

# Workforce Development & Worker Protections

## RECOMMENDATIONS

Prepared For:  
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Prepared By:



# INTRODUCTION

A coalition of Maryland stakeholders developed recommendations and action steps to help Governor-elect Moore address key workforce and worker protections opportunities in the state such as: improving workforce shortages, creating opportunities for more high school and college graduates to access apprenticeships, creating inclusive workforce programming that supports our immigrant communities, and shifting agencies and programs toward a stronger focus on taking care of workers. The work groups engaged around these topics focused their recommendations on apprenticeships, implementing the Career and Technical Education (CTE) provisions of the Blueprint for Education, specific strategies to expand key workforce sectors such as health care, and ensuring that all workers who are harmed are made whole and protected from retaliation. The stakeholders included representatives from labor, legal services, and advocacy organizations. Topics of discussion included but were not limited to: addressing workforce shortages, creating economic opportunities for skilled trades, and building a strong economy for Maryland by investing in workforce development and worker protections.

In recent years, Maryland has raised the minimum wage, expanded apprenticeships, and, in the Kirwan school reform law, set robust goals and funding to integrate Career and Technical Education with apprenticeships. It's time for our next governor to lead our state to reach our goal of good jobs at good wages for all. All it takes is vision and strategy.

# KEY TAKEAWAYS

- The Department of Labor should shift its focus from counseling businesses to asserting and protecting workers rights.
- More stakeholder engagement is needed; seek input from labor and people who work in the industry when developing standards and regulations.
- Maryland Occupational Safety and Health (MOSH) needs to function as its mission intended.
- Ensure workers who are harmed are made whole and they are protected from retaliation.
- Investing in career and technical education (CTE) in our public schools is equally as important as baccalaureate education paths.
- Coordination and collaboration through local workforce investment boards, local school districts, unions, and community colleges is critical to improving workforce development efforts across the state.
- Workforce shortages in sectors such as home health and health care aren't only an economic issue- they create barriers to care, contribute to health disparities, and hamper our health care institutions.
- Maryland's immigrant community should be valued and recognized as a critical part of our workforce and economic success.
- Public sector workers are a large, important workforce too. Even when workers aren't state employees, publicly funded jobs should be good jobs that include workers in the social safety net and allow workers to support themselves and their families.

# REPORT GUIDE

## WORKER PROTECTIONS • RECOMMENDATIONS

[RECOMMENDATION #1](#): Strengthen the vision for the Department of Labor (DoL)

[RECOMMENDATION #2](#): Strengthen Maryland Occupational Safety and Health (MOSH) and reinvest in MOSH enforcement and oversight

[RECOMMENDATION #3](#): Strengthen worker protections and prevent retaliation for workers who file complaints, and whistleblowers

[RECOMMENDATION #4](#): Expedite Maryland's \$15 minimum wage

[RECOMMENDATION #5](#): Implement the new paid family and medical leave law and staff the Department of Labor to begin collecting contributions to the fund

[RECOMMENDATION #6](#): Reform Unemployment Insurance

## WORKFORCE DEVELOPMENT • RECOMMENDATIONS

[RECOMMENDATION #1](#): Make significant investments in workforce development

[RECOMMENDATION #2](#): Implement the Blueprint for Maryland's Future and grow registered apprenticeships

[RECOMMENDATION #3](#): Integrate degree training with apprenticeships & end age and degree discrimination

[RECOMMENDATION #4](#): Expand career counseling and job matching centers across the state

[RECOMMENDATION #5](#): Heavily invest in healthcare and home health workforce development

[RECOMMENDATION #6](#): Review past recommendations for supporting Maryland's immigrant workforce

## OTHER KEY TAKEAWAYS

# WORKER PROTECTIONS • RECOMMENDATIONS

## RECOMMENDATION #1: Strengthen the vision for the Department of Labor (DoL)

**Context:** The Hogan Administration approached workforce and labor issues from the perspective of providing counseling and assistance to employers and businesses. This was a shift away from the O'Malley administration's focus on strong enforcement and balancing the needs of employers with those of workers. During Governor O'Malley's tenure, Maryland was seen as a leader on workplace safety and worker rights, a status the state should seek to achieve again by renewing the focus of the Department of Labor to asserting and protecting workers rights, engaging with all stakeholders, particularly labor and people who work in the industries being regulated. It should also be the DoL's mission to ensure workers who are harmed are made whole, and they are protected from retaliation.

### **Recommended Actions**

#### **Appoint a Secretary for the Maryland Department of Labor who:**

- Has professional qualifications and expertise in labor relations, including:
  - ◆ Deep understanding of the needs of low-wage and vulnerable workers;
  - ◆ Demonstrated knowledge of state and federal labor law and the capabilities and responsibilities of state Department of Labor operations.
  - ◆ Regulatory enforcement, particularly relating to occupational health and safety; and
  - ◆ A commitment to workplace safety, worker's rights, transparency, enforcement and accountability.
- Is a good collaborator with a track record of success working with labor, employers, community organizations, and nonprofit stakeholders.
- Believes DoL should:
  - ◆ Be an inclusive, informed, diverse and responsive agency;
  - ◆ Act as an industry watchdog;
  - ◆ Use its regulatory authority proactively and responsively;
  - ◆ Prioritize enforcement;
  - ◆ Coordinate with all stakeholders; and
  - ◆ Support unionization.

#### **Improve coordination and accountability by:**

- Creating more methods for formal collaboration on development of standards and regulations.
- Engaging with labor and nonprofit stakeholders
- Conducting proactive enforcement campaigns in high-violation industries.
- Developing regulations proactively, not only reactively.

