marketing."
- *Milton Inn in Baltimore County*: "In this industry people aren't interchangeable. I've had servers with me for 20 years and they know my clients who come in weekly. It took me two years to fill a cook position and I finally had to train an existing person."

⁵¹ https://www.glassdoor.com/Benefits/Darden-US-Benefits-EI_IE4160.0,6_IL.7,9_IN1.htm



- *Fishpaws MarketPlace in Anne Arundel County*: “When I started out I couldn’t afford it, but now I provide a generous package.”

Employees the committee met with also spoke about the benefits of working in the industry and the flexibility it brings. According to a manager at the AIDA Bistro & Wine Bar, “What’s good about this industry is the flexibility. I was able to care for my sick mom and attend acting school.”

Specific HB1 Industry Concerns

Flexible Scheduling



KEY FINDING: The restaurant industry is concerned HB1 will significantly increase labor costs while decreasing shift flexibility for employees.

Restaurant owners and managers the committee met with are concerned about attracting and keeping quality staff, and use flexible scheduling to allow staff to take time off when needed, and then swap shifts or pick up additional shifts when necessary. However, HB1 prevents managers from requiring employees to search for or find a replacement for their shift as is current practice. The manager at the Fishmarket Restaurant and Soup Co. told the committee, “Whenever someone needs to be out, someone else takes their place. We cannot afford to pay twice.”

HB1 was amended to allow the employer discretion to offer an employee the choice of being paid the minimum wage required for the employee's absence or working an additional shift of the same number of hours in the same pay period or the following pay period. The employer is not required to consent to an employee’s request to work additional hours or trade shifts if the additional hours would result in overtime pay.

Seasonal Workers and J-1 Visas



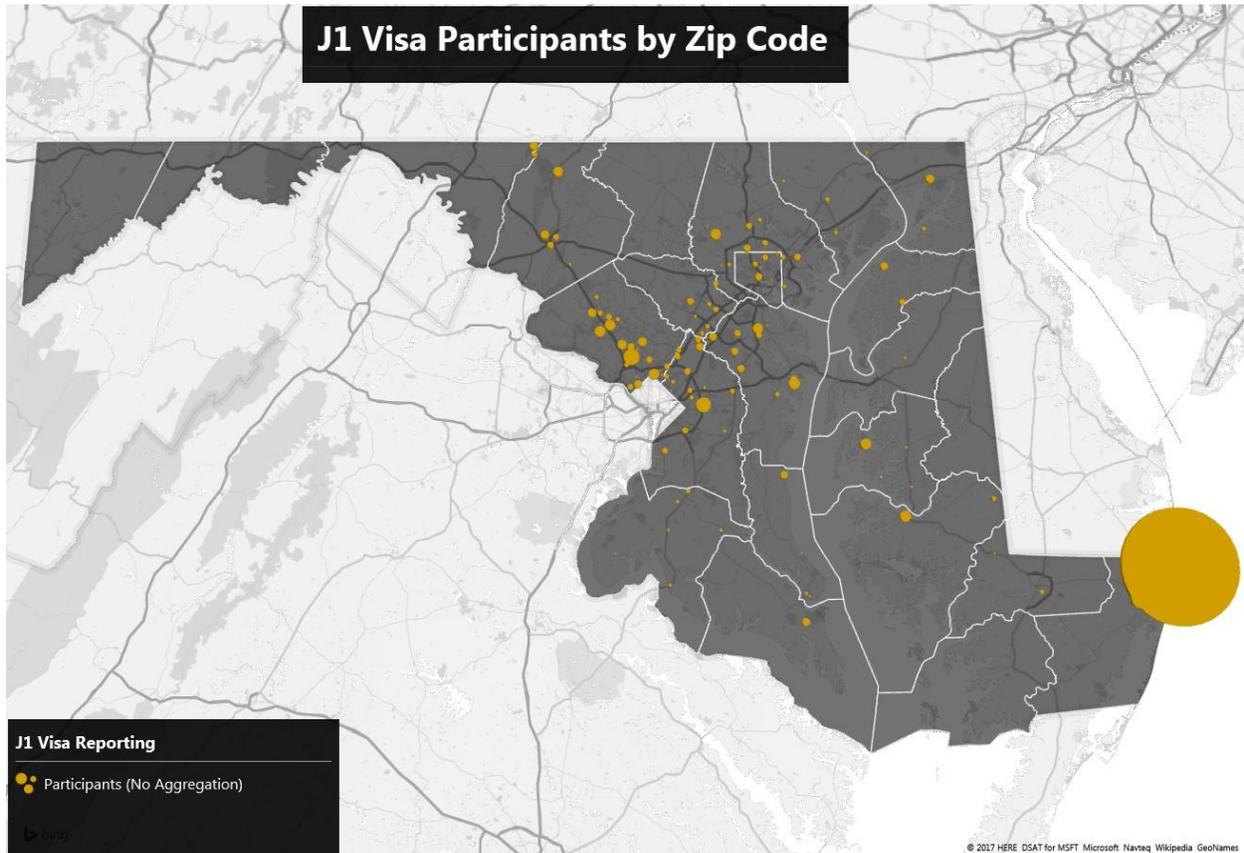
KEY FINDING: Businesses in Ocean City share many of the same concerns as restaurants and hospitality businesses across the state, however, seasonal employment is the number one concern.

According to the U.S. Department of State website, Maryland takes in 5,999 summer work-study J-1 visa holders, and more than 11,000 J-1 visa holders in total.⁵² Most of the summer work-study participants go to Ocean City, but many are spread throughout the state. J-1 visas are valid for four months (or roughly 120 days), allowing users to arrive 30 days before employment begins and stay 30 days following employment.

The bubble map below shows the reporting location of J-1 visa participants in Maryland. Larger bubbles indicate a larger number of participants reporting J-1 visa status in that region. As you

⁵² <https://j1visa.state.gov/basics/facts-and-figures/participant-and-sponsor-totals/?program=&state=MD&x=14&y=10>

can see, a majority of J-1 visa holders (4,265 participants) reported from the 21842 and 21811 zip codes, which are Ocean City and Berlin.



Ocean City businesses reported that September is the hardest month to staff. As Ocean City seeks to become a year-round destination, weekends following Labor Day are still busy with events such as SunFest, car shows, bike week, etc., thus placing further labor demands on the restaurant and hotel industry. Many businesses in Ocean City begin training staff in mid-May to be ready for Memorial Day and report that weekends do not slow down until after the car show scheduled for mid-October.

Ocean City employers, in fact all employers in seasonal businesses the committee met with, are concerned about seasonal employees using earned leave a few days prior to the end of their contract or taking an extra-long weekend over Labor Day, when staffing is reportedly the toughest. At a 1:30 rate for earning sick and safe leave, a 40-hour a week employee will have accrued 20 hours of paid leave after 106 days when they can use it. A 30-hour a week employee would earn 15 hours of leave after 106 days, and a 20-hour a week employee would accrue 10 hours.

HB1 was amended to require employee verification if leave is used between days 107 and 120, or if the employee agreed to provide verification at the time the employee was hired. Neither scenario is satisfactory to the businesses the committee met with, who would not only have to track what day the employee is using leave, but believes the issue is moot because the employee could use earned leave to leave the employer early with no recourse.

RECOMMENDATION

Extend the employee waiting period to 120 days.

Employee Perspective

The committee heard from seasonal employee Anna Wagner, who wrote a personal statement on her perspective of the impact mandated sick leave will have on seasonal employment in Ocean City. Ms. Wagner is a perfect example of someone who cannot attend a legislative hearing in Annapolis but has a personal story to tell with firsthand experience. An employee at the King Kone at night and Coldwell Banker Vacations during the day, Anna has become a “budgeting expert” that can save enough in four months to last her all year. Although she believes paid leave benefits are important, she believes it will have unintended consequences of not only impacting local businesses and “gems” like the King Kone, but will have a negative consequence for the community. Ms. Wagner’s full letter is included, with her permission, in Appendix 5.

Rehire Provision



KEY FINDING: Many employers mentioned that reinstating leave to employees who are rehired within 37 weeks will discourage rehiring employees.

