

Department of Legislative Services
 Maryland General Assembly
 2016 Session

FISCAL AND POLICY NOTE
 First Reader

Senate Bill 623
 Finance

(Senator Pugh, *et al.*)

Maryland Pay Stub Transparency Act of 2016

This bill expands the wage records that an employer is required to keep for each pay period. The bill likewise expands the wage and payday notices that an employer must provide to employees. The Commissioner of Labor and Industry must create and make available a model notice that may be used by an employer to comply with specified wage notice requirements. An employee or the Attorney General may bring an action against the employer under specified conditions to recover liquidated damages, counsel fees, and other costs. Upon written request of an employee, the Commissioner of Labor and Industry may take an assignment of the claim in trust for the employee, ask the Attorney General to bring an action on behalf of the employee, and consolidate two or more claims against an employer.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$256,100 in FY 2017 due to additional staffing needs for the Department of Labor, Licensing, and Regulation (DLLR) to enforce the bill and conduct outreach. Out-year expenditures reflect annualization, elimination of contractual staff and one-time start-up costs, and inflation. Imposition of existing penalty provisions is not expected to materially affect State finances.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	256,100	187,900	189,800	163,000	169,300
Net Effect	(\$256,100)	(\$187,900)	(\$189,800)	(\$163,000)	(\$169,300)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None. The bill does not apply to local governments as employers.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill expands the type of wage records that an employer is required to keep for at least three years for each pay period to include (1) the time interval or criteria by which each employee is paid; (2) allowances claimed; (3) deductions taken; (4) regular and overtime pay rates and hours worked at each rate for employees not exempt from overtime pay requirements; (5) piece rates and number of pieces completed for each employee paid at a piece rate; and (6) date of payment and pay period covered by the payment. If an employee alleges that an employer does not keep specified required records, the employee or the Attorney General may bring an action against the employer to recover (1) liquidated damages of \$100 for each pay period in which the violations occurred, up to \$2,500; (2) counsel fees; and (3) other costs. If an employee alleges that an employer pays less than the required wages under the Maryland Wage and Hour law, the employee or the Attorney General may bring an action against the employer. If a court determines that an employee is entitled to recovery, the court must award the employee the required amount of liquidated damages for failing to maintain pay records, along with reasonable counsel fees and other costs.

An employer must provide written notice, in English and, if different, the employee's primary language, to employees within one week after the first date of employment on specified information relating to wage calculations, allowances, and the employer. The Commissioner of Labor and Industry must create and make available a model notice that may be used by an employer to comply with these wage notice requirements.

The bill expands information that an employer must give to an employee for each pay period. On written request of an employee, an employer must provide an explanation in writing of how the employee's wages were calculated for one or more pay periods.

If an employer does not meet wage and payday notice requirements, an employee or the Attorney General may bring an action against the employer under specified conditions to recover (1) liquidated damages of \$100 for each workweek in which the violations occurred, up to \$2,500; (2) counsel fees; and (3) other costs. Upon written request of an employee, the Commissioner of Labor and Industry may take an assignment of the claim in trust for the employee, ask the Attorney General to bring an action on behalf of the employee, and consolidate two or more claims against an employer.

Current Law:

Maryland Wage and Hour Law

The Maryland Wage and Hour Law is the State complement to the federal Fair Labor Standards Act of 1938. State law requires an employer to keep for at least three years at the place of employment a record of the following:

- the name, address, and occupation of each employee;
- the pay rate of each employee;
- the amount that each employee is paid each pay period;
- the hours that each employee works each day and workweek; and
- other information that the Commissioner of Labor and Industry requires by regulation to enforce the Maryland Wage and Hour Act.

