

# HOUSE BILL 197

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By: **Delegates Lierman, Barkley, Brooks, Clippinger, Glenn, Gutierrez, McCray, Valderrama, and Waldstreicher**

Introduced and read first time: January 21, 2016

Assigned to: Economic Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Pay Stub Transparency Act of 2016**

3 FOR the purpose of requiring employers to keep certain wage records for each pay period  
4 for a certain period of time; expanding the types of wage records that employers are  
5 required to keep for each pay period; altering the circumstances under which an  
6 employee may bring a certain action against an employer; authorizing the Attorney  
7 General to bring an action under certain circumstances; authorizing certain  
8 employees to recover certain liquidated damages under certain circumstances;  
9 altering a certain provision of law to require that employers give employees a certain  
10 written notice within a certain period; expanding the information that employers are  
11 required to give to employees within a certain time of hiring and for each pay period;  
12 requiring employers to provide employees with an explanation of how certain wages  
13 were calculated under certain circumstances; requiring a certain notice to be  
14 provided in English and, if different, in the employee's primary language; requiring  
15 the Commissioner of Labor and Industry to create a certain model notice in English,  
16 Spanish, and any other language the Commissioner determines is needed for certain  
17 purposes; authorizing an employee or the Attorney General to bring an action  
18 against an employer for certain damages under certain circumstances; authorizing  
19 the Commissioner, on written request of an employee, to take assignment of certain  
20 claims, request that the Attorney General bring a certain action under certain  
21 circumstances, and consolidate certain claims; authorizing a court to award certain  
22 liquidated damages under certain circumstances; and generally relating to employer  
23 requirements concerning wage records, wages, and paydays.

24 BY repealing and reenacting, with amendments,  
25 Article – Labor and Employment  
26 Section 3–424, 3–427, 3–504, and 3–507.2  
27 Annotated Code of Maryland  
28 (2008 Replacement Volume and 2015 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Labor and Employment**

4 3–424.

5 Each employer shall keep, for at least 3 years, in or about the place of employment,  
6 **FOR EACH PAY PERIOD**, a record of:

7 (1) the name, address, and occupation of each employee;

8 (2) the rate of pay of each employee;

9 **(3) WHETHER EACH EMPLOYEE IS PAID BY:**

10 **(I) THE HOUR;**

11 **(II) THE SHIFT;**

12 **(III) THE DAY;**

13 **(IV) THE WEEK;**

14 **(V) SALARY;**

15 **(VI) THE PIECE;**

16 **(VII) COMMISSION; OR**

17 **(VIII) ANY OTHER BASIS OF PAY;**

18 **(4) ALLOWANCES CLAIMED AS PART OF THE EMPLOYEE’S WAGE,**  
19 **INCLUDING:**

20 **(I) TIP ALLOWANCES;**

21 **(II) MEAL ALLOWANCES; OR**

22 **(III) LODGING ALLOWANCES;**

23 **[(3)] (5) the amount that is paid each pay period to each employee;**

1            ~~[(4)]~~ **(6)**        the hours that each employee works each day and workweek;  
2 **[and]**

3            **(7)    DEDUCTIONS FROM EACH EMPLOYEE’S WAGES;**

4            **(8)    FOR EACH EMPLOYEE NOT EXEMPT FROM PAYMENT OF OVERTIME**  
5 **UNDER § 3-403(A)(1) OF THIS SUBTITLE, EACH EMPLOYEE’S:**

6                            **(I)    REGULAR HOURLY RATE OF PAY;**

7                            **(II)   OVERTIME RATE OF PAY; AND**

8                            **(III) NUMBER OF:**

9    **1.    REGULAR HOURS WORKED; AND**

10     **2.    OVERTIME HOURS WORKED;**

11                    **(9)    FOR EACH EMPLOYEE PAID AT A PIECE RATE, THE APPLICABLE**  
12 **PIECE RATES OR PIECE RATES OF PAY AND THE NUMBER OF PIECES COMPLETED AT**  
13 **EACH PIECE RATE;**

14                    **(10) DATE OF PAYMENT AND THE PAY PERIOD COVERED BY THE**  
15 **PAYMENT; AND**

16                    ~~[(5)]~~ **(11)**    other information that the Commissioner requires, by regulation,  
17 as reasonable to enforce this subtitle.

18 3-427.

