

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 451
Finance

(Senator Lenett)

Labor and Employment - Maryland Wage and Hour Law - Criminal Penalties

This bill increases misdemeanor penalties for employers that do not comply with the Maryland Wage and Hour Law, establishing a fine of up to \$2,500 for a first violation. Subsequent violations are subject to a fine of up to \$5,000. Each workweek for which an employer does not pay the wage required under Maryland Wage and Hour Law is considered a separate offense.

Fiscal Summary

State Effect: As the bill is expected to apply in a limited number of cases, State finances are not materially affected.

Local Effect: As the bill is expected to apply in a limited number of cases, local finances are not materially affected.

Small Business Effect: Potential minimal.

Analysis

Current 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.

Under Maryland Wage and Hour Law, employers, including governmental units, are generally required to pay each employee the greater of the federal minimum wage (currently \$6.55 and scheduled to increase to \$7.25 in July 2009) or an hourly wage of \$6.15. Exceptions exist for training wages and disabled employees of a sheltered workshop.

Employers are required to pay an overtime wage of at least 1.5 times the usual hourly wage. This requirement does not apply to: an employer that is subject to federal rail laws; a hotel or motel; a restaurant; a gasoline service station; a bona fide private country club; a nonprofit entity primarily engaged in providing temporary at-home care services; 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, partsperson, or salesperson, under certain conditions; or drivers employed by a taxicab operator. An employer has to compute the wage for overtime on the basis of each hour over 40 hours that an employee works during one work week. Specific exemptions apply for farm work, bowling establishments, and infirmaries.

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 or older than age 61; salesmen and those who work on commission; an employer's immediate family; movie 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 certain farm workers.

In addition to wage provisions, the Maryland Wage and Hour Law prohibits an employer from hindering or delaying enforcement of the law or discharging an employee for bringing an action against the employer. An employee is prohibited from making a complaint in bad faith. A violation of the Maryland Wage and Hour Law is a misdemeanor, subject to a fine of up to \$1,000.

Background: The Department of Labor, Licensing, and Regulation advises that an action has not been taken against an employer under the existing penalty provision in more than five years. Nonetheless, the department advises that the threat of court action and criminal penalty may have the effect of increasing voluntary compliance.

Additional Information

Prior Introductions: A similar bill, HB 1393 of 2008, was given an unfavorable report by the House Economic Matters Committee.

Cross File: HB 1287 (Delegate Ramirez, *et al.*) - Economic Matters.

Information Source(s): Department of Budget and Management; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Legislative Services

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