

HOUSE BILL 1243

P2, K3

8lr1743

By: **Delegates Morales, Barkley, Brooks, Impallaria, Kramer, J. Lewis, Pena–Melnyk, Valderrama, Waldstreicher, and Wilson**

Introduced and read first time: February 8, 2018

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Prevailing Wage Rates – Public Work Contracts – Suits by Employees**

3 FOR the purpose of authorizing certain employees to sue to recover the difference between
4 certain prevailing wage rates and certain amounts under certain circumstances;
5 providing that a certain determination by the Commissioner of Labor and Industry
6 does not preclude certain employees from filing a certain action; requiring a court to
7 order the payment of certain damages under certain circumstances; providing for the
8 liability of certain contractors and subcontractors under certain circumstances; and
9 generally relating to private rights of action under the State prevailing wage law.

10 BY repealing and reenacting, with amendments,
11 Article – State Finance and Procurement
12 Section 17–224
13 Annotated Code of Maryland
14 (2015 Replacement Volume and 2017 Supplement)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
16 That the Laws of Maryland read as follows:

17 **Article – State Finance and Procurement**

18 17–224.

19 (a) (1) If an employee under a public work contract is paid less than the
20 prevailing wage rate for that employee’s classification for the work performed, the employee
21 may file a complaint with the Commissioner.

22 (2) Except as otherwise provided in this section, a complaint filed under
23 this section shall be subject to the provisions of § 17–221 of this subtitle.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (3) If the Commissioner's investigation determines that the employer
2 violated provisions of this subtitle, the Commissioner shall try to resolve the issue
3 informally.

4 (4) (i) If the Commissioner is unable to resolve the matter informally,
5 the Commissioner shall issue an order for a hearing in accordance with § 17-221 of this
6 subtitle.

7 (ii) If, at the conclusion of a hearing ordered under subparagraph (i)
8 of this paragraph, the Commissioner determines that the employee is entitled to restitution
9 under this subtitle, the Commissioner shall issue an order in accordance with § 17-221 of
10 this subtitle.

11 (iii) If an employer of an employee found to be entitled to restitution
12 under subparagraph (ii) of this paragraph is no longer working under a contract with a
13 public body, the Commissioner may order that restitution be paid directly by the employer
14 to the employee within a reasonable period of time, as determined by the Commissioner.

15 (5) If an employer fails to comply with an order to pay restitution to an
16 employee under paragraph (4)(iii) of this subsection, the Commissioner or the employee
17 may bring a civil action to enforce the order in the circuit court in the county where the
18 employee or employer is located.

19 **(B) (1) IF AN EMPLOYEE UNDER A PUBLIC WORK CONTRACT IS PAID LESS**
20 **THAN THE PREVAILING WAGE RATE FOR THAT EMPLOYEE'S CLASSIFICATION FOR**
21 **THE WORK PERFORMED, THE EMPLOYEE IS ENTITLED TO SUE TO RECOVER THE**
22 **DIFFERENCE BETWEEN THE PREVAILING WAGE RATE AND THE AMOUNT RECEIVED**
23 **BY THE EMPLOYEE.**

24 **(2) A DETERMINATION BY THE COMMISSIONER THAT A CONTRACTOR**
25 **IS REQUIRED TO MAKE RESTITUTION UNDER SUBSECTION (A)(4) OF THIS SECTION**
26 **DOES NOT PRECLUDE AN EMPLOYEE FROM FILING AN ACTION UNDER THIS**
27 **SUBSECTION.**

28 **[(b)] (C) (1)** An action under this section is considered to be a suit for wages.

29 (2) A judgment in an action under this section shall have the same force
30 and effect as any other judgment for wages.

31 (3) An action brought under this section for a violation of this subtitle shall
32 be filed within 3 years from the date the affected employee knew or should have known of
33 the violation.

34 **[(c)] (D) (1)** The failure of an employee to protest orally or in writing the
35 payment of a wage that is less than the prevailing wage rate is not a bar to recovery in an
36 action under this section.

1 (2) A contract or other written document in which an employee states that
2 the employee shall be paid less than the amount required by this subtitle does not bar the
3 recovery of any remedy required under this subtitle.

4 **[(d)] (E)** (1) Except as provided in paragraph (3) of this subsection, if the
5 court in an action filed under this section finds that an employer paid an employee less
6 than the requisite prevailing wage, the court shall award the affected employee the
7 difference between the wage actually paid and the prevailing wage at the time that the
8 services were rendered.

9 (2) (i) Subject to subparagraph (ii) of this paragraph, unpaid fringe
10 benefit contributions owed for an employee in accordance with this section shall be paid to
11 the appropriate benefit fund, plan, or program.

12 (ii) In the absence of an appropriate benefit fund, plan, or program,
13 the amount owed for fringe benefits for an employee shall be paid directly to the employee.

14 (3) The court **[may]** **SHALL** order the payment of **[double damages or]**
15 treble damages under this section if the court finds that the employer withheld wages or
16 fringe benefits willfully and knowingly or with deliberate ignorance or reckless disregard
17 of the employer's obligations under this subtitle.

18 (4) In an action under this section, the court shall award a prevailing
19 plaintiff reasonable counsel fees and costs.

20 (5) If the court finds that an employee submitted a false or fraudulent claim
21 in an action under this section, the court may order the employee to pay the employer
22 reasonable counsel fees and costs.

23 **(6) THE CONTRACTOR AND SUBCONTRACTOR SHALL BE JOINTLY AND**
24 **SEVERALLY LIABLE FOR ANY VIOLATION OF THE SUBCONTRACTOR'S OBLIGATIONS**
25 **UNDER THIS SECTION.**

26 **[(e)] (F)** (1) Subject to paragraph (2) of this subsection, an action filed in
27 accordance with this section may be brought by one or more employees on behalf of that
28 employee or group of employees and on behalf of other employees similarly situated.

29 (2) An employee may not be a party plaintiff to an action brought under
30 this section unless that employee files written consent with the court in which the action is
31 brought to become a party to the action.

32 **[(f)] (G)** (1) A person found to have made a false or fraudulent representation
33 or omission known to be false or made with deliberate ignorance or reckless disregard for
34 its truth or falsity regarding a material fact in connection with any prevailing wage payroll
35 record required by § 17–220 of this subtitle is liable for a civil penalty of \$1,000 for each

1 falsified record.

2 (2) The penalty shall be recoverable in a civil action filed in accordance
3 with this section and paid to the State General Fund.

4 **[(g)] (H)** An employer may not discharge, threaten, or otherwise retaliate or
5 discriminate against an employee regarding compensation or other terms and conditions of
6 employment because that employee or an organization or other person acting on behalf of
7 that employee:

8 (1) reports or makes a complaint under this subtitle or otherwise asserts
9 the worker's rights under this section; or

10 (2) participates in any investigation, hearing, or inquiry held by the
11 Commissioner under § 17-221 of this subtitle.

12 **[(h)] (I)** (1) A contractor or subcontractor may not retaliate or discriminate
13 against an employee in violation of this section.

14 (2) If a contractor or subcontractor retaliates or discriminates against an
15 employee in violation of this section, the affected employee may file an action in any court
16 of competent jurisdiction within 3 years from the employee's knowledge of the action.

17 (3) If the court finds in favor of the employee in an action brought under
18 this subsection, the court shall order that the contractor or subcontractor:

19 (i) reinstate the employee or provide the employee restitution, as
20 appropriate;

21 (ii) pay the employee an amount equal to three times the amount of
22 back wages and fringe benefits calculated from the date of the violation; and

23 (iii) pay reasonable counsel fees and other costs.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2018.