In Ocean City, as with seasonal employers across the state, many J-1 visa holders and college students return to their previous summer employer for work. Employers the committee met with said this provision is not only burdensome to track in the event someone returns, but will cause them to not rehire an employee because they will be eligible to use previously unused hours from day one. The owner of DRD Pools perhaps summed up this sentiment best by saying, “The first year we get a mulligan, the second year when someone returns they qualify from day one and we get whacked.”

RECOMMENDATION

Remove the rehire provision and/or allow employers to front-load paid leave to returning employees.

Childcare Facilities, Nursing Homes, and Hospitals



KEY FINDING: Increased labor costs from HB1 are not unique to childcare facilities, nursing homes, or hospitals, but these businesses are unique in that quality care for loved ones will be negatively impacted without increased costs borne by parents and patients.



Caregivers at childcare centers, nursing homes, and hospitals require special skills unique to other industries, thus scheduling gaps present distinct challenges. When a caregiver in these industries calls out sick or takes a planned vacation, the employer cannot simply call a temp agency and get just anyone as they could in other industries; they have to find people with appropriate credentials and training.

Maryland childcare centers and nursing homes are highly regulated by the state. Existing laws limit child/patient to caregiver ratios. For example, childcare ratios for infants 0 to 18 months is 1:3 for same-age classes with a maximum group size of six. For two-year olds at centers and at home-based facilities, the ratio is 1:6 with a maximum group size of 12. Maryland nursing homes require a minimum of two hours of care per resident per day.

Large facilities can pull staff within the center to cover absences to some degree, but small facilities may not be afforded this luxury. Unscheduled absences due to additional paid sick leave will create last minute disruptions that could, at best, impact the quality of care by leading to increased demands and burdens on staff to work overtime at increased wages, or at worse could delay or prevent the facility from providing care at all. The only long-term solution to either scenario is to hire or retain additional staff for emergencies.

An unintended consequence to HB1 will be an increase in costs to the consumer of these industries. Nationally, child care is one of the leading barriers to employment for parents, but more frequently for women. Many families choose one parent to not reenter the workforce after giving birth, and many times it is due to the rising cost of child care.⁵³ In many cases, the parent does not earn enough in their existing career to cover the costs of child care. An increase in childcare costs at any level could increase that barrier to more women, further exacerbating the current issues of decreasing workforce, inequitable opportunities for women, and an increase in the need for state subsidies for families. (See Temporary Assistance for Needy Families (TANF) Recipients on page 42.)

Hospital Medicare Reimbursement Rates

Perhaps most concerning for hospitals is the 2% Medicare reimbursement rate they could lose based on patient satisfaction surveys. Since 2012, the Centers for Medicare & Medicaid Services has tied patient satisfaction surveys, known as HCAHPS (Hospital Consumer Assessment of Healthcare Providers and Systems) to Medicare reimbursements, where patients rate their inpatient stay in 27 categories, ranging from communication with doctors and nurses to pain management to facility cleanliness and personal experience. Healthcare providers the committee met with expressed strong concerns that staffing levels will not only impact their day-to-day operations, but that being short-staffed and using less qualified temps will negatively impact their surveys and will result in significant monetary losses.

⁵³ <http://www.pewresearch.org/fact-tank/2014/04/08/rising-cost-of-child-care-may-help-explain-increase-in-stay-at-home-moms/>

Manufacturing Industry



KEY FINDING: Maryland's manufacturers share many of the same concerns with HB1 as other industry sectors, but the highest priorities for areas of compromise are advance notice for time off and collective bargaining agreement exemptions.

Many experts in the manufacturing industry report the industry is suffering from a dearth of qualified workers.⁵⁴ Companies are losing productivity because enough qualified workers simply cannot be found.⁵⁵ Maryland is a national leader in innovative workforce training grants and programs to address this crisis, with record investments in the EARN Maryland program, apprenticeships, the Business Works program, and others. Yet as one hand works to strengthen and grow the manufacturing workforce, the other seeks to take it away by adding excessive burdens and barriers that drive businesses from the state.

Competition for Qualified Workers

Because competition for qualified staff is fierce, Maryland's manufacturers reported to the committee that they make every effort to retain trained staff with high pay and good benefits, including paid time off. Yet despite these generous benefits and high pay, for some employees, one drawback of the manufacturing industry is the lack of leave flexibility; employers rely on employees to be present to keep the assembly line or manufacturing floor moving. If someone calls out unexpectedly, productivity decreases. Companies have built employee benefit packages around advance leave notification, and have come to rely heavily on that notification. As a Jamison Door Company (Hagerstown) executive said in a paid leave meeting, "It's difficult to find qualified employees. It's a seller's market. Benefits packages attract and retain good employees."

Competition from Surrounding States

Just as Maryland's manufacturers face fierce competition for qualified employees, they also face competition from surrounding states and even countries outside the U.S for investments in plant upgrades and innovation, and often look to labor costs as a key indicator for those investments. For example, Volvo Cars in June 2017 announced a move to an all-electric fleet by 2019, and Volvo Trucks has recently tested its first hybrid long-haul engine. According to Volvo Truck officials in Hagerstown, the Swedish company is moving investments away from the combustion engine produced in Maryland and is making decisions on where to invest its hybrid technology. Of all Volvo Truck manufacturing facilities, the Hagerstown plant has the highest labor costs of any Volvo plant it operates in the world, according to the company representatives the Committee on Paid Leave Policy met with, and significantly higher costs than nearby plants in Dublin, Virginia, which has the world's largest Volvo plant, and Middletown, Pennsylvania.

⁵⁴ http://www.themanufacturinginstitute.org/~/_media/827DBC76533942679A15EF7067A704CD.ashx

⁵⁵ <http://www.careerbuilder.com/share/aboutus/pressreleasesdetail.aspx?id=pr807&sd=3/6/2014&ed=03/06/2014>



Employer Good-Will Examples in the Manufacturing Industry

The Volvo Group in Hagerstown maintains an onsite health clinic with free doctor visits, free physical therapy, and discounts on prescription drugs. The company gives employees a \$50 bonus for perfect attendance, with 15 employees with perfect attendance given \$500 from a random drawing of all employees with perfect attendance. The company also pays employees on accident and sickness leave up to \$660 per week.

At Jamison Door Company, also in Washington County, an employee diagnosed with cancer used all her leave but was still paid her full salary and didn't go on short-term disability because she was an invaluable member of the company. The company recently rewarded employees with an unexpected bonus of a week's extra pay because business revenues were up the first quarter of 2017.

Specific Manufacturing Industry Concerns

Advance Notice of Taking Leave

Manufacturers, especially assembly lines like those found at the Volvo Trucks facility in Hagerstown, require experienced workers to keep production moving, otherwise bottlenecks develop and production slows. Many companies the committee met with are concerned that HB1 limits advance notice to not more than seven days if it is foreseeable and requires an employee provide verification after missing two consecutive scheduled shifts despite company attendance policies. According to HB1, employers are prohibited from adopting and enforcing a policy that prohibits a pattern of abuse and improperly using sick and safe leave.

Unplanned absences exacerbate a short labor supply in the manufacturing industry to begin with, and employers the committee met with believe HB1 will lead to additional abuses of leave. Volvo Trucks estimates they lose 12 engines a year due to unexpected absences. A plant manager remarked to the committee that "not knowing for time off is the biggest disruption to the assembly line." To plan for absenteeism, Volvo Trucks staffs each shift with 10% additional floaters to fill in as needed, and management will also call other employees on their off time to cover an additional shift and earn overtime pay. Volvo managers estimate that 40 minutes of overtime costs the plant \$30,000 and they spend \$100,000 per week on unplanned absences, which comes to \$4.8 million per year.

The committee met with a mattress manufacturer in Prince George's County whose national clients such as Sam's Club, BJ's, Sears, Mattress Warehouse, etc. fine them if an order is late. The company has had a collective bargaining agreement for more than 80 years, and during the peak summer season, attendance policies are more strict to fill demand, and less strict during the off season. The business owner reported during our committee meeting that sick leave can be incorporated into the CBA, but new employees will earn less leave after five years because they earn more initially.



