

THE MARYLAND GUIDE TO WAGE PAYMENT AND EMPLOYMENT STANDARDS

This booklet is a publication of the **Employment Standards Service of the Maryland Division of Labor and Industry, Department of Labor, Licensing and Regulation**. The Employment Standards Service is responsible for enforcing the Maryland Wage Payment and Collection Law.

The Guide is meant to be used by employees and employers as a general reference source on wages and employment in Maryland. The information contained within identifies and discusses many fundamental elements of the Maryland law, and attempts to address many of the most often asked questions. This booklet is not exhaustive, however, and should not be cited as legal authority or used as a substitute for legal advice.

Questions concerning this publication and the topics discussed may be addressed to the **Employment Standards Service** at **(410) 767-2357**. The mailing address is 1100 N. Eutaw St., Room 607, Baltimore, Maryland 21201.

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I. MARYLAND WAGE LAWS - IN GENERAL

The Maryland Wage Payment and Collection Law sets forth the rights by which employees receive wages. The law states when and how often employees must be paid, general guidelines for making wage deductions, which actions are prohibited and how employees may enforce their rights.

The Maryland Wage and Hour Law concerns minimum wage and overtime. The law specifies which categories of employers and employees are exempt, and provide enforcement powers and remedies. The Maryland Wage and Hour Law is similar to the federal Fair Labor Standards Act (FLSA), but contains some important differences. In every case, workers and employers are advised to contact the U.S. Department of Labor, Wage and Hour Division, at **(410) 962-6211**, to assure compliance under the federal law. Where either state or federal law is more stringent, the higher standard applies.

* In the case of both Maryland laws, the age of a minor or the immigration status of an alien have no bearing on a worker's rights to receive earned wages which each provide.

* Federal, state and local governments are exempt from the provisions of both the Wage Payment and Collection Law and the Wage and Hour Law, but they must comply with the federal Fair Labor Standards Act.

II. REMEDIES FOR UNPAID WAGES

If you are an employee whose wages have been illegally withheld, you have three options under the Maryland Wage Payment and Collection Law (you may only choose one):

1. The Employment Standards Service (ESS), at (410) 767-2357, can provide information on wages and employment rights under Maryland law. On receipt of a proper claim for unpaid wages available by calling (410) 767-2357 or on line at www.dllr.state.md.us/forms/essclaimform.doc, ESS will conduct an independent investigation and work to collect any pay which is determined due. This may include taking the employer to court if the matter cannot be informally settled.

For those wishing to file a claim for unpaid wages, and for quickest results, it is suggested that a CERTIFIED letter RETURN RECEIPT REQUESTED, be sent to the employer stating the amount of money owed, identifying the hours and days or commissions this money represents, and demanding payment by a specific deadline (such as 10 days from receipt of the certified letter). It may help collection on the claim later to send the letter Certified Mail, as suggested, so as to receive back the green receipt proving the employer signed for and received it. In addition, a copy of this letter should be kept and later provided together with a claim form to the Employment Standards Service if the employer still does not pay. To request a claim form be mailed call 410-767-2357 or you may download the claim form on line by visiting our web site at www.dllr.state.md.us follow to >Labor and Industry>Wage & Hour>Claim Form. *Be sure to answer all questions and follow all directions when completing the claim form. The claim form must include your original signature and be mailed to ESS before an investigation is initiated.*

2. An employee may file a lawsuit. Where a court finds that wages were withheld in violation of the Maryland Wage Payment Law, and not as a result of a bona fide dispute, the court may award damages of up to three times the amount of the unpaid wage plus attorney fees.

3. An employee may file criminal charges. Under certain circumstances, Maryland law imposes criminal penalties for an employer who deliberately fails to pay the wage of an employee without a valid reason, or provides employment with the intent not to pay.

***Note on Jurisdiction**

Claims for unpaid wages must be brought in the state in which the work was performed. If work was performed in more than one state, claims may generally be filed in the state in which the employer maintains its business office-that is, the office where the employee reports to or was hired out of.

The following is a list of phone numbers of wage and hour offices in neighboring states and political subdivisions:

Virginia.....	(804) 786-2386
West Virginia.....	(304) 558-7890
Pennsylvania.....	(717) 787-4671
New Jersey.....	(609) 292-2337
Delaware	(302) 761-8200

III. WORK ISSUES

A. What is "Work"?

* Work is service performed by an employee at the request and under the control of an employer and, therefore, on the employer's time.