## **RECOMMENDATION #2:** Strengthen Maryland Occupational Safety and Health (MOSH) and reinvest in MOSH enforcement and oversight

**Context:** MOSH is not operating at the same level as it was before the Hogan administration. The agency is failing to open inspections in response to complaints by former workers or other serious hazard complaints filed through the agency’s website (E complaints). The issues are so significant that the U.S. Occupational Safety and Health Administration (OSHA) has issued findings in the annual reports from [FY2021](#) and [FY2020](#). In addition, federal law from 2015 requires the state to raise penalties (action requiring legislation); **Maryland has been out of compliance for six years.**

MOSH also needs to expand its regulatory authority to ensure it is proactively developing, updating, and implementing regulations to ensure Maryland workplaces are safe for workers. As an example, there are serious concerns from labor and workers regarding recently drafted heat stress regulations, as noted in [public comments](#):

“The proposed standard does not contain any requirements for employers to control heat exposure or prevent heat-related illness or death. The Maryland proposed heat standard is fundamentally flawed in that it does not require employers to implement any protections to prevent work-related heat illness or death. In fact, the draft is so flawed that it may leave workers with less protection than they have now under the general duty clause of the MOSH law. This draft is an insult to all workers in the state of Maryland that are exposed to dangerous levels of heat.”

### **Recommended Actions**

**First 100 Days** • Increase OSHA penalties to align with federal levels as required by federal law in 2016. Maryland is one of a handful of states that is not in compliance.

- "Civil penalties should be a credible deterrent that influences behavior far and wide," [said U.S. Secretary of Labor Thomas E. Perez](#). "Adjusting our penalties to keep pace with the cost of living can lead to significant benefits for workers and can level the playing field for responsible employers who should not have to compete with those who don't follow the law."
- [Inflation Adjustments for Civil Monetary Penalties](#)

**First 100 Days** • Revise the 2022 workplace heat stress standard to better align it with the intent of [HB 722/SB 434](#) as passed by the General Assembly in 2020 and in response to [public comments](#) from over 30 nonprofits and labor organizations and dozens of individuals. The revised standard should be accompanied by:

- Public outreach and education on the dangers of heat stress.
- Significant enforcement of the workplace heat stress standard from May to September each year.

**First Year** • The state should increase funding in order to provide adequate staffing for MOSH; sufficient staffing will enable MOSH to investigate and resolve complaints quickly and reliably.

- Recommended by the [O'Malley transition in 2006](#) - "Conduct a study to determine the staffing and salary levels commensurate with enforcement responsibilities and advocate for increases where required."

### **First Term • Create a MOSH Standards Board.**

- Include key stakeholders (labor, industry, community, public health experts)
- Give the board authority to to make recommendations for legislation and regulations including
  - ◆ Reviewing petitions for new standards/regulations
  - ◆ Making recommendations to the Commissioner for standards to improve worker safety
  - ◆ Periodically assesses/evaluates enforcement and educational performance of MOSH
- Mandate promulgation of an injury and illness prevention program standard

### **First Term • Reinvigorate MOSH enforcement and oversight.**

- Hire leaders who understand the hazards and stressors of work; especially for essential/frontline work, heat exposure, public health risks such as airborne infections, and stress.
- Utilize MOSH regulations to provide more meaningful enforcement tools such as excluding repeat violators of state law from state and local contracts, and enacting criminal penalties.
  - ◆ Recommended by the [O'Malley transition in 2007](#) - "Systematically investigate industries with high numbers of wage, hour and safety and health violations and target repeat violators."
- Improve public education and outreach to the public on industry and occupational safety.
  - ◆ Recommended by the [O'Malley transition in 2006](#) - "Increase public information efforts and expand outreach to increase awareness of rights and safety requirements and to reduce statutory violations."
- Launch proactive enforcement campaigns with a focus on high-violation industries and state and local governments.
- Expand MOSH research and data collection capacity (create new funding stream through Workers' Compensation) to support more effective standard setting and enforcement.
- Ensure all available federal funding is being utilized, and the state is providing adequate funding for vaccinations and PPE that protects workers from COVID-19. Extend these protections to influenza and emerging epidemics/pandemics.
- Improve data collection by:
  - ◆ Collecting data on pandemic illness and deaths, broken down by occupation & industry. Use this data to inform where stronger protective guidelines are needed.
  - ◆ Coordinating workers comp data with MOSH and OSHA data
  - ◆ Collecting data on black lung/exposure to mining dust

### **First Term • MOSH should develop new workplace safety standards (via regulation), and ensure all stakeholders are consulted in developing standards, including employers, labor, and legal services organizations.**

- Create a new MOSH unit to review, revise and draft regulations.
- Issue a **universal injury and illness prevention program standard**: Require all employers to assess workplaces for hazards and develop a (written) program to address all identified hazards.
- Amend the current **emergency response standard** to require all employers, whenever a state or federal emergency declaration is made, to immediately conduct a risk assessment for potential employee exposure to hazards associated with the emergency. Require employers to use the assessment to develop a protective program.
- Develop an **indoor air quality standard** for all public buildings and apply for federal grants to improve indoor air quality and HVAC systems as they become available.

## Supporting Resources

- [FY 2021 Comprehensive Federal Annual Monitoring Evaluation \(FAME\) Report](#)
- [FY 2020 Comprehensive Federal Annual Monitoring Evaluation \(FAME\) Report](#)
- [Maryland Heat Illness Prevention Coalition - Public Comments](#)
- [Press Release: US Department of Labor announces new rules to adjust civil penalty amounts](#) (US DoL)
- [Inflation Adjustments for Civil Monetary Penalties](#) (Federal Register)
- [Report on the Department of Labor, Licensing, and Regulation, 2006](#) (Maryland Transition)
- Labor & Employment - Occupational Safety & Health - Heat Stress Standards ([HB 722/SB 434](#))

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### **RECOMMENDATION #3:** Strengthen worker protections and prevent retaliation for workers who file complaints, and whistleblowers

**Context:** There are several gaps in Maryland’s worker protection laws that leave workers vulnerable and unable to truly avail themselves of their rights. Stronger anti-retaliation, whistleblower, and misclassification laws are necessary to ensure Maryland workers are receiving appropriate wages; are able to access benefits such as paid family and medical leave, and paid sick leave; and are provided reasonable accommodations when required by law.