Manufacturers are not alone in needing to adopt and enforce attendance policies, and are not alone in fearing HB1 will lead to additional unplanned absences. CPA firms the committee met with discourage vacation during tax season. Target stores reportedly do not allow some employees to take vacations between Thanksgiving and Christmas. Lifeguards and summer seasonal employees in Ocean City have limited leave flexibility between Memorial Day and Labor Day.

The U.S. DOL has provided guidance to employers with regard to planned sick leave when there is a hardship to the employer:

“...a contractor may deny a request for leave if the employee did not request leave at least seven days in advance for leave that was foreseeable, or as soon as practicable if the need for leave was not foreseeable.”⁵⁶

RECOMMENDATION

Strengthen and expand the provision to deny leave if the employee fails to provide the required advance notice and the absence will cause a disruption to the employer.

Construction Industry

Fortunately, the construction industry in Maryland is growing at a rapid rate. Competition for good, well-qualified employees is a concern for every employer in an industry that has seen major struggles in the past. This industry consists of perhaps the most diverse employee base, requiring skills ranging from plumbing, electrical, carpentry, welding, and operating heavy equipment. The industry also sees a great deal of transient workers who gain employment based on a specific job opportunity. Once that job has been completed, the worker will likely look for an employer who is looking to complete another job. Movement between employers is extremely common. Many construction firms cited generous benefits packages as an incentive to retain qualified employees. For example, Ferguson Trenching Company in Anne Arundel County provides advanced leave to employees without any after using it all, in order to retain them on staff because of the tight labor market.

The industry in general has concerns about unscheduled leave. Similar to manufacturing, there are time lines and products that need to be delivered to a particular customer. Many jobs require a specific “team” of employees to work together on a project. These teams consist of employees with a specific skill to work alongside a partner in order to finish a task. When one member of that team does not show up for work, there is a risk that the entire team will not be able to perform the task for the day. This could result in a delay of the project.

The industry has methods of compensating for a certain amount of time delays within jobs. However, there is a concern that an increased number of unscheduled time off would create more disruption to project management timelines. Good reputations within the industry are critical to

⁵⁶ <https://www.dol.gov/whd/govcontracts/eo13706/faq.htm>



the success of any business. Maryland construction businesses compete for work every day with businesses from neighboring states. Being able to perform in a cost-effective and timely manner on every job is critical to a good reputation and the growth of Maryland-based businesses.

Collective Bargaining Agreement Exemptions



KEY FINDING: HB1 is the first and only employment standard that directly and intentionally creates an unfair advantage to the competitive bidding process in Maryland.

Another variance within the industry is the difference between an employee working within a union structure, and those working within a merit shop (non-union) structure. Employers within both structures have had concerns regarding HB1. Union organizations have recognized the need for their members to be responsive to the job at hand and to be at work in a timely manner. The committee has reviewed a variety of collective bargaining agreements within the construction industry and have noted that there are no benefit provisions for paid sick leave. Employees have bargained rights for pay scale, paid vacation, and other benefits, but not paid sick leave. It is assumed that the nature of the bargaining, and through negotiations, this is an agreed upon benefit package that both employers and employees are satisfied with.

HB1 has made a provision to exempt construction industry employers who hire union workers. This same exemption is not given to non-union employers. There is no other industry that has been overtly divided based on membership within an organization. For example, the manufacturing industry has similar distribution of union and non-union employees, but their collective bargaining agreements have not been taken into consideration in HB1.

A concern of the non-union employers is that there will be a significant variance between labor costs when competing for jobs. Any business, in any industry, will need to adjust their budgeted costs for labor in the future, but the construction industry as a whole will not. The difference in this exemption is that a portion of the industry (union employers) will be able to proceed under existing agreements, with no rise in their cost of doing business. However, the increase in labor costs for the non-union employer will result in the need to raise pricing when competing for jobs. The Committee on Paid Leave Policy has not been able to identify one other area of employment law that so clearly chooses one type of employer to incur additional costs over another.

RECOMMENDATION

Extend the exemption to the entire construction industry.

Nonprofit Sector



KEY FINDING: Services provided by Maryland's nonprofits are susceptible to rising labor costs and decreased federal, state, and endowment funding.

Maryland has a long history of supporting the nonprofit sector, and is home to 23,769 registered nonprofits according to the IRS. Many of these are supported by state and federal grants, Medicaid reimbursements, private donations, and endowments. As funding sources from the state and federal government shrink, nonprofits are forced to do more with less. Like all businesses, nonprofits are also experiencing increased health care and labor expenses, making dire situations even worse.

Nonprofit executive directors and employees that met with the committee support the concept of paid leave, saying they can see how it will help provide some protection to vulnerable adults. Even though full-time employees (and some part-time employees) at these nonprofits receive more paid leave benefits than HB1's minimum requirements and would be exempt, many part-time employees do not receive benefits. Both the executive directors and employees said that they and their board members have strong concerns about the economic implications of HB1 on their budget by extending paid leave to the part-time staff. Budget concerns are compounded according to these officials because of increases to the minimum wage and the trickle-down effect of having to raise other salaries.

Extending paid leave benefits to part-time workers was the major concern of nonprofits. Much like the hospitality industry, nonprofits that care for adults and children have to staff all shifts with state-mandated caregiver ratios, and will have to pay overtime to full-time staff or pay part-time staff to cover a shift while paying the employee on leave. At many of these nonprofits, part-time employees cover the shifts in the early morning, late at night, or on weekends. These odd shifts are difficult to staff with full-time workers but are often the most convenient appointment times for working adults, especially those without paid leave. One nonprofit reported to the committee that they would prefer to lay off two part-time workers and hire one full-time, but filling these shifts with full-time workers is difficult. Another nonprofit stated that evening and weekend shifts would be the first to get cut back in a budget crunch, which are also their busiest times due to them trying to make appointment schedules fit their clients' needs. An unintended consequence of HB1 could very well be that more clients in this situation would need to take additional time off work to compensate for an organization cutting back on "after-hour" care.

Legislators recognized nonprofits' concern with a last minute amendment to deny leave to employees of private employers licensed by the Developmental Disabilities Administration or the Behavioral Health Administration that provide services to developmentally disabled or mentally ill individuals if the leave is foreseeable. Although a step in the right direction, many nonprofits fall outside this amendment and will be negatively affected.



Government Contracts



KEY FINDING: Maryland businesses who do business with the federal government will have a competitive disadvantage when competing for contracts due to increased labor rates.

There is no debating the fact that the federal government plays an important role in the Maryland economy. Based on FY16 USASpending data for Maryland, there are approximately 4,000 "small businesses" that performed work in Maryland as prime contractors. Of those, there are about 1,400 that are either SBA-certified small businesses or 8(a) small businesses. Of that subset, about 1,200 are fixed price contracts.

Although we do not have reliable data on the number of subcontractors, we know that number to be significant.

As in other competitive bidding industries, the cost of labor is a critical element of winning or losing any job. This industry is slightly different, however, in the fact that many of the businesses have staff that are managing and servicing contracts outside of Maryland. However, as Maryland-based businesses, they need to comply with Maryland employment standards. In this instance, these businesses are not just competing against firms from a neighboring state, but from businesses across the country. This is particularly true in the defense industry. Competitive labor rates are as critical to winning a bid as a good product offering.

An additional concern that the committee heard was that a majority of the federal contracts are multi-year contracts, some up to eight or 10 years. The difficulty with this is that labor rates for these contracts have already been negotiated and agreed upon by the government entity and business. There are no provisions in government contracts to renegotiate a contract due to changes in state laws. Thus, there is a concern within this industry that they will be forced to perform the remainder of the contracts at a loss.

The committee has met with federal government contractors that have expressed a desire to relocate their administrative offices outside of the state. This is particularly troublesome for areas in Southern Maryland that serve the Naval Air Station Patuxent River (Pax River). Southern Maryland, like other rural areas of the state, struggles to attract and retain businesses and a vibrant workforce to fill the needs of the existing businesses.