* Work is compensable -- that is, something for which an employee is entitled to be paid.

* Work under the Maryland Wage Payment and Collection Law does not include **volunteer service**, if the individual took the job with the full and voluntary understanding that he or she would not be paid, there is in fact no employer-employee relationship, and the activity is performed for the benefit of a charitable, educational, not for profit, or religious organization.

Work does not necessarily require an employee to do or accomplish anything. Work may only involve fulfilling the requirements or following the directions of the employer -- even where an employer instructs a worker to report to the job site at 7 AM and do nothing until called on. Work may even mean sleep time if a worker must remain on the premises for anytime less than 24 hours. Where free to leave without the possibility of consequence, the worker is on his or her own time, even if instructed to remain "on call" with a beeper, and may not be entitled to compensation. Once called back to work, however, compensation becomes due.

B. Change of Work Hours: An Employer's Right

In the absence of an employment contract, agreement or policy which states otherwise, an employer may shorten or lengthen an employee's work hours, or change the shift or times for employment, at any time at the employer's discretion. [*Note: Generally, qualifying employees who work more than 40 hours in a work week must be paid time and one-half for overtime*].

C. Employee or Independent Contractor?

Maryland wage and employment laws do not apply to "Independent Contractors".

The question of who is an employee and who is an independent contractor is important and often complex. Moreover, the financial consequences in making this determination are significant for both workers and employers. For workers, these consequences include entitlements to minimum wage and overtime pay, unemployment benefits, workers' compensation benefits, Social Security employer contributions, federal and state tax withholdings, protections against illegal employment discrimination, etc. At stake for employers are the financial and legal obligations in complying with

these federal and state requirements.

A signed agreement declaring that a worker is an independent contractor is not, by itself, enough to establish the fact. The "economic reality" of the work relationship determines the worker's status. Thus, if two individuals in fact stand in the relation of employer and employee to each other, it is irrelevant that the worker has agreed to be called an independent contractor. The measurement, method, or designation of compensation is also of lesser importance, if the relationship of employer and employee in fact exists.

Many government agencies have their own criteria for making the employee versus independent contractor distinction. These criteria often are established under separate laws.

*** Factors in Making the Distinction Between an Employee and an Independent Contractor**

Although many factors are considered, and no one factor by itself is controlling, the following basic principles often apply in determining whether a worker is an employee or an independent contractor:

Generally, the employer/employee relationship exists when the person for whom services are performed *has the right to control and direct the individual who performs the services*, not only as to the *result* to be accomplished by the work, but also as to the *details* and *means* by which that result is accomplished. That is, an employee, and not an independent contractor, is subject to the will and control of the employer not just as to "what" shall be done, but "how" it shall be done.

The *right to discharge* is also an important factor indicating that the person possessing that right is an employer, and the person subject to it is an employee. Other factors characteristic of an employer-employee relationship are the *furnishing of tools, materials and a place to work* to the individual who performs the services.

Independent contractors are persons who are in business for themselves. Their business is usually different from the business of the person for whom the work is performed. Generally, *those who follow an independent trade, business, or profession, in which they offer their services to the public, and who may be in a position to suffer financial loss rather than a guaranteed wage, are independent contractors and not employees*. Persons involved in certain professions and occupations are often conducting business as independent contractors. These include physicians, lawyers, dentists, veterinarians, construction contractors and subcontractors, certified public accountants, etc. However, many persons with these occupations work for firms, associations, institutions, leasing companies or organizations and, in those cases, may be employees and not independent contractors.

*** Case Studies**

The following three case studies are generalized examples of situations where the questions of employee or independent contractor commonly arise. They are by no means comprehensive, and illustrate the operation of only some of the factors applied in making the distinction.

A. A company runs a referral service for physical therapists, where hospitals or other health care organizations call to obtain temporary workers in that field. When an order is received, the company sends out a physical therapist from its list. The client health care organization pays the referral company who, in turn, keeps an amount for its overhead and profit and pays an hourly or daily amount to the physical therapist. Although the physical therapist is not directly supervised by the referral company, the company maintains the right to expect adherence to acceptable performance standards and to discharge the physical therapist on any adverse reports from client health care organizations.

