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Senate Bill 486 - Maryland Essential Workers' Protection Act

Finance Committee
Appropriations Committee

February 5, 2021

OPPOSE

Senate Bill 486 creates a number of requirements for employers across the state during a State of an Emergency including 1) an additional \$3/hour of hazard pay, 2) employer reimbursement of healthcare and other costs, 3) a new leave program for bereavement and health leave, 4) employee right to refuse work, 5) workplace safety standards, and 6) health emergency preparedness plans.

While the Montgomery County Chamber of Commerce (MCCC) agrees with the intent of this legislation - that every employee should go to a safe workplace – this bill has many concerning requirements and associated costs which would be devastating to Maryland's job creators. These businesses are already struggling with a global pandemic and compounding financial implications of other state mandates like increased minimum wage and paid sick and safe leave. Our small businesses struggling to stay afloat also effect our larger companies as they are seeing impacts in supply chains.

Definitions

The definitions of "emergency," "essential employer" and "essential employee" are very broad and all-encompassing. To the extent that a business may not fall under one of the specific sectors or named industries, so long as the business has been ordered to remain open during an emergency, they would fall under the definition of an employer. Additionally, clarity is needed as to whether non-profits are meant to be included as an essential employer, depending on the industry they fall within.

Significantly, essential workers are limited to those who perform duties that cannot be performed remotely and that must be completed at a worksite. In addition, it is important to note that essential employer is one that "employs" an essential worker, but essential worker is defined to include a contractor or subcontractor, who are not employed by the essential employer.

Continuing, the way that emergency is defined is ambiguous. Based on this definition, a snowstorm, a day of high winds, or even a stock market crash could be interpreted as an "emergency," subjecting all employers defined as essential to the rest of the provisions contained within the bill.

Employer Requirements

There are ambiguous and/or incredibly burdensome employer requirements throughout the bill. First, there are undefined terms that are either difficult to define, up for interpretation or exist on a spectrum. For example, it is unclear what is meant by "physical harm," "mental distress," and "physical health and safety."

This section of the bill also includes a provision which requires employers to provide personal protective equipment (PPE) to workers at no cost. Again, this section lacks clarity in its definitions and results in many open questions. For example, what does “necessary amount” mean and who determines that? Who determines what PPE is necessary based on the definition of the declared emergency? For example, PPE necessary for a public health emergency will be different than that needed for a flood or hurricane. In the beginning of the COVID-19 pandemic, PPE was challenging to procure as manufacturers scrambled to produce enough supply. As a result, we believe that language needs to be added to this section to clarify that PPE is procured and provided to essential workers “subject to availability.”

Another requirement placed on employers are the Emergency Preparedness plans. The Chamber has concerns about the burden this provision might place on small businesses, as they are less likely to have the in-house resources or expertise to comply. In addition, this section requires “mechanisms for notifying essential workers of positive test results for illness,” yet it does not specify what type of illness. For example, are employers to be required to issue such notification for the flu or a common cold? Does this requirement still exist if the declared state of emergency is not related to a health pandemic?

Hazard Pay and Additional Financial Assistance

The hazard pay component of this legislation is also concerning. This provision requires employers to provide hazard pay for each pay period that the essential worker works at a rate of \$3/hour. First, there is confusion regarding how this provision is to be applied. The bill is intended to apply prospectively (as noted in the uncodified section of the legislation) yet there is a provision in this section that states that an essential worker is eligible for hazard pay dating back to the start of the emergency. In addition, there is no scale or table for the amount of provided hazard pay based on industry-sector or specific job.

This legislation would require employers to provide financial assistance for unreimbursed healthcare costs including co-pays, insurance premiums, and out of pocket costs for healthcare or transportation. It is unreasonable for employers to be compelled to pay for healthcare costs for undefined illnesses that are not likely to have been contracted in the workplace nor impacted by the emergency itself. Further, it is not clear that this provision would not also apply to teleworking employees. Again, simply put, the cost implications of this provision alone would be devastating to Maryland’s job creators, who are already struggling with a global pandemic and compounding financial implications of other state mandates like increased minimum wage and paid sick and safe leave.

Right to Refuse Work

The bill also includes a provision which affords an essential worker the right to refuse work. It provides this decision-making power to the employee, in the moment, and without review. This is problematic for many reasons, not the least of which is the potential for abuse without verification. Beyond this, the reasonableness requirement is dropped for an employee refusing to work.

For the aforementioned reasons, **the Chamber opposes Senate Bill 486 and respectfully urges an unfavorable report.**

The Montgomery County Chamber of Commerce (MCCC) accelerates the success of our nearly 500 members by advocating for increased business opportunities, strategic investment in infrastructure, and balanced tax reform to advance Metro Maryland as a regional, national, and global location for business success. Established in 1959, MCCC is an independent non-profit membership organization and is proud to be a Montgomery County Green Certified Business.