One employer had mentioned that, like many procurement opportunities with the federal government, there are some restrictions placed on the location of a prime contractor. For example, Pax River often requires a vendor be within a 25-mile radius of the station. This employer pointed out that Dahlgren, Virginia, is within that radius and would not be unlikely for him or other businesses to move "across the bridge." Businesses in this industry relayed to the committee that this decision may not be solely related to HB1, but HB1 is an example of the direction that Maryland is moving and they are less willing to continue to see "what they will come up with next."



The committee did interview one company that moved from Annapolis, Maryland, to Chantilly, Virginia, due to a need to be in a less restrictive state.

Employee Impact

County Government Employees

Like state government, counties are faced with a very diverse workforce and limited funding. Many county structures consist of a combination of full-time, part-time, seasonal, contractual, and contingent employees. Each employee classification is based on the level of need for a specific job function. Similarly, each classification has historically been provided with a unique set of employee benefits.

There were several meetings to discuss issues with employees of local jurisdictions. Employees working in county government have had some concern regarding their employment classification, and would be supportive of being able to receive paid time off as a part-time or contractual/contingent employee.

During these meetings, employees learned about the governor's existing executive order to provide paid sick leave to current part-time and contractual state workers. After listening to the employees' concerns, it appeared that there may have been some miscommunication between the county government and the employees. A series of meetings occurred to look and see if there was a solution to the employees' issues. The two counties in question saw that there was some room for improvement in the classification of their employees in certain job functions. Like any large organization, classifications may have needed adjustment over a period of time, but were not addressed for any number of possible reasons.

At the time of the writing of this document, Howard and Anne Arundel Counties are in the process of reclassifying many of their contingent/contractual workforce in a way that recognizes their level of effort, in addition to developing paid time off benefits for their part-time workers that work at least 30 hours per week. Similar to Governor Hogan wanting to lead by example by providing these benefits to the state's contractual workers, these two counties are leading the way for other counties to follow suit.

RECOMMENDATION

The committee should continue to explore ways to assist county and municipal governments in identifying ways to incorporate some benefits for part-time yearly employees as well as redefining outdated employee classification models.

Temporary Assistance for Needy Families (TANF) Recipients



KEY FINDING: Intentional or not, HB1 exempts many Temporary Cash Assistance recipients and represents one of the biggest failings of the legislation and one of the greatest opportunities for positive change.

The Temporary Assistance for Needy Families (TANF), known in Maryland as Temporary Cash Assistance (TCA), is a source of federal funding through the U.S. Department of Health and Human Services and administered by the Maryland Department of Human Services. Congress created this block grant through the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The goal was to provide flexible funding to states that also utilize state funding known as the Maintenance of Effort. The congressional goal was to “end welfare as we know it” through investing in, among other things, job preparation, work, and the formation and maintenance of two parent families.⁵⁷ Since enactment, the TANF program has undergone a number of modifications, and was reauthorized in 2005. Since then, Congress has continued to extend TANF with short-term extensions rather than a full reauthorization.⁵⁸

The committee met with individuals who are currently receiving, or have received, TCA benefits. There were many common themes that came from these meetings, to include the need for a broader level of wraparound services for these individuals. There are extremely high barriers to meaningful employment due to lack of educational or skill requirements, lack of childcare and/or family support services, transportation, and chronic care to include mental health/addiction support. Overall, this area has been identified as a priority by this committee when the state continues to determine ways in which to provide the most effective resources to the most vulnerable population.

A central component of the TANF work requirement centers on the Work Participation Rate (WPR). The WPR is a “process measure” in that it “show[s] whether recipients were present for countable activities for a required number of hours.”⁵⁹ Generally, TANF participants must participate in a “countable” activity for 30 hours per week unless they have a child under the age of six in the home. In that instance, the individual must work a minimum of 20 hours per week. The state makes the final determination in what constitutes required work hours so long as it meets federal limits. In order to be counted, the participant must engage in various core activities. These nine core activities, as prescribed through federal regulations, are as follows:

- Unsubsidized employment;
- Subsidized private-sector employment;
- Subsidized public-sector employment;
- Work experience;
- On-the-job training;
- Job search and job readiness assistance;

⁵⁷ Center on Budget and Policy Priorities, “Policy Basics: An Introduction to TANF,” Updated June 15, 2015

⁵⁸ *Id.*

⁵⁹ Anna Cielinski, Center for Postsecondary and Economic Success, “Coordinating TANF & WIOA: High Interest, Slow Progress During Early Days of WIOA.” May 2017



- Community service programs;
- Vocational educational training (for up to 12 months); and
- Providing childcare services to an individual who is participating in a community service program.

At least an average of 20 of the 30 hours per week must be from these core activities. Additionally, there are three non-core activities:

- Job skills training directly related to employment
- Education directly related to employment
- Satisfactory attendance at secondary school or in a course of study leading to a GED

These may be counted beyond the 20 hours per week core activity requirement. Notably, basic education, such as adult literacy education, can only be counted as vocational education training if it is a “necessary and regular part” of a vocational program. Even then, federal law limits vocational education training for 12 months of the lifetime of the TANF participant.

Maryland state regulation COMAR 07.03.03.07-1 exempts certain individuals from the work requirement. Specifically, the following individuals are exempt from work activity requirements:

- (1) For a maximum of 12 months in the adult's lifetime, adults who are required to care for a child younger than one-year old, who is a member of the assistance unit;
- (2) Adults and children in the assistance unit who are severely disabled;
- (3) Children younger than 16 years old;
- (4) Adults caring for a disabled family member living in the home;
- (5) Adults in the assistance unit, and children age 16-years old or older in the assistance unit, who are victims of domestic or family violence and actively receiving family violence services; and
- (6) Non-parent caretaker relatives who have no children of their own in the assistance unit.

TANF and Sick Leave

Under federal regulation, paid holidays and sick leave count toward the WPR. 45 CFR 261.60(b) notes in pertinent part:

(b) For the purposes of calculating the work participation rates for a month, actual hours may include the hours for which an individual was paid, including paid holidays and sick leave.

For participation in unpaid work activities, it may include excused absences for hours missed due to a maximum of 10 holidays in the preceding 12-month period and up to 80 hours of additional excused absences in the preceding 12-month period, no more than 16 of which may occur in a month for each work-eligible individual. Each state must designate in its Work Verification Plan the days that it wishes to count as holidays for those in unpaid activities. It may designate no more than 10 such days. In order to count an excused absence as actual hours of participation,



the individual must have been scheduled to participate in a countable work activity for the period of the absence that the state reports as participation. A state must describe its excused absence policies and definitions as part of its Work Verification Plan, specified at §261.62.

However, TANF participants often have multiple barriers to employment. This includes transportation and childcare needs. They are often placed in low-wage jobs with no career pathway. While immediate employment through a work first philosophy provides opportunity for some TANF recipients, issues occur as childcare and other needs arise. In those instances, the parent is forced with making the decision to continue in employment, or to focus on the child. While those in unsubsidized employment would receive sick leave under the current legislation and the sick leave could count toward the WPR, the sick leave may quickly erode as childcare needs continue. Thus, for those employees that have chronic barriers to employment, like child care, HB1 would not, in fact, be a solution to this very real problem.

Additionally, although the TANF participant in Maryland would satisfy the work participation requirements under the federal standards and would continue to receive their designated benefits, the recipient would not necessarily be paid for the time off by their employer. Thus, those individuals that are only receiving supplemental subsidies see a decrease in overall monthly wages if they do not have paid sick leave benefits with their current employer.