Unlike the wage laws of many other states, Maryland’s wage laws lack effective anti-retaliation provisions. As a result, when employers retaliate against workers who complain about unpaid wages, workers are often left without a remedy. This misconduct – wage theft facilitated by actual or threatened retaliation – is prevalent in many low-wage industries. [One national study](#) found that forty-three percent of respondents who had tried to form a union or who had complained to a supervisor about a serious problem, such as not being paid the minimum wage, experienced reprisal in the form of firing, suspension, or threats to cut hours or pay or call immigration authorities. Another twenty percent of workers chose not to complain at all in order to avoid these sorts of retaliatory responses. Immigrant workers are particularly at risk. A [survey](#) of low-wage workers in Los Angeles found that almost 76 percent of undocumented immigrant employees worked off-the-clock without pay, and that 85 percent did not receive overtime wages they had earned. The most frequent form of retaliation that surveyed workers suffered when they complained about wages or other working conditions was a threat by an employer either to fire them or to report them to immigration authorities. Workplace retaliation not only harms individual workers by deterring them from recovering hard-earned wages that have been unlawfully denied to them – but it also allows unscrupulous businesses to undercut their law-abiding competitors. A business that underpays workers, and then uses retaliatory threats or action to silence their complaints, can turn a higher profit than a business that acts in accordance with the wage laws.



Maryland should also develop an effective statutory procedure for whistleblowers to come forward – without fear of losing their livelihoods. Maryland currently has no meaningful statute to protect whistleblowers seeking in good faith to raise issues of health, safety, or legal compliance. It should be easier for workers to report safety and health violations, including through the use of anonymous reports and systems developed for access by non-english speaking workers. And workers who are retaliated against should be able to bring a lawsuit against their employer under the protection of Maryland statute.

Misclassification is another way workers can be denied workplace protections. Independent contractor misclassification occurs when a worker who should be considered an employee – and receive a W-2 tax form – is treated as a self-employed “independent contractor,” and receives a 1099 tax form instead. When employers misclassify their employees as independent contractors, it hurts everyone. It hurts misclassified workers, who may not receive employment-related protections like sick and safe leave, unemployment insurance, workers’ compensation, overtime pay, or even minimum wage – and who may be subject to a crushing self-employment tax burden rather than receive a tax refund. It hurts businesses that follow the law and correctly classify their employees, subjecting them to unfair competition. And it hurts the state of Maryland, which loses employment tax revenue when employees are misclassified. Misclassification is particularly prevalent in low-wage jobs and in industries where women and people of color are overrepresented, such as house cleaning and in-home care. Lack of attention to this pernicious practice has led the problem to fester in our state, forcing vulnerable workers outside the social safety net exactly when safety net protections are most needed.

## **Recommended Actions**

### **First Term • Broad Based Worker Protections**

- In addition to increased funding for MOSH, additional funding and staffing is needed for the Maryland Commission on Civil Rights, Employment Standards Service (ESS).
  - ◆ ESS has historically had insufficient and irregular staffing and funding. ESS was [identified by the O’Malley transition team](#) as a priority in 2006, “DLLR should ensure the Employment Standards Service (ESS) is fully staffed and funded. DLLR elected to eliminate funding for the ESS twice in the past 16 years resulting in a disbanding of staff and termination of activity. When first terminated in 1991, the unit possessed an investigative staff of 35. It was reestablished in 1994 but with only 3 wage investigators and limited regulatory authority. ESS was again stripped of its funding in FY 2006, resulting in the loss of all experienced wage and hour investigators. The unit was re-funded for 2007, with an increase in slotted investigator positions from 3 to 6, but with only two thus far hired by January, ‘07.”
- Provide greater protection to workers through approaches like proactive monitoring of employers and industries with high rates of violating labor laws.
  - ◆ Recommended by the [O’Malley transition in 2006](#) - “Systematically investigate industries with high numbers of wage, hour and safety and health violations and target repeat violators.”
- Pass legislation requiring paystub transparency to deter deceptive payroll practices, alleviate misunderstandings between employers and employees about wages due, help identify true wage violations, and level the playing field for law abiding employers
- Improve outreach to increase awareness of worker protections and boost workers’ confidence in meaningful enforcement.

- ◆ Recommended by the [O'Malley transition in 2006](#) - "DLLR should establish effective outreach and public information efforts as proactive means to decrease statutory violations of wage and employment laws and better protect Maryland workers."
- Cultivate partnerships between enforcement agencies and worker advocates.
  - ◆ Recommended by the [O'Malley transition in 2006](#) - "Develop pilot program to engage community participation, establish partnerships and build local capacity to address chronic issues of wage and employment violations."
- Establish confidential processes for workers to report unsafe working conditions.

### **First Term • Misclassification**

- Combat misclassification of workers as independent contractors in all sectors, particularly low-wage workers, both by passing legislation and through targeted enforcement campaigns by DOL.
- Ensure that all workers employed by state contractors and Medicaid providers and paid with public funds are properly classified as employees

### **First Term • Retaliation**

- Pass legislation strengthening retaliation protections in Maryland's wage laws.
- Codify anti retaliation protections including job loss, deportation, demotions, threats of retaliation/scare tactics.
- Improve transparency of whistleblower/retaliation case data: How many complaints are being filed, what was the result, how many are dismissed, how long does it take for cases to be resolved, etc.

