

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 452

(Senator Lenett)

Finance

Labor and Employment - Maryland Wage and Hour Law - Damages

This bill requires that an employer who is found to have violated the Maryland Wage and Hour Law pay triple damages to the employee entitled to recovery. The employee is entitled to the difference between the wage paid to the employee and the wage required by law and an additional payment equal to two times the difference between the wage paid to the employee and the wage required. Additionally, employees entitled to damages must also be awarded reasonable legal fees and other associated costs.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues due to the bill's civil penalty provisions for cases heard in District Court. Because units of governments are included in the bill, potential increase in general fund expenditures due to an increase in litigation against the State. The Administrative Office of the Courts advises that the extent to which litigation increases as a result of the bill cannot be determined.

Local Effect: Potential minimal increase in local revenues due to the bill's civil penalty provisions for cases heard in circuit courts. Because units of governments are included in the bill, potential increase in local expenditures due to an increase in litigation against the local governments. The Administrative Office of the Courts advises that the extent to which litigation increases as a result of the bill is unknown.

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 that provide a maintenance level consistent with the needs of the population.

Under the Maryland Wage and Hour Law, employers, including governmental units, are generally required to pay each employee the greater of the federal minimum wage (currently \$6.55 and scheduled to rise to \$7.25 in July 2009) 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 has 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, and consolidate two or more claims against an employer. If an employee is entitled to a recovery, the court may direct the employer to pay reasonable counsel fees and other costs, but is not required to do so.

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 attorney's 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. Furthermore, the Department of Labor, Licensing, and Regulation advises that the poor economic conditions may result in an increase in violations as employers may be more likely to default on wage payments to employees.

Additional Information

Prior Introductions: A similar bill, HB 1392 of 2008, passed the House with amendments and was heard by the Senate Finance Committee, but no further action was taken.

Cross File: HB 1288 (Delegate Ramirez, *et al.*) - Economic Matters.

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

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