

HOUSE BILL 528

K3

5lr1378

By: **Delegates Lierman, Barkley, Conaway, Glenn, McCray, Morales, and Waldstreicher**

Introduced and read first time: February 11, 2015

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Wage Records, Wages, and Paydays – Requirements**

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

20 BY repealing and reenacting, with amendments,
21 Article – Labor and Employment
22 Section 3–424, 3–427, 3–504, and 3–507.2
23 Annotated Code of Maryland
24 (2008 Replacement Volume and 2014 Supplement)

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

27 **Article – Labor and Employment**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 3-424.

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

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

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

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

7 **(I) THE HOUR;**

8 **(II) THE SHIFT;**

9 **(III) THE DAY;**

10 **(IV) THE WEEK;**

11 **(V) SALARY;**

12 **(VI) THE PIECE;**

13 **(VII) COMMISSION; OR**

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

15 **(4) ALLOWANCES CLAIMED AS PART OF THE EMPLOYEE'S WAGE,**
16 **INCLUDING:**

17 **(I) TIP ALLOWANCES;**

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

19 **(III) LODGING ALLOWANCES;**

20 **[(3)] (5)** the amount that is paid each pay period to each employee;

21 **[(4)] (6)** the hours that each employee works each day and workweek;

22 **[and]**

23 **(7) DEDUCTIONS FROM EACH EMPLOYEE'S WAGES;**

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

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

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

5 **(III) NUMBER OF:**

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

7 **2. OVERTIME HOURS WORKED;**

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

11 **(10) DATE OF PAYMENT AND THE PAY PERIOD COVERED BY THE**
12 **PAYMENT; AND**

13 **[(5)] (11) other information that the Commissioner requires, by regulation,**
14 **as reasonable to enforce this subtitle.**

15 3-427.

16 (a) **(1) If an employer pays an employee less than the wage required under this**
17 **subtitle, the employee may bring an action against the employer to recover:**

18 **[(1)] (I) the difference between the wage paid to the employee and the**
19 **wage required under this subtitle;**

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

22 **[(3)] (III) counsel fees and other costs.**

23 **(2) IF AN EMPLOYER DOES NOT KEEP THE RECORDS REQUIRED**
24 **UNDER § 3-424 OF THIS SUBTITLE, THE EMPLOYEE MAY BRING AN ACTION AGAINST**
25 **THE EMPLOYER TO RECOVER:**

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

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

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

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

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

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

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

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

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

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

16 (iii) reasonable counsel fees and other costs.

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

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

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

23 3-504.

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

25 (1) **[at] WITHIN 10 DAYS AFTER** the time of hiring, **WRITTEN** notice of:

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

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

28 **1. THE HOUR;**

- 1 **2. THE SHIFT;**
- 2 **3. THE DAY;**
- 3 **4. THE WEEK;**
- 4 **5. SALARY;**
- 5 **6. THE PIECE;**
- 6 **7. COMMISSION; OR**
- 7 **8. ANY OTHER BASIS OF PAY;**

8 **(III) ALLOWANCES CLAIMED AS PART OF THE EMPLOYEE’S WAGE,**
9 **INCLUDING:**

- 10 **1. TIP ALLOWANCES;**
- 11 **2. MEAL ALLOWANCES; OR**
- 12 **3. LODGING ALLOWANCES;**

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

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

15 **(VI) THE NAME OF THE EMPLOYER, INCLUDING ANY DBA**
16 **NAMES;**

17 **(VII) THE PHYSICAL ADDRESS OF THE EMPLOYER’S MAIN OFFICE**
18 **OR PRINCIPAL PLACE OF BUSINESS AND, IF DIFFERENT, THE MAILING ADDRESS OF**
19 **THE EMPLOYER; AND**

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

21 **(2) for each pay period[.];**

22 **(I) a statement of the gross earnings of the employee and deductions**
23 **from those gross earnings; [and]**

24 **(II) THE DATES OF WORK COVERED BY THE PAYMENT OF WAGES**
25 **FOR EACH PAY PERIOD;**

1 **3. NUMBER OF:**

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

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

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

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

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

11 **(C) ON REQUEST OF AN EMPLOYEE, AN EMPLOYER SHALL PROVIDE AN**
12 **EXPLANATION IN WRITING OF HOW THE EMPLOYEE'S WAGES UNDER THIS SECTION**
13 **WERE CALCULATED.**

14 **(D) (1) THE WRITTEN NOTICE REQUIRED UNDER SUBSECTION (A)(1) OF**
15 **THIS SECTION SHALL BE PROVIDED IN ENGLISH AND, IF DIFFERENT, THE**
16 **EMPLOYEE'S PRIMARY LANGUAGE.**

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

21 3-507.2.

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

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

31 **(B) (1) NOTWITHSTANDING ANY REMEDY AVAILABLE UNDER § 3-507 OF**
32 **THIS SUBTITLE, IF AN EMPLOYER DOES NOT MEET THE REQUIREMENTS OF § 3-504**

1 OF THIS SUBTITLE, THE EMPLOYEE MAY BRING AN ACTION AGAINST THE EMPLOYER
2 TO RECOVER:

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

5 (II) COUNSEL FEES AND OTHER COSTS.

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

8 (I) TAKE AN ASSIGNMENT OF THE CLAIM IN TRUST FOR THE
9 EMPLOYEE;

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

12 (III) CONSOLIDATE TWO OR MORE CLAIMS AGAINST AN
13 EMPLOYER.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2015.