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2010 Maryland General Assembly Session - Legislative Preview

The Maryland General Assembly reconvenes on January 13th to begin its 90-day Legislative Session. This year's session will surely be more political than recent years, as all 188 legislators and the Governor will be up for re-election in 2010. State legislators and the Governor serve four-year terms. Maryland is also facing a $1.5 billion state budget deficit for the fiscal year beginning in July 2010. This is on top of the $1 billion that the Governor and Board of Public Works already trimmed from our current budget. There is no appetite for tax increases this year, especially in light of the $1.4 billion in tax increases approved during the 2007 Special Session. That means that additional budget cuts to popular programs are likely, unless Congress considers another state aid package.

Despite our budget challenges and a slower than expected economic recovery, we still expect to see a significant number of bills that threaten to hurt the foodservice industry and small business community in general. We are providing this Legislative Preview to give our members an idea of what to expect. As always, we will rely heavily on Restaurant Association of Maryland (RAM) members to help communicate our concerns to state lawmakers and to help protect our industry.

If you have questions or comments about these or other issues, please call Melvin or Kesa in the RAM office at 410-290-6800.

UNEMPLOYMENT INSURANCE TAX INCREASE

The looming unemployment insurance tax increase will be the front and center issue from the first days of the Legislative Session. Because of a record number of layoffs this year, Maryland's unemployment insurance trust fund has paid out significantly more than it has collected in tax revenue. When the fund balance dips too low, an automatic tax increase kicks in the following year to help rebuild the fund. The amount of the increase will vary among employers, depending on the employer's layoff history and frequency of unemployment benefits charged against their accounts. State unemployment insurance tax is assessed on the first $8,500 of an employee's wages. For minimally-rated employers (those with few layoffs or benefit charges), the unemployment insurance tax will jump from $51 per employee to $187 per employee. If an employer has 30 employees, for example, the increase will cost the employer an extra $4,080 in unemployment insurance taxes next year. Employers who are currently taxed at the maximum rate (because of frequent layoffs and benefit charges) will see their unemployment insurance tax jump from $765 per employee to $1,147.

RAM is working very closely with a coalition of small business stakeholders to recommend options that will help reduce the financial impact on businesses. We are particularly concerned for our industry because the higher tax payments in the first quarter of next year hit us at a time when business slows.

We will likely see several legislative proposals that attempt to minimize the tax increase's impact on small businesses. So far, the most popular options being discussed include: allowing employers to spread the cost of the increase over a year; slightly reducing the rate of the increase in hopes that the economy will improve

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by next year; and reducing the cost of payouts from the trust fund by tightening befit eligibility. In a recent survey, RAM members seemed to favor a temporary rate reduction and spreading out the cost of the increase over a longer period of time.

At the current rate that benefits are being paid out, we expect Maryland's trust fund to be nearly bankrupt by February. That means that we will certainly have to borrow from the federal government to continue paying benefits. The longer we delay rate increases, the more we will have to borrow from the federal government. Employers will surely play a role in repaying federal loans.

While we have few options on this issue, RAM will work closely with legislators to minimize both the short- and long-term impact on our businesses.

ALCOHOL TAX INCREASE

Each year, we see multiple bills that attempt to triple or quadruple the tax on beer, wine and liquor. Alcohol taxes are assessed at the wholesale level and passed onto retailers and customers in the form of higher prices. Tax increase supporters argue that a tax hike is long overdue because Maryland has not raised beer and wine taxes since 1972, and the liquor tax rate has remained stagnant since 1955. Maryland has among the lowest alcohol tax rates in the nation. Currently, Maryland's beer tax is $.09 per gallon and wine is taxed at $.40 per gallon. Liquor is currently taxed at $1.50 per gallon.

With additional budget cuts likely, tax increase supporters will attempt to earmark additional alcohol tax revenue for popular programs like aid to people with developmental disabilities. Traditionally, lawmakers have been reluctant to earmark funds for specific programs, preferring instead to use additional revenue for general funds. General Assembly leadership says that tax increases will be highly unlikely this year, citing the economy and the fact that tax increases are difficult to pass in election years.

Our industry will argue that the state is already collecting more tax revenue from alcohol as a result of the recent increase in the state sales tax. Moreover, now is the wrong time to force an increase in prices when many of our businesses are struggling to maintain customer traffic. While we remain optimistic that we can defeat such tax proposals, we have been warned by legislative allies that public and political support for such an increase is growing.

MANDATORY SHIFT BREAKS

After narrowly defeating this legislation last year, we expect it to return and be pushed even harder by labor interests. Last year's legislation would have required a mandatory 15-minute break for all employees who work more than four consecutive hours, and a 30-minute break for all employees who work more than six consecutive hours. The bill would have exempted employers with fewer than 50 employees.

We have heard rumors that this year's legislation may require that the breaks be paid. We also expect to see revisions to the number of exemptions and stronger support from the Governor's office. RAM strongly opposes this legislation and played a key role as part of a coalition of several business groups that joined forces to defeat the bill last year. It would be difficult for hospitality businesses to comply with such a law. Moreover, in states like California, which has adopted mandatory shift breaks, there has been a significant increase in the number of employment-related class-action lawsuits. Such a law also increases labor costs because of the need to schedule additional staff to cover for those taking shift breaks.

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OVERTIME CALCULATION

This legislation would change the basis of overtime calculation from the traditional 40-hour workweek to an 8-hour workday. That means that employees would have to be paid overtime if they work more than 8 hours in a day, regardless of how many hours they work in a week. If this legislation becomes law, part-time workers will be eligible for overtime if they work more than 8 hours in a given day. This would significantly increase labor costs and discourage flexible scheduling.

This bill has been introduced during the past several years but has never passed out of committee. RAM has always strongly opposed this legislation. Last year's version of the bill would have exempted employers with fewer than 50 employees. We hear that supporters are planning to work harder to pass legislation this year. RAM will work hard to ensure that this bill is defeated once again.

REMITTING UNREDEEMED GIFT CARD VALUE TO THE STATE

After several unsuccessful attempts, those who want businesses to turn over their unredeemed gift card/certificate revenue to the state do not appear to be giving up. RAM has helped to defeat this legislation for several years now.

In addition to remitting unredeemed gift card value, last year's bill would have required sellers to keep on file the names and addresses of all gift card/gift certificate purchasers, and keep track of the unredeemed values. This would create an unnecessary administrative burden. RAM will strongly oppose this bill again this year.

PAID SICK LEAVE

Two years ago, the Maryland General Assembly passed legislation requiring employers who offer earned paid sick leave to allow employees to use such leave to also care for a sick parent, spouse or child. The law exempts employers with fewer than 15 workers.

Last year, legislation was filed to require all employers to offer earned paid sick leave. The legislation was withdrawn without receiving a hearing or committee vote. Similar paid sick leave legislation is currently pending at the federal level.

We expect statewide legislation to be reintroduced this year. Being an election year, a hearing and committee vote are likely.