

PUBLICATION

Maryland Legislators Pass Sweeping Changes to the Time to Care Act, and More

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On April 10, 2023, Maryland legislators ended the 2023 session (known as sine die) with three significant bills headed to, and likely to be signed by, Governor Wes Moore.

First, Senate Bill 828 will bring sweeping changes to the Time to Care Act, Maryland's version of paid family leave. Second, Maryland's minimum wage will increase to \$15.00 sooner than employers anticipated, and third, the salary threshold under Maryland's ban on non-competition restrictions will increase, providing greater protections for "low wage" workers.

Sweeping Changes to Maryland's Time to Care Act

As readers may recall, the Family Medical Leave Insurance Program, also known as the Time to Care Act (the Act) was enacted during a Special Session on April 9, 2022, during which the Maryland General Assembly overrode Governor Hogan's veto. For background on the Act, see our [April 12, 2022 article](#). In general, the Act provides up to 12 weeks of paid leave (24 weeks in certain circumstances) via an insurance-like program under which covered employees apply to the state for benefits.

One key provision missing from the 2022 version of the Act was the employee and employer contributions rates. Contributions were set to begin on October 1, 2023; thereafter, as of January 1, 2025, covered employees would have been able to apply for benefits. Employees would have been required to exhaust all employer-paid leave before applying for benefits under the Act.

Senate Bill 828, which Governor Moore is expected to sign, amends the Act in the following significant ways:

- Delays the start date for employer and employee contributions to October 1, 2024.
- Delays the start date for benefits payments to covered employees to January 1, 2026.
- The employer/employee contribution rates are set at 50/50 percent, rather than being determined by the Maryland Department of Labor (DOL).
- The total rate of contribution (i.e., the percent of wages up to the Social Security wage base to be split 50/50 percent) must be set by the Maryland DOL by October 1, 2023, and cannot exceed 1.2 percent of an employee's covered wages; that rate will remain the same from October 1, 2024, through June 30, 2026.
- Employees will not be required to exhaust all employer-paid leave; however, employers will have the right to manage benefits coordination with their company-provided paid leave benefits.
- Employees and employers may agree to use employer-paid leave to "true up" the benefits an employee receives under the Act.

So, employers can breathe a sigh of relief this year – they will not be required to make contributions in 2023 as originally required, nor will employers have to manage the benefits coordination issues that will ensue. Employers, however, should use this time to consider how they will address benefit coordination and whether they will apply to the Maryland DOL (when the process is in place) to have a private plan that complies with the Act.

Fair Wage Act of 2023 Brings \$15.00 State Minimum Wage Effective January 1, 2024

Senate Bill 555, the Fair Wage Act of 2023, signed into law by Governor Moore on April 11, 2023, accelerates the pace at which Maryland will reach a \$15.00 minimum wage. Effective January 1, 2024, all employers, regardless of size, must pay employees at least \$15.00 per hour.

The Fair Wage Act does not impact Montgomery County's or Howard County's minimum wage increase scales. Employers with employees working in those counties must comply with the state or the applicable county's minimum wage, which is higher.

A comparison of current law and the impact of the Fair Wage Act is below:

	The Bill	Current Law	
	Employers of <u>Any Size</u>	Employers with <u>15 or More Employees</u>	Employers with <u>Fewer Than 15 Employees</u>
1/1/2023	N/A	\$13.25	\$12.80
1/1/2024	\$15.00	\$14.00	\$13.40
1/1/2025	\$15.00	\$15.00	\$14.00
1/1/2026	\$15.00	\$15.00	\$14.60
7/1/2026+	\$15.00	\$15.00	\$15.00

Employers should ensure that their payroll systems are updated as of January 1, 2024, with the new minimum wage rate. For tipped employees, no change has been made to the "subminimum" wage of \$3.63 per hour, thereby increasing the tipped credit that employers may take, provided that tipped employees have the requisite cash and/or credit card tips to cover the minimum wage rate for each hour worked. Otherwise, employers must "make up" the shortage so that tipped employees earn the full minimum wage for each hour worked.

Salary Threshold Increase – Non-Competition Restrictions

Senate Bill 591, Noncompete and Conflict of Interest Provisions, expected to be signed by Governor Moore, will increase the salary threshold for requiring an employee to agree to any non-compete or conflict of interest provision in an employment contract or similar document or agreement that restricts the ability of an employee to enter into employment with a new employer or to become self-employed in the same or similar business or trade. If Governor Moore signs the bill it will take effect on October 1, 2023.

Currently, employers may not require a prospective employee or a current employee to sign a non-competition provision if the employee earns equal to or less than \$15.00 per hour or \$31,200 annually. Under Senate Bill 591, the threshold will increase to 150 percent of the state minimum wage. Thus, effective October 1, 2023, the

threshold for large employers would be \$19.88 (the current minimum wage of \$13.25 x 150 percent), or approximately \$41,350 annually. Effective January 1, 2024, assuming a \$15.00 minimum wage rate for all Maryland employers, the threshold will be \$22.50 per hour, or approximately \$46,800.

If you have any questions or need assistance, please contact [Donna M. Glover](#) or any member of Baker Donelson's [Labor & Employment Team](#).