

HOUSE BILL 1012

K3

EMERGENCY BILL

1lr2349

By: **Delegate Stewart**

Introduced and read first time: February 5, 2021

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Reinstatement of Employment – Employees at**
3 **Baltimore–Washington International Thurgood Marshall Airport**
4 **(BWI–Thurgood Marshall Workers’ Right to Reinstatement Act)**

5 FOR the purpose of requiring certain employers at the Baltimore–Washington
6 International Thurgood Marshall Airport to reinstate certain laid–off employees
7 under certain circumstances; requiring certain employers to provide certain laid–off
8 employees with certain written notice of a layoff in a certain manner and at a certain
9 time; requiring certain employers to offer certain laid–off employees certain job
10 positions; establishing the process through and manner in which an employer is
11 required to offer employment to certain laid–off employees; requiring a certain
12 employer to provide a laid–off employee who is offered a position under a certain
13 provision of this Act with at least a certain amount of time to accept or decline the
14 job offer; requiring a certain employer to provide a certain notification to a laid–off
15 employee within a certain period of time under certain circumstances; providing that
16 a new employer is subject to the requirements of certain provisions of this Act under
17 certain circumstances; requiring certain employers to provide the Maryland Aviation
18 Administration with certain information for laid–off employees; requiring the
19 Administration to use certain information to contact laid–off employees for a certain
20 purpose; authorizing the Administration to provide certain contact information to
21 certain third parties for certain purposes; requiring an employer to retain certain
22 records for at least a certain period of time; specifying the date on which a certain
23 retention period begins; prohibiting an employer from taking certain adverse actions
24 against an individual under certain circumstances; specifying that a certain
25 protection applies to certain individuals under certain circumstances; establishing a
26 certain rebuttable presumption; specifying the manner in which an employer is
27 required to rebut a certain presumption and a laid–off employee may respond to a
28 certain rebuttal; authorizing certain persons to bring a civil action for certain
29 enforcement and remedies; authorizing a court to take certain actions on certain
30 findings; requiring a court to consider certain information when determining the
31 amount of certain awards; requiring a court to award certain reasonable fees and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



costs under certain circumstances; authorizing the Administration to adopt regulations; providing for the application of this Act; requiring a certain employer to provide a certain notice to a certain employee under certain circumstances within a certain period of time; requiring the Administration to report to the General Assembly on or before a certain date; defining certain terms; making this Act an emergency measure; and generally relating to employment at the Baltimore–Washington International Thurgood Marshall Airport.

BY adding to

Article – Labor and Employment

Section 3–718

Annotated Code of Maryland

(2016 Replacement Volume and 2020 Supplement)

Preamble

WHEREAS, COVID–19 is a respiratory disease that was first detected in China and has now spread across the globe, with multiple confirmed cases in Maryland; and

WHEREAS, On January 31, 2020, the United States Secretary of Health and Human Services declared a public health emergency based on the threat caused by COVID–19, and the President of the United States issued the Proclamation Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID–19) Outbreak on March 13, 2020; and

WHEREAS, On March 5, 2020, a state of emergency and catastrophic health emergency, in accordance with the Maryland Constitution and the Laws of Maryland, was proclaimed for the State; and

WHEREAS, The proclamation declaring a state of emergency has been renewed multiple times; and

WHEREAS, The World Health Organization announced on March 11, 2020, that it had characterized COVID–19 as a pandemic; and

WHEREAS, Since the declaration of a national public health emergency on January 31, 2020, and of a State public emergency on March 5, 2020, the COVID–19 pandemic has led to a dramatic decrease in travel through Baltimore–Washington International Thurgood Marshall Airport (BWI), with the number of total passengers using the airport decreasing by about 47.5% for the rolling 12–month period ending October 2020; and

WHEREAS, Many hundreds of travel–related workers have been separated from their jobs during the pandemic; and

WHEREAS, While federal, State, and local programs and efforts by some of Maryland’s nonprofit organizations have provided support to BWI workers in the short

term, what workers need most is the promise of a return to their previous jobs as the pandemic recedes and business returns; and

WHEREAS, Ensuring that employers honor their former employees' right to return will speed the transition back to a functioning labor market, will lessen the damage to Maryland's economy, and will help ensure that airport operations can quickly resume as the pandemic recedes and travel increases; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Labor and Employment

3–718.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “ADMINISTRATION” MEANS THE MARYLAND AVIATION ADMINISTRATION.

