

Chapter 612

(Senate Bill 789)

AN ACT concerning

Labor and Employment – The Healthy Retail Employee Act

FOR the purpose of requiring certain retail employers to provide a certain nonworking or working shift break to certain employees under certain circumstances; authorizing certain employees to file a complaint with the Commissioner of Labor and Industry under certain circumstances; authorizing the Commissioner to investigate whether a certain provision of law has been violated under certain circumstances; requiring the Commissioner to attempt to resolve a certain issue informally or issue a certain order under certain circumstances; ~~authorizing~~ requiring the Commissioner to assess a certain civil penalty under certain circumstances; subjecting certain provisions of this Act to certain notice and hearing requirements; requiring the Commissioner to consider certain factors when determining whether a violation of this Act has occurred or the amount of a certain civil penalty; authorizing certain civil actions under certain circumstances; ~~authorizing certain remedies under certain circumstances;~~ requiring a court to award specifying that a certain employee may be entitled to a certain monetary amount and certain attorney's fees and costs under certain circumstances; providing for the application of this Act; defining certain terms; providing for a delayed effective date; and generally relating to shift breaks for employees.

BY repealing and reenacting, with amendments,
Article – Labor and Employment
Section 3–103(d)
Annotated Code of Maryland
(2008 Replacement Volume and 2009 Supplement)

BY adding to
Article – Labor and Employment
Section 3–710
Annotated Code of Maryland
(2008 Replacement Volume and 2009 Supplement)

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

Article – Labor and Employment

3–103.

(d) (1) The Commissioner may investigate whether § 3-701 of this title has been violated on receipt of a written complaint of an applicant for employment.

(2) The Commissioner may investigate whether § 3-702 of this title has been violated on receipt of a written complaint of an applicant for employment or an employee.

(3) THE COMMISSIONER MAY INVESTIGATE WHETHER § 3-710 OF THIS TITLE HAS BEEN VIOLATED ON RECEIPT OF A WRITTEN COMPLAINT OF AN EMPLOYEE AS PROVIDED IN § 3-710(D)(1) OF THIS TITLE.

3-710.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “EMPLOYER” MEANS A PERSON:

(I) ENGAGED IN A RETAIL ESTABLISHMENT BUSINESS IN THE STATE THAT HAS ~~AT LEAST~~ 50 OR MORE RETAIL EMPLOYEES FOR EACH WORKING DAY IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE CURRENT OR PRECEDING CALENDAR YEAR; OR

(II) THAT OWNS ONE OR MORE RETAIL ESTABLISHMENT FRANCHISES WITH THE SAME TRADE NAME WITH ~~AT LEAST~~ 50 OR MORE RETAIL EMPLOYEES IN THE STATE FOR EACH WORKING DAY IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE CURRENT OR PRECEDING CALENDAR YEAR.

(3) “FRANCHISE” HAS THE MEANING STATED IN § 14-201 OF THE BUSINESS REGULATION ARTICLE.

(4) (I) ~~“RETAIL ESTABLISHMENT” HAS THE MEANING STATED IN § 5-401 OF THE ECONOMIC DEVELOPMENT ARTICLE~~ MEANS A PLACE OF BUSINESS WITH THE PRIMARY PURPOSE OF SELLING GOODS TO A CONSUMER WHO IS PRESENT AT THE PLACE OF BUSINESS AT THE TIME OF SALE.

(II) “RETAIL ESTABLISHMENT” DOES NOT INCLUDE:

1. A WHOLESALER, AS DEFINED IN § 11-401(I) OF THE COMMERCIAL LAW ARTICLE; OR

2. A RESTAURANT.

(B) THIS SECTION DOES NOT APPLY TO AN EMPLOYEE:

(1) COVERED BY A COLLECTIVE BARGAINING AGREEMENT OR EMPLOYMENT POLICY THAT INCLUDES SHIFT BREAKS EQUAL TO OR GREATER THAN THOSE PROVIDED UNDER THIS SECTION;

(2) EXEMPT FROM OVERTIME PAY REQUIREMENTS UNDER THE FAIR LABOR STANDARDS ACT; ~~OR~~

(3) WHO WORKS FOR A UNIT OF THE STATE, A COUNTY, OR A MUNICIPALITY;

(4) WHO WORKS IN A CORPORATE OFFICE OR OTHER OFFICE LOCATION; OR

(5) WHO WORKS FOR AT LEAST 4 CONSECUTIVE HOURS FOR AN EMPLOYER AT A SINGLE LOCATION WITH 5 OR FEWER EMPLOYEES.

