

# Maryland Wage and Hour Law ("MWHL")

Md. Code, Lab. & Empl. Art., § 3-401 *et seq.*

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## § 3-401. Definitions

(a) In general. -- In this subtitle the following words have the meanings indicated.

(b) Employer. -- "Employer" includes a person who acts directly or indirectly in the interest of another employer with an employee.

(c) Federal Act. -- "Federal Act" means the federal Fair Labor Standards Act of 1938.

(d) Wage. -- "Wage" means all compensation that is due to an employee for employment.

### § 3-402. Legislative findings and purpose

(a) Legislative findings. -- The General Assembly finds that wages in some occupations in the State have been insufficient to provide adequate maintenance and to protect health.

(b) Statement of purpose. -- The purpose of this subtitle is to set minimum wage standards in the State to:

(1) provide a maintenance level that is consistent with the needs of the population for their efficiency, general well-being, and health;

(2) safeguard employers and employees against unfair competition;

(3) increase the stability of industry;

(4) increase the buying power of employees; and

(5) decrease the need to spend public money for the relief of employees.

### § 3-403. Scope of subtitle

This subtitle does not apply to an individual who:

(1) is employed in a capacity that the Commissioner defines, by regulation, to be administrative, executive, or professional;

(2) is employed in a nonadministrative capacity at an organized camp, including a resident or day camp;

(3) is under the age of 16 years and is employed no more than 20 hours in a week;

(4) is employed as an outside salesman;

(5) is compensated on a commission basis;

(6) is a child, parent, spouse, or other member of the immediate family of the employer;

(7) is employed in a drive-in theater;

(8) is employed as part of the training in a special education program for emotionally, mentally, or physically handicapped students under a public school system;

(9) is employed by an employer who is engaged in canning, freezing, packing, or first processing of perishable or seasonal fresh fruits, vegetables, or horticultural commodities, poultry, or seafood;

(10) engages in the activities of a charitable, educational, nonprofit, or religious organization if:

(i) the service is provided gratuitously; and

(ii) there is, in fact, no employer-employee relationship;

(11) is employed in a cafe, drive-in, drugstore, restaurant, tavern, or other similar establishment that:

(i) sells food and drink for consumption on the premises; and

(ii) has an annual gross income of \$ 400,000 or less;

(12) is employed in agriculture if, during each quarter of the preceding calendar year, the employer used no more than 500 agricultural-worker days;

(13) is engaged principally in the range production of livestock; or

(14) is employed as a hand-harvest laborer and is paid on a piece-rate basis in an operation that, in the region of employment, has been and customarily and generally is recognized as having been paid on that basis, if:

(i) the individual:

1. commutes daily from the permanent residence of the individual to the farm where the individual is employed; and

2. during the preceding calendar year, was employed in agriculture less than 13 weeks; or

(ii) the individual:

1. is under the age of 17;

2. is employed on the same farm as a parent of the individual or a person standing in the place of the parent; and

3. is paid at the same rate that an employee who is at least 17 years old is paid on the same farm.

#### **§ 3-404. Effect of subtitle**

This subtitle does not diminish:

(1) the right of employees to bargain collectively with their employers through representatives whom the employees choose to establish wages or other conditions of employment in excess of the applicable minimum under this subtitle; or

(2) a right of an employee that is granted under the federal Act.

#### **§ 3-405. Void agreements**

An agreement to work for less than the wage required under this subtitle is void.

#### **§§ 3-406, 3-407 [Reserved].**

Reserved.

### § 3-408. Powers to ascertain wages and obtain evidence

(a) Power to ascertain wages. -- The Commissioner may ascertain what wage is paid in any occupation in the State.

(b) Evidence. --

(1) In an investigation under this subtitle, the Commissioner shall try to negotiate with an employer to obtain the testimony or documentary evidence that is needed to determine whether a violation exists.

(2) If the Commissioner is unable to obtain evidence by negotiation, the Commissioner may issue a subpoena for the attendance of a witness to testify or the production of documentary evidence that relates to the subject matter of the complaint.

(3) Each application for a subpoena under this subsection shall:

(i) be under oath; and

(ii) describe in detail:

1. the nature, purpose, and scope of the investigation;
2. each witness to be subpoenaed; and
3. each record to be inspected.

