



POSITION STATEMENT

POSITION STATEMENT PRESENTED TO THE BALTIMORE CITY COUNCIL'S EQUITY AND STRUCTURE COMMITTEE

COUNCIL BILL 20-0543 COVID-19 EMPLOYEE RETENTION July 16, 2020

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Although the title of Council Bill 20-0543 suggests that the legislation relates to conditions brought about by the current COVID-19 pandemic and the economic downturn that it has created, a thorough review of the bill shows very little policy or substantive connection to the pandemic or the current State of Emergency that is in place in the State of Maryland.

Instead, the provisions of Council Bill 20-0543 seek to impose strict limitations on the actions of commercial property employers, event center employers and hotel employers that have experienced a “change in control.”

The current legislation is similar to Council Bill 17-0048 - Labor and Employment – Displaced Service Workers Protection, which *protected service workers employed by government contractors* if the contract changed hands.

When the Baltimore City Council originally considered Council Bill 17-0048 both the Office of Finance and the Department of General Services expressed concerns about the impact on city contracts.

Among its concerns, the Department of Finance pointed out that requiring the city to retain contractors may affect the city's ability to improve performance. The Department of General Services expressed concern that vendors might be discouraged from submitting bid proposals due to the additional regulations, leading to less competition for City contracts and decreased performance.

Council Bill 20-0543 seeks to expand the same protections to private sector business transactions. Such an expansion of government regulation is unacceptable as it seeks to hinder legitimate business decisions made by a private sector business in the hiring of personnel.

Specifically, Council Bill 20-0543 – COVID-19 Employee Retention requires successor commercial property employers, event center employers or hotel employers to retain employees after a “change in control” to the successor employer.

During the first six months after a successor employer opens the business to the public, the successor employer may only hire employees from a list of employees provided by the incumbent employer. The successor employer must extend an offer to retain each of those employees for no fewer than 90 days unless the successor employer determines that fewer employees are required than were required previously by the incumbent employer.

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In that case, the successor business employer must hire solely based on seniority (i.e. - length of service) rather than skill level, competency or performance.

In the case of a commercial property employer, the definition of an employee is “limited to janitorial, maintenance, or security service employees...” No such limitation applies to event center employers or hotel employers. Further, the legislation does not apply to and specifically excludes an employee that is considered a “managerial, supervisory, or confidential employee.”

Further, a complaint for a violation of this law “can be filed by any group or person seeking to enforce this subtitle.” The complaint must be filed within one year of the alleged violation. In the event that a successor employer is found to have violated the subtitle, the sanction against the employer includes back pay to the affected employee including 10% yearly interest. A civil penalty is also assessed for a violation by the successor business at the rate of \$250 for a first violation, \$500 for a second violation and \$1,000 for each subsequent offense. Each day that a violation continues constitutes a separate offense.

In addition to the intrusion into the normal business operations of a private sector company, the timing of this legislation is concerning. Commercial property employers, event center employers and hotel employers are facing significant loss of revenue in their operations because of the COVID-19 pandemic. These industry sectors are particularly hard hit from the economic downturn. Commercial property employers are faced with tenants that are not at full capacity (non-essential businesses are operating at a maximum of 50% in Baltimore City); event center employers are not permitted to host public performances, sporting events, etc. due to limitations on social gatherings; and hotel employers are facing significantly reduced occupancy due to lack of travel, etc. Businesses have not fully re-opened much less recovered from the pandemic. The imposition of additional regulations upon them when surrounding jurisdictions do not have such rules would create a competitive disadvantage for these businesses.

In addition to the negative competitive business aspects of Council Bill 20-0543, the GBC would like to point out several specific concerns with the bill:

- A successor employer must use the list of employees provided by the incumbent employer and may only hire employees from that list during the first six months of business. The bill does not allow for hiring outside of the list even should the successor employer exhaust the names on the list provided by the incumbent employer.
- If a successor employer plans to hire fewer employees than the incumbent employer does, the workers must be retained based on seniority (length of service) and not based upon skill, competency, or performance. This does not ensure quality of work – an important criteria to the employer.
- Complaints may be filed by virtually anyone, not just by a person who was impacted by a decision. This enables individuals that have no relation with the employer or no connection with the employer/employee relationship to pursue enforcement of the legislation. This could lead to unlimited complaints and costs to the employer.
- The penalties and sanctions outlined in the bill are excessive and unconscionable. A complaint must be filed within a year. In addition to back pay and interest an employer found responsible for an initial violation is assessed \$250 for each day that a violation occurred. This could result

in a cost to the employer in excess of \$90,000. The risk of incurring such high penalties will likely have the impact of discouraging employers from doing business in Baltimore.

- The bill is entitled COVID-19 Employee Retention. The bill does not express a policy justification or substantive connection to the COVID-19 pandemic or the Governor’s State of Emergency proclamation. This is evidenced as follows:
 - The only mention of COVID-19 outside of the title is found in the definition of “employee”, which states that an “employee is someone who worked for the incumbent employer on or after March 5, 2020” (i.e. - the date Governor Hogan declared a State of Emergency in Maryland).
 - The provisions of the bill do not require that the “change in control” be the direct or indirect result of the COVID-19 pandemic.
 - The bill contains no sunset provision establishing a termination of the bill’s effectiveness on a date certain (i.e. – specific date, the end of the COVID-19 pandemic or the dissolution of the State of Emergency). Without such the provisions of the bill affecting commercial property employers, event center employers and hotel employers remain in perpetuity.
 - The only suggestion that the provisions of the bill may terminate at some date in the future is contained in Section 19-14 of the bill that requires the Wage Commission on or before June 30, 2022 to report to the Mayor and City Council on:
 - (3) *“Whether the provisions of this subtitle are still necessary based on the city’s recovery from the impacts of the COVID-19 pandemic.”*
- In addition, the Greater Baltimore Committee has multiple concerns regarding provisions included in Sections 19-3, 19-9 and 19-10 and will submit a list of detailed concerns subsequent to the hearing.

For these reasons, the GBC respectfully requests an unfavorable report on Council Bill 20-0543.

ABOUT THE GREATER BALTIMORE COMMITTEE (GBC)

The Greater Baltimore Committee (GBC), a regional business advocacy organization, and its membership are focused on issues related to economic growth, business competitiveness, and job creation. Since its inception the GBC has advocated for policies directed at creating an effective and reliable transportation system, increasing the quality of our school system, improving public safety, encouraging business growth and entrepreneurship, and expanding access to workforce training and job opportunities. The GBC is an advocate on behalf of business and opposes legislative efforts that impose unreasonable burdens on business and its operations.

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