



Legislation Text

File #: 20-0535, Version: 0

Introductory*

City of Baltimore Council Bill

Introduced by: President Scott

A Bill Entitled

An Ordinance concerning

COVID-19 Relief - Premium Pay for Essential Workers

For the purpose of requiring certain essential businesses to provide premium pay to their employees; prohibiting certain essential businesses from taking certain adverse actions against their employees; requiring certain essential businesses to keep certain records of their compliance with the premium pay requirements; requiring certain signs to be posted; including the premium pay provisions within the Baltimore City Wage Commission's scope of enforcement; applying certain fines and penalties for violations of premium pay provisions; defining certain terms; providing for a special effective date; and establishing a termination date.

By adding

Article 11 - Labor and Employment

Section(s) 3A-1 to 3A-7, to be under the new subtitle,

“Subtitle 3A. COVID-19 Premium Pay”

Baltimore City Code
(Edition 2000)

Section 1. Be it ordained by the Mayor and City Council of Baltimore, That the Laws of Baltimore City read as follows:

Baltimore City Code

Article 11. Labor and Employment

Subtitle 3A. COVID-19 Premium Pay

§ 3A-1. Definitions.

(a) In general.

In this subtitle, the following terms have the meanings indicated.

(b) Chain business.

“Chain business” means any business that is part of a group of establishments that share a common owner or principal who owns at least 30% of each establishment where the establishments:

(1) engage in the same business; or

(2) operate pursuant to franchise agreements with the same franchisor as defined in Title 14, Subtitle 2 {"Franchises"}, of the State Business Regulation Article.

(c) *COVID-19 emergency.*

"COVID-19 emergency" means the catastrophic health emergency declared by the Governor of Maryland on March 5, 2020, as amended or extended by the Governor, under State Public Safety Article, _ 14-3A-02.

(d) *Essential business.*

"Essential business" means any person that is permitted to continue business operations under:

(1) the Executive Order of the Governor of Maryland, Number 20-03-30-01, and any amendments issued thereafter; or

(2) any other Order of the Governor of the State of Maryland issued under the Governor's COVID-19 emergency authority.

(e) *Essential employee.*

(1) *In general.*

"Essential employee" means any individual employed or permitted to work at or for an essential business, for at least 4 hours or more during a pay period within the geographic boundaries of the City of Baltimore.

(2) *Exclusion.*

"Essential employee" does not include any employee who is:

(i) salaried;

(ii) covered by a collective bargaining agreement if the agreement expressly waives the provisions of this local law and provides comparable or superior benefits for essential employees; or

(iii) covered by a program created pursuant to an order issued by the Governor under the Governor's COVID-19 emergency authority that provides comparable or superior benefits for essential employees.

(f) *Essential employer.*

"Essential employer" means any employer that employs an individual or permits an individual to work at or for an essential business within the City of Baltimore.

(g) *Essential worker premium.*

"Essential worker premium" means a wage amount specified in this subtitle to be paid to an essential worker that is separate from and addition to the essential worker's base wage pay.

(h) *Large essential employer.*

(1) *In general.*

“Large essential employer” means an essential employer that employs 100 or more individuals or permits 100 or more individuals to work at or for the employer’s essential business.

(2) *Calculation of employees.*

(i) *In general.*

To calculate the number of individuals performing work for an employer for compensation during a pay period, all individuals performing work for compensation on a full-time, part-time or temporary basis shall be counted.

(ii) *Fluctuating employees.*

Where the number of individuals who work for an employer for compensation per pay period fluctuates, business size may be determined for the current calendar year based on the average number of individuals who worked for compensation per pay period during the preceding calendar year.

(iii) *Chain businesses.*

To calculate the number of individuals performing work for an employer that is a chain business, the total number of employees in that group of establishments within Baltimore City shall be counted.

(3) *Exclusion.*

“Large essential employer” does not include a business that is assigned a 2017 North American Industry Classification System code beginning with 531 {“Real estate”}.

