

Chapter 563

(House Bill 1100)

AN ACT concerning

Prevailing Wage Rates – Public Works Contracts – Suits by Employees

FOR the purpose of authorizing certain employees to file a complaint with the Commissioner of Labor and Industry; requiring that a certain complaint filed by an employee under a certain provision of law is subject to certain ~~investigation and enforcement~~ procedures; requiring the Commissioner to attempt to resolve a certain issue ~~internally or issue a certain order under certain circumstances;~~ informally; requiring the Commissioner to issue an order for a hearing under certain circumstances; requiring the Commissioner to take certain actions if an employee is found to be entitled to restitution; authorizing certain employees to seek certain compensation and additional remedies from certain employers under certain circumstances; authorizing certain employees or the Commissioner to file certain court actions; requiring that certain actions be brought within a certain time period; providing that a certain contract is not a bar to the recovery of certain remedies; authorizing a court to award certain employees certain wages, other compensation, and fees in certain circumstances; authorizing certain employees to bring an action on their behalf and on behalf of certain other employees; subjecting certain persons to certain civil penalties; prohibiting a contractor or subcontractor from engaging in certain conduct against certain employees; subjecting a contractor or subcontractor to certain penalties for certain violations; and generally relating to private enforcement actions under the State prevailing wage law.

BY repealing and reenacting, with amendments,
 Article – State Finance and Procurement
 Section 17–224
 Annotated Code of Maryland
 (2009 Replacement Volume)

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

Article – State Finance and Procurement

17–224.

(a) (1) If an employee under a public work contract is paid less than the prevailing wage rate for that employee's classification for the work performed, the employee [is entitled to sue to recover the difference between the prevailing wage rate

and the amount received by the employee] MAY FILE A COMPLAINT WITH THE COMMISSIONER.

(2) ~~A~~ EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A [determination by the Commissioner that a contractor is required to make restitution does not preclude an employee from filing an action under this section] COMPLAINT FILED UNDER THIS SECTION SHALL BE SUBJECT TO THE INVESTIGATION AND ENFORCEMENT PROCEDURES UNDER PROVISIONS OF § 17-221 OF THIS SUBTITLE.

(3) IF THE COMMISSIONER'S INVESTIGATION DETERMINES THAT THE EMPLOYER VIOLATED PROVISIONS OF THIS SUBTITLE, THE COMMISSIONER SHALL:

~~(I) TRY TO RESOLVE THE ISSUE INFORMALLY; OR~~

~~(II) ISSUE AN ORDER COMPELLING COMPLIANCE WITH THIS SUBTITLE IN ACCORDANCE WITH § 17-221 OF THIS SUBTITLE~~ TRY TO RESOLVE THE ISSUE INFORMALLY.

(4) (I) IF THE COMMISSIONER IS UNABLE TO RESOLVE THE MATTER INFORMALLY, THE COMMISSIONER SHALL ISSUE AN ORDER FOR A HEARING IN ACCORDANCE WITH § 17-221 OF THIS SUBTITLE.

(II) IF, AT THE CONCLUSION OF A HEARING ORDERED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE COMMISSIONER DETERMINES THAT THE EMPLOYEE IS ENTITLED TO RESTITUTION UNDER THIS SUBTITLE, THE COMMISSIONER SHALL ISSUE AN ORDER IN ACCORDANCE WITH § 17-221 OF THIS SUBTITLE.

(III) IF AN EMPLOYER OF AN EMPLOYEE FOUND TO BE ENTITLED TO RESTITUTION UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH IS NO LONGER WORKING UNDER A CONTRACT WITH A PUBLIC BODY, THE COMMISSIONER MAY ORDER THAT RESTITUTION BE PAID DIRECTLY BY THE EMPLOYER TO THE EMPLOYEE WITHIN A REASONABLE PERIOD OF TIME, AS DETERMINED BY THE COMMISSIONER.

~~(4)~~ (5) IF AN EMPLOYER FAILS TO COMPLY WITH ~~THE~~ AN ORDER ISSUED UNDER PARAGRAPH (3)(II) TO PAY RESTITUTION TO AN EMPLOYEE UNDER PARAGRAPH (4)(III) OF THIS SUBSECTION, THE COMMISSIONER OR THE EMPLOYEE MAY BRING A CIVIL ACTION TO ENFORCE THE ORDER IN THE CIRCUIT COURT IN THE COUNTY WHERE THE EMPLOYEE OR EMPLOYER IS LOCATED.

(b) (1) An action under this section is considered to be a suit for wages.

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

(3) AN ACTION BROUGHT UNDER THIS SECTION FOR A VIOLATION OF THIS SUBTITLE SHALL BE FILED WITHIN 3 YEARS FROM THE DATE THE AFFECTED EMPLOYEE KNEW OR SHOULD HAVE KNOWN OF THE VIOLATION.

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

(2) A CONTRACT OR OTHER WRITTEN DOCUMENT IN WHICH AN EMPLOYEE STATES THAT THE EMPLOYEE SHALL BE PAID LESS THAN THE AMOUNT REQUIRED BY THIS SUBTITLE DOES NOT BAR THE RECOVERY OF ANY REMEDY REQUIRED UNDER THIS SUBTITLE.

(D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, IF THE COURT IN AN ACTION FILED UNDER THIS SECTION FINDS THAT AN EMPLOYER PAID AN EMPLOYEE LESS THAN THE REQUISITE PREVAILING WAGE, THE COURT SHALL AWARD THE AFFECTED EMPLOYEE THE DIFFERENCE BETWEEN THE WAGE ACTUALLY PAID AND THE PREVAILING WAGE AT THE TIME THAT THE SERVICES WERE RENDERED.