(3) “AIRPORT” MEANS THE BALTIMORE–WASHINGTON INTERNATIONAL THURGOOD MARSHALL AIRPORT.

(4) (I) “AIRPORT HOSPITALITY OPERATION” MEANS A BUSINESS THAT PROVIDES FOOD AND BEVERAGE, RETAIL, OR OTHER CONSUMER GOODS OR SERVICES TO THE PUBLIC AT THE AIRPORT.

(II) “AIRPORT HOSPITALITY OPERATION” DOES NOT INCLUDE AN AIR CARRIER CERTIFICATED BY THE FEDERAL AVIATION ADMINISTRATION.

(5) (I) “AIRPORT SERVICE PROVIDER” MEANS A PERSON THAT PERFORMS, UNDER CONTRACT WITH A PASSENGER AIR CARRIER, FOOD AND BEVERAGE CATERING FUNCTIONS AT THE AIRPORT.

(II) “AIRPORT SERVICE PROVIDER” DOES NOT INCLUDE AN AIR CARRIER CERTIFICATED BY THE FEDERAL AVIATION ADMINISTRATION.

(6) “COVERED ENTERPRISE” MEANS AN AIRPORT HOSPITALITY OPERATION OR AN AIRPORT SERVICE PROVIDER.

(7) “EMPLOYEE” DOES NOT INCLUDE MANAGERIAL, SUPERVISORY, OR CONFIDENTIAL EMPLOYEES OF AN EMPLOYER.

(8) "EMPLOYER" MEANS ANY PERSON, INCLUDING A CORPORATE OFFICER OR EXECUTIVE, WHO DIRECTLY OR INDIRECTLY OR THROUGH AN AGENT OR ANY OTHER PERSON, INCLUDING THROUGH THE SERVICES OF A TEMPORARY SERVICE OR STAFFING AGENCY OR SIMILAR ENTITY, OWNS OR OPERATES A COVERED ENTERPRISE WITHIN THE STATE AND EMPLOYS OR EXERCISES CONTROL OVER THE WAGES, HOURS, OR WORKING CONDITIONS OF AN EMPLOYEE.

(9) "LAID-OFF EMPLOYEE" MEANS AN EMPLOYEE:

(I) WHO WAS EMPLOYED BY THE EMPLOYER FOR 6 MONTHS OR MORE IN THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE LAYOFF; AND

(II) WHOSE MOST RECENT SEPARATION FROM ACTIVE SERVICE OCCURRED AFTER JANUARY 31, 2020, AND WAS DUE TO A GOVERNMENT ORDER, LACK OF BUSINESS, OR A REDUCTION IN FORCE FOR OTHER ECONOMIC, NONDISCIPLINARY REASONS.

(10) "LENGTH OF SERVICE" MEANS THE TOTAL OF ALL PERIODS OF TIME DURING WHICH AN EMPLOYEE HAS BEEN IN ACTIVE SERVICE, INCLUDING PERIODS OF TIME WHEN THE EMPLOYEE WAS ON LEAVE OR ON VACATION.

(B) (1) THIS SECTION APPLIES TO ALL EMPLOYEES REGARDLESS OF WHETHER THEY ARE COVERED BY A COLLECTIVE BARGAINING AGREEMENT.

(2) THIS SECTION MAY NOT BE CONSTRUED TO:

(I) INVALIDATE OR LIMIT THE RIGHTS, REMEDIES, AND PROCEDURES OF ANY CONTRACT OR AGREEMENT THAT PROVIDES GREATER OR EQUAL PROTECTION FOR EMPLOYEES THAN IS AFFORDED BY THIS SECTION; OR

(II) LIMIT A LAID-OFF EMPLOYEE'S RIGHT TO BRING AN ACTION FOR WRONGFUL TERMINATION.