The referral company's right to discharge, together with its administration of the contract with the client health care organization and its payment of wages to the worker, appear to indicate that *the physical therapist is most likely an employee and not an independent contractor.*

B. A general contractor hires a painter to paint a new house. The general contractor is not, herself, a housepainter. The painter uses his own tools, obtains his own materials, is free to hire helpers if necessary, comes and goes when he likes (as long as he gets the job done properly and on schedule), and bids for other jobs during the period he is performing the job for the general contractor.

The painter appears to be in business for himself. The general contractor provides no assistance or direction to the painter in the performance of the job, but is only interested in the end product. *The painter is most likely an independent contractor and not an employee.*

C. A truck owner hires a driver to deliver loads the owner has contracted to haul for a large transportation company. The driver is free to take the truck home with her but is instructed to leave it parked on the street. The driver is free to devise her own routes, reject any load she wishes, and work her own hours within the constraints of the company's deadlines. She is also free from direct daily supervision, merely reporting to the owner on a weekly or bi-weekly basis. The owner pays all bills on the truck including fuel, tolls, insurance and maintenance. The owner pays the driver 30% of the gross receipts.

Although some elements exist which would seem to point to the driver as an independent contractor, other elements outweigh them including the owner's control over the truck, "hiring" of the driver, and control over the contract with the transportation company. *On balance, therefore, the driver is more likely an employee than an independent contractor.*

IV. WAGES AND COMPENSATION

A. What is a "Wage"?

A wage is payment or compensation earned by an employee for work performed under an employer's direction, or with the employer's knowledge or consent. Generally, wages are paid as currency (U.S. Dollars) representing a length of time worked, but may also include the following:

1. **Bonus.** This could include a monetary reward for finishing a special project or completing a length of employment.
2. **Commission.** This is usually a portion of the sale price of some commodity or service which the employee has sold on behalf of the employer, or some promised amount of money as a reward for making the sale.
3. **Fringe Benefit.** This could be many things, but often involves some accrued or accumulated compensation such as vacation ("annual") leave, sick leave, or other promised benefit.
4. Any **Other "Remuneration"** (compensation) promised for work performed. Examples could include room and board, materials and inventory, etc.

B. Frequency of Pay

Employees in Maryland must be paid at least once every two weeks or twice in a month. However, **Executive, Professional and Administrative** employees may be paid less frequently (See the discussion on Executive, Professional and Administrative employees, Section V. B).

C. Wage Payment at Termination: When Final Pay Due

Each employer shall pay an employee, or the authorized representative of an employee, all wages due for work that the employee performed before the termination of employment, on or before the day on which the employee would have been paid the wages if the employment had not terminated.

D. Wages Paid on Time

Generally, an employer must set regular paydays, and pay all earned wages of an employee on time regardless of whether the employee has turned in a time sheet or punch card, quit without notice, or provided any other form or document required by the employer. In addition, earned wages must be paid on time whether or not the employer has received payment from a customer or client for a job

on which the employee worked.

If payday falls on a nonworking day, such as a weekend or holiday, wages must be paid on the preceding workday.

E. Deductions from Wages

Work, whether satisfactory or not, must be awarded compensation. Wage deductions are extraordinary, and are prohibited unless:

1. A **court** has **ordered** or allowed the employer to make the deduction. Examples include court ordered wage garnishments and orders to pay child support.

2. The **Commissioner of the Maryland Division of Labor and Industry** has allowed the deduction to offset or "pay for" something of value the employee has received. Examples include long distance telephone calls on the employer's business phone, personal loans, wage advances, etc.

3. Allowed by some **law or regulation** of the government. Examples include state and federal taxes.

4. The employee has given **express written authorization** to the employer to make the deduction. This should take the form of a *separate* and *distinct* statement, signed by the employee, concerning only the deduction and nothing more. Even with a proper authorization, however, employers must still pay at least the federal minimum wage in the case of a deduction made to offset a loss to the employer due to the admitted or court determined fault or negligence of an employee (for example, careless damage to the employer's truck). If the deduction is made to offset something the employee received or retained from the employer which had monetary value (for example, personal loan, use of long-distance telephone line, materials, etc.), the deduction may, in that case, reduce the employee's wages below the minimum wage. Finally, an authorized deduction may be invalid if it violates or is inconsistent with other federal or state laws or regulations.