(4) A subpoena may not be issued unless the application is approved by the Attorney General as to form and substance.

(5) If a person fails to comply with a subpoena issued under this subsection, on a complaint filed by the Commissioner, a circuit court may compel compliance with the subpoena.

### § 3-409. Advisory Committee on Wage and Hour Law [Repealed]

Repealed by Acts 1993, ch. 552, § 1, effective October 1, 1993.

### § 3-410. Regulations

In addition to any regulation specifically required by this subtitle, regulations that the Commissioner adopts to carry out this subtitle may include:

(1) definitions of the terms "administrative capacity", "executive capacity", "professional capacity", and "outside salesman";

(2) a scale of wages that is suitable for learners and apprentices but is at least 80% of the minimum wage under this subtitle; and

(3) a wage for a special case or class of case if the Commissioner finds the wage appropriate to:

(i) avoid undue hardship;

(ii) prevent the curtailment of employment opportunity; and

(iii) safeguard the minimum wage under this subtitle.

**§§ 3-411, 3-412 [Reserved].**

Reserved.

**§ 3-413. Payment of minimum wage required**

(a) "Employer" defined. -- In this section, "employer" includes a governmental unit.

(b) In general. -- Except as provided in subsection (d) of this section and § 3-414 of this subtitle, each employer shall pay:

(1) to each employee who is subject to both the federal Act and this subtitle, at least the greater of:

(i) the minimum wage for that employee under the federal Act; or

(ii) the State minimum wage rate set under subsection (c) of this section; and

(2) each other employee who is subject to this subtitle, at least:

(i) the greater of:

1. the highest minimum wage under the federal Act; or

2. the State minimum wage rate set under subsection (c) of this section; or

(ii) a training wage under regulations that the Commissioner adopts that include the conditions and limitations authorized under the federal Fair Labor Standards Amendments of 1989.

(c) State minimum wage. -- The State minimum wage rate is:

(1) for the 6-month period beginning January 1, 2015, \$ 8.00 per hour;

(2) for the 12-month period beginning July 1, 2015, \$ 8.25 per hour;

(3) for the 12-month period beginning July 1, 2016, \$ 8.75 per hour;

(4) for the 12-month period beginning July 1, 2017, \$ 9.25 per hour; and

(5) beginning July 1, 2018, \$ 10.10 per hour.

(d) Exceptions. --

(1)

(i) Except as provided in paragraph (2) of this subsection and subject to subparagraph (ii) of this paragraph, an employer may pay an employee a wage that equals a rate of 85% of the State minimum wage established under this section if the employee is under the age of 20 years.

(ii) An employer may pay to an employee the wage provided under subparagraph (i) of this paragraph only for the first 6 months that the employee is employed.

(2)

(i) This paragraph applies only to an employer that is an amusement or a recreational establishment, including a swimming pool, if the employer:

1. operates for no more than 7 months in a calendar year; or
2. for any 6 months during the preceding calendar year, has average receipts that do not exceed one-third of the average receipts for the other 6 months.

(ii) An employer may pay an employee a wage that equals the greater of:

1. 85% of the State minimum wage established under this section; or
2. \$ 7.25.

### § 3-414. Individuals with disabilities

(a) "Federal certificate" defined. -- In this section, "federal certificate" means a certificate that the United States Department of Labor issues to a work activities center or other sheltered workshop to allow the workshop to pay an individual less than the wage otherwise required for that individual under the federal Act.

(b) Authority to waive minimum wage; when not authorized. --

(1) Subject to the limitations in this section, the Commissioner may authorize a work activities center or other sheltered workshop to pay an employee with a disability less than the minimum wage otherwise required under this subtitle for the employee.

(2) The Commissioner may not authorize a work activities center or other sheltered workshop to pay an employee with a disability less than the minimum wage under paragraph (1) of this subsection if the work activities center or workshop was not authorized to do so before October 1, 2016.

(3) A work activities center or other sheltered workshop may pay a new employee with a disability less than the minimum wage under paragraph (1) of this subsection only if the requirements of § 7-1014 of the Health - General Article are met.