(C) (1) AN EMPLOYER SHALL PROVIDE A LAID-OFF EMPLOYEE WITH WRITTEN NOTICE OF THE LAYOFF:

(I) 1. IN PERSON; OR

2. BY MAIL TO THE EMPLOYEE'S LAST KNOWN ADDRESS;

AND

1 (II) IF THE EMPLOYER POSSESSES SUFFICIENT CONTACT
2 INFORMATION, BY E-MAIL AND TEXT MESSAGE.

3 (2) AN EMPLOYER SHALL PROVIDE THE NOTICE REQUIRED UNDER
4 PARAGRAPH (1) OF THIS SUBSECTION AT THE TIME OF THE LAYOFF.

5 (3) THE NOTICE REQUIRED TO BE PROVIDED UNDER PARAGRAPH (1)
6 OF THIS SUBSECTION SHALL:

7 (I) INCLUDE:

8 1. NOTICE OF THE LAYOFF AND THE LAYOFF'S
9 EFFECTIVE DATE; AND

10 2. A SUMMARY OF THE RIGHT TO REEMPLOYMENT
11 UNDER THIS SECTION OR CLEAR INSTRUCTIONS ON HOW A LAID-OFF EMPLOYEE
12 MAY ACCESS THE INFORMATION; AND

13 (II) BE PROVIDED IN A LANGUAGE UNDERSTOOD BY THE
14 LAID-OFF EMPLOYEE.

15 (D) (1) SUBJECT TO PARAGRAPHS (2) AND (3) OF THIS SUBSECTION, AN
16 EMPLOYER SHALL OFFER A LAID-OFF EMPLOYEE ALL JOB POSITIONS THAT BECOME
17 AVAILABLE AND FOR WHICH THE LAID-OFF EMPLOYEE IS QUALIFIED.

18 (2) AN EMPLOYER SHALL EXTEND THE OFFER MADE UNDER
19 PARAGRAPH (1) OF THIS SUBSECTION:

20 (I) IN WRITING;

21 (II) BY REGISTERED MAIL TO THE LAID-OFF EMPLOYEE'S LAST
22 KNOWN PHYSICAL ADDRESS; AND

23 (III) IF THE EMPLOYER POSSESSES SUFFICIENT CONTACT
24 INFORMATION, BY E-MAIL AND TEXT MESSAGE.

25 (3) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, A
26 LAID-OFF EMPLOYEE IS QUALIFIED FOR A POSITION IF THE LAID-OFF EMPLOYEE:

27 1. HELD THE SAME POSITION OR A SIMILAR POSITION
28 WITH THE EMPLOYER AT THE TIME OF THE LAID-OFF EMPLOYEE'S MOST RECENT
29 SEPARATION FROM EMPLOYMENT BY THE EMPLOYER; OR

1 **2. WOULD BE QUALIFIED FOR THE POSITION WITH THE**
2 **SAME TRAINING THAT WOULD BE PROVIDED TO A NEW EMPLOYEE HIRED FOR THAT**
3 **POSITION.**

4 **(II) AN EMPLOYER SHALL:**

5 **1. FIRST OFFER A POSITION TO A LAID-OFF EMPLOYEE**
6 **WHO IS QUALIFIED UNDER SUBPARAGRAPH (I)1 OF THIS PARAGRAPH; AND**

7 **2. IF THE POSITION IS UNFILLED, THEN OFFER THE**
8 **POSITION TO A LAID-OFF EMPLOYEE WHO IS QUALIFIED UNDER SUBPARAGRAPH**
9 **(I)2 OF THIS PARAGRAPH.**