### **First Term • Whistleblower Complaints**

- Pass legislation protecting whistleblowers who complain or seek to shine a light on health, safety, or legal violations.
- MOSH should develop a strategy for ensuring that a safety and/or health hazard investigation or inspection is conducted in accordance with MOSH policies and procedures "**everytime** a whistleblower complainant alleges a safety and health concern." [FY2021 FAME Report, OSHA](#)
  - ◆ "MOSH did not generate an associated UPA or inspection for whistleblower complaints in six of 14 (43%) whistleblower complaints alleging serious safety and health concerns." [FY2020 FAME Report, OSHA](#)

### **Farm Worker Protections**

- Evaluate in particular how to extend worker protection laws and regulations to food and farm workers, including those on temporary work permits like H2A.
- Collect and report data on pesticide use to provide information about farm worker risks and exposures. See recommendations in the Agriculture report for more information on pesticide exposure and the need for data and transparency.
- Create a process and remove barriers to [enable migrant farmworkers to have representation](#).
- Create an Advisory Council or a Director-level position to identify the needs of farmworkers and provide resources to support farmworkers in Maryland.

## Sources & Supporting Resources

- [Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities, Report 2009](#)
  - [Wage Theft and Workplace Violations in Los Angeles, Survey](#) (UCLA Labor Center)
  - [Report on the Department of Labor, Licensing, and Regulation, 2006](#) (Maryland Transition)
  - [FY 2021 Comprehensive Federal Annual Monitoring Evaluation \(FAME\) Report](#)
  - [FY 2020 Comprehensive Federal Annual Monitoring Evaluation \(FAME\) Report](#)
  - [Collective Bargaining Rights for Farmworkers](#) (National Agricultural Law Center)
  - David J. Rodwin, *Independent Contractor Misclassification is Making Everything Worse: The Experience of Home Care Workers in Maryland*, 14 St. Louis U. J. Health L. & Pol'y (2020), available at <https://scholarship.law.slu.edu/jhlp/vol14/iss1/5>.
  - Sarah Leberstein & Catherine Ruckelshaus, National Employment Law Project, *Independent Contractor vs. Employee: Why Independent Contractor Misclassification Matters and What We Can Do to Stop It* (2016)
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## RECOMMENDATION #4: Expedite Maryland's \$15 minimum wage

**Context:** In 2019, the General Assembly passed legislation to increase [Maryland's minimum wage](#) to \$15 an hour by January 1, 2025 for employers with 15 or more employees and by January 1, 2026 for employers with 14 or employees giving employers 5-6 years to reach the \$15 minimum wage. Some local jurisdictions (Montgomery, Prince George's and Howard counties, and Baltimore City) have passed local minimum wage increases accelerating and/or exceeding the state minimum wage. While Maryland's minimum wage law is better than most states, it's far behind the estimated \$19.74 [identified by MIT](#) as the average "living wage" for a single adult with no dependents in the state of Maryland. Unfortunately, [a \\$15 minimum wage is already not enough](#), and by the time the \$15 minimum wage is standard across the state, the minimum wage will be even further behind the living wage. Maryland must accelerate implementation of the \$15 minimum wage, eliminate the tipped worker exemption, and index the minimum wage to inflation to move the state closer to a living wage for all.

According to [the U.S. Department of Labor](#), "when the Fair Labor Standards Act (FLSA) established minimum wage and overtime protections in 1938, most domestic workers were excluded in a nod to Southern senators unwilling to endorse a law that would expand labor protections to a largely African-American workforce. Congress amended the law in 1974 to extend protections to domestic workers, but limited these protections with an exclusion known as the companionship exemption."

## Recommended Actions

**First Year** • Accelerate the minimum wage increase to \$15 per hour by the end of 2023 and restore the categories of workers cut out of the 2019 bill.

- Restore categories of workers excluded including agricultural workers and young workers under 20 years of age.
- Eliminate the training wage.
- Remove language exempting seasonal employers.
- Apply the minimum wage law equally regardless of employer size.
- Index future minimum wage increases to inflation.
- Pass legislation to eliminate the subminimum wage for tipped workers, currently capped at \$3.63 per hour.

**First Term** • The next administration should prioritize legislation that [increases wages for Medicaid-funded direct care workers](#), similar to “living wage” laws in effect in Maine and D.C.

## Sources & Supporting Resources

- [Maryland Minimum Wage and Overtime Law - Employment Standards Service \(ESS\)](#) (MD DoL)
  - [Living Wage Calculator](#) (MIT)
  - [“\\$15 an hour isn’t enough: U.S. workers need a living wage” - Article](#) (MIT)
  - [Fact Sheet: Application of the Fair Labor Standards Act to Domestic Service, Final Rule](#) (US DoL)
  - [Maryland Department of Labor—Division of Labor and Industry Annual Reports MEMO](#)
  - [Making Care Work Pay: How A Living Wage For LTSS Workers Benefits All](#) (Health Affairs)
  - [Expanding Home Care Options in Maryland](#) (MDCEP)
  - Labor and Employment – Payment of the Minimum Wage Required (Fight for Fifteen) ([HB 664](#))
  - [National Employment Law Project fact sheet on raising Maryland’s minimum wage to \\$15 by 2023](#) (NELP)
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**RECOMMENDATION #5:** Implement the new paid family and medical leave law and staff the Department of Labor to begin collecting contributions to the fund

**Context:** The General Assembly passed [HB 8/SB 275](#) during the 2022 legislative session to create a state-wide paid family and medical leave program.

The Maryland General Assembly in 2022 passed the Time to Care Act, which establishes a Family and Medical Leave Insurance (FAMLI) program through which employees may take up to 12 weeks of paid leave from their jobs to care for new children, other family members with serious health conditions or disabilities, the circumstances surrounding a family member's military deployment, or for themselves.

The program will provide wage replacement and job protection production during an employee's leave period. The program will replace an employee's wages during the leave on a sliding scale, with benefit payments ranging from \$50 to \$1000 per week. The benefit level is calculated based on the employee's weekly wage. The benefit formula is progressive, providing lower wage workers with a higher percentage of their total wages. The program will also ensure that employees who take leave will not lose their jobs.

Outstanding issues in implementation of the law remain, including the contribution rate, the share of the contribution to be paid by the employer and employee, and technical fixes to the 2022 legislation.