19            (a)    If an **EMPLOYEE ALLEGES THAT AN** employer pays ~~[an]~~ **THE** employee less  
20 than the wage required under this subtitle, the employee **OR THE ATTORNEY GENERAL**  
21 may bring an action against the employer to recover:

22                    (1)    the difference between the wage paid to the employee and the wage  
23 required under this subtitle;

24                    (2)    an additional amount equal to the difference between the wage paid to  
25 the employee and the wage required under this subtitle as liquidated damages; **[and]**

26                    **(3)    LIQUIDATED DAMAGES OF \$100 FOR EACH PAY PERIOD THAT THE**  
27 **EMPLOYER FAILED TO MAINTAIN THE EMPLOYEE’S WAGE RECORDS REQUIRED**  
28 **UNDER § 3-424 OF THIS SUBTITLE, NOT TO EXCEED \$2,500; AND**

1            ~~[(3)]~~ (4)    counsel fees and other costs.

2            (b)    On the written request of an employee who is entitled to bring an action under  
3 this section, the Commissioner may:

4            (1)    take an assignment of the claim in trust for the employee;

5            (2)    ask the Attorney General to bring an action in accordance with this  
6 section on behalf of the employee; and

7            (3)    consolidate 2 or more claims against an employer.

8            (c)    The agreement of an employee to work for less than the wage to which the  
9 employee is entitled under this subtitle is not a defense to an action under this section.

10           (d)    (1)    If a court determines that an employee is entitled to recovery in an  
11 action under this section, the court shall award to the employee:

12                    (i)    the difference between the wage paid to the employee and the  
13 wage required under this subtitle;

14                    (ii)    1.    except as provided in paragraph (2) of this subsection, an  
15 additional amount equal to the difference between the wage paid to the employee and the  
16 wage required under this subtitle as liquidated damages; **AND**

17                                    2.    **THE AMOUNT OF LIQUIDATED DAMAGES REQUIRED**  
18 **UNDER SUBSECTION (A)(3) OF THIS SECTION FOR FAILURE TO MAINTAIN PAY**  
19 **RECORDS; and**

20                    (iii)    reasonable counsel fees and other costs.

21            (2)    If an employer shows to the satisfaction of the court that the employer  
22 acted in good faith and reasonably believed that the wages paid to the employee were not  
23 less than the wage required under this subtitle, the court shall:

24                    (i)    determine that liquidated damages should not be awarded; or

25                    (ii)    award, as liquidated damages, any amount less than the amount  
26 specified in paragraph (1)(ii) of this subsection.

27 3-504.

28            (a)    An employer shall give to each employee:

29                    (1)    **[at] WITHIN 1 WEEK AFTER** the **[time of hiring] FIRST DATE OF**  
30 **EMPLOYMENT, WRITTEN** notice of:

1 (i) the rate of pay of the employee;

2 **(II) WHETHER THE EMPLOYEE IS PAID BY:**

3 1. THE HOUR;

4 2. THE SHIFT;

5 3. THE DAY;

6 4. THE WEEK;

7 5. SALARY;

8 6. THE PIECE;

9 7. COMMISSION; OR

10 8. ANY OTHER BASIS OF PAY;

11 **(III) ALLOWANCES CLAIMED AS PART OF THE EMPLOYEE'S WAGE,**  
12 **INCLUDING:**

13 1. TIP ALLOWANCES;

14 2. MEAL ALLOWANCES; OR

15 3. LODGING ALLOWANCES;

16 **[(ii)] (IV) the regular paydays that the employer sets; [and**

17 **(iii)] (V) leave benefits;**

18 **(VI) THE NAME OF THE EMPLOYER;**

19 **(VII) THE PHYSICAL ADDRESS OF THE EMPLOYER'S MAIN OFFICE**  
20 **OR PRINCIPAL PLACE OF BUSINESS AND, IF DIFFERENT, THE MAILING ADDRESS OF**  
21 **THE EMPLOYER; AND**

22 **(VIII) THE TELEPHONE NUMBER OF THE EMPLOYER;**

23 (2) for each pay period[.];

1 (I) a statement of the gross earnings of the employee and deductions  
2 from those gross earnings; [and]

3 (II) THE DATES OF WORK COVERED BY THE PAYMENT OF WAGES  
4 FOR EACH PAY PERIOD;

5 (III) THE NAME OF THE EMPLOYEE;

6 (IV) THE NAME OF THE EMPLOYER;

7 (V) THE ADDRESS AND TELEPHONE NUMBER OF THE  
8 EMPLOYER;

9 (VI) THE RATE OR RATES OF PAY;

10 (VII) WHETHER THE RATE OF PAY IS BY:

11 1. THE HOUR;

12 2. THE SHIFT;

13 3. THE DAY;

14 4. THE WEEK;

15 5. SALARY;

16 6. THE PIECE;

17 7. COMMISSION; OR

18 8. ANY OTHER BASIS OF PAY;

19 (VIII) NET WAGES;