(i) *Person.*

(1) *In general.*

“Person” means:

- (i) an individual;
- (ii) a partnership, firm, association, corporation, or other entity of any kind; or
- (iii) a receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind.

(2) *Exclusion.*

“Person” does not include any unit of federal or state government or the government of any political subdivision of Maryland, except for the City of Baltimore.

(3) *Inclusion.*

“Person” includes the City of Baltimore.

§ 3A-2. Premium pay.

(a) *In general.*

A large essential employer shall provide an essential employee with the essential worker premium amount as specified in this section for each shift worked by the essential employee.

(b) *Essential worker premium amounts.*

Large essential employers shall pay an essential employee an essential worker premium of:

- (1) \$10 for any shift of less than 4 hours;
- (2) \$20 for any shift of between 4 and 8 hours, inclusive; or
- (3) \$25 for any shift of greater than 8 hours.

(c) *Method of payment.*

(1) *Time.*

A large essential employer shall pay the essential worker premiums required under this section at the same time as that employer pays the essential employee wages owed for work performed during that pay period.

(2) *Documentation.*

Essential worker premium pay shall be separately noted on a wage stub or other form of written documentation and provided to the essential employee for that pay period.

§ 3A-3. Retaliation prohibited.

(a) “Adverse action” defined

For the purposes of this section, “adverse action” includes threatening, intimidating, disciplining, discharging, demoting, suspending, or harassing an essential employee, reducing the hours or pay of an essential employee, informing another essential employer, or any other person or entity that employs or permits individuals to work at or for that person or entity, that an essential employee has engaged in activities protected by this subtitle, and discriminating against the essential employee, including actions related to perceived immigration status or work authorization.

(b) *In general.*

- (1) A person may not take any adverse action against an essential employee that penalizes that employee for, or is reasonably likely to deter that employee from, exercising or attempting to exercise any right protected under this subtitle.
- (2) An essential employee need not explicitly refer to this subtitle or the rights enumerated under this subtitle to be protected from retaliation.

§ 3A-4. Notice and posting.

(a) *In general.*

A large essential employer shall conspicuously post, at every workplace or job site where any essential employee works, notices informing employees of this subtitle within 5 calendar days of its effective date.

(b) *Languages.*

The notice required by this section shall be in English and in any other language spoken as a primary language by at least 5% of the employees at that workplace or job site.

§ 3A-5. Recordkeeping.

(a) *In general.*

A large essential employer shall:

- (1) make and retain, for at least 3 years, records that document its compliance with this subtitle; and
- (2) allow the Commission to access the records and other information, in accordance with applicable law and with appropriate notice, in furtherance of an investigation conducted under this Division I.

(b) *Failure to maintain, retain, or produce.*

A large essential employer's failure to make, retain, or produce a record or other information required to be maintained by this subtitle and requested by the Commission in furtherance of an investigation conducted pursuant to this Division I that is relevant to a material fact alleged by the Commission in a notice of violation issued pursuant to this Division I creates a rebuttable presumption that the alleged fact is true.

§ 3A-6. Enforcement procedures.

Subtitle 4 {"Enforcement Procedures"} of this Division I shall govern the administration of complaints, investigations, and enforcement of this subtitle.

§ 3A-7. Penalties and fines.

Any person who violates any provision of this subtitle is subject to the penalties and fines set forth in Subtitle 6 {"Penalties and fines"} of this Division I.

Section 2. And be it further ordained, That the catchlines contained in this Ordinance are not law and may not be considered to have been enacted as a part of this or any prior Ordinance.

Section 3. And be it further ordained, That this Ordinance takes effect on the date it is enacted. It will remain effective through the day following the expiration of the catastrophic health emergency declared by the Governor on March 5, 2020, as amended or extended by the Governor; and, immediately after that date, with no further action by the Mayor and City Council, this Ordinance will be abrogated and of no further effect.