

The Maryland Guide to Wage Payment and Employment Standards

This booklet is a publication of the Maryland Division of Labor and Industry, Department of Labor and only pertains to the Maryland Law, which is different from the Federal Fair Labor Standards Act (FLSA).

For more information on the requirements of the FLSA, please visit: www.dol.gov.

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.

Table of Contents

- I. Maryland Wage Laws - In General
- II. Remedies for Unpaid Wages
 - *Note on Jurisdiction
- III. Work Issues
 - A. What is "Work"?
 - B. Change of Work Hours: An Employer's Right
 - C. Employee or Independent Contractor?
 - Factors in making the distinction between an employee and an independent contractor
 - Case Studies
- IV. Wages and Compensation
 - A. What is a "Wage"?
 - B. Frequency of Pay
 - C. Wages: What I need to Know
 - Direct Deposit of Wages
 - Holding Wages: "One Pay in the Hole."
 - Wages Paid On-Time
 - D. Termination Pay
 - Wage Payment at Termination: When Final Paycheck Due
 - Notice of Termination: Payment of Wages During Notice Period
 - Unused Vacation Time at Termination—Is it Payable?
 - Unused Sick Leave at Termination—Is it Payable?
 - Wages Paid On Time
 - E. Deductions from Wages
 - F. Deductions for Unemployment and Workers' Compensation
 - G. Leave Laws
 - Adoption Leave
 - Deployment Leave
 - Flexible Leave Act
 - Parental Leave
 - Maryland Healthy Working Families Act
 - H. Healthy Retail Employee Act (Shift Breaks)
 - I. Fair Credit Act
 - J. User Name and Password Privacy Protection

- K. Compensable Time
 - What compensation am I entitled to?
 - What is the employer NOT required to pay?
- L. Change of Pay: In the Employer's Discretion
- M. Severance Pay
- N. Uniforms: Passing On the Cost
- O. Tipped Employees: Payment of Less than Minimum Wage
- P. Recordkeeping: An Employer's Responsibility
- Q. Bounced Paychecks
- R. Pay for Lunch and Other Breaks
- S. Commissions
- T. Amusement and Recreational Establishments

V. Overtime

- A. In General
- B. Salaried Employees: No Overtime
 - Executive
 - Administrative
 - Professional
- C. Hourly and Non-Executive, Non-Administrative and Non-Professional Employees: May Receive Overtime
- D. Independent Contractors
- E. Minimum Wage and Overtime Exemptions
- F. Overtime Only Exemptions
- G. Involuntary Overtime Prohibition for Licensed Practical Nurses or Registered Nurses

VI. Employer Discretion in the Workplace: Employment-At-Will

- A. Employment At-Will: Termination of Employment
- B. Displaced Workers: Reductions in Force
- C. Setting the Terms of Employment
- D. Breaks, Benefits and Days Off
- E. Drug Tests

VII. Where to Find Help

VIII. Labor and Employment Publications in Maryland

I. Maryland Wage Laws - In General

Introduction - The Maryland Guide to Wage Payment and Employment Standards

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 provides 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.,
- Federal, State and local governments are exempt from the provisions of the Wage Payment and Collection Law but they must comply with the federal Fair Labor Standards Act.

Note: Effective June 1, 2019, employees under 18 years of age must earn at least 85% of the State Minimum Wage Rate

II. Remedies for Unpaid Wages

Wage Issues - Having Problems with My Pay

If you are an employee and you believe your wages have been unfairly withheld, you have two options under the Maryland Wage Payment and Collection Law (you may only choose one):

1. **File a Claim:** To expedite your claim, please ask the employer for your unpaid wages. 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 requesting payment by a specific deadline (such as 10 days from receipt of the certified letter). Once mailed, you will receive a green receipt card indicating that your letter was received by the employer. It will be signed by the employer and will serve as proof at a later date that the employer did, in fact, receive your letter and will help us collect your claim. In addition, in the event the employer still does not pay, a copy of this letter should be kept and sent to the Employment Standards Service (ESS) along with a completed claim form. [A claim form can be found online](https://www.labor.maryland.gov/labor/wages/essclaimform.shtml) and downloaded (<https://www.labor.maryland.gov/labor/wages/essclaimform.shtml>). To request a claim form by mailed, call 410-767-2357. Be sure to answer all questions and follow directions when completing the form. All claim forms must include your original signature, be completed correctly and be mailed to ESS (see the mailing address below) prior to beginning an investigation. Upon receipt of a completed claim form, ESS will then conduct an independent investigation and work diligently to collect and pay any monies which you may be due. . This may include bringing an action in court against the employer.
2. **File a Lawsuit:** If 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.