### **Recommended Actions**

**First 100 Days** • The State should set a reasonable contribution rate and an equitable share to be paid jointly by employer and employee as well as passing legislation to make technical fixes to last year's bill.

**First 100 Days** • Convene an advisory group to assist with regulation development and program planning.

**First Year** • Build capacity at the Department of Labor to administer the paid family and medical leave program and begin collecting contributions to the fund.

**First Year** • Establish an equity focused framework for implementation of the bill:

- [Claims administration should remain with DoL and not be privatized](#)
- Create an application process that is accessible to all
  - ◆ Social Security numbers should not be required to access the online platform or call center representatives
  - ◆ Call centers should offer language accessibility
  - ◆ Online applications should be available in multiple languages
  - ◆ Streamline the medical documentation process recognizing variations in technological accessibility and literacy
  - ◆ Beta test with workers and community based organizations
- Design data systems to provide disaggregated data by class, race, gender and zip code
- Develop a funded outreach and communications plan that is targeted and collaborative

- ◆ Educational efforts for applicants should include not just program awareness but also program understanding
  - Applicants need to know how to navigate the program successfully and confidently
- ◆ Outreach efforts should be coordinated with sister agencies including the Comptroller's office, Department of Human Services and Department of Health
- Recognize the importance of community partnerships
  - ◆ Create a grant program for community based organizations to partner with DOL in outreach efforts that funds education for the community, employers, medical providers, and childcare providers.
  - ◆ Fund community based organizations to assist workers with applications
- Promulgate regulations that will ensure fairness and flexibility
  - ◆ Ensure any businesses that opt to use a private plan have coverage that meets or exceeds all components of the state plan
  - ◆ Calculate a tipped workers average weekly wage using wages and tips
  - ◆ Protect the portability of the benefit if a worker changes jobs

## **Sources & Supporting Resources**

- [Maryland's New Paid Family and Medical Leave - Fact Sheet](#) (Time To Care)
- Labor and Employment – Family and Medical Leave Insurance Program – Establishment (Time to Care Act of 2022) ([SB 275](#))
- [HB 8/SB 275 - Witness Testimony](#)
- [Time to Care FAQ](#)
- [Early Lessons from D.C.'s Paid Leave Program](#) (CLASP)

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## **RECOMMENDATION #6:** Reform Unemployment Insurance

**Context:** After a [series of failures](#) by Maryland's Unemployment Administration to adequately meet its obligation to provide timely unemployment benefits to eligible applicants, the General Assembly passed a series of corrective bills to increase oversight and ensure sufficient benefits are being provided to unemployed Marylanders:

- [HB 907/SB 817](#) - Study on System Reforms
- [HB 908/SB 816](#) - Employer Contributions and Reimbursement Payments
- [HB 1139/SB 818](#) - Maryland Department of Labor – Accountability and Oversight

Despite the significant issues within the Unemployment Administration, which have even resulted in a [class action lawsuit](#), the Unemployment Administration is still under-resourced.

As [outlined by the Maryland Center on Economic Policy](#):

*Understaffing and outdated technology hampered the state in getting help to workers who needed it during the COVID-19 pandemic, leaving thousands of workers to wait weeks or months to receive payments they were owed, as bills piled up . . . Most Maryland workers receiving unemployment benefits were cut off when federal emergency unemployment programs expired on Labor Day 2021. The basic unemployment insurance program's eligibility rules simply do not reflect today's economy. Maryland's current unemployment benefits are far too low to support a basic standard of living. This problem was less urgent while federal emergency benefit expansions were in place, but those programs have now expired.*

## **Recommended Actions:**

**First 100 Days** • [Fix administrative problems by implementing SB 893 \(Chapter 65\)](#) as passed by the General Assembly in 2021. State leaders must implement this legislation faithfully, ensure unemployment administration is funded adequately, and resist the temptation to cut back as the current crisis recedes from memory.

**First Year** • Modernize eligibility rules by expanding eligibility to include app-based workers, self-employed workers, and those with irregular employment history or low earnings.

**First Year** • **Strengthen benefit by increasing the cap on weekly unemployment benefits as well as the replacement rate used to calculate benefits.** The state could aim to increase the average weekly benefit from its current, deeply inadequate level (\$357), to a level that can support a basic living standard at least for a single worker without children. In the Baltimore metropolitan area, this requires an income of \$744 per week, according to the Economic Policy Institute.

**First Year** • **Protect unemployment insurance claimants who are overpaid due to agency error rather than fraud.** Even when Marylanders are overpaid unemployment benefits through no fault of their own, Maryland law currently allows the state to recover overpaid benefits by keeping 100% of any unemployment benefits that a claimant may be eligible for in the future, punishing unemployed Marylanders who did nothing wrong. To address this issue, many states provide that for non-fraud overpayments only, when claimants are overpaid, the state can keep 50% of the unemployment benefits but the claimant gets the remaining 50%. This balances the state's interest in recovering overpaid benefits with the claimant's interest in surviving. Maryland should pass such legislation.

## **Sources & Supporting Resources**

- [Here's what's going on with Maryland's unemployment system after a change left many unable to submit weekly claims - Article](#) (Baltimore Sun)
- Unemployment Insurance – Study on System Reforms ([HB 907/SB 817](#))
- Unemployment Insurance – Employer Contributions and Reimbursement Payments ([HB 908/SB 816](#))
- Unemployment Insurance – Maryland Department of Labor – Accountability and Oversight ([HB 1139/SB 818](#))

- [Gorres et. al. v. Robinson - Class Action Lawsuit](#)
- [Budgeting for Opportunity: Maryland's Workforce Development Policy Can be a Tool to Remove Barriers and Expand Opportunity](#) (MDCEP)



# WORKFORCE DEVELOPMENT • RECOMMENDATIONS

## RECOMMENDATION #1: Make significant investments in workforce development

**Context:** Federal funding formulas establish a floor for workforce development funding. These funding levels are often identified as inadequate, which is a real problem that Congress should address. However, the state is not prevented from investing more in workforce development than required. Maryland should use more state resources to target the specific workforce development needs of our state, to clear wait lists, and get workers the help they need. In addition to direct workforce funding, continuing to invest in Maryland's community colleges will help the state address workforce training and education needs.

