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Maryland Procurement Law Alert

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What Every Contractor Should Know About Laws Enacted by the 2021 Maryland General Assembly

The 2021 Session of the Maryland General Assembly ended April 12th at midnight. Whew! Several bills will have a major impact on companies that do business with the State of Maryland and other governmental units. Here are just a few:

- **CORPORATE DIVERSITY - BOARD AND EXECUTIVE LEADERSHIP**

[HB 1210](#) was enacted as a part of Speaker Adrienne Jones' legislative package. HB 1210 provides that a business may not receive a state benefit, which is defined to include **a state contract of more than \$1 million**, unless the business can demonstrate either: (1) membership of underrepresented

communities on the entity's board or executive leadership; or (2) support for underrepresented communities in the entity's mission.

Further, the bill requires most Maryland businesses to file an annual report with the State Department of Assessments and Taxation describing the representation of members of "underrepresented communities" on a business entity's board and executive team. This requirement is similar to an existing requirement on business entities to disclose the number of females on governing boards.

HB 1210 takes effect July 1, 2022 but it does not apply to contracts awarded prior to that date.

- **ESSENTIAL WORKER REQUIREMENTS**

[HB 581](#) was enacted to establish new requirements that employers of essential workers must adhere to in future catastrophic health emergencies. These requirements only apply if the catastrophic health emergency is the subject of an executive proclamation and is related to a communicable disease. "Essential workers" are individuals who perform a duty or work responsibility during an emergency that "cannot be performed remotely or is required to be completed at the worksite and provides services that are essential or critical to its operations". Employers of essential workers must:

1. Provide working conditions that comply with applicable safety standards;
2. Subject to availability, provide necessary amounts of safety equipment recommended for usage during the emergency to essential workers at no cost;
3. Adopt, maintain, and post written protocols to ensure an essential worker's access to information regarding the applicable safety standards in effect during the emergency; and

4. Provide or implement any other measures or requirements set by the Governor or a federal or State agency to ensure the general health and safety of essential workers.

An essential worker has a right to refuse to perform an assigned task and is protected from discharge or other discrimination by the employer if a task is refused. If a worker contracts the communicable disease that is the subject of the emergency at a worksite, the essential employer must take proactive steps to minimize the risk of transmission, including informing essential workers that they may have been exposed. Additionally, if an essential worker's health insurance coverage or other benefits do not cover the cost of testing for the communicable disease, the essential employer must pay for testing, unless the essential worker is able to obtain testing free of charge.

If the federal or State government provides funding that can be used for public health emergency leave, each essential employer must provide an essential worker with public health emergency leave up to 14 days on the date the funding is made available. This leave is in addition to any other leave. If specified in a federal program, order, law, or regulation, the amount of leave provided must equal that requirement. The leave may be used for: (1) isolation without an order to do so because the essential worker has been diagnosed with the communicable disease that is the subject of the emergency or is experiencing associated symptoms; (2) care for a family member who is isolating for the same reason; or (3) related and specified public health and safety reasons.

Under the bill, an essential employer is permitted to require an essential employee, who uses public health emergency leave, to provide documentation of the need to use said leave. If an essential employee refuses to provide the required documentation (as specified upon the adoption of regulations), the

essential employer is permitted to refuse pay to an essential employee for the duration of public health emergency leave that was taken.

Note: as originally introduced, the legislation required employers to pay “hazard pay” equaling an additional \$3 per hour and the legislation was believed by many to be retroactive. Ultimately, those provisions were stripped from the final bill.

- **PREVAILING WAGE - APPLICABILITY**

[SB 35](#) was enacted into law over the Governor’s veto. This bill expands the applicability of the State’s prevailing wage law to include (1) a public work project contract with a value of \$250,000 or more (instead of \$500,000 or more) and (2) a public work project for which State funds constitute at least 25% of the construction costs (instead of at least 50% of construction costs).

Legislative bond initiatives that receive State funds in the capital budget are exempt from the bill’s requirements. The bill only applies to a public works project contract executed on or after October 1, 2021.

- **PROCUREMENT - TRANSPARENCY AND APPLICATION TO COUNTY CONTRACTS**

[HB 1214](#) was *not* enacted by the legislature. Still, it is important. This bill applies State procurement law to any county governmental entity entering into a procurement contract either using State funds or for the benefit of the State. It also requires the Governor’s Office of Small, Minority, and Women Business Affairs (GOSBA) to assign a staff member to each State and county procurement unit to observe procurement processes and ensure that minority business enterprise (MBE) goals are met to the best of the unit’s capacity. Annually, the Secretary of General Services must review and evaluate all contracts using State funds that were executed in the prior year and report by

July 1 of each year on specified findings to specified committees of the General Assembly. The bill requires specified procurement-related information to be posted publicly, specified notices to be sent to bidders and offerors, and specified information to be included in solicitations. It also alters the timeframes for the filing of bid protests.

[Here](#) is a full list of Maryland Procurement Legislation bills.

***Need help with Maryland State and local bid protests,
contract claims, or other concerns? We are here for you.***

***Give us a call at (301) 704-8060 or email us at
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to find out how we can help.

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