

Department of Legislative Services  
Maryland General Assembly  
2008 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 1392

(Delegate Ramirez, *et al.*)

Economic Matters

Finance

---

Labor and Employment - Maryland Wage and Hour Law - Civil Penalties

---

This bill specifies that an employee entitled to recovery from an employer due to a violation of Maryland Wage and Hour Law must be awarded counsel fees, other costs, and interest on the amount of the recovery.

A person who violates Maryland Wage and Hour Law is subject to a penalty of up to \$500 for a first violation, a penalty of up to \$1,000 for a second violation, and a penalty of up to \$1,500 for any subsequent violation.

---

Fiscal Summary

**State Effect:** Potential minimal increase in general fund revenues due to the bill's civil penalty provision for cases heard in the District Court.

**Local Effect:** Potential minimal increase in local revenues due to the bill's civil penalty provision for cases heard in the circuit courts.

**Small Business Effect:** Potential minimal.

---

Analysis

**Current Law:** The Maryland Wage and Hour Law is the State complement to the federal Fair Labor Standards Act of 1938. State law sets minimum wage standards with the purpose of providing a maintenance level consistent with the needs of the population for their efficiency, general well-being, and health.

Under Maryland Wage and Hour Law, employers, including governmental units, are generally required to pay each employee the greater of the federal minimum wage (currently \$5.85) or an hourly wage of \$6.15. Exceptions exist for training wages and disabled employees of a sheltered workshop.

Employers are required to pay an overtime wage of at least 1.5 times the usual hourly wage. This requirement does not apply to • an employer that is subject to federal rail laws; • a hotel or motel; • a restaurant; • a gasoline service station; • a bona fide private country club; • a nonprofit entity primarily engaged in providing temporary at-home care services; • a nonprofit concert promoter, legitimate theater, music festival, music pavilion, or theatrical show; or • specified amusement or recreational establishments. It also does not apply to • an employee for whom the U.S. Secretary of Transportation sets qualifications and maximum hours of service under federal law; • a mechanic, partsperson, or salesperson, under certain conditions; or • drivers employed by a taxicab operator. An employer is required to compute the wage for overtime on the basis of each hour over 40 hours that an employee works during one work week. Specific exemptions apply for farm work, bowling establishments, and infirmaries.

The Maryland Wage and Hour Law does not apply to • certain categories of employees, including those defined as administrative, executive, or professional; • certain seasonal employees; • part-time employees younger than age 16 or older than age 61; • salesmen and those who work on commission; • an employer's immediate family; • movie theater employees; • employees training in a special education program in a public school; • employees of an establishment that sells food and drink for on-premises consumption; • and certain farm workers.

If an employer pays an employee less than the required wage, the employee may bring an action against the employer to recover the difference. At an employee's request, the Commissioner of Labor and Industry may take an assignment of the claim in trust, ask the Attorney General to bring an action, or consolidate two or more claims against an employer. If an employee is entitled to a recovery, the court may allow against the employer reasonable counsel fees and other costs.

A person who violates Maryland Wage and Hour Law is guilty of a misdemeanor and is subject to a fine of up to \$1,000.

**Background:** The Court of Appeals addressed statutory provisions allowing attorney's fees in *Friolo v. Frankel*, 373 Md. 501 (2003). In determining an appropriate amount of remediation, the court advocated the lodestar approach, by which the court uses case-specific considerations to determine a rate that is generally higher than the hours

spent times the counsel's hourly rate. The factors employed in determining the amount of the award must be clearly defined in the judgment. An employee is not entitled to attorneys' fees for appellate or post-remand services that are used to increase the amount of the award and not to defend the underlying judgment.

The number of cases to which civil penalties may apply is unknown; however, recent activity suggests an annual rate of approximately 1,500 wage cases per year. The increased recoveries authorized under the bill have the potential to further increase the number of such cases.

---

### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Labor, Licensing, and Regulation; Judiciary (Administrative Office of the Courts); Department of Legislative Services

**Fiscal Note History:** First Reader - February 13, 2008  
mll/ljm Revised - Updated Budget Information - March 13, 2008  
Revised - Clarification - March 21, 2008  
Revised - House Third Reader - March 28, 2008

---

Analysis by: Suzanne O. Potts

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510