

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 701
Economic Matters

(Delegate Murray, *et al.*)

Labor and Employment - Vacation Leave - Compensation

This bill requires an employer under specified conditions to provide compensation, at the employee's regular rate of pay, for any unused or accumulated vacation leave upon its expiration.

Fiscal Summary

State Effect: None. The bill pertains exclusively to private-sector activities.

Local Effect: None.

Small Business Effect: Potential meaningful impact on small business.

Analysis

Bill Summary: The provisions of the bill apply to an employer that provides vacation leave or paid time off (herein collectively referred to as leave) to an employee and require that the employee request leave within an agreed-on time frame. It specifically does not apply to a unit of State or local government or to an employee terminated for cause.

If the employee is unable to use leave because the request was denied by the employer, the employer must: (1) compensate the employee at the employee's regular rate of pay on or before December 31; (2) carry over the unused leave to the following year; or (3) apply unused sick leave to an employee as transferred leave on or before December 31 if the employer and employee enter into an agreement approving the transfer. If the employer carries over the unused leave to the following year, the employer must: (1)

provide compensation, at the regular rate of pay, on or before December 31 of either the calendar year in which the leave is carried over or the calendar year following the year in which the leave is carried over; (2) designate a specific time period in which the employee may use the leave; or (3) apply any unused sick leave to an employee as transferred vacation leave. Upon termination the employer must compensate an employee for any unused leave.

Current Law: The Federal Fair Labor Standards Act does not require the payment of leave for employees, and no states require employers to provide vacation leave. In most states, leave issues such as how much, how it accumulates, how it is used, and how it is forfeited if not used are left entirely to the discretion of the employer.

Background: California requires an employer to compensate an employee for all vacation leave upon termination. Vacation leave is considered wages and vacation time earned, or vested, as labor is performed. An employer that chooses to provide vacation leave to its employees is subject to certain restrictions on how it fulfills its obligation to provide vacation pay. Vacation pay accrues as it is earned and cannot be forfeited even upon termination; however, an employer can place a reasonable cap on vacation benefits that prevents an employee from earning more than a certain amount of hours. Upon termination, all earned and unused vacation must be paid to the employee.

In Maryland, the question as to whether an employer must pay an employee for vacation leave upon termination depends on the employer's policies. In the Wage Payment and Collection Law (WPCL), wage means all compensation due an employee and includes any fringe benefit promised in exchange for service. Accrued vacation leave, which accumulates as an employee provides services, is then sometimes viewed as recoverable under WPCL.

Small Business Effect: To the extent that small business vacation leave policies remain constant, this bill could have a meaningful impact. A small business would be required to compensate an employee for vacation leave upon its expiration. Small business, with usual limited resources, is more likely to limit an employee's use or accrual of vacation time. Therefore, this bill could significantly impact small business.

According to 2001 U.S. Census Bureau information, small businesses in Maryland employed 604,373 individuals with a total payroll of \$19,070,641.

Additional Information

Prior Introductions: HB 63 of 2005, a similar bill, received an unfavorable report from House Economic Matters Committee.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; Department of Budget and Management; Department of Legislative Services

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