

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 797

(Senators Astle and Kittleman)

Finance

Economic Matters

**Labor and Employment - Wage Payment on Termination of Employment -
Accrued Leave**

This emergency bill requires an employer to provide notice of the employer's leave benefits to each new employee. At termination of employment, an employer is not required to pay accrued leave to an employee if the employer has a written policy that limits the compensation of accrued leave and the employee is not entitled to payment of accrued leave under the terms of the policy.

The bill requires an employer to pay accrued leave to an employee terminated on or after November 1, 2007, with an employee entitled to payment only if eligible under the terms of the employer's written policy, as communicated to the employee prior to termination. This provision does not apply to any case for which a final judgment has been rendered with all judicial appeals exhausted

Fiscal Summary

State Effect: The bill pertains to private-sector activities and would not materially affect State finances or operations.

Local Effect: None.

Small Business Effect: Potential minimal.

Analysis

Current Law: At the time of hiring, an employer must provide a new employee with notice of the employee's rate of pay and the employer's regular paydays.

An employer is required to pay an employee all wages due for work that the employee performed prior to the termination of employment. This payment must be made by the date on which the employee would have otherwise been paid if employment had not been terminated.

Once two weeks have elapsed from the date on which an employer is required to have paid the wages, the employee may bring an action against the employer to recover any unpaid wages. If a court finds that an employer withheld the wage in violation of Maryland Wage Payment and Collection Law, the court may award the employee an amount of up to three times the wage as well as reasonable counsel fees and other costs.

Background: In *Catapult Technology, LTD v. Paul Wolfe*, No. 997 (2007), the Maryland Court of Special Appeals held that accrued leave constitutes a wage under Maryland Wage Payment and Collection Law. The case arose when Catapult Technology lost a contract with the U.S. Department of Transportation, causing 14 employees to resign to pursue employment with the new contractor. These employees did not provide the two weeks notice as required by Catapult Technology's employee handbook.

The Circuit Court for Montgomery County held that leave that accrues based on the number of hours worked constitutes a wage that must be paid at termination of employment, regardless of an employer's written policies. The Court of Special Appeals affirmed the decision, citing *Medex v. McCabe*, 372 Md. 28 (2002), which held that employees are entitled to incentive and commission payments "when the employee does everything required to earn the wages." Given that Catapult Technology's employees accrued leave based on hours worked, the court held that these employees were entitled to be paid for the value of their unused leave.

The *Maryland Guide to Wage Payment and Employment* published by the Department of Labor, Licensing, and Regulation's Division of Labor and Industry was revised in November 2007 to reflect the court's decision, stating:

When an employee has earned or accrued his or her leave in exchange for work, an employee has a right to be compensated for unused leave upon the termination of his or her employment regardless of the employer's policy or language in the employee handbook.

The bill applies retroactively to employees whose employment terminated since the department's revision to wage payment and employment standards.

Small Business Effect: The bill could reduce an employer's liability in compensating an employee at termination of employment, provided that the employer establishes a written policy regarding payment of accrued leave. It is expected that this will apply in a relatively limited number of circumstances; however, small businesses could be positively affected by the provisions of the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; Jackson Lewis; Department of Legislative Services

Fiscal Note History: First Reader - March 11, 2008
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