### Recommended Actions

#### **First Year** • Provide enough funding for workforce development services so that everyone who wants them, and is eligible, is able to receive services.

- Thousands of Maryland workers [want and are eligible for workforce development services but do not receive any](#) because of inadequate funding.
- This problem is most severe when it comes to vocational rehabilitation services for workers with disabilities. There is evidence that the state currently underinvests in WIOA Title I programs and correctional education as well.
- While insufficient federal funding is an important factor for these service gaps, the state's hands are not tied.

#### **First Year** • Invest in community colleges, which are an essential component of both our workforce development system and our system of public higher education.

- The state should strengthen its investments in community colleges and ensure that students are not locked out by unaffordable tuition, fees, living expenses, or administrative hurdles.
- Increase funding of Promise Scholarships to ensure no eligible student pays community college tuition out of pocket.

#### **First Year** • Strengthen support for higher education (including community colleges and four-year institutions) to [prevent continued, unaffordable growth in tuition and fees](#).

#### **First Year** • Dismantle barriers to employment. The state reports that workers receiving workforce development services face an array of barriers to employment, but most participants do not receive supportive services through these programs.

- DoL should assess and identify solutions to address barriers to employment (such as transportation and access to affordable childcare).
- Invest in programs that address barriers to employment while strengthening broader community investments in the foundations of thriving communities, that make it easier for workers to access opportunities.

#### **First Year** • Focus occupational training on marketable skills. Workers benefit most when occupational training focuses on marketable skills that can open up a range of job options and lay the groundwork for

career advancement. While businesses benefit from highly customized training services, it is essential to ensure that workers gain a skill set that does not tie them to a specific employer.

## Sources & Supporting Resources

- [Budgeting for Opportunity: Maryland's Workforce Development Policy Can be a Tool to Remove Barriers and Expand Opportunity \(MDCEP\)](#)
  - [O'Malley Council for New Americans & Similar Programs - Renewing Immigrant Integration \(2009\)](#)
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**RECOMMENDATION #2:** Implement the Blueprint for Maryland's Future and grow registered apprenticeships

**Context:** “To meet world-class standards, Maryland needs to [grow the number of workers in apprenticeships](#) each year from less than 12,000 today to at least 80,000 (equivalent to the rates in the UK and Australia).” That will require sustained commitment, substantial public investment in both the infrastructure of apprenticeships and the related instruction, and public embrace of career pathways based on skills, not just degrees. Federal funds can offset some of the costs, but, as Maryland does with degree training, the state needs to commit to adequate state funding. The Blueprint for Education establishes a plan to scale up high school registered apprenticeships through Career and Technical Education (CTE) related classroom instruction. The Blueprint establishes a benchmark of at least 45% of high school graduates completing a high school level apprenticeship by 2031.

### Recommended Actions:

**First 100 Days • First Year • Implement the Blueprint for Maryland's Future apprenticeship requirement to scale up the level of high school registered apprenticeships with career and technical education (CTE) to have at least 45% of high school graduates attaining a high school level of an apprenticeship by 2031.** The goal is to reach 80,000 apprenticeships by 2030.

**First 100 Days • Set numerical goals and timetables for apprenticeships by sector beginning with sectors with the highest needs such as IT, health care, construction, business, and public services (includes accounting, HR, public safety, and education).**

**First Term • Establish a minimum 5 year investment in creating performance-based incentives for public and private apprenticeship intermediaries to:**

- Start up more apprenticeships
- Market apprenticeships to employers
- Help design the programs
- Recruit the apprentices
- Advise employers
- Find the appropriate academic coursework called “related instruction”

- Build high quality local career counseling and matching agencies and state apprenticeship staff to support them.

## Sources & Supporting Resources

- [Sen. Rosapepe: Registered Apprenticeships Can Fix Maryland's Broken Labor Market](#) (Maryland Matters)
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### **RECOMMENDATION #3:** Integrate degree training with apprenticeships & end age and degree discrimination

**Context:** There is a frequent misperception that degree programs and apprenticeships are at odds, when in reality, there is no inherent conflict, and apprenticeships and degrees can be integrated. The difference is that degrees are time-based, while off-the-job training and apprenticeships can be time or competency-based and include on-the-job training.

Degree apprenticeships, where apprentices earn college credit for their off-the-job and on-the-job training is one solution. This is already in place for many industries. For example, a high school-trained certified nurse assistants could earn community college credits as they train for their RN, AA degrees and licenses. Two of the highest cost, lowest value labor market policies are problematic degree and minimum age requirements. When the thresholds for entry are too high, they deny opportunity to too many skilled workers and create skills shortages for too many employers.

Ending the degree discrimination, which some employers, such as the State government, are already doing on their own, would materially improve the efficiency and capacity of the labor market – at zero cost. State law sets 16 as the minimum age for most jobs. However, many employers (including the state) often set a higher minimum – generally 18, but occasionally 21. Banning age discrimination from age 16 could help workers and employers – and is critical to reaching the Blueprint for Education law goals for High School Level Apprenticeships.

### **Recommended Actions:**

**First 100 Days** • [Coordinate service delivery](#) so learners can seamlessly transition to education, training, and careers. This would involve establishing cross-training among a wide array of service providers, so that staff members making referrals are aware of the range of services and participation requirements.

**First Year** • Maryland can create degree apprenticeships in any field, simply by directing the colleges and licensing boards to accept the credits and providing incentive funding to do it sooner rather than later.

**First Year** • **Banning age discrimination from 16 could help workers and employers – and is critical to reaching the Blueprint for Maryland's Future goals for High School Level Apprenticeships.** OSHA's student learner agreement can be used to hire those under 18 by utilizing a curriculum-based program to supplement on the job learning. Industry can utilize intermediaries to develop online curricula.