10 **(III) WHEN MORE THAN ONE EMPLOYEE IS ENTITLED TO A**
11 **PREFERENCE FOR A POSITION, AN EMPLOYER SHALL OFFER THE POSITION TO THE**
12 **LAID-OFF EMPLOYEE WITH THE LONGEST RECORD OF SERVICE WITH THE**
13 **EMPLOYER.**

14 **(4) AN EMPLOYER SHALL PROVIDE A LAID-OFF EMPLOYEE WHO IS**
15 **OFFERED A POSITION UNDER THIS SUBSECTION AT LEAST 10 DAYS AFTER THE DATE**
16 **THAT THE LAID-OFF EMPLOYEE RECEIVES THE OFFER TO ACCEPT OR DECLINE THE**
17 **OFFER.**

18 **(5) IF MORE THAN ONE EMPLOYEE MEETS THE PRIORITY**
19 **REQUIREMENTS UNDER PARAGRAPH (3) OF THIS SUBSECTION, THE EMPLOYER MAY**
20 **MAKE SIMULTANEOUS CONDITIONAL OFFERS OF EMPLOYMENT TO THE LAID-OFF**
21 **EMPLOYEES.**

22 **(6) IF AN EMPLOYER DECLINES TO REINSTATE A LAID-OFF**
23 **EMPLOYEE DUE TO LACK OF QUALIFICATION, WITHIN 30 DAYS AFTER MAKING THE**
24 **DECISION, THE EMPLOYER SHALL PROVIDE THE LAID-OFF EMPLOYEE A WRITTEN**
25 **NOTICE OF THE DECISION THAT IDENTIFIES THE REASONS FOR THE DECISION.**

26 **(E) A NEW EMPLOYER BECOMES SUBJECT TO THE REQUIREMENTS OF THIS**
27 **SECTION IF:**

28 **(1) THE OWNERSHIP OF THE COVERED ENTERPRISE CHANGED AFTER**
29 **THE SEPARATION FROM EMPLOYMENT OF A LAID-OFF EMPLOYEE, BUT THE NEW**
30 **OWNER OF THE COVERED ENTERPRISE IS CONDUCTING THE SAME OR SIMILAR**
31 **OPERATIONS AS ITS PREDECESSOR WAS CONDUCTING BEFORE JANUARY 31, 2020;**

32 **(2) THE FORM OF ORGANIZATION OF THE COVERED ENTERPRISE**
33 **CHANGED AFTER JANUARY 31, 2020; OR**

1 **(3) SUBSTANTIALLY ALL OF THE ASSETS OF THE COVERED**
2 **ENTERPRISE WERE ACQUIRED BY ANOTHER ENTITY THAT CONDUCTS THE SAME OR**
3 **SIMILAR OPERATIONS USING SUBSTANTIALLY THE SAME ASSETS.**

4 **(F) AT THE TIME AN EMPLOYER LAYS OFF EMPLOYEES, THE EMPLOYER**
5 **SHALL PROVIDE TO THE ADMINISTRATION THE FOLLOWING INFORMATION FOR**
6 **EACH LAID-OFF EMPLOYEE:**

7 **(1) NAME;**

8 **(2) POSITION OR CLASSIFICATION;**

9 **(3) DATE OF LAYOFF;**

10 **(4) LAST KNOWN MAILING ADDRESS; AND**

11 **(5) IF THE EMPLOYER POSSESSES SUFFICIENT INFORMATION, AN**
12 **E-MAIL ADDRESS AND A PHONE NUMBER TO WHICH TEXT MESSAGES MAY BE SENT.**

13 **(G) (1) THE ADMINISTRATION SHALL USE THE INFORMATION PROVIDED**
14 **UNDER SUBSECTION (F) OF THIS SECTION TO CONTACT LAID-OFF EMPLOYEES**
15 **ABOUT THEIR RIGHTS UNDER THIS SECTION AND OTHER STATE AND LOCAL**
16 **PROGRAMS AND SERVICES FROM WHICH THEY MAY BENEFIT.**