The Maryland Wage and Hour Law does not apply to certain categories of employees, including those defined as administrative, executive, or professional; certain seasonal employees; part-time employees younger than age 16; salesmen and those who work on commission; an employer's immediate family; drive-in theater employees; employees training in a special education program in a public school; employees of an establishment that sells food and drink for on-premises consumption and has an annual gross income of \$400,000 or less; employees employed by an employer who is engaged in canning, freezing, packing, or first processing of perishable or seasonal fresh fruits, vegetables, poultry, or seafood; and certain farm workers.

If an employer pays less than the wages required, the employee may bring an action against the employer to recover (1) the difference between the wage paid to the employee and the wage required; (2) an additional amount equal to the difference as liquidated damages; and (3) legal fees. The court must award these differences in wages, damages, and counsel fees if the court determines that an employee is entitled to recovery. However, if an employer shows to the satisfaction of the court that the employer acted in good faith and reasonably believed that the wages paid to the employee were not less than the required wages, then the court must award liquidated damages of an amount less than the difference in wages or no liquidated damages.

A person who violates the State's Wage and Hour Law is guilty of a misdemeanor and on conviction is subject to a fine of up to \$1,000.

Maryland Wage Payment and Collection Law

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

At the time of hiring, an employer must provide a new employee with notice of the employee's rate of pay, regular paydays, and leave benefits. For each pay period, an employer must provide each employee with a statement of the employee's gross earnings and deductions. An employer must provide notice of any change in a payday or wage at least one pay period in advance, but an employer is not prohibited from increasing an employee's wages without advance notice.

Whenever it is determined that the State's Wage Payment and Collection Law has been violated, the commissioner may (1) try to resolve the violation informally through mediation; (2) ask the Office of the Attorney General 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.

State Expenditures: By creating additional employer wage record and wage and payday notification requirements and establishing liquidated damages for an employer's failure to comply, the bill creates a monetary incentive for employees to report complaints, thereby creating additional enforcement responsibilities for DLLR's Division of Labor and Industry. DLLR cannot absorb the additional workload within existing resources and requires additional staffing to respond to the increase in inquiries and complaints prompted by the bill.

The regular staff needed to respond to and manage the additional workload created by the bill includes an assistant Attorney General and one wage and hour investigator. For the first three years, DLLR needs one contractual wage and hour investigator. DLLR estimates it could receive as many as 170 complaints alleging violations that would need to be investigated and processed each year by the division.

In addition to analyzing employer paystubs and processing complaints, DLLR advises that the additional staff must develop employer notification materials and conduct outreach efforts, costing \$5,000 for the first two years, to inform employers of the new requirements. Additionally, changes must be made in the database used by the Employment Standards Service and Worker Classification Protection units, which increases expenditures by at least \$100,000.

Thus, general fund expenditures increase for DLLR by at least \$256,060 in fiscal 2017, which assumes that DLLR staff are in place as of October 1, 2016, concurrent with the effective date of the bill. This estimate reflects the cost of hiring two wage and hour investigators (one regular and one contractual) and an assistant Attorney General to investigate complaints and enforce the new requirements. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Regular Positions	2
Contractual Position	1
Regular Salaries and Fringe Benefits	\$106,668
Contractual Salary and Fringe Benefits	24,998
One-time Start-up Costs	118,089
Operating Expenses	<u>6,305</u>
Total FY 2017 State Expenditures	\$256,060

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State’s implementation of the federal Patient Protection and Affordable Care Act.

Future year expenditures reflect elimination of the contractual position, annual increases, and employee turnover as well as annual increases in ongoing operating expenses.

Small Business Effect: Small businesses may incur administrative costs to adjust their payroll reporting systems to provide and maintain the required specified information. If a small business does not meet wage and payday notice requirements, an employee or the Attorney General may bring an action against the employer under specified conditions.

Additional Information

Prior Introductions: A similar bill, HB 528 of 2015, was heard by the House Economic Matters Committee and withdrawn.

Cross File: HB 197 (Delegate Lierman, *et al.*) - Economic Matters.

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

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Analysis by: Heather N. Ruby

Direct Inquiries to:
(410) 946-5510
(301) 970-5510