(c) Grant of authority. --

(1) To authorize a work activities center or other sheltered workshop to pay less than the minimum wage, the Commissioner shall:

- (i) issue a State certificate that sets wages for employees of the workshop;
- (ii) accept a federal certificate for the workshop; or
- (iii) grant an exception for the workshop but only if:
  1. the Commissioner has not issued a State certificate for the workshop;

2. the workshop is not eligible for a federal certificate; and
3. the Commissioner investigates and holds a hearing on the exception.

(2) The Commissioner shall accept a federal certificate if a work activities center or other sheltered workshop submits that certificate to the Commissioner within 10 days after the workshop receives the certificate.

(d) Term of certificate. --

(1) Each certificate that the Commissioner issues under this section shall state the period for which the certificate is in effect.

(2) The acceptance of a federal certificate does not apply automatically to an individual whom a work activities center or other sheltered workshop continues to employ after the individual completes a training program that the workshop runs.

(e) Revocation of acceptance. --

(1) The Commissioner may revoke acceptance of a federal certificate if:

- (i) the United States Department of Labor revokes the federal certificate; or
- (ii) at any time before revocation by the Department of Labor and after an investigation and hearing, the Commissioner finds good cause to revoke the acceptance.

(2) The Commissioner shall send notice of a hearing under this subsection, by certified mail, to the holder of the federal certificate at least 30 days before the hearing.

### **§ 3-415. Payment of overtime.**

(a) General requirement. -- Except as otherwise provided in this section, each employer shall pay an overtime wage of at least 1.5 times the usual hourly wage, computed in accordance with § 3-420 of this subtitle.

(b) Exceptions for employers. -- This section does not apply to an employer that is:

- (1) subject to 49 U.S.C. § 10501;
- (2) a nonprofit concert promoter, legitimate theater, music festival, music pavilion, or theatrical show; or
- (3) an amusement or recreational establishment, including a swimming pool, if the establishment:
  - (i) operates for no more than 7 months in a calendar year; or
  - (ii) for any 6 months during the preceding calendar year, has average receipts that do not exceed one-third of the average receipts for the other 6 months.

(c) Exceptions for employees. -- This section does not apply to an employer with respect to:

(1) an employee for whom the United States Secretary of Transportation may set qualifications and maximum hours of service under 49 U.S.C. § 31502;

(2) a mechanic, partsperson, or salesperson who primarily sells or services automobiles, farm equipment, trailers, or trucks, if the employer is engaged primarily in selling those vehicles to ultimate buyers and is not a manufacturer;

(3) a driver if the employer is engaged in the business of operating taxicabs; or

(4) unless a collective bargaining agreement between an employer and a labor organization provides otherwise, an employee of the employer if:

(i) the employer is subject to Title II of the federal Railway Labor Act;

(ii) the employer does not require the employee to work more than 40 hours during 1 workweek; and

(iii) the employee voluntarily enters into an agreement with another employee to trade scheduled work hours and as a result the employee works more than 40 hours during a single workweek.

**§§ 3-416, 3-417 [Reserved].**

Reserved.

**§ 3-418. Cost of advantages**

(a) "Board, lodging, or other advantage" defined. -- In this section, "board, lodging, or other advantage" means a facility or service that an employer customarily provides to an employee.

(b) Inclusion in wage. -- Unless a collective bargaining agreement excludes board, lodging, or other advantage from the wage of an employee, an employer may include, as part of the wage, the cost that the employer incurs in providing the advantage to the employee.

(c) Cost. -- An employer shall compute the cost of board, lodging, or other advantage in accordance with the regulations that the Commissioner adopts.

(d) Regulations. -- The Commissioner may provide, by regulation, for computation of the cost of board, lodging, or other advantage on the basis of:

(1) the actual cost; or

(2) the reasonable cost of the board, lodging, or other advantage for a defined class of employees and in a defined area, based on:

(i) the average cost to the employer or groups of employers who are situated similarly;

(ii) the average value to groups of employees; or

(iii) any other appropriate measure of fair value.



### § 3-419. Tips

(a) Scope of section. --

(1) This section applies to each employee who:

(i) is engaged in an occupation in which the employee customarily and regularly receives more than \$ 30 each month in tips;

(ii) has been informed by the employer about the provisions of this section; and

(iii) has kept all of the tips that the employee received.

(2) Notwithstanding paragraph (1)(iii) of this subsection, this section does not prohibit the pooling of tips.