20 (IX) ALLOWANCES CLAIMED AS PART OF THE EMPLOYEE'S WAGE,  
21 INCLUDING:

22 1. TIP ALLOWANCES;

23 2. MEAL ALLOWANCES; OR

24 3. LODGING ALLOWANCES;

1                   **(X) FOR EACH EMPLOYEE NOT EXEMPT FROM PAYMENT OF**  
2 **OVERTIME UNDER § 3-403(A)(1) OF THIS TITLE, EACH EMPLOYEE’S:**

3                   **1. REGULAR HOURLY RATE OF PAY;**

4                   **2. OVERTIME RATE OF PAY; AND**

5                   **3. NUMBER OF:**

6                   **A. REGULAR HOURS WORKED; AND**

7                   **B. OVERTIME HOURS WORKED; AND**

8                   **(XI) FOR EACH EMPLOYEE PAID AT A PIECE RATE, THE**  
9 **APPLICABLE PIECE RATES OR PIECE RATES OF PAY AND THE NUMBER OF PIECES**  
10 **COMPLETED AT EACH PIECE RATE; AND**

11                   (3) at least 1 pay period in advance, notice of any change in a payday or  
12 wage.

13                   (b) This section does not prohibit an employer from increasing a wage without  
14 advance notice.

15                   **(C) ON WRITTEN REQUEST OF AN EMPLOYEE, AN EMPLOYER SHALL**  
16 **PROVIDE AN EXPLANATION IN WRITING OF HOW THE EMPLOYEE’S WAGES WERE**  
17 **CALCULATED FOR ONE OR MORE PAY PERIODS.**

18                   **(D) (1) THE WRITTEN NOTICE REQUIRED UNDER SUBSECTION (A)(1) OF**  
19 **THIS SECTION SHALL BE PROVIDED IN ENGLISH AND, IF DIFFERENT, THE**  
20 **EMPLOYEE’S PRIMARY LANGUAGE.**

21                   **(2) THE COMMISSIONER SHALL CREATE AND MAKE AVAILABLE A**  
22 **MODEL NOTICE IN ENGLISH, SPANISH, AND ANY OTHER LANGUAGE THAT THE**  
23 **COMMISSIONER DETERMINES IS NEEDED THAT MAY BE USED BY AN EMPLOYER TO**  
24 **COMPLY WITH THE REQUIREMENTS OF SUBSECTION (A)(1) OF THIS SECTION.**

25 3-507.2.

26                   (a) **(1)** Notwithstanding any remedy available under § 3-507 of this subtitle,  
27 if an employer fails to pay an employee in accordance with § 3-502 or § 3-505 of this  
28 subtitle, after 2 weeks have elapsed from the date on which the employer is required to  
29 have paid the wages, the employee may bring an action against the employer to recover the  
30 unpaid wages.

1           **[(b)] (2)** If, in an action under [subsection (a)] **PARAGRAPH (1)** of this [section]  
2 **SUBSECTION**, a court finds that an employer withheld the wage of an employee in violation  
3 of this subtitle and not as a result of a bona fide dispute, the court may award the employee  
4 an amount not exceeding 3 times the wage, and reasonable counsel fees and other costs.

5           **(B) (1) NOTWITHSTANDING ANY REMEDY AVAILABLE UNDER § 3-507 OF**  
6 **THIS SUBTITLE, IF AN EMPLOYER DOES NOT MEET THE REQUIREMENTS OF § 3-504**  
7 **OF THIS SUBTITLE, THE EMPLOYEE OR THE ATTORNEY GENERAL MAY BRING AN**  
8 **ACTION AGAINST THE EMPLOYER TO RECOVER:**

9                           **(I) LIQUIDATED DAMAGES OF \$100 FOR EACH WORKWEEK IN**  
10 **WHICH THE VIOLATIONS OCCURRED, NOT TO EXCEED \$2,500; AND**

11                           **(II) COUNSEL FEES AND OTHER COSTS.**

12           **(2) ON THE WRITTEN REQUEST OF AN EMPLOYEE WHO IS ENTITLED**  
13 **TO BRING AN ACTION UNDER THIS SUBSECTION, THE COMMISSIONER MAY:**

14                           **(I) TAKE AN ASSIGNMENT OF THE CLAIM IN TRUST FOR THE**  
15 **EMPLOYEE;**

16                           **(II) ASK THE ATTORNEY GENERAL TO BRING AN ACTION IN**  
17 **ACCORDANCE WITH THIS SECTION ON BEHALF OF THE EMPLOYEE; AND**

18                           **(III) CONSOLIDATE TWO OR MORE CLAIMS AGAINST AN**  
19 **EMPLOYER.**

20           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
21 October 1, 2016.