F. Deductions for Unemployment and Workers' Compensation

An employer may not deduct any part of the wages of an employee as representing or contributing to the employer's legal obligation to pay unemployment or workers' compensation insurance premiums.

G. Unused Vacation at Termination -- Is It Payable?

The answer to this question depends on the employer's written policy, and whether this policy was

communicated to the employee at the time of hiring. For example, if an employer informs employees in writing at the time of hiring that unused vacation leave will be lost or forfeited upon termination, then an employee will not be able to claim it. On the other hand, *where the employer does not have a written policy that limits the compensation for accrued leave to a terminated employee, that employee is entitled to the cash value of whatever unused earned vacation leave was left -- provided it was otherwise usable.*

H. Unused Sick Leave at Termination -- Is It Payable?

Because sick leave is generally meant to be used in the case of sickness or for medical attention, its use is limited to those situations. Sick leave is therefore a contingency against illness, and cannot be claimed at termination in the same manner as unused vacation leave, unless expressly allowed in a contract or an employer's policy.

I. Flexible Leave Act

Effective October 1, 2008, the Flexible Leave Act, Chapter 644 of the Laws of Maryland 2008, authorizes employees of employers with 15 or more individuals to use “leave with pay” for an illness in the employee’s immediate family –a child, spouse or parent. Leave with pay is considered time away from work for which an employee is paid and includes sick leave, vacation time, and compensatory time. An employee may only use leave with pay that has been earned and employees who earn more than one type of leave with pay may elect the type and amount of leave with pay to be used. An employee who uses leave with pay under this law is required to comply with the terms of any collective bargaining agreement or employment policy.

The Flexible Leave Act prohibits an employer from discharging, demoting, suspending, disciplining or otherwise discriminating against an employee or threatening to take any of these actions against an employee who exercises rights under this law. This law does not affect leave granted under the Federal Family and Medical Leave Act of 1993.

J. Holidays and Holiday Pay: No Entitlement

Unless there is an employment contract, agreement or policy providing for such benefits, state law does not guarantee days off for holidays or any special holiday pay for private sector employees, except an unpaid religious day of rest each week for retail employees who give prior written notice to their employers. Moreover, an employer may require an employee to work on a holiday, and is not required to pay extra in doing so.

K. Temporary Closures, Snow Days, Etc.: Not Compensable

An employer may temporarily close its business for any reason and for any length of time without offering special compensation to non-exempt employees who cannot go to work as a result. This is

commonly true, for example, during snow emergencies. However, for salaried employees who fit the definition of Executive, Administrative or Professional (defined in this Guide at paragraph **V. B.**), and who are ready, willing, and able to work, deductions may not be made for time when work is not available. Doing so will remove this category of employee from exempt salary status, entitling the worker to payment of overtime.

[See, also, paragraph **VI. B.** below concerning *Displaced Workers and Reductions in Force*].

L. Change of Pay: In the Employer's Discretion

In the absence of an employment contract, agreement or policy which states otherwise, an employer may lower the pay of an employee at any time following *one full pay period* advance notice. Prior notice of a pay increase is not required.

M. Severance Pay

Maryland law does not guarantee severance pay when employment terminates, unless promised in advance in an employment contract, agreement or policy. For information on the federal law involving severance pay, contact the U.S. Department of Labor, Pension Welfare Benefits Administration at (202) 219-8776, or Wage and Hour Division at (410) 962-6211.

N. Uniforms: Passing On the Cost

Generally, the cost of providing and maintaining a uniform which may bear the name or logo of the employer may be passed on to an employee through a wage deduction -- with the employee's signed written authorization. An employee may be held responsible for the depreciated value of the uniform if it is not returned as required.

O. Compensable Time: For What Time Must An Employee Be Paid?

All of the time an employer requires an employee to be at work is compensable time, whether or not the employee is officially "on the clock". This includes time driving in the employer's truck from worksite to worksite during the day. It also includes time driving from the shop to the work site at the beginning of the day and returning to the shop at the end of the day, if the employer requires the employee to report to and return to the shop. Some examples of **illegal** practices include the following:

Example 1: An employee is required to report to work at 7:30, but is not paid for the time before punch-in at 8:00.

Example 2: An employee is not paid for the time she is required to clean-up the employer's shop at the end of the day.