(C) (1) (I) EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS SUBSECTION OR SUBPARAGRAPH (II) OF THIS PARAGRAPH, AN EMPLOYER MAY NOT EMPLOY AN EMPLOYEE AT A RETAIL ESTABLISHMENT FOR:

~~1~~ 4 TO 6 CONSECUTIVE HOURS WITHOUT PROVIDING A NONWORKING SHIFT BREAK OF AT LEAST 15 MINUTES; ~~OR.~~

(II) AN EMPLOYEE IS NOT ENTITLED TO A 15 MINUTE SHIFT BREAK UNDER THIS PARAGRAPH IF THE EMPLOYEE IS ENTITLED TO A 30 MINUTE SHIFT BREAK UNDER PARAGRAPH (2) OF THIS SUBSECTION.

~~2~~ (2) AN EMPLOYER MAY NOT EMPLOY AN EMPLOYEE AT A RETAIL ESTABLISHMENT FOR MORE THAN 6 CONSECUTIVE HOURS WITHOUT PROVIDING A NONWORKING SHIFT BREAK OF AT LEAST 30 MINUTES.

(3) IF AN EMPLOYEE WORKS 8 CONSECUTIVE HOURS IN A SINGLE SHIFT, THE EMPLOYER SHALL PROVIDE AN ADDITIONAL NONWORKING SHIFT BREAK OF AT LEAST 15 MINUTES FOR EVERY ADDITIONAL 4 CONSECUTIVE HOURS THE EMPLOYER EMPLOYS THE EMPLOYEE IN THE SHIFT.

~~(4)~~ (4) IF AN EMPLOYEE'S WORK HOURS DO NOT EXCEED 6 CONSECUTIVE HOURS, THE PROVISIONS OF ~~SUBPARAGRAPH (I) OF THIS PARAGRAPH~~ PARAGRAPH (1) OF THIS SUBSECTION MAY BE WAIVED BY WRITTEN AGREEMENT BETWEEN THE EMPLOYER AND EMPLOYEE.

~~(2)(5)~~ ~~THE A~~ SHIFT BREAK REQUIRED UNDER PARAGRAPH (1)
~~OF THIS SUBSECTION MAY BE CONSIDERED A WORKING SHIFT BREAK IF:~~

(I) 1. THE TYPE OF WORK PREVENTS AN EMPLOYEE FROM BEING RELIEVED OF WORK DURING THE NONWORKING SHIFT BREAK; OR

2. THE EMPLOYEE IS ALLOWED TO CONSUME A MEAL WHILE WORKING AND THE WORKING SHIFT BREAK IS COUNTED TOWARDS THE EMPLOYEE'S WORK HOURS; AND

(II) THE EMPLOYER AND EMPLOYEE MUTUALLY AGREE IN WRITING TO THE WORKING SHIFT BREAK AND DOCUMENT THE AGREEMENT.

(D) (1) IF AN EMPLOYER VIOLATES SUBSECTION (C) OF THIS SECTION, AN EMPLOYEE OF THE EMPLOYER MAY FILE A COMPLAINT WITH THE COMMISSIONER.

(2) IF THE COMMISSIONER ~~DETERMINES THAT THE EMPLOYER HAS VIOLATED THIS SECTION~~ RECEIVES A COMPLAINT UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE COMMISSIONER SHALL:

(I) TRY TO RESOLVE THE ISSUE INFORMALLY; OR

(II) DETERMINE WHETHER THE EMPLOYER HAS VIOLATED THIS SECTION.

(3) IF THE COMMISSIONER DETERMINES THAT THE EMPLOYER HAS VIOLATED THIS SECTION, THE COMMISSIONER SHALL:

(I) ISSUE AN ORDER COMPELLING COMPLIANCE WITH THIS SECTION ~~CONSISTENT WITH THE NOTICE AND HEARING REQUIREMENTS OF TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE; AND~~

(II) IN THE COMMISSIONER'S DISCRETION, ASSESS A CIVIL PENALTY OF:

1. UP TO \$300 FOR EACH EMPLOYEE FOR WHOM THE EMPLOYER IS NOT IN COMPLIANCE WITH THIS SECTION; OR

2. UP TO \$600 FOR EACH EMPLOYEE FOR WHOM THE EMPLOYER IS NOT IN COMPLIANCE WITH THIS SECTION IF THE VIOLATION OCCURRED WITHIN 3 YEARS AFTER AN EMPLOYEE FILED A PREVIOUS

COMPLAINT THAT LED TO A DETERMINATION THAT A VIOLATION HAD OCCURRED.