Addressing the TANF Questions

Promising Practice: Career Pathways for TANF Recipients

Some states have worked toward creating career pathways for TANF recipients and low-income parents. For instance, Arkansas has seen results in developing a career pathway model for low-income and TANF participants.⁶⁰ The model combines adult education and postsecondary training with case management, childcare, and transportation assistance.⁶¹ Through leveraging the state's TANF block grant, and through investments the state had made since implementing the program in 2005, "more than half of all... enrollees obtained at least one postsecondary credential or degree" compared to 24 percent of non-program participants. Additionally, while the program was not limited to TANF participants only, participants in the career pathways program earned \$3,100 more per year than TANF recipients who were not enrolled in the program.⁶²

The brief by the National Skills Coalition notes that like Maryland, Arkansas made the decision to incorporate workforce programing from TANF into the state's workforce plan mandated by the federal Workforce Innovation and Opportunity Act (WIOA). Governor Hogan designated Maryland as a combined plan state under WIOA in 2015, and further made the state one of only 15 to incorporate TANF into Maryland's workforce system plan. The Maryland plan calls for combining resources between the state's workforce programs administered by the Department of Labor and the TANF program administered by DHS. Recognizing that TANF recipients may also be eligible to receive workforce training by utilizing the federal workforce funds under

⁶⁰ DeRenzis and Kaleba, National Skills Coalition, "Arkansas Career Pathways Initiative: How TANF can support skills for low-income parents, and how policymakers can help," October 2016.

⁶¹ Id.

⁶² Id.



WIOA, Maryland is poised to implement such a program to sustainably meet the needs of TANF recipients and to further place them on a career pathway that would lead to family sustaining wages. A career pathways model can leverage TANF, WIOA adult funding, and adult education funding.

This would necessarily require close collaboration with the state's 16 community colleges to develop career pathways from adult education through technical degrees. It would also require state and local entities administering workforce and TANF funds to provide training opportunities for staff to focus on intensive case management. By incorporating a coaching model that focuses on the needs of the TANF participant, frontline staff can develop a plan to meet the aspirational and career goals of the program participant.

Rather than only temporarily providing sick leave for unsubsidized employment, utilizing a career pathways model for TANF participants provides a true way toward a sustainable future for those who need it most.

RECOMMENDATION

The Departments of Labor and Human Services should continue to look for ways to combine efforts to provide meaningful workforce development and job training opportunities to this population.

Workers Opportunity Tax Credit (WOTC)

WOTC Background

The WOTC program helps individuals from certain groups who consistently have had a particularly high unemployment rate.⁶³

The WOTC was designed to appeal to a wide range of employers, impose a minimal burden upon participating employers, and promote the hiring of targeted group individuals. The Work Opportunity Tax Credit was designed specifically to streamline the eligibility determination process used by previous tax programs as well as to close the gaps that appeared between and within some target group designations.⁶⁴

The Work Opportunity Tax Credit program was created by the Small Business Job Protection Act (P.L. 104-188) and the Welfare-to-Work Tax Credit (WtWTC) by the Taxpayer Relief Act of 1997 (P.L. 105-34). On February 17, 2009, the president signed into law the American Recovery and Reinvestment Act (ARRA) of 2009 (P.L. 111-5) (Recovery Act). The Recovery Act amended Section 51 of the Internal Revenue Code by adding two new target groups to the WOTC program. The amended Sec. 51 (d) (14) provides that 1) unemployed veterans and 2)

⁶³ https://www.doleta.gov/business/incentives/opptax/pdf/ETA_Handbook_408_Nov_2002_3rd_Edition.pdf

⁶⁴ Id. P. I-3



disconnected youth who begin work for an employer during 2009 and 2010 shall be treated as members of a [new] targeted group for purposes of the WOTC.⁶⁵

On December 20, 2006, the President George W. Bush signed into law the Tax Relief and Health Care Act of 2006 (P.L. 109-432). This legislation not only extended the WOTC program (retroactively to January 1, 2006) through December 31, 2007, but also eliminated the Welfare-to-Work Tax Credit (WtWTC) by merging it into the WOTC program, and repealed permanently section 51(A) of the IRC.⁶⁶

There are now 12 target group designations for the consolidated WOTC program. The WOTC target group titles and designations are as follows:

- Qualified IV-A Recipient (TANF)
- Qualified Veteran
- Qualified Ex-Felon
- Designated Community Resident
- Vocational Rehabilitation Referral
- Qualified Summer Youth Employee
- Qualified Food Stamp Recipient
- Qualified Supplemental Security Income Recipient
- Hurricane Katrina Employee (does not require SWA certification)
- Long-Term Family Assistance (TANF) Recipient
- Unemployed Veteran
- Disconnected Youth (K)⁶⁷

The Long-Term Family Assistance (TANF) Recipient group refers to any recipient certified by the SWA as one, who is a member of a family that:

- has received Temporary Assistance to Needy Families (TANF) (or a successor program) for at least 18 consecutive months ending on the hiring date; or
- has received family assistance for a total of at least 18 months (whether or not the 18 months are consecutive) beginning after the day of enactment (i.e., August 5, 1997), and has a hiring date that is not more than two years after the end of the earliest 18-month period; or
- whose TANF eligibility expired under a federal or state law after the day of enactment (i.e., August 5, 1997), for applicants hired within two years after their eligibility expired. Section 105 of P.L. 109-432 repealed Section 51(A) of the Internal Revenue Code by merging the Welfare-to-Work Tax Credit (WtWTC) into the WOTC and creating a new WOTC target group I, entitled “Long-Term Family Assistance Recipient.”⁶⁸

On December 18, 2015, President Barack Obama signed into law the Protecting Americans from Tax Hikes Act of 2015 (the PATH Act) that extends and modifies the WOTC program (Section

⁶⁵ https://www.doleta.gov/business/incentives/opptax/pdf/Aug_2009_Addendum_Recovery_Act_2009_Hdbk_408.pdf

⁶⁶ Id.

⁶⁷ Id.

⁶⁸ Id.



142) and the Empowerment Zones (EZs) (Section 171). In summary, the PATH Act retroactively reauthorizes the following WOTC program target groups for a five-year period, from January 1, 2015, to December 31, 2019:

- Qualified IV-A (TANF) Recipient
- Qualified Veteran
- Qualified Ex-Felon
- Designated Community Resident
- Vocational Rehabilitation Referral
- Qualified Summer Youth Employee
- Qualified Supplemental Nutrition Assistance Program (SNAP) Benefits Recipient
- Qualified SSI Recipient
- Long-Term Family Assistance (TANF) Recipient⁶⁹

A new target group, Qualified Long-Term Unemployment Recipients, for new hires that begin to work for an employer on or after January 1, 2016, through December 31, 2019, was also created under the 2015 legislation.⁷⁰

Maryland WOTC Potential

Maryland's Department of Labor, Licensing and Regulation is the administrator of the federal WOTC program. A state does not have the ability to place additional requirements onto those employers who are seeking a tax credit through WOTC. However, there is a possibility of utilizing the existing universe of employers to incentivise them to provide additional benefits to their employees. The Department of Commerce currently administers additional state tax credit incentives through their agency.

RECOMMENDATION

Incentivise those employers who are providing a higher level of benefits to their employees through a state tax credit program.

⁶⁹ TEGL 25-15- Change 1 https://wdr.doleta.gov/directives/attach/TEGL/TEGL_25-15_Change_1_acc.pdf

⁷⁰ Id.



CONCLUSION

Since taking office, Governor Hogan has focused on growing Maryland’s private sector, adding more jobs for our citizens, making Maryland more competitive, and creating a more business-friendly future for our state. In recent years, there has been a great deal of discussion and debate around the issue of paid sick leave, many times resulting in proposed legislation that would have unfairly penalized Maryland’s job creators. In fact, for the four years prior to 2017, the Maryland General Assembly introduced various versions of paid sick leave legislation - all of which failed to pass.

Governor Hogan’s veto of HB1 and subsequent forming of the Committee on Paid Leave Policy opens the door to compromise... As the [report’s] recommendations demonstrate, not only are there many areas of HB1 that deserve review, there is much room to reach consensus.

In 2017, Governor Hogan took the initiative and introduced a commonsense measure to expand paid leave that had the potential to cover nearly all working Marylanders, while containing important provisions to protect Maryland job creators. Despite the governor’s stated willingness to work with legislators of both parties, his paid leave bill was never given an up or down vote in committee nor debated in legislative chambers. Instead, the majority passed HB1 along solely partisan lines.

HB1 was slated to become effective January 1, 2018. The governor is not delaying this benefit by vetoing the legislation and forming a committee to thoroughly evaluate the legislation by meeting with employers and employees to discuss its impact, as some have suggested since the veto, nor is the work of the committee “anti-worker,” as some partisans have told

the press. Quite the contrary, the committee is democratic to its core, going straight to the people to hear their concerns.

