

# HOUSE BILL 1288

K3  
HB 1392/08 – ECM

9lr1469  
CF SB 452

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By: **Delegates Ramirez, Ali, Aumann, Barkley, Bronrott, Burns, Cane, Conaway, Davis, Dumais, Feldman, Frush, Glenn, Gutierrez, Haynes, Healey, Heller, Hucker, Ivey, Kaiser, Kirk, Krysiak, Lee, Manno, Mizeur, Murphy, Niemann, Pena-Melnyk, Reznik, Ross, Schuler, Stukes, Taylor, Valderrama, and Vaughn**

Introduced and read first time: February 13, 2009

Assigned to: Economic Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Maryland Wage and Hour Law – Damages**

3 FOR the purpose of allowing an employee to recover certain damages under certain  
4 circumstances; requiring a court to allow certain costs against an employer for a  
5 certain recovery in a certain action; and generally relating to violations of the  
6 wage and hour laws.

7 BY repealing and reenacting, without amendments,  
8 Article – Labor and Employment  
9 Section 3–413, 3–415(a), 3–419, and 3–420  
10 Annotated Code of Maryland  
11 (2008 Replacement Volume)

12 BY repealing and reenacting, with amendments,  
13 Article – Labor and Employment  
14 Section 3–427  
15 Annotated Code of Maryland  
16 (2008 Replacement Volume)

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

19 **Article – Labor and Employment**

20 3–413.

21 (a) In this section, “employer” includes a governmental unit.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (b) Except as provided in § 3–414 of this subtitle, each employer shall pay:

2 (1) to each employee who is subject to both the federal Act and this  
3 subtitle, at least the greater of:

4 (i) the minimum wage for that employee under the federal Act;  
5 or

6 (ii) a wage that equals a rate of \$6.15 per hour; and

7 (2) each other employee who is subject to this subtitle, at least:

8 (i) the greater of:

9 1. the highest minimum wage under the federal Act; or

10 2. a wage that equals a rate of \$6.15 per hour; or

11 (ii) a training wage under regulations that the Commissioner  
12 adopts that include the conditions and limitations authorized under the federal Fair  
13 Labor Standards Amendments of 1989.

14 3–415.

15 (a) Except as otherwise provided in this section, each employer shall pay an  
16 overtime wage of at least 1.5 times the usual hourly wage, computed in accordance  
17 with § 3–420 of this subtitle.

18 3–419.

19 (a) (1) This section applies to each employee who:

20 (i) is engaged in an occupation in which the employee  
21 customarily and regularly receives more than \$30 each month in tips;

22 (ii) has been informed by the employer about the provisions of  
23 this section; and

24 (iii) has kept all of the tips that the employee received.

25 (2) Notwithstanding paragraph (1)(iii) of this subsection, this section  
26 does not prohibit the pooling of tips.

27 (b) Subject to the limitations in this section, an employer may include, as  
28 part of the wage of an employee to whom this section applies:

1 (1) an amount that the employer sets to represent the tips of the  
2 employee; or

3 (2) if the employee or representative of the employee satisfies the  
4 Commissioner that the employee received a lesser amount in tips, the lesser amount.

5 (c) The tip credit amount that the employer may include under subsection  
6 (b) of this section may not exceed 50% of the minimum wage established under § 3-413  
7 of this subtitle for the employee.

8 3-420.

9 (a) Except as otherwise provided in this section, an employer shall compute  
10 the wage for overtime under § 3-415 of this subtitle on the basis of each hour over 40  
11 hours that an employee works during 1 workweek.

12 (b) Notwithstanding § 3-415(b)(8) of this subtitle, an employer that is not a  
13 not for profit organization and is a concert promoter, legitimate theater, music festival,  
14 music pavilion, or theatrical show shall pay overtime for a craft or trade employee as  
15 required in subsection (a) of this section.

16 (c) The wage for overtime may be computed on the basis of each hour over 60  
17 hours that an employee works during 1 workweek for an employee who:

18 (1) is engaged in agriculture; and

19 (2) is exempt from the overtime provisions of the federal Act.

20 (d) The wage for overtime may be computed on the basis of each hour over 48  
21 hours that an employee works during 1 workweek:

22 (1) for an employee of a bowling establishment; and

23 (2) for an employee of an institution that:

24 (i) is not a hospital; but

25 (ii) is engaged primarily in the care of individuals who:

26 1. are aged, mentally retarded, or sick or have a mental  
27 disorder; and

28 2. reside at the institution.

29 3-427.

30 (a) If an employer pays an employee less than the wage required under this  
31 subtitle, the employee may bring an action against the employer to recover:

1           (1) the difference between the wage paid to the employee and the wage  
2 required under this subtitle;

3           (2) **AN ADDITIONAL AMOUNT EQUAL TO TWO TIMES THE**  
4 **DIFFERENCE BETWEEN THE WAGE PAID TO THE EMPLOYEE AND THE WAGE**  
5 **REQUIRED UNDER THIS SUBTITLE AS LIQUIDATED DAMAGES; AND**

6           (3) **THE COUNSEL FEES AND COSTS SPECIFIED IN SUBSECTION (D)**  
7 **OF THIS SECTION.**

8           (b) On the written request of an employee who is entitled to bring an action  
9 under this section, the Commissioner may:

10           (1) take an assignment of the claim in trust for the employee;

11           (2) ask the Attorney General to bring an action in accordance with this  
12 section on behalf of the employee; and

13           (3) consolidate 2 or more claims against an employer.

14           (c) The agreement of an employee to work for less than the wage to which  
15 the employee is entitled under this subtitle is not a defense to an action under this  
16 section.

17           (d) If a court determines that an employee is entitled to recovery in an action  
18 under this section, the court [may] **SHALL** allow against the employer:

19           (1) reasonable counsel fees and other costs;

20           (2) **THE DIFFERENCE BETWEEN THE WAGE REQUIRED UNDER**  
21 **THIS SUBTITLE AND THE WAGE PAID TO THE EMPLOYEE; AND**

22           (3) **AN ADDITIONAL AMOUNT EQUAL TO TWO TIMES THE**  
23 **DIFFERENCE BETWEEN THE WAGE PAID TO THE EMPLOYEE AND THE WAGE**  
24 **REQUIRED UNDER THIS SUBTITLE AS LIQUIDATED DAMAGES.**

25           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
26 October 1, 2009.