(2) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, UNPAID FRINGE BENEFIT CONTRIBUTIONS OWED FOR AN EMPLOYEE IN ACCORDANCE WITH THIS SECTION SHALL BE PAID TO THE APPROPRIATE BENEFIT FUND, PLAN, OR PROGRAM.

(II) IN THE ABSENCE OF AN APPROPRIATE BENEFIT FUND, PLAN, OR PROGRAM, THE AMOUNT OWED FOR FRINGE BENEFITS FOR AN EMPLOYEE SHALL BE PAID DIRECTLY TO THE EMPLOYEE.

(3) THE COURT MAY ORDER THE PAYMENT OF DOUBLE DAMAGES OR TREBLE DAMAGES UNDER THIS SECTION IF THE COURT FINDS THAT THE EMPLOYER WITHHELD WAGES OR FRINGE BENEFITS WILLFULLY AND KNOWINGLY OR WITH DELIBERATE IGNORANCE OR RECKLESS DISREGARD OF THE EMPLOYER'S OBLIGATIONS UNDER THIS SUBTITLE.

(4) IN AN ACTION UNDER THIS SECTION, THE COURT SHALL AWARD A PREVAILING PLAINTIFF REASONABLE COUNSEL FEES AND COSTS.

(5) IF THE COURT FINDS THAT AN EMPLOYEE SUBMITTED A FALSE OR FRAUDULENT CLAIM IN AN ACTION UNDER THIS SECTION, THE COURT MAY ORDER THE EMPLOYEE TO PAY THE EMPLOYER REASONABLE COUNSEL FEES AND COSTS.

(E) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, AN ACTION FILED IN ACCORDANCE WITH THIS SECTION MAY BE BROUGHT BY ONE OR MORE EMPLOYEES ON BEHALF OF THAT EMPLOYEE OR GROUP OF EMPLOYEES AND ON BEHALF OF OTHER EMPLOYEES SIMILARLY SITUATED.

(2) AN EMPLOYEE MAY NOT BE A PARTY PLAINTIFF TO AN ACTION BROUGHT UNDER THIS SECTION UNLESS THAT EMPLOYEE FILES WRITTEN CONSENT WITH THE COURT IN WHICH THE ACTION IS BROUGHT TO BECOME A PARTY TO THE ACTION.

(F) (1) A PERSON FOUND TO HAVE MADE A FALSE OR FRAUDULENT REPRESENTATION OR OMISSION KNOWN TO BE FALSE OR MADE WITH DELIBERATE IGNORANCE OR RECKLESS DISREGARD FOR ITS TRUTH OR FALSITY REGARDING A MATERIAL FACT IN CONNECTION WITH ANY PREVAILING WAGE PAYROLL RECORD REQUIRED BY § 17-220 OF THIS SUBTITLE IS LIABLE FOR A CIVIL PENALTY OF \$1,000 FOR EACH FALSIFIED RECORD.

(2) THE PENALTY SHALL BE RECOVERABLE IN A CIVIL ACTION FILED IN ACCORDANCE WITH THIS SECTION AND PAID TO THE STATE GENERAL FUND.

(G) AN EMPLOYER MAY NOT DISCHARGE, THREATEN, OR OTHERWISE RETALIATE OR DISCRIMINATE AGAINST AN EMPLOYEE REGARDING COMPENSATION OR OTHER TERMS AND CONDITIONS OF EMPLOYMENT BECAUSE THAT EMPLOYEE OR AN ORGANIZATION OR OTHER PERSON ACTING ON BEHALF OF THAT EMPLOYEE:

(1) REPORTS OR MAKES A COMPLAINT UNDER THIS SUBTITLE OR OTHERWISE ASSERTS THE WORKER'S RIGHTS UNDER THIS SECTION; OR

(2) PARTICIPATES IN ANY INVESTIGATION, HEARING, OR INQUIRY HELD BY THE COMMISSIONER UNDER § 17-221 OF THIS SUBTITLE.

(H) (1) A CONTRACTOR OR SUBCONTRACTOR MAY NOT RETALIATE OR DISCRIMINATE AGAINST AN EMPLOYEE IN VIOLATION OF THIS SECTION.

(2) IF A CONTRACTOR OR SUBCONTRACTOR RETALIATES OR DISCRIMINATES AGAINST AN EMPLOYEE IN VIOLATION OF THIS SECTION, THE

AFFECTED EMPLOYEE MAY FILE AN ACTION IN ANY COURT OF COMPETENT JURISDICTION WITHIN 3 YEARS FROM THE EMPLOYEE'S KNOWLEDGE OF THE ACTION.

(3) IF THE COURT FINDS IN FAVOR OF THE EMPLOYEE IN AN ACTION BROUGHT UNDER THIS SUBSECTION, THE COURT SHALL ORDER THAT THE CONTRACTOR OR SUBCONTRACTOR:

(I) REINSTATE THE EMPLOYEE OR PROVIDE THE EMPLOYEE RESTITUTION, AS APPROPRIATE;

(II) PAY THE EMPLOYEE AN AMOUNT EQUAL TO THREE TIMES THE AMOUNT OF BACK WAGES AND FRINGE BENEFITS CALCULATED FROM THE DATE OF THE VIOLATION; AND

(III) PAY REASONABLE COUNSEL FEES AND OTHER COSTS.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2010.

Approved by the Governor, May 20, 2010.