Note on Jurisdiction: Claims for unpaid wages must be brought in the state in which the work was performed.

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

Baltimore City - 410-396-4835
Delaware - 302-761-8200
District of Columbia – 202-671-1880
New Jersey - 609-292-2337
Pennsylvania - 717-787-5279
Virginia - 804-371-2327
West Virginia - 304-558-7890

III. Work Issues

Change in 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.

Employee or Independent Contractor?

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

For individuals in landscaping and construction, please refer to the Workplace Fraud Act for information specific to these industries (http://www.dsd.state.md.us/comar/SubtitleSearch.aspx?search=09.12.40*).

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. For employers, consequences include 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 that fact. The "economic reality" of the work relationship determines the worker's status, meaning is the worker economically dependent on an employer who can allow or prevent an employee from working? 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 under separate laws for determining an employee versus an independent contractor. . For more information, access the Department of Labor Fact Sheet: Am I an Employee? Employment Relationship under the Fair Labor Standards Act (<https://www.dol.gov/whd/regs/compliance/whdfs13.htm>)

Factors to Consider in Distinguishing Between an Employee and Independent Contractor - The Maryland Guide to Wage Payment and Employment Standards

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 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.

The following are three examples of situations where the question of employee or independent contractor is commonly addressed. 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

What is "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:

- Bonus. This could include a monetary reward for finishing a special project or completing a length of employment.
- 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.
- 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.
- Overtime
- Any Other "Remuneration" (compensation) promised for work performed. Examples could include room and board, materials and inventory, etc.

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](#)).

Wages: What I Need to Know

Direct Deposit of Wages - With voluntary employee authorization, an employer may direct deposit wages. Though free to encourage participation in this system, an employer may currently not require it.

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 that this section concerns the indefinite holding of wages as security, not the short-term delay of pay for payroll processing purposes.

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 non-working day, such as a weekend or holiday, wages must be paid on the preceding workday.

Termination Pay

Wage Payment at Termination - When Final Paycheck is 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.

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.

Unused Vacation 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.

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.

Deductions from Wages

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

- A court has ordered or allowed the employer to make the deduction. Examples include court ordered wage garnishments and orders to pay child support.
- The Maryland Commissioner 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.
- Allowed by some law or regulation of the government. Examples include state and federal taxes.
- 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. The general rule is that authorized deductions may not cause an employee's wage to fall 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.

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.

Other Employment Related Laws

What other employment laws employees and employers should be aware of?

Adoption Leave

Adoption leave under section 3-801 of the Labor and Employment Article states that employers who provide leave with pay to an employee following the birth of the employee's child shall provide the same leave with pay to an employee when a child is placed with the employee for adoption.

Flexible Leave Act

The Flexible Leave Act, section 3-802 of the Labor and Employment Article authorizes employees of employers with 15 or more individuals to use "leave with pay" to care for an immediate family member who is ill or for bereavement leave upon the death of an immediate family member. Immediate family member is 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 to use. 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 (FMLA) (<https://www.dol.gov/whd/fmla/>).

For more information on the Flexible Leave Act, visit https://mgaleg.maryland.gov/2021RS/chapters_noln/Ch_573_hb0056T.pdf

Deployment Leave

Deployment Leave under section 3-803 of the Labor and Employment Article authorizes individuals of employers with 50 or more employees who work full-time or part-time, have worked for the employer for the last 12 months, and has worked at least 1,250 hours during the last 12 months, leave from work on the day that an immediate family member, which includes a spouse, parent, stepparent, child, stepchild or sibling of the employee is leaving for, or returning from, active duty outside the United States as a member of the armed forces of the United States.