**First Year** • **Banning the degree box in employer recruitment would help workers and employers.** There are occupations in which licensing rules require high school and college degrees, but not many. Ending the degree discrimination, which some employers, such as the State government, are already doing on their own, would materially improve the efficiency and capacity of the labor market – at zero cost.

## **Sources & Supporting Resources**

→ [A FRESH START: Renewing Immigrant Integration for a Stronger Maryland](#)

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**RECOMMENDATION #4:** Expand career counseling and job matching centers across the state

**Context:** Maryland has committed to dramatically improving career counseling and matching services for high school and middle school students, as well as adults. The Blueprint for Maryland's Future provides money for comprehensive career counseling for students including increasing funding and support for CTE and apprenticeships.

The ASVAB (the Armed Services Vocational Aptitude Battery) is an examination developed and refined by the U.S. military over the past half century to determine young people's aptitude for various career paths, in the same way the SAT tests a student's aptitude for college programs. Under a 2017 Maryland law, the ASVAB scores can be shared with the Maryland Department of Labor and local workforce development boards to match local employers with interested workers, both high school students and graduates.

If the state can provide local workforce development boards with more information from ASVAB results, Unemployment Insurance applicant lists, and work permit lists, they will be better equipped to match job seekers with employers. Coupled with the Blueprint for Maryland's Future, and increased funding, local workforce agencies could be universal, full-service job counseling and matching centers.

## **Recommended Actions:**

**First 100 Days** • **The Governor should appoint officials who share this vision, particularly for:**

- Labor, Commerce, Budget, Higher Education, and other Secretaries
- Members of the Maryland State Board of Education, Maryland Higher Education Commission, Governor's Workforce Investment Board, and USM, Morgan, St. Mary's, and community college boards.

**First Year** • **The Governor should propose annual budgets to incentivize:**

- Creation of apprenticeship intermediaries in all occupations, starting with skilled workforce shortage areas
- Redirection of high school and community college CTE as related instruction for registered apprenticeships
- Community colleges and four-year institutions to work with apprenticeship sponsors to develop and scale up degree programs as related instructions in apprenticeships
- Local workforce boards to become career counseling and job matching centers in every community

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## **RECOMMENDATION #5:** Heavily invest in healthcare and home health workforce development

**Context:** Across all health related workgroups associated with The 2023 Project, it is clear there is a dire need for Maryland to invest in workforce development for the entire healthcare and home care workforce. If Maryland is to achieve any of its goals for behavioral health, disabilities, older Marylanders, public health, health disparities, and other health related or health adjacent fields, there must be significant investment and planning for building the workforce to meet demand.

As noted in the Older Adults and Aging Recommendations report, Recommendation #5,

*The commitment of state leaders to a common goal is critical for making meaningful progress in strengthening the direct care workforce (DCW), which includes home care workers and workers at assisted living facilities, skilled nursing facilities, and medical adult day facilities. Ideally, state leaders from the Governor's office, the General Assembly, and the Departments of Labor, Health and Human Services, Medicaid, Aging, and Behavioral Health, would be aligned around a shared DCW goal. Importantly, the perspectives of DCWs and care recipients should also play a central role in setting state goals.*

*Home care workers are a crucial – and growing – part of the DCW. Their work allows many tens of thousands of older Marylanders and Marylanders with disabilities to remain independent in their homes and communities. As Maryland becomes an older state and more Marylanders choose to receive supportive services at home rather than in an institution, demand for these workers is growing faster than that of nearly every other occupation statewide. A 2018 [study](#) found that Maryland will need 40 percent more care workers over the next ten years.*

*But the number of home care workers is not increasing. Residential Service Agencies (RSAs, the Health Code's term for home care agencies) report sky-high turnover. Workers are leaving for jobs at places like Wal-Mart or Royal Farms because of low wages and lack of benefits. The biggest reason for this is state Medicaid policies. Medicaid funds about 60% of the state's home care. The Maryland Department of Health currently provides RSAs just \$23 per hour of home care. There is no requirement that workers be paid anything other than minimum wage. The median wage for all the state's home health and personal care aides is just \$13.51 – but it is even less for Medicaid-funded workers. Marylanders are already having extreme difficulty finding and keeping home care workers. If action is not taken soon, the shortage – and its consequences for those who rely on home care – will only worsen.*

*Home care job quality can – and must – be [improved in a number of ways](#). First, Maryland should increase home care worker wages. One way to do this is to increase the hourly reimbursement rate Maryland Medicaid pays RSAs for in-home personal care while also mandating that workers be paid at least 25% more than minimum wage. Second, Maryland should ensure that all home care employees are properly classified as employees and not misclassified as independent contractors – a practice that strips workers of their rights and benefits and imposes on them costly obligations.*

*Third, Maryland should reinstate the independent provider program, which can both improve job quality and give thousands of Marylanders who rely on home care services greater control over those services without an intermediary home care agency.*

## **Recommended Actions**

**First 100 Days** • Identify immediate actions and long term goals to expand the home care workforce, in conjunction with recommendation #2 from the [Older Marylanders report](#) to develop a Master Plan for Aging:

- Review wages and reimbursement across levels of care;
- Increase Medicaid reimbursement rates while including a requirement that home care workers be paid at least 25% more than Maryland's minimum wage;
- End the misclassification of home care employees as independent contractors;
- Address safety concerns for workers;
- Provide the tools necessary for a visiting healthcare provider to complete the necessary comprehensive home care; and
- Implement a program to collect state-wide data on how long term care personnel are paid, especially when paid using Medicaid reimbursement.

