

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 509
Economic Matters

(Delegate Carey)

Labor and Employment - Overtime Exemption - Service Advisors

This bill exempts an employer from having to pay overtime wages of at least 1.5 times the usual hourly wage to a service advisor who primarily sells or services automobiles, farm equipment, trailers, or trucks, if the employer is engaged primarily in selling those vehicles to buyers and is not a manufacturer.

Fiscal Summary

State Effect: None. Although the bill pertains exclusively to private-sector employees, State enforcement is not affected as it generally clarifies current law.

Local Effect: None. The bill pertains exclusively to private-sector employees.

Small Business Effect: Potential minimal.

Analysis

Current Law: An employer is exempt from having to pay overtime wages of at least 1.5 times the usual hourly wage to a mechanic, parts person, or salesperson who primarily sells or services automobiles, farm equipment, trailers, or trucks, if the employer is engaged primarily in selling those vehicles to buyers and is not a manufacturer. Additionally, as discussed below, others are exempt from overtime requirements or more broadly from the Maryland Wage and Hour Law.

Maryland Wage and Hour 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 to provide a maintenance level consistent with the needs of the population. State law specifies that an employee must be paid the greater of the federal minimum wage (which is currently \$7.25 per hour) or \$10.10 per hour.

The Maryland Wage and Hour Law, and minimum wage requirements, do 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.

An employer is required to pay an overtime wage of at least 1.5 times the usual hourly wage for each hour over 40 hours that an employee works during one work week. This requirement does not apply to an employer that is subject to federal rail laws; 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, parts person, or salesperson, under certain conditions (as mentioned above); a driver employed by a taxicab operator; or specified air carrier employees under certain conditions. Also, specific exemptions apply for farm work, bowling establishments, and infirmaries.

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.

Additional Information

Prior Introductions: None.

Cross File: SB 157 (Senator Beidle) - Finance.

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

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Analysis by: Heather N. Ruby

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