

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 831
Finance

(Senator Jennings)

Labor and Employment - Wage Payment and Collection - General Contractor Liability

This bill specifies that a general contractor on a project for construction services is jointly and severally liable for specified violations of the Maryland Wage Payment and Collection Law committed by a subcontractor only if an employee (whose wages were withheld in violation of the law by a subcontractor) notifies the general contractor, in writing, that the violation occurred and the general contractor fails to cure the violation within 30 days. A presently existing obligation or contract right may not be impaired in any way by the bill. The bill applies prospectively and may not be applied or interpreted to have any effect on or application to any cause of action arising before the bill's October 1, 2020 effective date.

Fiscal Summary

State Effect: The State is not subject to the Wage Payment and Collection Law as an employer so the bill pertains exclusively to private-sector employers. Holding a general contractor jointly and severally liable only under specified circumstances is not expected to materially affect the workload of the District Court or enforcement activities by the Commissioner of Labor and Industry.

Local Effect: The bill does not apply to local governments as employers. The bill is not anticipated to materially affect the circuit courts.

Small Business Effect: Potential meaningful.

Analysis

Current Law: Chapter 17 of 2018 made a general contractor on a project for construction services jointly and severally liable for violations of the Maryland Wage Payment and Collection Law committed by a subcontractor, regardless of whether the subcontractor is in a direct contractual relationship with the general contractor. A subcontractor must indemnify a general contractor for any wages, damages, interest, penalties, or attorney's fees owed as a result of the subcontractor's violation unless (1) indemnification is provided for in a contract between the general contractor and the subcontractor or (2) a violation of the Maryland Wage Payment and Collection Law arose due to a lack of prompt payment in accordance with the terms of the contract.

Maryland's Wage Payment and Collection 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 or twice in each month, 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. The Maryland Department of Labor'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.

The Commissioner of Labor and Industry may investigate a violation of the Wage Payment and Collection Law only upon receipt of a written complaint by an employee. 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.

However, for wage complaints amounting to \$3,000 or less, the Commissioner of Labor and Industry uses an expedited process. For these cases, the commissioner must review the complaint and may investigate the claim and may either issue an order requiring the employer to pay or dismiss the claim. Within 30 days after receipt of the order to pay wages, the employer may request an administrative hearing. 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.

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, 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.

Small Business Effect: The bill may reduce the liability of general contractors whose subcontractors violate the Maryland Wage Payment and Collection Law by giving them, in some instances, a chance to cure the violation before the violation is reported.

Additional Information

Prior Introductions: A similar bill, SB 959 of 2019, passed the Senate with amendments and received a hearing in the House Economic Matters Committee, but no further action was taken.

Designated Cross File: HB 956 (Delegate Adams) - Economic Matters.

Information Source(s): State Board of Contract Appeals; Judiciary (Administrative Office of the Courts); Department of General Services; Maryland Department of Labor; Department of Legislative Services

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