

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 528
Economic Matters

(Delegate Lierman, *et al.*)

Labor and Employment - Wage Records, Wages, and Paydays - Requirements

This bill expands the wage records that employers are required to keep for each pay period. The bill expands the wage and payday notices that employers must provide to employees. The Commissioner of Labor and Industry must create and make available a model notice that may be used by an employer to comply with specified wage notice requirements. An employee may bring an action against the employer under specified conditions to recover liquidated damages, counsel fees, and other costs. Upon written request of an employee, the Commissioner of Labor and Industry may take an assignment of the claim in trust for the employee, ask the Attorney General to bring an action on behalf of the employee, and consolidate two or more claims against an employer.

Fiscal Summary

State Effect: The bill does not materially affect governmental operations or finances.

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

Small Business Effect: Potential meaningful. Small businesses may incur administrative costs to adjust their payroll reporting systems to provide and maintain the required information.

Analysis

Bill Summary: The bill expands the type of wage records that employers are required to keep for at least three years for each pay period to include (1) the time interval or criteria by which each employee is paid; (2) allowances claimed; (3) deductions taken; (4) regular and overtime pay rates and hours worked at each rate for employees not exempt from

overtime pay requirements; (5) piece rates and number of pieces completed for each employee paid at a piece rate; and (6) date of payment and pay period covered by the payment. If an employer does not keep specified required records, the employee may bring an action against the employer to recover (1) liquidated damages of \$100 for each workweek in which the violations occurred, up to \$2,500; (2) counsel fees; and (3) other costs.

Employers must provide written notice, in English and, if different, the employee's primary language, to employees within 10 days after the time of hiring on specified information relating to wage calculations, allowances, and the employer. The Commissioner of Labor and Industry must create and make available a model notice that may be used by an employer to comply with these wage notice requirements.

The bill expands information that an employer must give to an employee for each pay period. On request of an employee, an employer must provide an explanation in writing of how the employee's wages were calculated.

If an employer does not meet wage and payday notice requirements, an employee may bring an action against the employer under specified conditions to recover (1) liquidated damages of \$100 for each workweek in which the violations occurred, up to \$2,500; (2) counsel fees; and (3) other costs. Upon written request of an employee, the Commissioner of Labor and Industry may take an assignment of the claim in trust for the employee, ask the Attorney General to bring an action on behalf of the employee, and consolidate two or more claims against an employer.

Current Law:

Maryland Wage and Hour Law

The Maryland Wage and Hour Law is the State complement to the federal Fair Labor Standards Act (FLSA) of 1938. State law requires an employer to keep for at least three years at the place of employment a record of the following:

- the name, address, and occupation of each employee;
- the pay rate of each employee;
- the amount that each employee is paid each pay period;
- the hours that each employee works each day and workweek; and
- other information that the Commissioner of Labor and Industry requires by regulation to enforce the Maryland Wage and Hour Act.

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; salesmen and those who work on commission; an employer's immediate family; drive-in 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 has an annual gross income of \$400,000 or less; employees employed by an employer who is engaged in canning, freezing, packing, or first processing of perishable or seasonal fresh fruits, vegetables, poultry, or seafood; and certain farm workers.

If an employer pays less than the wages required, the employee may bring an action against the employer to recover (1) the difference between the wage paid to the employee and the wage required; (2) an additional amount equal to the difference as liquidated damages; and (3) legal fees. The court must award these differences in wages, damages, and counsel fees if the court determines that an employee is entitled to recovery. However, if an employer shows to the satisfaction of the court that the employer acted in good faith and reasonably believed that the wages paid to the employee were not less than the required wages, then the court must award liquidated damages of an amount less than the difference in wages or no liquidated damages.

A person who violates the State's Wage and Hour Law is guilty of a misdemeanor and on conviction is subject to a fine of up to \$1,000.

Maryland Wage Payment and Collection 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. The Department of Labor, Licensing, and Regulation'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.

At the time of hiring, an employer must provide a new employee with notice of the employee's rate of pay, regular paydays, and leave benefits. For each pay period, an employer must provide each employee with a statement of the employee's gross earnings and deductions. An employer must provide notice of any change in a payday or wage at least one pay period in advance, but an employer is not prohibited from increasing an employee's wages without advance notice.

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 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.

Small Business Effect: Small businesses may incur administrative costs to adjust their payroll reporting systems to provide and maintain the required specified information. If a small business does not meet wage and payday notice requirements, an employee may bring an action against the employer under specified conditions.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; Department of Legislative Services

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