**First 100 Days** • Fully implement the Commission to Study the Health Care Workforce Crisis ([HB625, 2022 session](#)) and consider expanding the commission's scope and extending the sunset for an additional two years to include:

- Review of reimbursement rates for providers compared to neighboring jurisdictions and a plan for increasing rates, and maintaining regionally competitive rates across the board for all service providers.
- Use Medicaid cost reports to obtain data from providers concerning how they are spending Medicaid funds – including, among other things, the percentage spent on worker pay and benefits.
- Specific action plans for workforce needs in home care, nursing, geriatric primary care, and home healthcare delivery.
- Study of workplace safety issues including hospitals, nursing homes, state institutions, and home healthcare settings.
- Workforce wellness plans that encourage providers to seek behavioral health support and minimize punitive action for providers who seek out behavioral health support including mental health and substance use.

## **Supporting Resources**

- [The Direct Services Workforce in LTSS in MD and DC](#) (PHI National)
- [Expanding Home Care Options in Maryland](#) (MDCEP)
- [California manual for in home supportive services \(IHSS\) regulations](#)
- [Forging a Path Forward to Strengthen Michigan's Direct Care Workforce](#) (Center for Healthcare Strategies)
- [PHI's Maryland Workforce Data Center](#)
- [Healthcare Workforce Task Force Committee Recommendations](#)

- Commission to Study the Health Care Workforce Crisis in Maryland ([HB 625](#))
  - [California manual for in home supportive services \(IHSS\) regulations](#)
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## **RECOMMENDATION #6:** Review past recommendations for supporting Maryland’s immigrant workforce

**Context:** Governor O’Malley’s Maryland Council for New Americans published a report in 2009: [A FRESH START Renewing Immigrant Integration for a Stronger Maryland](#). This report outlined numerous recommendations for working with Maryland’s immigrant communities and recognized that immigrants play a critical role in Maryland’s workforce – “we need our immigrants to work at their highest potential if we are to continue Maryland’s economic success and compete in the global economy.” **Below are the main recommendations from that report.**

### **Recommended Actions**

**First 100 Days • Improve all workforce websites by incorporating an immigrant-friendly approach.**

Include pertinent information such as definitions of basic workplace terms, training and ELL information, networking support, interviewing strategies, visa information, a standard language “toggle” button at the top of appropriate pages, and a comprehensive list of resources.

**First Year • Target professions in Maryland experiencing shortages for best practice pilots and fast track reforms.** Although some general needs are shared across professions (such as ELL), specific requirements may differ so a “one size fits all” approach is not appropriate. High demand professions such as healthcare and education should receive priority and support from the highest levels.

**First Term • Provide financial aid to foreign-trained professionals who are preparing for qualifying exams in under-served areas or professions with labor shortages.** This must be done in coordination with the state university and community college system, affected employers, professional associations, and private foundations.

**First Term • Establish a credentialing office for foreign-trained professionals with specially trained professional navigators.** These specialists would work closely with licensing entities in DLLR’s Division of Occupational and Professional Licensing, DHMH Board of Physicians, and others to help guide applicants through the credentialing process, address visa concerns, recommend “refresher” or English courses as needed, develop alternative career paths in related professions, and maintain relationships with employers for placement. Such an office should be collaboratively funded by private industry, philanthropy and state workforce entities.

**First Term • Provide an integrated approach to connect learners to a range of relevant opportunities and services including training, networking, transportation, childcare, mental/physical health and social services.**

**First Term** • Design programs accommodating various points of access and flexible scheduling for real world circumstances of adult immigrants.

**First Term** • Under the umbrella of a state-level Office for New Americans and sub-cabinet for New Americans, engage a cross-representation of State and local-level agencies, educational institutions, community-based organizations, industry sectors, employers, and ELL learners in long-term strategic planning so as to best identify and prioritize career training areas and re-credentialing options, advocate for ELL learner needs, and support regional Workforce Investment Boards in local implementation and coordination.

**First Term** • Coordinate service delivery so learners can seamlessly transition to education, training and careers. This would involve establishing cross-training among a wide array of service providers, so that staff members making referrals are aware of the range of services and participation requirements.

### **Supporting Resources**

→ [A FRESH START: Renewing Immigrant Integration for a Stronger Maryland](#)

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## **OTHER KEY TAKEAWAYS**

### **Staffing**

- MOSH has under 50 inspectors for the entire state and has been chronically understaffed for both enforcement and standard setting. In addition, the agency has not attracted the number the professional caliber of staff, i.e. certified industrial hygienists, professional safety certified etc.) to address and evaluate the myriad, and complex workplace exposures in Maryland. In addition, the agency does not have adequate professional staff to develop effective standards.
- The Department of Labor and Department of Health lack sufficient staffing and have high vacancy rates.
- The Unemployment Insurance Administration does not have enough staff to meet demand.

### **Data and Metrics**

- **Data not currently collected or made available:**
  - ◆ MDH and MDL need to collect data on Medicaid-funded workers. It is important for the state to know how providers are spending state money including whether workers are classified as employees or independent contractors, what hourly pay rates are, and benefits provided.
  - ◆ Health related data collection by MDH, such as COVID related data, should be broken down by NAICS code and industry so there is a better understanding of where outbreaks of disease occur.



- ◆ Data collection of heat-related illnesses and fatalities is mostly non-existent and highly flawed. There should be significant training on what these heat-related health issues look like for purposes of identifying the data to collect and high emphasis on collecting the data from employers, employees, medical professionals, etc.
  - Requires extensive education for those who report the information on the variety of health impacts of heat stress, including heat as a trigger for other health problems like cardiac arrest, and on the injuries that can result from workplace accidents caused by heat stress.
  - Reporting of all workplace injuries should include the high temperature/heat index at the workplace on the day of the injury.

→ **Data & Metrics - Improvements:**

- ◆ Data on pesticide use by farmers is not being collected, even basic information about how much and which types of pesticides are being used in the state. The Department of Health and the Department of Environment can't make decisions to protect workers without basic data.
- ◆ MOSH collects data on the severe injuries that are reported by employers - but unlike the Federal Gov, it does not post them. This data should be publicly available.
- ◆ The Whistleblower protection program does not publish any data about how many complaints they get, or how many are rejected.