17 **(2) AT THE REQUEST OF A LAID-OFF EMPLOYEE, THE**
18 **ADMINISTRATION MAY PROVIDE THE LAID-OFF EMPLOYEE'S CONTACT**
19 **INFORMATION TO THIRD-PARTY ENTITIES PROVIDING NAVIGATION AND OTHER**
20 **SOCIAL SERVICES.**

21 **(H) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, EACH**
22 **EMPLOYER SHALL RETAIN THE FOLLOWING RECORDS FOR EACH LAID-OFF**
23 **EMPLOYEE FOR AT LEAST 2 YEARS:**

24 **(I) FULL LEGAL NAME;**

25 **(II) JOB CLASSIFICATION AT THE TIME OF SEPARATION FROM**
26 **EMPLOYMENT;**

27 **(III) DATE OF HIRE;**

28 **(IV) LAST KNOWN ADDRESS OF RESIDENCE;**

(V) LAST KNOWN E-MAIL ADDRESS;

(VI) LAST KNOWN TELEPHONE NUMBER; AND

(VII) A COPY OF THE WRITTEN NOTICE PROVIDED UNDER
SUBSECTION (C) OF THIS SECTION.

(2) THE 2-YEAR RETENTION PERIOD BEGINS ON THE DATE THE
WRITTEN NOTICE OF THE LAYOFF IS PROVIDED TO THE LAID-OFF EMPLOYEE.

(I) (1) (I) AN EMPLOYER MAY NOT TERMINATE, REFUSE TO EMPLOY,
REDUCE COMPENSATION FOR, OR OTHERWISE TAKE ANY ADVERSE ACTION AGAINST
AN INDIVIDUAL FOR:

1. SEEKING TO ENFORCE THE INDIVIDUAL'S RIGHTS
UNDER THIS SECTION BY ANY LAWFUL MEANS;

2. PARTICIPATING IN PROCEEDINGS RELATED TO THIS
SECTION;

3. OPPOSING ANY PRACTICE PROHIBITED UNDER THIS
SECTION; OR

4. OTHERWISE ASSERTING THE INDIVIDUAL'S RIGHTS
UNDER THIS SECTION.

(II) THE PROTECTION FROM ADVERSE ACTION UNDER THIS
PARAGRAPH APPLIES TO ANY INDIVIDUAL WHO MISTAKENLY, BUT IN GOOD FAITH,
ALLEGES NONCOMPLIANCE WITH THIS SECTION.

(2) THERE IS A REBUTTABLE PRESUMPTION THAT AN EMPLOYER'S
ACTION VIOLATED PARAGRAPH (1) OF THIS SUBSECTION IF:

(I) A LAID-OFF EMPLOYEE HAS EXERCISED RIGHTS OR
ALLEGED IN GOOD FAITH THAT THE EMPLOYER DID NOT COMPLY WITH THIS
SECTION; AND

(II) THE EMPLOYER SUBSEQUENTLY TERMINATED, REFUSED TO
EMPLOY, DEMOTED, OR OTHERWISE TOOK ADVERSE ACTION AGAINST THE LAID-OFF
EMPLOYEE WITHIN 60 DAYS AFTER THE LAID-OFF EMPLOYEE EXERCISED THE
EMPLOYEE'S RIGHTS.

1 **(3) ONCE THERE IS A REBUTTABLE PRESUMPTION, AN EMPLOYER**
2 **SHALL PROVE THAT THE SOLE REASON FOR THE ACTION WAS A LEGITIMATE**
3 **BUSINESS REASON.**

4 **(4) A LAID-OFF EMPLOYEE MAY REBUT THE EMPLOYER'S ASSERTED**
5 **LEGITIMATE BUSINESS REASON BY SHOWING THAT IT WAS A PRETEXT.**