The benefits of HB1 expressed by supporters and advocates has been consistent: no one should be forced to go to work while sick. No one disagrees with that; not the governor, not employers, not the opponents of HB1, and no one individual that the committee met with. Despite this broad support for the concept of paid leave, however, there is overwhelming concern across the state and across numerous industry sectors about many aspects of HB1.

Concerns raised by employers and employees varied throughout the state and varied depending on a person’s role within a company, the location of the business, the type of business, and the size of the business. In Ocean City, for example, main concerns related to the issue of seasonal workers. Businesses are fearful that seasonal employees will abuse leave and walk off the job on day 107 of employment, leaving the employer with no recourse. In Howard County, employers are concerned about preemption since many have operations in Howard and Montgomery counties and will have to track and enforce two or more sick leave laws. In Prince George’s County, employers are concerned about rising minimum wage laws and their ability to afford higher labor costs. In Saint Mary’s County, near Patuxent Naval Air Station, government



contractors are concerned about losing business to competitors in other states. In counties bordering Pennsylvania, businesses are worried they cannot compete with the lower prices stemming from the \$7.25 minimum wage offered there. These examples of concerns serve to underscore the point that there exists much fear and trepidation surrounding HB1, and employers are desperate for a commonsense compromise.

Governor Hogan's veto of HB1 and subsequent forming of the Committee on Paid Leave Policy opens the door to compromise. This report examined in great detail the specific aspects of HB1 that concern employers and present opportunities for compromise. As the recommendations demonstrate, not only are there many areas of HB1 that deserve review, there is much room to reach consensus. Due to the extensive research performed by the committee, the governor and leaders in the legislature have a roadmap to agree on a better bill. This report provides a pathway to a bill that both advocates and opponents of HB1 can support. The only remaining question is, is there the political will within the legislature to achieve a commonsense compromise?



APPENDIX 1

Letter to Legislators



LEGISLATIVE OFFICE
45 Calvert Street
Annapolis, Maryland 21401
(410) 260-6076

June 12, 2017

RE: Committee on Paid Leave Data Collection Survey

Dear Senators and Delegates,

Governor Larry Hogan has directed the Committee on Paid Leave, established by [Executive Order 01.01.2017.08](#), to collect data from employers and workers throughout Maryland to better understand access to paid leave policies and how this benefit is best met by a fair and flexible statewide leave policy. Over the course of the next six months, the committee will be meeting with employers and workers to collect reliable data as to how a mandated leave policy would specifically impact the Maryland workforce.

As head of this committee, I am reaching out for your assistance in identifying employers and employees in your district that the committee should meet with and hear from. Our goal is to listen to all concerns and opportunities as we draft a final report for a common sense policy that meets the needs of employees without being a burden on the men and women who own and operate our small businesses. Given the time-frame we have to complete our work, the committee would appreciate your help identifying these key stakeholders who can help us better ascertain both the benefits and complications surrounding the issue of paid leave.

The committee has developed an online survey tool for businesses and employees to use to solicit feedback. This survey is available at <http://www.dlr.maryland.gov/paidleave/> and may be shared with interested parties that wish to assist our work.

Please contact my Legislative Director Maria Iannatuono to share business and workers' names that the task force may contact for this research. We would be more than happy to include you in any discussion with your local businesses and constituents. Maria may be reached at (410) 230-6009 or Maria.Iannatuono@Maryland.gov.

Best Regards,

Kelly M. Schulz
Secretary

LARRY HOGAN, JR., GOVERNOR • BOYD K. RUTHERFORD, LT. GOVERNOR • KELLY M. SCHULZ, SECRETARY



APPENDIX 2

Committee Stakeholder Meetings

Individual - Angelina Seeney	Birroteca
Individual - Anna Wagner	Blu Crabhouse & Raw Bar
Individual - Brian Bowman	Brenda's Pizzeria
Individual - Christine Sybert	BYK-Gardner
Individual - Dave Norman	Center for Children
Individual - Kim Mozingo	Century Group/Awalt Builders
Individual - Marilyn Story	Charles P. Johnson & Associates Inc.
Individual - Philip Romm	Coherent Technical Services, Inc.
Individuals - Allegany County Department of Social Services	Community Bank of the Chesapeake
Individuals - Anne Arundel Department of Human Services	Comprehensive Nursing Solutions
Individuals - Baltimore City Department of Human Services clients	Continental Realty Corporation
Individuals - Baltimore County Department of Human Services clients	Cool Beanz
Individuals - Robinson Nature Center Employees	Crab Trap, LLC
ABC Chesapeake Shores	D.M. Bowman, Inc.
AIDA Bistro & Wine Bar	Darden Restaurants, Inc.
Allegany College of Maryland	Dean Camlin & Associates
American Combustion Industries, Inc.	Dough Roller, The
Arc of Howard County, The	DRD Pools
Associated Builders & Contractors Chesapeake Shores	Embers Restaurant
Automatic Data Processing (ADP)	Exclamation Labs
AW Industries, Inc.	Fager's Island
B. Green & Co., Inc./Food Depot	Ferguson Trenching Company
Barcoding	Fire-X Sales & Service Corp.
Bennett Termite & Pest Solutions	Fishmarket Restaurant and Soup Co.
Berry Patch Early Learning Center	Fishpaws MarketPlace
	Francis Scott Key Family Resort
	Freedom Federal Credit Union
	GANTECH Inc.
	Garrett College



Garrett County Community Action
Committee
Girl Scouts of Central Maryland
Glory Days Grill
Grimsley Chiropractic
Hard Times Café (College Park/Prince
George's County location)
Harford Chamber of Commerce
Harford Community College
Harrison Group
High Mountain Sports
Hobbit Restaurant
HR Team, The
Hub Labels
Human Resources Development Corp.
Jamison Door Company
King Kone
Kronos
Law Office of Wayne Norman
Ligon & Ligon
Madison Avenue, Inc.
Meritus Health
Mid-Atlantic Spinal Rehab & Chiropractic
Miller's Food Market
Milton Inn
Mudd & Lakes
Noel's Fire Protection LLC
Norair Engineering Corp.

Ocean City Hotel-Motel-Restaurant
Association
Omni House, Inc.
Pasadena Jewelers
Plamondon Hospitality Partners
Power Marketing LLC
QualiTax
Ramar Moving
REJ & Associates, Inc.
Reliable Contracting Co. Inc.
Ristorante Firenze
S.H Tevis & Son, Inc.
Santoni's
Savage River Lodge
Score Drywall
Simpatico Inc. T/A Anthony's Carry Out
Six Flags America & Hurricane Harbor
Skyworks Solutions
St. Mary's Nursing and Rehab Center
Terry's Tag & Title Service
Think Stack
Total Biz Fulfillment
TriTech Enterprise Systems Inc.
Trivergent Health Alliance MSO
Twigg Cycles, Inc.
United Way of Washington County
Volvo Group/Mack Trucks
Watermark
Wills Group



APPENDIX 3

HB1/HB382 Comparison Chart

	HB1 - Maryland Healthy Working Families Act	HB382 - Commonsense Paid Leave Act
Type of Plan	Sick and safe leave only	Can be used for any reason
Business Size	15 or more employees	50 or more employees
Other Business Size Requirements	14 or fewer must provide unpaid leave	49 or fewer receive a tax credit if provide paid leave
Incentives	None	Income tax subtraction for companies that employ less than 50 employees - \$20,000 income tax subtraction off their federal AGI
Preemption	<ul style="list-style-type: none"> ▪ Preempts new local laws enacted after January 1, 2017 ▪ Existing laws may be amended 	Preempts all local laws
Accrual Rate	1 hour of leave for 30 worked	1 hour of leave for 30 worked
Type Accrual	Lump sum or gradual, except for nonprofits or government units with grants limited to one year and nonrenewable	Gradual
Kicks-in for Employee	After working 106 days	After working at least 120 days
Max Yearly Accrual	40 hours	40 hours
Max Total Accrual	64 Hours	40 hours
Max Employee Can Use in a Year	64 Hours	40 hours
Carry Over	40 hours max unless optional lump sum paid	40 hours
Part-Time Status	Employees who work less than 12 hours a week	Employees who work less than 30 hours a week, or have been employed for less than 120 days during a 12-month period
Additional Part-Time Exclusions	May not earn leave if: <ul style="list-style-type: none"> ▪ For two-week pay periods, employee worked fewer than 24 hours ▪ For one-week pay periods, employee worked fewer than a 	Silent



