

## Chapter 494

(Senate Bill 551)

AN ACT concerning

### **Maryland Wage and Hour Law – Prohibited Acts of Employers – Adverse Action**

FOR the purpose of prohibiting an employer from taking adverse action against an employee who makes a complaint, brings an action, or testifies in an action under the Maryland Wage and Hour Law; specifying that the adverse action prohibited includes certain retaliatory actions; prohibiting the conviction of an employer without certain evidence; defining a certain term; and generally relating to prohibited acts of employers under the Maryland Wage and Hour Law.

BY repealing and reenacting, without amendments,  
Article – Labor and Employment  
Section 3–401  
Annotated Code of Maryland  
(2008 Replacement Volume and 2010 Supplement)

BY repealing and reenacting, with amendments,  
Article – Labor and Employment  
Section 3–428  
Annotated Code of Maryland  
(2008 Replacement Volume and 2010 Supplement)

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

#### **Article – Labor and Employment**

3–401.

- (a) In this subtitle the following words have the meanings indicated.
- (b) “Employer” includes a person who acts directly or indirectly in the interest of another employer with an employee.
- (c) “Federal Act” means the federal Fair Labor Standards Act of 1938.
- (d) “Wage” means all compensation that is due to an employee for employment.

3-428.

(a) IN THIS SECTION, “COMPLAINT” INCLUDES A WRITTEN OR ORAL COMPLAINT, CLAIM, OR ASSERTION OF RIGHT BY AN EMPLOYEE, REGARDING THE PAYMENT OF WAGES UNDER THIS SUBTITLE, THAT IS MADE TO:

(1) THE EMPLOYER OR A SUPERVISOR, MANAGER, OR FOREMAN EMPLOYED BY THE EMPLOYER WHETHER IT IS MADE THROUGH THE EMPLOYER’S INTERNAL GRIEVANCE PROCESS OR OTHERWISE; OR

~~(2) THE EMPLOYEE’S UNION REPRESENTATIVE;~~

~~(3) A REPRESENTATIVE OF A LABOR UNION OR LABOR ORGANIZATION WHO IS CONSULTED BY THE EMPLOYEE WITH RESPECT TO A COMPLAINT IF THE LABOR UNION OR LABOR ORGANIZATION IS IN THE PROCESS OF ORGANIZING AT THE EMPLOYEE’S WORKSITE;~~

~~(4) AN ATTORNEY WHO IS CONSULTED OR RETAINED BY THE EMPLOYEE WITH RESPECT TO A COMPLAINT; OR~~

~~(5)~~ (2) THE COMMISSIONER OR AN AUTHORIZED REPRESENTATIVE OF THE COMMISSIONER.

(B) (1) An employer may not:

[(1)] (I) pay or agree to pay less than the wage required under this subtitle;

[(2)] (II) hinder or delay the Commissioner or an authorized representative of the Commissioner in the enforcement of this subtitle;

[(3)] (III) [discharge] TAKE ADVERSE ACTION AGAINST an employee because the employee:

[(i)] 1. makes [to the employer, the Commissioner, or an authorized representative of the Commissioner] a complaint that the employee has not been paid in accordance with this subtitle;

[(ii)] 2. brings an action under this subtitle or a proceeding that relates to the subject of this subtitle; or

[(iii)] 3. has testified in an action under this subtitle or a proceeding related to the subject of this subtitle; or

[(4)] (IV) violate any other provision of this subtitle.

**(2) ADVERSE ACTION PROHIBITED UNDER PARAGRAPH (1) OF THIS SUBSECTION INCLUDES:**

**(I) DISCHARGE;**

**(II) DEMOTION;**

**(III) THREATENING THE EMPLOYEE WITH DISCHARGE OR DEMOTION; AND**

**(IV) ANY OTHER RETALIATORY ACTION THAT RESULTS IN A CHANGE TO THE TERMS OR CONDITIONS OF EMPLOYMENT THAT WOULD DISSUADE A REASONABLE EMPLOYEE FROM MAKING A COMPLAINT, BRINGING AN ACTION, OR TESTIFYING IN AN ACTION UNDER THIS SUBTITLE.**

[(b)] (C) An employee may not:

(1) make a groundless or malicious complaint to the Commissioner or an authorized representative of the Commissioner;

(2) in bad faith, bring an action under this subtitle or a proceeding related to the subject of this subtitle; or

(3) in bad faith, testify in an action under this subtitle or a proceeding related to the subject of this subtitle.

[(c)] (D) A person who violates any provision of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000.

**(E) AN EMPLOYER MAY NOT BE CONVICTED UNDER THIS SECTION UNLESS THE EVIDENCE DEMONSTRATES THAT THE EMPLOYER HAD KNOWLEDGE OF THE RELEVANT COMPLAINT, TESTIMONY, OR ACTION FOR WHICH THE PROSECUTION FOR RETALIATION IS SOUGHT.**

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

**Approved by the Governor, May 19, 2011.**