(b) Computation of wage. -- Subject to the limitations in this section, an employer may include, as part of the wage of an employee to whom this section applies:

(1) an amount that the employer sets to represent the tips of the employee; or

(2) if the employee or representative of the employee satisfies the Commissioner that the employee received a lesser amount in tips, the lesser amount.

(c) Limit. -- The tip credit amount that the employer may include under subsection (b) of this section may not exceed the minimum wage established under § 3-413 of this subtitle for the employee less \$ 3.63.

### § 3-420. Overtime.

(a) In general. -- Except as otherwise provided in this section, an employer shall compute the wage for overtime under § 3-415 of this subtitle on the basis of each hour over 40 hours that an employee works during 1 workweek.

(b) Music or theater craft or trade. -- Notwithstanding § 3-415(b)(2) of this subtitle, an employer that is not a nonprofit organization and is a concert promoter, legitimate theater, music festival, music pavilion, or theatrical show shall pay overtime for a craft or trade employee as required in subsection (a) of this section.

(c) Farm work. -- The wage for overtime may be computed on the basis of each hour over 60 hours that an employee works during 1 workweek for an employee who:

(1) is engaged in agriculture; and

(2) is exempt from the overtime provisions of the federal Act.

(d) Bowling establishments; infirmaries. -- The wage for overtime may be computed on the basis of each hour over 48 hours that an employee works during 1 workweek:

(1) for an employee of a bowling establishment; and

(2) for an employee of an institution that:

(i) is not a hospital; but

(ii) is engaged primarily in the care of individuals who:

1. are aged, intellectually disabled, or sick or have a mental disorder; and
2. reside at the institution.

### § 3-421. Involuntary overtime prohibition

(a) "Nurse" defined. -- In this section, "nurse" means a licensed practical nurse or a registered nurse as defined in § 8-101 of the Health Occupations Article.

(b) Overtime prohibited. -- Except as provided in subsections (c) and (d) of this section, an employer may not require a nurse to work more than the regularly scheduled hours according to the predetermined work schedule.

(c) Overtime prohibited -- Exceptions. -- A nurse may be required to work overtime if:

(1) the work is a consequence of an emergency situation which could not have been reasonably anticipated;

(2) the emergency situation is nonrecurring and is not caused by or aggravated by the employer's inattention or lack of reasonable contingency planning;

(3) the employer has exhausted all good faith, reasonable attempts to obtain voluntary workers during the succeeding shifts;

(4) the nurse has critical skills and expertise that are required for the work;

(5) the standard of care for a patient assignment requires continuity of care through completion of a case, treatment, or procedure; and

(6)

(i) the employer has informed the nurse of the basis for the employer's direction; and

(ii) that basis satisfies the other requirements for mandatory overtime listed under this subsection.

(d) Overtime prohibited -- Additional exceptions. -- In addition to the provisions of subsection (c) of this section, a nurse may be required to work overtime if:

(1) a condition of employment includes on-call rotation; or

(2) the nurse works in community-based care.

(e) Construction. -- This section may not be construed to prohibit a nurse from voluntarily agreeing to work more than the number of scheduled hours provided in this section.

(f) Responsibility for patient's care. --

(1) Except as provided in subsections (c) and (d) of this section, a nurse may not be considered responsible for the care of a patient beyond the nurse's predetermined work schedule if the nurse:

(i) has notified another appropriate nurse of the patient's status; and

(ii) has transferred responsibility for the patient's care to another appropriate nurse or properly designated individual.

(2) The employer shall exhaust all good faith, reasonable attempts to ensure that appropriate staff is available to accept responsibility for a patient's care beyond a nurse's predetermined work schedule.

#### **§ 3-422 [Reserved].**

Reserved.

#### **§ 3-423. Copies and posting of law**

(a) Copies. -- On request by an employer, the Commissioner shall provide without charge a copy of any summary or regulation to the employer.

(b) Place for posting. -- Each employer shall keep posted conspicuously in each place of employment:

(1) a summary of this subtitle that the Commissioner approves; and

(2) a copy or summary of each regulation that is adopted to carry out this subtitle.