An employer may not require an employee to use compensatory, sick, or vacation leave when taking leave under this section. An employer may require an employee requesting leave under this section to submit proof to the employer verifying that the leave is being taken in accordance with the deployment leave law.

Parental Leave

The Parental Leave Law, section 3-1201 of the Labor and Employment Article, provides that an eligible employee is entitled to a total of six (6) workweeks of unpaid parental leave during any 12-month period for the birth of a child of the employee; or the placement of a child with the employee for adoption or foster care. The Commissioner will look to existing rules, regulations and interpretations under the Federal Family Medical Leave Act for guidance in administering this law.

Maryland Healthy Working Families Act - Earned Sick and Safe Leave

The Maryland Healthy Working Families Act, section 3-1301 et. seq. of the Labor and Employment Article provides that employers with 15 or more employees that do not currently offer at least one hour of paid leave for every 30 hours that an employee works must establish a method to provide employees with paid sick and safe leave that is consistent with this law. Employers with fewer than 15 employees must provide unpaid sick and safe leave consistent with this law. Eligible employees include are those that regularly work more than 12 hours a week.

For more information on the Maryland Healthy Working Families Act, visit http://mgaleg.maryland.gov/2017RS/chapters_noln/Ch_1_hb0001E.pdf

Shift Breaks – The Healthy Retail Employee Act

The Healthy Retail Employees Act, section 3-710 of the Labor and Employment Article provides that employees who work in certain retail establishments are entitled to a non-working shift break depending upon the number of hours worked. A retail establishment is an employer whose primary purpose is to sell goods to a consumer with the consumer present in the retail establishment at the time of sale, and does not include

restaurants or wholesalers. This law applies only to employers who are engaged in a retail business or retail franchise with the same trade name with 50 or more retail employees for each working day in the last 20 or more calendar weeks.

However, certain employees are exempt including the following:

- Employees covered by a collective bargaining agreement or other employment policy that provides for shift breaks of equal or greater duration to those required by this law;
- Employees exempt from the overtime pay requirements of the Fair Labor Standards Act (FLSA) including executive, administrative and professional employees, as well as employees engaged in outside sales work;
- Commissioned sales employees of retail or service establishments are exempt from the overtime requirements of the FLSA if more than half of the employee's earnings come from commissions and the employee averages at least one and one-half times the minimum wage for each hour worked;
- Employees of the State, or a county or municipality within the State
- Employees who work in a corporate office or other office location; and,
- Employees who work at a single location with five or fewer employees.

* Shift Break Frequently Asked Questions (FAQs)

(<https://www.labor.maryland.gov/labor/wages/essretailfaqs.shtml>)

* Read the law in its entirety by visiting (<http://mgaleg.maryland.gov/webmga/>)

* Shift Break Complaint Form (<https://www.labor.maryland.gov/forms/essretailcomp.pdf>)

Job Applicant Fairness Act:

The Job Applicant Fairness Act, section 3-711 of the Labor and Employment Article, generally prohibits employers in Maryland from using a job applicant or employee's credit history to determine:

1. whether to hire a job applicant;
2. whether to terminate an employee; or
3. the rate of pay or other conditions of employment for an employee.

* Job Applicant Fairness Frequently Asked Questions (FAQs)

(<https://www.labor.maryland.gov/labor/wages/essjobappfairness.shtml>)

* For a Credit Check Complaint Form, go to <https://www.labor.maryland.gov/forms/dlicreditcheckcomplaint.pdf>

User Name and Password Privacy Protection

The User Name and Password Privacy Protection Act, section 3-712 of the Labor and Employment Article, provides that an employer may not request or require that an employee or applicant disclose any user name, password, or other means for accessing a personal account or service through an electronic communications device.

An employer may require an employee to disclose any user name, password, or other means for accessing non-personal accounts or services that provide access to the employer's internal computer or information systems.

An employer may not:

- Discharge, discipline, or otherwise penalize or threaten to discharge, discipline, or otherwise penalize an employee for an employee's refusal to disclose any information; or
- Fail or refuse to hire any applicant as a result of the applicant's refusal to disclose any information.

