

Department of Legislative Services
 Maryland General Assembly
 2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 726
 Finance

(Senator Smith, *et al.*)

**Maryland Wage Payment and Collection Law - Awards of Certain Fees and
 Costs and Prohibition Against Retaliation**

This bill authorizes the court to award the Attorney General reasonable counsel fees and other costs if a court finds, in a case brought by either the Attorney General or the Commissioner of Labor and Industry, that an employer withheld the wage of an employee in violation of the State’s Wage Payment and Collection Law. If an employee brings an action against the employer to recover unpaid wages and the court finds that the employer unlawfully withheld wages, the court may award the employee reasonable counsel fees and other costs, regardless of whether the employer withheld the wages as part of a bona fide dispute. Additionally, the bill prohibits an employer from taking adverse action against an employee who takes specified actions related to the State’s Wage Payment and Collection Law.

Fiscal Summary

State Effect: General fund expenditures increase by \$144,800 in FY 2018 due to additional staffing needs for the Department of Labor, Licensing, and Regulation (DLLR) to enforce the bill. Out-year expenditures reflect annualization and the elimination of one-time start-up costs. General fund revenues increase minimally to the extent the court awards the Attorney General counsel fees and other costs against violators of the State’s Wage Payment and Collection Law and from additional fines imposed on employers who take adverse action against employees. The State is not subject to the Wage Payment and Collection Law as an employer.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
GF Revenue	-	-	-	-	-
GF Expenditure	\$144,800	\$124,000	\$129,700	\$135,800	\$142,200
Net Effect	(\$144,800)	(\$124,000)	(\$129,700)	(\$135,800)	(\$142,200)

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

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

Small Business Effect: Potential minimal.

Analysis

Bill Summary: An employer may not take adverse action against an employee because the employee (1) makes a complaint that the employee has not been paid; (2) brings an action or a proceeding that relates to the State’s Wage Payment and Collection Law; (3) has opposed a practice prohibited under the State’s Wage Payment and Collection Law; or (4) cooperated in an investigation or testified, participated, or assisted in any action or proceeding related to the State’s Wage Payment and Collection Law.

“Adverse action” includes doing or threatening the following: discharge; demotion; discipline; and any other action that would reasonably deter an employee from engaging in protected activity under the State’s Wage Payment and Collection Law.

Current 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.

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.

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. Under specified circumstances, the commissioner may proceed in District Court to enforce payment of the order.

For wage complaints over \$3,000, an employee entitled to wages from an employer may – after two weeks have elapsed – bring an action against the employer in a court of competent jurisdiction to recover the unpaid wages.

In cases brought by the commissioner, the Attorney General, or an employee, if a court determines that an employer withheld an employee’s wage unlawfully, and not as a result of a bona fide dispute, the court may award the employee up to three times the amount of wages owed, reasonable counsel fees, and other costs.

Employers who violate the State’s Wage Payment and Collection Law are guilty of a misdemeanor and may be fined up to \$1,000.

State Revenues: DLLR anticipates investigating more violations of the State’s Wage Payment and Collection Law under the bill, particularly for adverse actions taken against employees, which are not prohibited under current law, so general fund revenues may increase minimally due to additional fines assessed against violators of the law. Additionally, general fund revenues increase, likely minimally, to the extent the Office of the Attorney General is awarded reasonable counsel fees and other costs.

State Expenditures: DLLR advises that employees often do not file a claim for a Wage Payment and Collection Law violation because they fear retaliation. Thus, the Division of Labor and Industry anticipates receiving as many as 200 claims per year alleging adverse action violations. 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 one part-time assistant Attorney General and one wage and hour investigator. Additionally, changes must be made to the complaint tracking database used by the Employment Standards Service and Wage and Hour units.

Thus, general fund expenditures increase for DLLR by \$144,844 in fiscal 2018, which accounts for the bill’s October 1, 2017 effective date. This estimate reflects the cost of hiring one wage and hour investigator and one part-time 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	1.5
Regular Salaries and Fringe Benefits	\$83,588
One-time Start-up Costs	54,180
Operating Expenses	<u>7,076</u>
Total FY 2018 State Expenditures	\$144,844

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

Additional Information

Prior Introductions: SB 1016 of 2016 was withdrawn before its scheduled hearing in the Senate Finance Committee. Its cross file, HB 872 of 2016, received an unfavorable report from the House Economic Matters Committee. A similar bill, HB 1314 of 2014, passed both the House and the Senate with amendments and was referred to a conference committee, but no further action was taken.

Cross File: None.

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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mm/mcr

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