	HB1 - Maryland Healthy Working Families Act	HB382 - Commonsense Paid Leave Act
	<p>combined total of 24 hours in the current and the immediately preceding period</p> <ul style="list-style-type: none"> For a pay period in which employee is paid 2x/month and worked fewer than 26 hours in pay period 	
Shift Swapping	Employee may request to work additional shifts/hours to make up for time off during that pay period or the immediately following pay period	Silent
Exclusions	<ul style="list-style-type: none"> Regularly work less than 12 hours/week Under 18-years old Employed by temp company staffing another person Employed by an employment agency to provide part-time or temp work Independent contractors as determined in the unemployment insurance article Construction industry covered by a collective bargaining agreement IF the CBA expressly waives HB1 requirements Agriculture industry Real estate agents and brokers Called to work on an as-needed basis in a health or human services industry and can accept or reject the shift offered by the employer, not guaranteed to be called to work, and is not employed by a temp agency 	<ul style="list-style-type: none"> No regulator work schedule Certain on-call employees Works less than 30 hours/week Employed less than 120 days/calendar year Independent contractors Construction industry Agriculture industry All collective bargaining agreements
Impact to Existing Leave Policies	<ul style="list-style-type: none"> Does not impact policies equivalent to HB1 as defined Does not impact policies that do not reduce compensation for an absence due to sick or safe leave 	<ul style="list-style-type: none"> Does not impact existing leave policies that provide at least equivalent accrual Does not impact workers comp benefits
Reinstatement	Full hours if re-employed before 37 weeks unless voluntarily paid out	Silent



	HB1 - Maryland Healthy Working Families Act	HB382 - Commonsense Paid Leave Act
Verification	<ul style="list-style-type: none"> ▪ Verification may be required if employee misses two consecutive shifts, uses leave between 107 and 120 days of employment, or employee agreed to provide verification at the time of employment ▪ Employer may refuse future leave request if verification not provided 	Silent
Advanced Notice	Employer may require advanced notice and may deny request	Silent
Other Restrictions	<ul style="list-style-type: none"> ▪ Private employers providing services to developmentally disabled or mentally ill individuals may deny request under prescribed circumstances ▪ Tipped employees in restaurant industry use restrictions 	Silent
Notice to Employees	<ul style="list-style-type: none"> ▪ Employer must provide statement of earned leave balance when wages are paid ▪ Employer must provide employee notice that employee is entitled to sick and safe leave, sick and safe qualifying events, accrual process, employer prohibitions, complaint or civil action rights ▪ Labor Commissioner shall create a poster and model notice, develop a model sick and safe leave policy, and provide technical assistance to employer 	Silent
Records	Employer to keep records of accrued and used leave for each employee for three years	Silent
Enforcement	<ul style="list-style-type: none"> ▪ Commissioner may conduct an investigation upon receipt of written complaint; Commissioner to keep the identity of the complainant confidential ▪ Commissioner shall attempt mediation or issue order 	<ul style="list-style-type: none"> ▪ Commissioner may conduct an investigation upon receipt of written complaint ▪ Commissioner may resolve informally or through an order compelling compliance



	HB1 - Maryland Healthy Working Families Act	HB382 - Commonsense Paid Leave Act
		<ul style="list-style-type: none"> For subsequent violations within three years, AG may bring civil action
Civil Action	<ul style="list-style-type: none"> Commissioner may bring a civil action within 30 days or order Employee may bring civil action within three years of order 	Commissioner may bring civil action
Damages	<ul style="list-style-type: none"> Commissioner order for monetary value of unpaid leave and actual economic damages, and discretion for civil penalty of \$1,000 per employee, and direct payment up to three times value of hourly wage Civil action damages of three times the value of unpaid leave, punitive damages, attorney fees, court costs, injunctive relief, and any other damages deemed appropriate Damages waivable if error caused by third-party payroll service 	<ul style="list-style-type: none"> Commissioner discretion for civil penalty of up to \$300 per employee or up to \$600 for repeat violation within three years of previous violation under certain considerations Civil action damages of compelling compliance and civil penalty for violation Injunctive relief, actual damages, and attorney fees and court costs for repeat violation within three years
Presumptions	Presumed employer violation if accurate records are not kept or employer refuses to provide record to Commissioner	Silent
Employee Violation	Employee guilty of misdemeanor and subject to max \$1,000 fine for bad faith complaint	Silent



APPENDIX 4

Multi-Jurisdiction Sick Leave Example

Example of how one Maryland construction company complies with three different sick and safe leave laws.

JURISDICTION	MONTGOMERY COUNTY	DISTRICT OF COLUMBIA	FEDERAL CONTRACTORS
Amount of Leave	<ul style="list-style-type: none"> ▪ 1 hour for every 30 hours worked; can earn up to 56 hours per year ▪ May award leave as it accrues or may award the full amount that an EE would earn over the entire calendar year at the beginning of the calendar year ▪ May limit use to 80 hours per year 	<ul style="list-style-type: none"> ▪ <u>100+ EEs</u>: 1 hour for every 37 hours worked, up to 7 days per year ▪ <u>25-99</u>: 1 hour for every 43 worked, up to 5 days per year ▪ <u>Under 25</u>: 1 hour for every 87 hours worked, up to 3 days per year ▪ May limit use per year to the maximum number of hours the employee is entitled to earn per year 	<ul style="list-style-type: none"> ▪ 1 hour for every 30 hours worked on a covered federal contract ▪ In the alternative, contractors may provide an EE with at least 56 hours of paid sick leave at the beginning of each accrual year
Accrual Begins	Begin earning immediately, but ER can prohibit employee from using sick leave during that 90-day period	Begin earning immediately, but ER can prohibit employee from using sick leave during 90-day period	Begin earning immediately, able to use immediately
Required Carryover?	Unless ER awards the full amount of earned sick and safe leave that an EE would earn over the entire calendar year at the beginning of the calendar year, the ER must allow carryover up to 56 hours	Yes, must allow carryover of all accrued	<ul style="list-style-type: none"> ▪ Yes, must allow carryover of all accrued, but may cap accrual at any point to 56 hours ▪ Once an EE has reached the 56-hour cap, may not earn any more leave until he or she uses some of the leave to bring below the cap



Leave Usage	<ul style="list-style-type: none">▪ Care for own or family member’s illness or injury or preventive care;▪ if employer’s place of business is closed due to public health emergency;▪ if school or childcare center of family member closed due to public health emergency;▪ to care for family member if health official determines family member has communicable disease that poses public health risk;▪ if absence from work is due to domestic violence, assault, stalking committed against employee or family member	<ul style="list-style-type: none">▪ Care for own or family member’s illness, injury, medical condition, or preventive care or to obtain diagnosis;▪ Employee or family member victim of stalking, domestic violence, or sexual abuse;	<ol style="list-style-type: none">(1) For an employee’s own physical or mental illness, injury, medical condition;(2) When an employee needs to obtain diagnosis, care, or preventative care;(3) To care for a child, parent, spouse, domestic partner, or “any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship” who has an illness, injury, medical condition, or who needs to obtain diagnosis, care, or preventative care; or(4) For domestic violence, assault, or stalking situations resulting in an illness, injury or medical condition or the need for obtaining diagnosis, care, or preventative care, or to obtain additional counseling, seek relocation, seek assistance from a victim services organization, take related legal action for the employee or one of the above-
--------------------	---	--	--