P. Commuting to Work: Non-Compensable

Time spent travelling or "commuting" to work is non-compensable (not payable). This is true, even where an employee must drive a long distance. However, as stated in the previous section, once reporting to work (such as to the employer's shop or office, or any other place an employer requires an employee to report), the employee must then be paid for the time necessary to travel to a work site or to accomplish some other mission the employer assigns.

Q. Notice of Termination: Payment of Wages During Notice Period

Unless expressly provided in an employment contract, agreement or policy, an employer is not required to allow an employee to work the full two week termination notice period (or whatever other termination notice period given by the employee), nor pay the employee for the time not actually allowed to work.

R. Tipped Employees: Payment of Less than Minimum Wage

Employees who earn at least \$30 per month in tips may, under Maryland law, be paid as little as (but no less than) **\$3.28** per hour by their employer effective July 24, 2008. This is only the case, however, where earned tips for the week combined with **\$3.28** per hour equal at least the minimum wage for all hours worked. Where an employee's earnings fall short of the minimum wage due to meager tips, the employer must make up the difference.

Note: *Tipped employees who are from time to time assigned to perform non-tip related tasks must be paid by their employer at least the full minimum wage rate for that non-tipped time.*

S. Trainings and Meetings: Compensable Time

Generally, an employee must be paid for training time and meetings -- whether held during regular work hours or not -- if attendance at a training or meeting is required and not "voluntary". Trainings and meetings are not "voluntary" if it is generally known, or the employee reasonably believes, that non-attendance will result in some negative effect on employment.

T. Direct Deposit of Wages: Voluntary

With voluntary employee authorization, an employer may direct deposit wages. Though free to encourage participation in this system, an employer may *not require* it.

U. Recordkeeping: An Employer's Responsibility

Each employer shall keep, for at least 3 years, in or about the place of employment, a record of the name, address, race, gender (☐ White ☐ Black / African American ☐ American Indian ☐ Asian ☐ Native Hawaiian / Pacific Islander ☐ Hispanic or Latino) and occupation of each employee; the rate of pay of each employee; the amount that is paid each pay period to each employee, and; the hours that each employee works each day and workweek.

V. Holding Wages: "One Pay in the Hole"

An employer may not keep any part of the wage of an employee, either by withholding an entire paycheck, part of a paycheck, or by way of incremental wage deductions from several paychecks, as security against some future or contingent occurrence. This practice amounts to a confiscation of pay and is a direct violation of the law requiring timely payment of earned wages.

[Note: This section concerns the indefinite holding of wages as security, not the short-term delay of pay for payroll processing purposes].

W. Bounced Paychecks

Paying wages with a bad check is the same as failing to pay wages and may subject an employer to civil and criminal penalties under the Wage Payment and Collection Law and the Maryland Criminal Code.

X. Pay for Lunch and Other Breaks

There is no law requiring an employer to provide breaks, including lunch breaks, for workers 18 years old or older (See section **VI. D.**). An employer who chooses to provide a break, however, does not have to pay wages for lunch periods or other breaks in excess of 20 minutes where the employee is free to leave the worksite (or workstation if leaving the workplace is physically impractical), in fact takes their lunch or break (whether freely choosing to leave or remain at the worksite), and the employee does not actually perform work. If employees are told their pay will be reduced each day by one-half hour for lunch, and they are not free to take this lunch period without an expectation or reasonable understanding that they must work or be on hand to work, they must be paid for the time.

A "reasonable understanding" that they must work or be on hand to work is a condition in which it is generally known, or the employee reasonably believes, that failure to perform work (or be available "on hand" to perform work) during their break, will result in some negative effect on employment.

[See also section **VI. D.** regarding rights to breaks and benefits]

Y. Commissions

Commissioned sales agreements between an employee and employer are generally enforceable contracts. Where an employee completes the specified services on a sale or account, and the transaction is finalized through settlement, delivery and payment, the commission is usually payable unless a reasonable -- but not excessive -- lag time is agreed to in the event of customer return or default.

Where a commission is paid in advance of receipt of payment from the customer, but no provision in an agreement between the parties provides for a refund to the employer of commissions paid, no deduction may be made from the future wage of the commissioned employee in the event of customer return or default.

Unconditional agreements to forgo commissions upon termination of employment are unenforceable to the extent all required services necessary to claim the commission were completed by the employee prior to termination.

