

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 404

(Chair, Economic Matters Committee)(By Request -
Departmental - Labor, Licensing and Regulation)

Economic Matters

Finance

Labor and Employment - Wage Payment and Collection - Order to Pay Wages

This departmental bill establishes an administrative procedure for resolving wage complaints involving \$3,000 or less under the Maryland Wage Payment and Collection Law.

Fiscal Summary

State Effect: Any change in State activities does not materially affect State finances. However, a decrease in the workload of the Office of the Attorney General (OAG) may occur resulting in improved operational efficiencies. Any impact on the workload of the District Court or the Office of Administrative Hearings (OAH) is expected to be minimal and can be handled with existing resources.

Local Effect: The bill does not materially affect local government finances or operations.

Small Business Effect: The Department of Labor, Licensing, and Regulation (DLLR) has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: In wage complaints amounting to \$3,000 or less, the Commissioner of Labor and Industry may review and investigate the complaint and may either issue an order requiring the employer to pay, or dismiss the claim. The order to pay wages may

include a requirement that the employer pay an additional amount equal to 5% annual interest calculated from the date when the wages were to be paid.

Within 30 days of receiving the order to pay, the employer may request a *de novo* administrative hearing before OAH to dispute the order to pay. If no hearing is requested, the commissioner's finding becomes a final order. If a petition for review by the circuit court is not filed by the employer within 30 days of the issuance of a final order, the commissioner may proceed in District Court to enforce payment of the order.

Current Law: Whenever it is determined that the Wage Payment and Collection Law has been violated, the commissioner may (1) try to resolve the violation informally through mediation; (2) ask OAG to bring an action on behalf of the employee; or (3) bring an action on behalf of the employee in the county where the violation allegedly occurred.

Employees entitled to wages from an employer may – after two weeks have elapsed – bring action against the employer in a court of competent jurisdiction to recover the unpaid wages. If a court determines that an employer withheld an employee's wage unlawfully, the court may award the employee up to three times the amount of wages owed, counsel fees, and other costs. Employers who violate the Wage Payment and Collection Law are guilty of a misdemeanor and may be fined up to \$1,000.

Unless otherwise specified, the definition of employer in the State's Wage Payment and Collection Law does not include units of government.

Background: DLLR advises that the Division of Labor and Industry receives over 1,700 wage claims from employees (former employees) alleging that an employer failed to pay their earned wages. Often the disputes arise from a final paycheck or compensation for vacation pay. The division reviews each complaint and attempts to contact the employer to determine the validity of the claim. DLLR estimates that, in about 30% of the cases, the employer either does not respond or admits owing the wages but claims insolvency. In these cases, the division refers the matter to OAG to obtain a civil judgment.

Maryland's Wage Payment and Collection Law regulates the payment of wages by employers in the State. The law requires employers to pay workers the wage promised; establish regular paydays; pay wages when due; pay employees in a specified manner; pay employees at least once every two weeks, with exceptions; furnish employees with a statement of gross earnings; advise employees of their rate of pay and designated payday; and pay employees all wages due on termination of employment. DLLR's Division of Labor and Industry enforces the provisions of the State's Wage Payment and Collection Law.

State law, through the Administrative Procedure Act, establishes procedures to resolve contested agency actions through an impartial administrative hearing. In 1990, the General Assembly created OAH in furtherance of the effort to centralize the administrative hearing process of government agencies in the State. Maryland is one of 27 states to establish a centralized office for the purpose of administrative adjudication. OAH conducts hearings for approximately 22 State agencies, in over 200 different types of contested cases.

State Fiscal Effect: DLLR advises that the bill establishes a more efficient system for processing wage complaints involving wage claims valued at or below \$3,000. In cases where DLLR determines that a claim is valid, its current procedure is to refer the matter to OAG to file suit. The bill allows the commissioner to issue an order to pay in lieu of referring the matter to OAG. Unless the order is successfully contested, the commissioner can file the claim in District Court to enforce payment on the employer. Therefore, Legislative Services estimates that the bill reduces OAG's workload and improves the commissioner's ability to investigate, enforce, and recover small wage claims.

OAH anticipates that the bill generates less than 30 additional cases per year; such an increase in the workload of OAH can be handled with existing resources. Legislative Services estimates that any impact on the workload of the District Court is minimal and can be handled with existing resources.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - February 15, 2010
ncc/mcr Revised - House Third Reader - March 27, 2010

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Labor and Employment – Wage Payment and Collection – Order to Pay Wages

BILL NUMBER: HB 404

PREPARED BY: Department of Labor, Licensing and Regulation

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.