

| Problem   | Current Law & Loopholes   | MDL Limitations   | MWPA Fix  |
|---|---|---|---|
| <p><b>Misleading or Confusing Paystubs</b></p> <p><i>Paystubs do not show hours worked, pay rate, or employer contact information, so employees do not know if they have been paid correctly and cannot resolve errors.</i></p> | <p><u>Wage Payment &amp; Collection Law</u><sup>1</sup> - Employer must provide paystub for each pay period, <b>BUT</b> it need only include gross earnings and total deductions. In addition, at time of hire, employer must provide notice of employee’s pay rate, paydays, and leave benefits.</p> <p><u>Wage &amp; Hour Law</u><sup>2</sup> – Employer must keep records of each employee’s pay rate, hours worked per day and week, and amount paid per pay period, <b>BUT</b> are not required to put the same information on paystubs.</p> <p><u>FLSA</u><sup>3</sup> – Employer must keep records of each employee’s pay rate, hours worked per day and week, straight-time and overtime earnings, and itemized deductions, <b>BUT</b> are not required to put the same information on paystubs.</p> <p>There are no penalties under any applicable law for failure to provide a paystub, even when that failure facilitates wage theft</p> | <ul style="list-style-type: none"> <li>➤ No basis for MDL enforcement – provision of vague or misleading paystubs is not illegal under Maryland or federal law</li> </ul> | <ul style="list-style-type: none"> <li>➤ Requires that paystub include all information that employers must maintain in their records under the Wage &amp; Hour Law and/or the FLSA</li> <li>➤ Requires adequate employer identification on paystub</li> <li>➤ Allows employees to seek additional damages, capped at \$2,500 total, for paystub violations where they have also experienced wage theft</li> </ul> |

<sup>1</sup> Md. Lab. & Empl. § 3-504.

<sup>2</sup> Md. Lab. & Empl. § 3-424.

<sup>3</sup> 29 C.F.R. § 516.

| Problem  | Current Law & Loopholes  | Limited DOL Role  | MWPA Fix  |
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| <p><b>Mis-classification</b></p> <p><i>Employees are wrongly classified as independent contractors even though not in business for themselves, and thereby denied minimum wage, overtime, employer share of payroll taxes etc.</i></p> | <p><u>Wage &amp; Hour Law, Wage Payment Law</u>– Does not define “independent contractor,” leading to confusion over who is exempt from the protections of the wage laws and resulting in exclusion of protected employees, and damage to the state coffers.</p> <p><u>Unemployment Insurance Law</u><sup>4</sup> – Defines an independent contractor as an individual who is (a) free from control and direction over work performance; (b) customarily engaged in an independently established business doing the type of work at issue; and (c) performing work outside the usual course of business for the person/entity for whom the work is performed.</p> <p>Example: Retailer contracts with a plumber to fix its sink; plumber also provides services to other businesses, setting own rates and hours.</p> <p><u>Workplace Fraud Act</u><sup>5</sup>– Incorporates “independent contractor” from UI law and prohibits independent contractor misclassification, <b>BUT</b> applies only to the construction and landscaping industries.</p> | <ul style="list-style-type: none"> <li>➤ MDL has express authority to investigate misclassification only in UI and WFA context</li> <li>➤ MDL does not pursue wage theft claims to the fullest extent of the law, e.g: (a) imposes 2-year statute of limitations instead of 3, (b) for larger claims, requires claimants to seek private legal representation first, (c) rejects cases where majority of work was not performed Maryland</li> </ul> | <ul style="list-style-type: none"> <li>➤ Uses the same definition of “independent contractor” in Maryland’s wage laws as in Workplace Fraud and UI law to clarify who is legitimately exempt</li> </ul> |

<sup>4</sup> Md. Lab. & Empl. § 8-205.

<sup>5</sup> Md. Lab. & Empl. § 3-901 et seq.

| Problem   | Current Law & Loopholes   | MDL Limitations <sup>6</sup>   | MWPA Fix  |
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| <p><b>Retaliation</b></p> <p><i>Employee asks about wages and gets fired, receives a cut in hours, is reassigned, or threatened, etc.</i></p> | <p><u>Wage &amp; Hour Law</u><sup>7</sup> – Prohibits some forms of retaliation (demotion, discharge), <b>BUT</b></p> <ul style="list-style-type: none"> <li>• The only penalty is the possibility of a misdemeanor prosecution with a fine of up to \$1,000 on conviction</li> <li>• Prosecution does not get workers their jobs back or otherwise remedy the retaliation or wage theft</li> <li>• States’ attorneys rarely, if ever, prosecute</li> </ul> <p><u>Wage Payment &amp; Collection Law</u>: <b>No protection</b> from retaliation.</p> <p><u>FLSA</u><sup>8</sup> - Prohibits some forms of retaliation against workers pursuing federal wage claims, and permits civil enforcement, <b>BUT</b></p> <ul style="list-style-type: none"> <li>• Only applies to violations of the federal minimum wage (\$7.25/hr for non-tipped) and overtime</li> <li>• Generally covers only larger, multi-state businesses</li> </ul> | <ul style="list-style-type: none"> <li>➤ Not authorized to take action against retaliation, only against wage theft</li> <li>➤ Wage theft complaints referencing retaliation not tracked</li> <li>➤ “In the experience of the ESS supervisor, a small percentage of complaints include adverse action as part of a complaint together with other wage and hour violations”</li> <li>➤ No record of referring any retaliation claims for criminal prosecution</li> <li>➤ MDL does not pursue wage theft claims to the fullest extent of the law, e.g: (a) imposes 2-year statute of limitations instead of 3, (b) for larger claims, requires claimants to seek private legal representation first, (c) rejects cases where majority of work was not performed Maryland.</li> </ul> | <ul style="list-style-type: none"> <li>➤ Allows employee to get their job back if terminated</li> <li>➤ Employee can recover wages owed</li> <li>➤ Covers retaliation against employees claiming denials of the federal or state minimum wage, overtime, and other promised wages</li> <li>➤ Covers all businesses</li> <li>➤ Allows employee to file suit against employer who retaliates against the employee for inquiring or complaining about wage theft, or supporting others who complain</li> <li>➤ Employee can recover damages for actual harm suffered – e.g. loss of employment, reduced wages</li> <li>➤ Creates civil penalties for repeat offenders</li> </ul> |

<sup>6</sup> Based on August 2019 response by the Maryland Department of Labor (MDL) to the Economic Matters Committee, and analysis of a sample of 21 complaints filed with and rejected by MDL (then Department of Labor, Licensing, and Regulation) in 2018.

<sup>7</sup> Md. Lab. & Empl. § 3-428.

<sup>8</sup> 29 U.S.C. § 215(a).