V. OVERTIME

A. In General

Overtime is payment to an employee of one and one-half (1.5) times the regular hourly wage for work performed in excess of 40 hours in a 7-day week. For some occupations in Maryland, overtime is calculated based on a different period of time. Certain farm workers, for example, receive overtime for hours worked over 60 in a week. However, under state and federal laws, some employers are exempt from the requirement to pay overtime, and some employees are exempt from the right to receive it.

Leave hours, including vacation, sick time, holiday, etc., are not counted toward the accumulated hours in a week for overtime purposes. Overtime is calculated on hours actually worked.

B. Salaried Employees: No Overtime

Salaried employees, who fit the description of "**Executive**", "**Administrative**" or "**Professional**", are generally *exempt under the law from receiving overtime*, regardless of the number of hours they are required to work in a week. Some employers, in attempting to avoid paying overtime, make the decision to pay a salary to workers who do not fit the definition of **Executive**, **Administrative** or **Professional**. This practice does *not* eliminate the obligation of an employer to pay overtime based

on a mathematical calculation of the employee's average hourly wage to employees who are otherwise eligible.

For **Executive, Administrative and Professional** employees receiving salaries, an employer may not generally deduct or "dock" from wages any amount of time for missed work which is less than a full day. Doing so may remove the employee from the "exempt" status under the Wage and Hour Law, and entitle him or her to overtime pay after 40 hours. An employer may, however, deduct any of the hours of missed work from an employee's accrued leave reserves (e.g., vacation, sick leave, compensatory time, etc.) without jeopardizing the exempt status.

To fall under one of the three exempt categories, the following criteria are used for quick reference:

1. Executive:

An Executive employee is one who is compensated on a salary basis at a rate of not less than \$455 per week (excluding board, lodging or other facilities), whose primary duty is the management of the enterprise in which the employee is employed, who customarily and regularly directs the work of two or more other employees, and who has the authority to hire or to fire other employees or whose recommendations as to hiring or firing, advancement or promotion or change in employee status are given particular weight.

2. Administrative:

An Administrative employee is one who is compensated on a salary basis at a rate of not less than \$455 per week (excluding board, lodging or other facilities), and whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer, and whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

3. Professional:

A Professional employee is one who is compensated on a salary basis at a rate of not less than \$455 per week (excluding board, lodging or other facilities), whose primary duty is the performance of work requiring the knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction or requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

C. Hourly and Non-Executive, Non-Administrative and Non-Professional Employees: May Receive Overtime

Hourly and "hourly-type" employees (who do not fit the definitions of Executive, Administrative or Professional), even though they may receive a salary, generally are entitled to overtime. Some examples of "hourly-type" employees include office clerical workers, landscape laborers, fast-food employees, health care workers not meeting the regulatory definition of "professional" (including most categories of nurses in non-state facilities), dishwashers, construction and factory workers, day care workers, maintenance workers, etc. Where such employees receive a salary, as mentioned above, employers must mathematically compute the average hourly wage rate by dividing hours into salary in order to determine the amount of overtime compensation to be paid at the rate of time and one-half.

D. Independent Contractors

Independent Contractors are exempt from federal and State overtime laws. However, workers who are called independent contractors, but in reality are employees, may not be exempt (see Section **III. C** above).

E. Employers Not Required to Pay Overtime Under Maryland Law:

1. Trucking companies which operate interstate
2. Hotels or motels
3. Restaurants
4. Gasoline service stations
5. Private country clubs
6. Not for profit temporary home care services
7. Not for profit concert promoter or theater
8. Some amusement or recreational establishments, including seasonal swimming pools (*However*, companies which manage such establishments may still be required to pay overtime)
9. Food processing companies engaged in canning, freezing, packing, or first processing of perishable or seasonal fresh produce, poultry, or seafood.