(4) THE PROVISIONS OF PARAGRAPHS (2)(II) AND (3) OF THIS SUBSECTION ARE SUBJECT TO THE NOTICE AND HEARING REQUIREMENTS OF TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

(5) (I) IN DETERMINING WHETHER THERE IS A VIOLATION OF THIS SECTION, THE COMMISSIONER SHALL CONSIDER IF THERE WAS A THREAT TO PUBLIC HEALTH OR SAFETY AT THE TIME THE VIOLATION IS ALLEGED TO HAVE OCCURRED.

(II) IN DETERMINING THE AMOUNT OF ANY CIVIL PENALTY TO BE IMPOSED, THE COMMISSIONER SHALL CONSIDER THE:

- 1. SERIOUSNESS OF THE VIOLATION;
- 2. SIZE OF THE EMPLOYER'S BUSINESS;
- 3. EMPLOYER'S GOOD FAITH IN COMPLYING WITH THIS SECTION; AND
- 4. EMPLOYER'S HISTORY OF VIOLATIONS UNDER THIS SECTION.

~~(3) (6) (I) IF THE EMPLOYER FAILS TO COMPLY WITH AN ORDER ISSUED FOR A FIRST VIOLATION UNDER PARAGRAPH (2)(II) (3) OF THIS SUBSECTION, THE COMMISSIONER MAY:~~

~~1. BRING AN ACTION TO ENFORCE THE ORDER AND CIVIL PENALTY IN THE CIRCUIT COURT IN THE COUNTY WHERE THE EMPLOYER IS LOCATED; OR~~

~~2. ASSESS A CIVIL PENALTY OF UP TO \$500 FOR EACH EMPLOYEE FOR WHOM THE EMPLOYER IS NOT IN COMPLIANCE WITH THIS SECTION.~~

~~(4) (I) IF THE EMPLOYER FAILS TO COMPLY WITH AN ORDER ISSUED FOR A SUBSEQUENT VIOLATION UNDER PARAGRAPH (2)(II) OF THIS SUBSECTION:~~

- ~~1. THE COMMISSIONER MAY:~~

~~A. BRING AN ACTION TO ENFORCE THE ORDER IN THE CIRCUIT COURT IN THE COUNTY WHERE THE EMPLOYER IS LOCATED; AND~~

~~B. ASSESS A CIVIL PENALTY OF UP TO \$500 FOR EACH EMPLOYEE FOR WHOM THE EMPLOYER IS NOT IN COMPLIANCE WITH THIS SECTION; AND~~

~~2.~~

(7) IF THE EMPLOYER FAILS TO COMPLY WITH AN ORDER ISSUED FOR A SUBSEQUENT VIOLATION AGAINST THE SAME EMPLOYEE UNDER PARAGRAPH (3) OF THIS SUBSECTION WITHIN 3 YEARS AFTER THE EMPLOYEE FILED A COMPLAINT THAT IS DETERMINED TO BE A VIOLATION UNDER SUBSECTION (D) OF THIS SECTION, THE EMPLOYEE MAY BRING AN ACTION TO ENFORCE THE ORDER IN THE CIRCUIT COURT IN THE COUNTY WHERE THE EMPLOYER IS LOCATED.

~~(5) THE EMPLOYEE SHALL BE ENTITLED TO ANY REMEDIES AVAILABLE AT LAW OR IN EQUITY APPROPRIATE TO REMEDY ANY VIOLATION OF THIS SECTION, INCLUDING BACK PAY OR INJUNCTIVE RELIEF.~~

~~(6) THE COURT SHALL AWARD REASONABLE ATTORNEY'S FEES AND COSTS TO AN EMPLOYEE WHO PREVAILS IN AN ENFORCEMENT ACTION UNDER THIS SECTION.~~

(8) IF AN EMPLOYEE PREVAILS IN AN ACTION BROUGHT UNDER PARAGRAPH (7) OF THIS SUBSECTION, THE EMPLOYEE MAY BE ENTITLED TO:

(I) THREE TIMES THE VALUE OF THE EMPLOYEE'S HOURLY WAGE FOR EACH SHIFT BREAK VIOLATION OF THIS SECTION OCCURRING AFTER THE MOST RECENT VIOLATION AGAINST THE SAME EMPLOYEE; AND

(II) REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF THE EMPLOYEE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October 1, 2010~~ March 1, 2011.

Approved by the Governor, May 20, 2010.