

CLIENT ALERT

EMPLOYERS BEWARE -- NEW MARYLAND LAW TO ENFORCE WAGES SET TO TAKE EFFECT ON OCTOBER 1, 2013

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As if the employee friendly Fair Labor Standards Act (FLSA) and the Maryland Wage Payment Law (MWPL) were not sufficient to fully protect the concerns of employees who believe that they have not been fully compensated for their services, Maryland Governor Martin O'Malley recently signed into law the "Lien For Unpaid Wages Act." The new legislation, which is scheduled to take effect on October 1, 2013, will permit employees to file liens against the real and/or personal property of their employers as part of their efforts to recover wages that allegedly have not been paid. The statute contemplates a speedy process to address these lien claims. Once a lien has been filed, the legislation requires that employers file a complaint in the Circuit Court where the employer's property is located within 30 days of the lien filing. If employers fail to do so, the result will be the establishment of a lien. The employer must include with the complaint a statement of the facts that support the defenses to the unpaid wage claim. Thereafter, the court must decide whether to issue an order establishing a lien within 45 days of the date that the complaint is filed.

The statute contemplates that the Maryland Department of Labor, Licensing and Regulation (DLLR) is to clarify the various obligations that employees and employers will have under the new legislation by issuing regulations. Presumably, these regulations will provide guidance on the pleading and evidentiary burdens an employee will have to satisfy to establish a lien. Unfortunately, the statute is vague. For example, although the statute states that there is to be an evidentiary hearing, it is unclear whether the parties will be able to participate in discovery before the hearing and to brief the issues, before the court determines whether to establish a lien. Although the full ramifications of the new legislation remain to be seen, it certainly appears that the statute will place tremendous pressure on employers to address wage claims promptly, and will likely significantly change the manner in which these claims have been litigated for many years.

The new legislation will make it even more important that employers take appropriate, constructive measures to prevent the filing of such claims to best prepare themselves for defending them once they have been filed. These measures include the following:

1. Conduct a careful review of all job descriptions to determine whether positions are exempt from the overtime requirements.
2. Interview employees and otherwise engage in the necessary factual investigation to make sure that the job descriptions accurately reflect the duties being performed by employees on a daily basis.
3. Make sure that the employee handbook incorporates the appropriate safe harbor language contemplated by the FLSA; namely, that if employees have questions or concerns

about their compensation, that they should contact their supervisor or the Human Resources Department.

4. Train managers on the basics of the new legislation.
5. Promptly consult with counsel where there are questions regarding whether wages are due or could be argued to be due.
6. Establish a clear written policy mandating that express supervisor authorization is required before overtime is worked.
7. Monitor the overtime hours worked by employees to determine if they are excessive. If they are, consideration should be given to staffing alternatives such as hiring additional employees in order to minimize the total amount of overtime worked.
8. Include the appropriate representation language in timesheets; namely, that employees represent that the timesheets accurately reflect all of the hours that they have worked and that no one has instructed them not to record all of the hours they have worked.
9. Check with insurance agents/brokers to determine whether there is insurance coverage for liens filed for unpaid wages under this new statute.
10. Establish a sound procedure to evaluate – *before* employees are terminated – whether they have been fully compensated for all work performed.

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The Maryland legislature is sending a powerful message to employers that it expects them to deal with wage issues in a proactive and constructive manner, and that the consequences of failing to properly compensate employees will be significant. Employers that plan accordingly by taking proactive measures – such as those outlined above – will best position themselves to prevent the filing of wage lien claims and to successfully defend them if they are filed.

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