6 **(J) (1) THIS SECTION MAY BE ENFORCED IN A CIVIL ACTION IN AN**
7 **APPROPRIATE CIRCUIT COURT BROUGHT BY THE ADMINISTRATION, OR BY ONE OR**
8 **MORE EMPLOYEES FOR AND ON BEHALF OF THEMSELVES OR OTHER SIMILARLY**
9 **SITUATED EMPLOYEES, OR THE EMPLOYEE OR EMPLOYEES MAY DESIGNATE AN**
10 **AGENT OR A REPRESENTATIVE TO MAINTAIN AN ACTION FOR AND ON BEHALF OF ALL**
11 **SIMILARLY SITUATED EMPLOYEES.**

12 **(2) IF A COURT FINDS THAT AN EMPLOYER HAS VIOLATED THIS**
13 **SECTION, THE COURT MAY:**

14 **(I) ISSUE AN INJUNCTION COMPELLING COMPLIANCE;**

15 **(II) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, ORDER**
16 **ANY AFFIRMATIVE ACTION AS APPROPRIATE, INCLUDING REINSTATEMENT OR**
17 **HIRING OF LAID-OFF EMPLOYEES WITH OR WITHOUT BACK PAY AND FRINGE**
18 **BENEFITS, OR ANY OTHER EQUITABLE RELIEF THAT THE COURT DEEMS**
19 **APPROPRIATE; AND**

20 **(III) ON A FINDING OF MALICE OR RECKLESS INDIFFERENCE TO**
21 **THE REQUIREMENTS OF THIS SECTION, ORDER COMPENSATORY DAMAGES,**
22 **PUNITIVE DAMAGES, AND TREBLE DAMAGES ON BEHALF OF A LAID-OFF EMPLOYEE.**

23 **(3) IN DETERMINING THE AMOUNT OF BACK PAY AND FRINGE**
24 **BENEFITS OWED, A COURT SHALL:**

25 **(I) DETERMINE THE AMOUNT OF EARNINGS OR WAGES THAT**
26 **THE LAID-OFF EMPLOYEE EARNED OR COULD HAVE EARNED WITH REASONABLE**
27 **DILIGENCE DURING THE PERIOD OF TIME IN QUESTION;**

28 **(II) DEDUCT FROM THE AMOUNT DETERMINED UNDER ITEM (I)**
29 **OF THIS PARAGRAPH ANY REASONABLE AMOUNTS THAT THE LAID-OFF EMPLOYEE**
30 **EXPENDED IN SEARCHING FOR, OBTAINING, OR RELOCATING TO NEW EMPLOYMENT;**
31 **AND**

32 **(III) REDUCE THE AMOUNT OF BACK PAY OWED BY THE AMOUNT**
33 **DETERMINED UNDER ITEM (II) OF THIS PARAGRAPH.**

1 **(4) IF A LAID-OFF EMPLOYEE PREVAILS IN A CIVIL ACTION UNDER**
2 **THIS SECTION, THE COURT SHALL AWARD REASONABLE ATTORNEY'S FEES AND**
3 **EXPERT WITNESS FEES AND COSTS AS PART OF THE COSTS RECOVERABLE.**

4 **(K) THE ADMINISTRATION SHALL ADOPT REGULATIONS TO CARRY OUT AND**
5 **ENFORCE THIS SECTION.**

6 SECTION 2. AND BE IT FURTHER ENACTED, That an employer shall provide the
7 notice required under § 3-718(c)(1) of the Labor and Employment Article, as enacted by
8 Section 1 of this Act, to a laid-off employee within 20 days after the effective date of this
9 Act if the layoff occurred before the enactment of this Act.

10 SECTION 3. AND BE IT FURTHER ENACTED, That, on or before December 31,
11 2022, the Maryland Aviation Administration shall report to the General Assembly, in
12 accordance with § 2-1257 of the State Government Article, on the effectiveness of this Act
13 in promoting employment stability and shall advise the General Assembly on the need for
14 any further legislative action.

15 SECTION 4. AND BE IT FURTHER ENACTED, That this Act is an emergency
16 measure, is necessary for the immediate preservation of the public health or safety, has
17 been passed by a yea and nay vote supported by three-fifths of all the members elected to
18 each of the two Houses of the General Assembly, and shall take effect from the date it is
19 enacted.