F. Employees Not Eligible for Overtime Under Maryland Law:

1. Certain retail mechanics, parts persons, or salespersons that sell or service cars, farm equipment, trailers or trucks
2. Taxicab Drivers
3. Executive, Administrative and Professional employees (as discussed before)
4. Outside Salesmen
5. Commissioned Employees
6. A child, parent, spouse, or other member of the employer's immediate family

7. Employee of a movie theater

[NOTE: the federal law may be different or more defined regarding some of the topics, definitions and examples discussed above. For more information, contact the U.S. Department of Labor, Wage and Hour Division at (410) 962-6211]

VI. EMPLOYER DISCRETION IN THE WORKPLACE

A. Employment At-Will: Termination of Employment (not under the enforcement powers of the Employment Standards Service)

In Maryland, employees work "at the will" of their employers. This means, in the absence of an express contract, agreement or policy to the contrary, an employee may be hired or fired for almost any reason -- whether fair or not -- or for no reason at all.

There are certain **exceptions** to this general rule which provide some protection to employees from illegal discrimination based on such categories as race, color, gender, national origin, religion, age, disability or marital status. Examples of other employment at-will exceptions include laws which protect employees from termination or retaliation for filing workers' compensation claims, for attempting to enforce rights to receive overtime or the minimum wage, for asserting rights to work in a safe and healthy workplace, for refusing to commit criminal acts, for reporting for jury duty or military service, or for being subject to a wage attachment for any one indebtedness. Terminating an employee for any of these specific reasons may constitute a violation under the applicable State or federal law.

B. Displaced Workers: Reductions in Force

Although in possession of broad discretionary powers to terminate workers at-will, employers may nevertheless be required under the federal **WARN** Law to provide advance notice of layoffs to employees under certain circumstances. In addition, the Maryland Economic Stabilization Act

provides for the adoption of voluntary guidelines to be followed by employers regarding advance notification of reductions in operations, provision of information on continuation of benefits, and mechanisms for State assistance. For more information, contact the **Maryland Dislocated Worker Unit** at **(410) 767-2833**.

Maryland law also requires employers to give notice to their local Office of Unemployment Insurance when laying off 25 or more employees for a common reason for periods in excess of 7 days.

C. Setting the Terms of Employment

In the absence of a specific contract of employment limiting such action (and with due regard to the limitations imposed under applicable child labor laws, department of transportation, Maryland Wage and Hour Law section 3-421 Nurse's), an employer may require an employee to work overtime, to work on holidays, to work at night, or to perform extra or different duties than the employee was originally hired to perform, as the need may arise for the employer. An employer may also treat one employee differently than other employees, such as by providing compensation at a different rate of pay. As in the case of employment termination, however, the power to do these things is limited by the prohibition against illegal discrimination/retaliation discussed in the section above. *Although sometimes appearing unfair to an affected employee, such practices are not necessarily illegal.*

D. Breaks, Benefits and Days Off

* There is no law requiring an employer to provide breaks, including lunch breaks, unless the employee is under the age of 18. Minors under 18 must receive a 30 minute break for every 5 hours of work. In addition, state law does not guarantee days off for holidays or any special holiday pay for private sector employees, except a religious day of rest each week for retail employees who give prior written notice to their employers.

* Maryland law does not require the award of **benefits**. Examples include vacation leave, sick leave, compensatory time, holidays and holiday pay, health and life insurance, bonuses, severance pay, etc. The right to claim benefits only arises through a prior agreement of the parties.

[See also section **IV. W.** regarding pay for breaks]

E. Drug Tests

Generally, when following specific legal procedures, Maryland employers may require employees to be tested for the illegal use of alcohol and drugs for a "*legitimate business purpose*". [Maryland Annotated Code, Health-General Article, Section 17-214].

Such tests should be conducted at the employer's expense.

VII. WHERE TO FIND HELP

Both employees and employers may call the **Employment Standards Service** at **(410) 767-2357** with any questions relating to the Maryland wage laws. Other employment related questions will be answered if possible, or referred to the appropriate authority.

Listed below is a quick reference guide to sources of information on various subject areas involving employment.

1. **Employment Discrimination** -- Maryland Commission on Human Relations, **(410) 767-8600** or **(800) 637-MCHR**, or Equal Employment Opportunity Commission at **(410) 962-3932**.

2. **Minimum Wage and Overtime** -- U.S. Department of Labor, Wage and Hour Division, **(410) 962-6211**.

3. **Retirement Benefits** (including 401(k) and ERISA) -- U.S. Department of Labor, Pension Welfare Benefits Administration, **(202) 219-8776**, **(866) 444-3272**, TTY **(877) 889-5627**

4. **Health Care Benefits After Termination of Employment (COBRA)** -- U.S. Department of Labor, Pension Welfare Benefits Administration, (202) 219-8776. If less than 20 employees, Maryland Insurance Administration, (410) 468-2000.

