

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1314
Economic Matters

(Delegate Hucker)

Finance

**Maryland Wage Payment and Collection Law - Awards of Certain Fees and Costs
and Prohibition Against Retaliation**

This bill authorizes the court to award the Attorney General reasonable counsel fees and other costs if a court finds, in a case brought by either the Attorney General or the Commissioner of Labor and Industry, that an employer withheld the wage of an employee in violation of the State's Wage Payment and Collection Law. If an employee brings an action against the employer to recover unpaid wages and the court finds that the employer unlawfully withheld wages, the court may award the employee reasonable counsel fees and other costs. Additionally, the bill prohibits an employer from taking adverse action against an employee who takes specified actions related to the State's Wage Payment and Collection Law.

Fiscal Summary

State Effect: State finances are not likely materially affected. General fund revenues increase, likely minimally, to the extent the court awards the Attorney General counsel fees and other costs against violators of the State's Wage Payment and Collection Law and from additional fines imposed on employers who take adverse action against employees. The Department of Labor, Licensing, and Regulation (DLLR) can likely investigate claims of adverse action with existing resources. The State is not subject to the Wage Payment and Collection Law as an employer.

Local Effect: None. The bill does not apply to local governments as employers.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: An employer may not take adverse action against an employee because the employee (1) makes a complaint that the employee has not been paid; (2) brings an action or a proceeding that relates to the State's Wage Payment and Collection Law; (3) has opposed a practice prohibited under the State's Wage Payment and Collection Law; or (4) cooperated in an investigation or testified, participated, or assisted in any action or proceeding related to the State's Wage Payment and Collection Law.

“Adverse action” includes the following or threatening the following: discharge, demotion, discipline, and any other action that would reasonably deter an employee from engaging in protected activity under the State's Wage Payment and Collection Law.

Current Law: Maryland's Wage Payment and Collection Law regulates the payment of wages by employers in the State. The law requires employers to pay workers the wage promised; establish regular paydays; pay wages when due; pay employees in a specified manner; pay employees at least once every two weeks, with exceptions; furnish employees with a statement of gross earnings; advise employees of their rate of pay and designated payday; and pay employees all wages due on termination of employment. DLLR's Division of Labor and Industry enforces the State's Wage Payment and Collection Law. Unless otherwise specified, the definition of “employer” in the State's Wage Payment and Collection Law does not include units of government.

Whenever it is determined that the State's Wage Payment and Collection Law has been violated, the commissioner may (1) try to resolve the violation informally through mediation; (2) ask the Office of the Attorney General (OAG) to bring an action on behalf of the employee; or (3) bring an action on behalf of the employee in the county where the violation allegedly occurred.

In wage complaints amounting to \$3,000 or less, the Commissioner of Labor and Industry may review and investigate the complaint and may either issue an order requiring the employer to pay, or dismiss, the claim. Under specified circumstances, the commissioner may proceed in District Court to enforce payment of the order.

For wage complaints over \$3,000, employees entitled to wages from an employer may – after two weeks have elapsed – bring an action against the employer in a court of competent jurisdiction to recover the unpaid wages.

If a court determines that an employer withheld an employee's wage unlawfully, and not as a result of a bona fide dispute, the court may award the employee up to three times the amount of wages owed, counsel fees, and other costs.

Employers who violate the State's Wage Payment and Collection Law are guilty of a misdemeanor and may be fined up to \$1,000.

Background: The Division of Labor and Industry received 905 wage payment claims from employees (or former employees) alleging that an employer failed to pay their earned wages in fiscal 2013. Often the disputes arise from a final paycheck or compensation for vacation pay. The division reviews each complaint and attempts to contact the employer to determine the validity of the claim. If the employer either does not respond or admits owing the wages but claims insolvency, then the division refers the matter to OAG to obtain a civil judgment. Most cases are resolved informally, but the commissioner issued 35 wage orders under his authority for small claims, referred 46 cases to the Central Collection Unit due to nonpayment, and referred 88 cases for legal action in fiscal 2013.

State Revenues: DLLR anticipates investigating more violations of the State's Wage Payment and Collection Law under the bill, particularly for adverse actions taken against employees, so general fund revenues may increase minimally due to additional fines assessed against violators of the law. Additionally, general fund revenues increase, likely minimally, to the extent OAG is awarded reasonable counsel fees and other costs.

State Expenditures: The Division of Labor and Industry estimates that 15% of the wage claims currently filed with the division could also be adverse action claims. However, 5% of all inquiries regarding unpaid wages do not result in a claim due to an employee fearing adverse action from the employer. The Division of Labor and Industry anticipates receiving as many as 1,700 inquiries regarding adverse action, of which 30 cases could require investigation. The Division of Labor and Industry can likely investigate adverse action violations with existing resources. To the extent that more adverse action violations occur, the Division of Labor and Industry would require additional staff and resources.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Allegany, Montgomery, Talbot, and Wicomico counties; Baltimore City; towns of Berlin and Bladensburg; Department of Budget and Management; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Maryland Association of Counties; Maryland Municipal League; Department of Legislative Services

Fiscal Note History: First Reader - March 2, 2014
ncs/mcr Revised - House Third Reader - March 28, 2014

Analysis by: Heather N. Ruby

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