JURISDICTION	MONTGOMERY COUNTY	DISTRICT OF COLUMBIA	FEDERAL CONTRACTORS
			<p>listed individuals in domestic violence, assault or stalking situations.</p>
<p>Family Member Definition</p>	<p>Biological child, adopted child, foster child, stepchild; child for whom EE has legal or physical custody or guardianship; child for whom EE is primary caregiver; biological, adoptive, foster, stepparent of EE or EE’s spouse; legal guardian of EE; individual who served as primary caregiver of EE when the employee was a minor; spouse; grandparent, spouse of a grandparent; grandchild; biological, adopted, or foster sibling; spouse of a biological, adopted, or foster sibling</p>	<p>Spouse, domestic partner, parents of spouse, children (including foster children, grandchildren), spouses of children, parents, siblings, spouses of siblings, child who lives with employee and for whom employee permanently assumes and discharges parental responsibility, person with whom employee shares or has shared for not less than preceding 12 months, a mutual residence and with whom employee maintains committed relationship</p>	<p>Child, parent, spouse, domestic partner, or “any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship”</p>
<p>Certification</p>	<ul style="list-style-type: none"> ▪ ER may require EE to provide reasonable certification of need for requested leave of more than 3 consecutive days ▪ ER must not require EE to disclose specific details of the illness or injury 	<p>ER may require EE to provide reasonable certification of need for requested leave of 3 or more consecutive days</p>	<p>ER may require EE provide reasonable certification of need for requested leave of 3 or more consecutive full days, and the EE must have received notice of the requirement to provide certification or documentation before he or she returns to work</p>



JURISDICTION	MONTGOMERY COUNTY	DISTRICT OF COLUMBIA	FEDERAL CONTRACTORS
<p>Notice Requirements – Employee</p>	<p>EE must request leave as soon as practicable after learning of need for leave</p>	<ul style="list-style-type: none"> ▪ If need for leave is foreseeable, EE must provide notice at least 10 days in advance, or as soon as possible ▪ If need for leave is unforeseeable, an oral request must be provided prior to the start of the work shift for which paid leave is requested ▪ In case of emergency, EE must notify ER prior to the start of the next work shift or within 24 hours of the onset of the emergency, whichever occurs sooner 	<ul style="list-style-type: none"> ▪ A leave request must be made at least 7 calendar days in advance where the need for the leave is foreseeable, and in other cases as soon as is practicable ▪ ER is required to communicate any denial of a request to use paid sick leave in writing, with an explanation for the denial—which cannot be based on whether the employee has found a replacement worker or on the contractor’s operational needs
<p>Notice Requirements – Employer</p>	<ul style="list-style-type: none"> ▪ ER must display poster from the Mo. Co. Office of Human Rights or otherwise distribute the same information to EEs through the EE handbook or other notice ▪ ER must provide written statement of available leave each time ER pays wages 	<p>Employer must display in a conspicuous place a poster outlining rights under the law (as provided by the D.C. Department of Employment Services)</p>	<ul style="list-style-type: none"> ▪ ER must display in a conspicuous location a poster outlining rights under the law (as provided by the U.S. Department of Labor) ▪ ER must provide notice of the amount of paid sick leave available each pay period or at the end of each month, whichever is more frequent



APPENDIX 5

Personal Statement from an Employee in a Seasonal Ocean City Job

The following letter was sent to the Committee on Paid Leave Policy on July 9, 2017.

To Whom It May Concern,

I am writing to give personal statement on the paid leave legislation. I would like to start out by giving myself some credibility on the subject. I have been living on my own since I was 17 and moved down to Ocean City, Maryland. Living in a resort town provides for seasonal residences, seasonal business, and seasonal savings. I've mastered budgeting for an entire year in the 4 months of the summer that we are in peak season. I work two jobs to manage this. One job is at Coldwell Banker Vacations as a part-time seasonal employee, and the second is King Kone. I love both my jobs and have passion for each equally. Even though both share a busy season there are striking differences. Coldwell Banker Vacations operates all year around while King Kone closes for the winter. Coldwell is a day job, and I work King Kone at night. Coldwell has full-time employees while King Kone does not. One similarity for both my jobs and positions though is neither job comes with benefits, besides the occasional ice cream cone. I have done an internship at both places, Coldwell was in sales and marketing and King Kone was an entrepreneurial internship.

In terms of paid leave, I do not receive paid leave at either job. When I am not at Coldwell, I clock out when I leave whether it be because I am sick or just done for the day. King Kone on the other hand, if I am scheduled and I must leave early my boss will pay me for those hours I am scheduled for. Rick knows that we rely on those hours that we are set just as much as he relies on us to give King Kone our all for 4 months. Rick does a fantastic job at understanding that I have financial goals for the upcoming year I need to budget for. One example is in January 2017 I studied abroad in France and the summer of 2016 was the time I was saving for that trip. Both jobs gave me as many hours as possible but Rick allowed me to work in the off season, he also referred my name to families for babysitting jobs. If I ever caught myself so busy I forgot to pack dinner, he would let me go get something to eat on the clock. I also save money by not driving a car while working in my 10-mile-long town. Rick helps me when my bike breaks, or if the weather makes a turn for the worse and it is not safe to bike home at night.

Each year provides a pay increase and an increase in responsibilities that is expected, this played a role in my return each year. While there is more money to be had for a serving position, many employees would agree the team like work community that Rick provides has managed to keep us money hungry college students working there. There is no monetary value to the attentiveness he gives to each of his employees. If someone is having a bad day, he will know. He has coached and provided guidance unique to each employee's life and situations.

Both jobs have their perks and I have found great value in both despite this analytical comparison. If this paid leave was to be enforced to the small business owners who operate on a seasonal basis, it would take away from the financial room for support and community. I would like to run a theoretical scenario of the implications of this change to King Kone. If this is



applied Rick would be paying for leave that is equivalent to having two employees that never worked a day for his seasonal shop. This means that he may have to cut back on staff numbers, or not allow for the pay increase or not allow for Rick to pay us when we must leave early for illness or injury. It will cause changes that will shift the staffs schedule which will change the dynamics of King Kone.

The motto for King Kone is to make people happy, and we do that by scooping ice cream with great customer service. If the staff who operate at high pace for a short season cannot rely on this extra support that Rick and King Kone gives us he will lose the staffing of local students and may have to resort in more foreign staff or younger people. Again, this is all theoretical but the implications of this job will trickle down not only to staff but the community. I think that paid leave is important and I know I have a very narrowly tailored perspective but I do know that there are many others that feel the same way. Ocean City has a lot of small local businesses and hidden gems only here like King Kone. If every small or local business must implement this, they would see changes that could be inversely affect the positive intention of this paid leave legislation. Thank you for your time and listening to my voice.

Best Regards,

Anna Wagner



APPENDIX 6

Additional Paid Leave Executive Orders

In addition to the executive order (EO) establishing the Committee on Paid Leave Policy, Governor Hogan signed two executive orders expanding paid leave benefits to Maryland workers.

Executive Order [01.01.2017.09](#) provides 40 hours of paid leave benefits to nearly 8,000 temporary executive branch employees working in state government and encourages the legislative and judicial branches to follow suit. The EO applies to every contractual worker averaging more than 30 hours a week who is not covered by a collective bargaining agreement. Accrual of one hour of paid leave for every 30 worked begins on day one and can be used after working 120 days. Leave maxes out at 40 hours a year and 40 hours may be carried over.

Executive Order [01.01.2017.10](#) directed each state department, agency, authority, board, or instrumentality controlled by the governor to review their procurement procedures, guidelines, and regulations to determine whether they can be modified or expanded to grant a procurement preference to bidders that provide paid leave to employees. After its review, and to the extent permitted by law, each state department, agency, authority, board, or instrumentality controlled by the governor shall modify or expand its procedures, guidelines, and regulations to grant a preference to bidders that provide paid leave to employees. Each agency shall provide a report by December 1, 2017, with the results of its review and identifying any resulting modifications to or expansions of procedures, guidelines, or regulations.



For questions about this report, please contact:

MICHAEL HARRISON
Policy Director

Maryland Department of Labor, Licensing and Regulation
500 N. Calvert Street, 4th Floor
Baltimore, MD 21202
(410) 230-6008
michael.harrison@maryland.gov