#### **§ 3-424. Wage records**

Each employer shall keep, for at least 3 years, in or about the place of employment, a record of:

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

(2) the rate of pay of each employee;

(3) the amount that is paid each pay period to each employee;

(4) the hours that each employee works each day and workweek; and

(5) other information that the Commissioner requires, by regulation, as reasonable to enforce this subtitle.

#### **§ 3-425. Inspection of wage records**

(a) Required. -- The Commissioner shall enter a place of employment to:

(1) question employees to determine whether an employer has been and is complying with this subtitle and regulations adopted to carry out this subtitle;

(2) inspect and copy each record that an employer keeps on wages and hours of employees; and

(3) require each employer:

(i) to attest to the truthfulness of each record that is copied and to sign the copy; or

(ii) at the option of the employer, to submit a complete, written statement about the wages, hours, name, and address of each employee, on forms that the Commissioner provides or approves.

(b) Confidentiality. -- Each record or statement that the Commissioner or an authorized representative of the Commissioner obtains under subsection (a) of this section is confidential and may be shown only to the Commissioner, a court, or a member of the Committee.

### § 3-426. Judicial review and enforcement

(a) Review allowed. --

(1) A person aggrieved by a regulation or order to pay wages that the Commissioner adopts under this subtitle may file a complaint in circuit court for the county within 60 days after the date of publication of the regulation or order to pay wages to have it modified or set aside.

(2) A copy of the complaint shall be served on the Commissioner.

(b) Effect of filing. -- Unless the court specifically orders otherwise, the commencement of proceedings under this section may not operate as a stay of the regulation or order to pay wages.

(c) Scope of review. --

(1) The court shall determine whether a regulation or order to pay wages is in accordance with law.

(2) If a finding of fact is supported by substantial evidence, the finding is conclusive.

### § 3-427. Action against employer by or for employee

(a) Action by employee. -- If an employer pays an employee less than the wage required under this subtitle, 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 under this subtitle;

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

(3) counsel fees and other costs.

(b) Assignment of claims. -- On the written request of an employee who is entitled to bring an action under this section, the Commissioner may:

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

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

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

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

(d) Damages and costs. --

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

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

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

(iii) reasonable counsel fees and other costs.

(2) 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 wage required under this subtitle, the court shall:

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

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

**§ 3-428. Prohibited acts; penalties**

(a) "Complaint" defined. -- In this section, "complaint" includes a written or oral complaint, claim, or assertion of right by an employee, regarding the payment of wages under this subtitle, that is made to:

(1) the employer or a supervisor, manager, or foreman employed by the employer whether it is made through the employer's internal grievance process or otherwise; or

(2) the Commissioner or an authorized representative of the Commissioner.

(b) Prohibited acts of employers. --

(1) An employer may not:

(i) pay or agree to pay less than the wage required under this subtitle;

(ii) hinder or delay the Commissioner or an authorized representative of the Commissioner in the enforcement of this subtitle;

(iii) take adverse action against an employee because the employee:

1. makes a complaint that the employee has not been paid in accordance with this subtitle;

2. brings an action under this subtitle or a proceeding that relates to the subject of this subtitle; or

3. has testified in an action under this subtitle or a proceeding related to the subject of this subtitle; or

(iv) violate any other provision of this subtitle.

(2) Adverse action prohibited under paragraph (1) of this subsection includes:

(i) discharge;

(ii) demotion;

(iii) threatening the employee with discharge or demotion; and

(iv) any other retaliatory action that results in a change to the terms or conditions of employment that would dissuade a reasonable employee from making a complaint, bringing an action, or testifying in an action under this subtitle.

(c) Prohibited acts of employees. -- An employee may not:

(1) make a groundless or malicious complaint to the Commissioner or an authorized representative of the Commissioner;

(2) in bad faith, bring an action under this subtitle or a proceeding related to the subject of this subtitle; or

(3) in bad faith, testify in an action under this subtitle or a proceeding related to the subject of this subtitle.

(d) Penalty. -- A person who violates any provision of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$ 1,000.

(e) Standard of proof. -- An employer may not be convicted under this section unless the evidence demonstrates that the employer had knowledge of the relevant complaint, testimony, or action for which the prosecution for retaliation is sought.

**§§ 3-429, 3-430 [Reserved].**

Reserved.

**§ 3-431. Short title**

This subtitle may be cited as the Maryland Wage and Hour Law.