5. **State Scaled or "Prevailing" Wage** (State funded construction contract wage questions) -- Maryland Division of Labor and Industry, Prevailing Wage Unit, (410) 767-2342.

6. **Federal Scaled or "Prevailing" Wage** (Federally funded construction contract wage questions under the Davis-Bacon Act) -- U.S. Department of Labor, Wage and Hour Division, (410) 962-4984.

7. **Federal Service Contracts** (Federally funded non-construction contract wage questions under the Federal Service Contract Act) -- U.S. Department of Labor, Wage and Hour Division, (410) 962-6211.

8. **Unemployment Benefits** -- Maryland Office of Unemployment Insurance,
For Claimant Information Call (800) 827-4839, TTY (800) 827-4400 or, in the Baltimore area, (410) 949-0022, TTY (410) 767-2727.
For Employer Information Call (410) 949-0033, (800) 492-5524.

9. **Workers' Compensation** (for work related injuries and illnesses) -- Maryland Workers' Compensation Commission, (410) 864-5100, (800) 492-0479, (410) 767-0900.

[Note: It is the independent responsibility of an injured worker to obtain a workers compensation claim form and file it within a certain time after injury. Employers are not required to provide this service to employees. It is the responsibility of employers to file a First Report of Injury. This is different than an employee's claim for workers compensation].

10. **Immigration Verification for Employment, I-9 Requirements** -- U.S. Department of Labor, Wage and Hour Division, (410) 962-6211, or U.S. Immigration and Naturalization Service, (800) 357-2099. To file a complaint of national origin discrimination, citizenship discrimination or document abuse in filling out the I-9 or when seeking employment, U.S. Department of Justice, Office of Special Counsel, (800) 255-7688.

11. **Unions and Collective Bargaining Agreements** -- National Labor Relations Board, (410) 962-2822.

12. **Severance Pay** -- U.S. Department of Labor, Pension Welfare Benefits Administration, (202) 219-8776, (866) 444-3272.

13. **Occupational Safety and Health** -- Maryland Occupational Safety and Health (MOSH), (410) 767-7233.

14. **Displaced Workers and Reductions in Force (WARN Act)** -- Maryland Dislocated Workers Unit, **(410) 767-2471**.

15. **Child Labor** -- Maryland Division of Labor and Industry, **(410) 767-2239**.

16. **Family and Medical Leave** -- U.S. Department of Labor, **(800) 959-3652** or **(202) 219-8727**.

VIII. LABOR AND EMPLOYMENT PUBLICATIONS IN MARYLAND

The following is a list of various agencies and units of Maryland State Government which are concerned with some area of labor and employment, and the publications and postings which are required for employers by law.

Employment Standards Service. (410) 767-2357
Employment law information and wage investigations.

Required publications/posters for employers:

1. Wage and Hour Fact Sheet
2. Equal Pay For Equal Work
3. Employment of Minors Fact Sheet

Workers' Compensation Commission. (410) 767-0900

Provides a system of wage and health care protection for eligible workers who have suffered work-related injury or illness.

Required Publications/Posters For Employers:

1. First Report of Injury (form to be filed by employer upon notice of an injury)
2. Workers' Compensation Poster

Office of Unemployment Insurance. (800) 827-4839, (410) 767-3249

Provides a system of wage protection for eligible unemployed workers through collection and administration of unemployment insurance tax contributions from employers.

Required Publications/Posters For Employers:

1. Health Insurance Coverage
 2. To Employees (unemployment benefits eligibility)
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Maryland Commission on Human Relations. (800) 637-6247, (410) 767-8600

Provides education on and enforces Maryland law prohibiting discrimination based on age, ancestry, color, family/marital status, disability, national origin, race, religion and sex in employment, public accommodations, housing and licensing.

Required Publications/Posters For Employers:

1. Employment Discrimination is Illegal
-

Maryland Occupational Safety and Health (MOSH).(410) 880-4970 x348

Ensures a safe and healthful work environment for Maryland workers through inspections, consultation and trainings.

Required Publications/Posters For Employers:

1. MOSH Poster (for employees)
2. Recordkeeping: Injuries and Illnesses Forms, OSHA 200