

EMPLOYEES AND BUSINESSES PROTECTED BY EMERGENCY ACT

Maryland's Emergency Management Agency Act grants the governor the authority to establish protections for the people of Maryland during a state of emergency. Accordingly, Governor Larry Hogan signed the COVID-19 Public Health Emergency Protection Act of 2020 into law on March 19. The act contains three key provisions that address employees' access to unemployment insurance benefits, the termination of employees and alternative work weeks for employees of state-owned or operated health care facilities.

The COVID-19 Act authorizes the secretary of labor to determine whether an individual is eligible for unemployment insurance benefits due to COVID-19. More specifically, the COVID-19 Act gives the secretary the discretion to permit an individual who has not been terminated from employment to collect unemployment insurance if:

- The individual's employer temporarily ceases operations due to COVID-19 preventing employees from coming to work;
- The individual is quarantined due to COVID-19 with the expectation of returning to work after the quarantine is over; or
- The individual leaves employment due to a risk of exposure or infection of COVID-19, or to care for a family member due to COVID-19.

Although the COVID-19 Act is silent as to whether the secretary intends to waive the requirement that a claimant search for substitute employment during the state of emergency, the Maryland Department of Labor has issued guidance indicating that claimants may instead be required to perform other reemployment activities in lieu of the work search requirement due to the instability of the current labor market.

The COVID-19 Act also permits the governor to prohibit Maryland employers from terminating an employee solely on the basis that the employee has been required to be isolated or quarantined, or if the individual leaves his or her employment due to a risk of exposure or infection. Employees who leave their employment to care for a family member affected by COVID-19 are also afforded protection from termination pursuant to this emergency legislation.

Additionally, the COVID-19 Act contains a provision allowing the Maryland Department of Health to offer flexibility in staffing during the current state of emergency. Pursuant to this law, the governor is permitted to order MDH to authorize alternative work weeks for employees of state-owned or operated health care facilities. Therefore, employees of these state facilities are permitted to work a 12-hour shift, three days per week instead of the traditional eight-hour shift for 40 hours per week.

The COVID-19 Act permits alternative work weeks for employees of facilities that are owned or operated by MDH, open 24 hours a day and seven days a week, and subject to a memorandum of understanding with the American Federation of Teachers. The alternative work week permits employees to work less than 40 hours per week.

An employee who is authorized to work an alternative work week must be:

- Considered a full-time state employee; and
- Entitled to compensations for overtime work.

Employers of these facilities should note that the time worked by an employee authorized to work an alternative work week includes only the hours actually worked by the employee and does not include paid leave hours taken by the employee during the work week.

Notably, this emergency legislation was enacted by Gov. Hogan as a temporary measure to protect Marylanders from certain economic hardships that may result from this pandemic. The COVID-19 Act will remain effective through April 30, 2021, and will be repealed after that date.