Compensable Time

What compensation am I entitled to?

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.

Note: A tipped employee who spends more than 20 percent of the employee's work time performing non-tip producing duties directly related to their tipped occupation shall be paid by the employer at least the minimum wage for that time. (Code of Maryland Regulation (COMAR) 09.12.41.19 (http://www.dsd.state.md.us/comar/SubtitleSearch.aspx?search=09.12.41.19*))

Trainings and Meetings:

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.

What is Non-Compensable?

Commuting to Work:

Time spent traveling 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 worksite or to accomplish some other mission the employer assigns.

Temporary Closures, Snow Days, etc.:

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](#) 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.

Change of Pay: 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.

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, visit the Department of Labor webpage (<https://www.dol.gov/general/topic/wages/severancepay>) or contact the U.S. Department of Labor, Employee Benefits Security Administration at 866-444-3272, or Wage and Hour Division at 410- 962-6211.

Uniforms: Passing on the Cost

Generally, the cost of providing and maintaining a uniform which bears 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. See "Deductions," above. An employee may be held responsible for the depreciated value of the uniform if it is not returned as required.

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) \$3.63 per hour by their employer effective July 24, 2009. This is only the case, however, where earned tips for the week combined with \$3.63 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.

Subject to the adoption of related regulations, restaurant employers who utilize a tip credit are required to provide employees with a written or electronic wage statement for each pay period showing the employee's effective hourly rate of pay including employer paid cash wages plus tips for tip credit hours worked for each workweek of the pay period.

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.

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 (White, Black/African American, American Indian, Asian, Native Hawaiian/Pacific Islander, Hispanic or Latino), gender 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.

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.

Pay for Lunch and Other Breaks:

Unless the worker is under 18 years old or is an employee who works in certain retail establishments, there is no law requiring an employer to provide breaks, including lunch breaks (see **Breaks, Benefits and Days Off** - <https://www.labor.maryland.gov/labor/wagepay/wpbreaks.shtml>). 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.

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.

Amusement and Recreational Establishments: As of June 1, 2019, the Maryland Wage and Hour law was amended to remove the minimum wage exception for certain amusement and recreational establishments.

V. Overtime

Overtime: 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.

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 \$684 a week (\$35,568 annualized; 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 \$684 a week (\$35,568 annualized; 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 \$684 a week (\$35,568 annualized; 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.

Hourly and Non-Executive, Non-Administrative and Non-Professional Employees 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.

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 Employee or Independent Contractor, <https://www.labor.maryland.gov/labor/wagepay/wpempindcont.shtml>)

Minimum Wage and Overtime Exemptions

- Certain agricultural employees
- Executive, administrative, and professional employees
- Volunteers for educational, charitable, religious, and non-profit organizations
- Employees under 16 working less than 20 hours per week
- Outside salesman
- Commissioned employees
- Employees enrolled as a trainee as part of a public school special education program
- Non-administrative employees of organized camps
- Certain establishments selling food and drink for consumption on the premises grossing less than \$400,000 annually
- Drive-in theaters
- Establishments engaged in the first canning, packing or freezing of fruits, vegetables, poultry, or seafood

Overtime Only Exemptions -

(Must earn the State Minimum Wage Rate):

- Taxicab drivers
- Seasonal amusement and recreational establishments that meet certain criteria
- Certain employees selling/servicing automobiles, farm equipment, trailers, or trucks
- Non-profit concert promoter, theater, music festival, music pavilion, or theatrical show
- Employers subject to certain railroad requirements of the U.S. Dept. of Transportation, the Federal Motor Carrier Act, and the Interstate Commerce Commission

Involuntary Overtime Prohibition for Licensed Practical Nurses or Registered Nurses An employer may not require a nurse to work more than the regularly scheduled hours according to the predetermined work scheduled.

A nurse may be required to work overtime if:

- the work is a consequence of an emergency situation which could not have been reasonably anticipated;
- the emergency situation is nonrecurring and is not caused by or aggravated by the employer's inattention or lack of reasonable contingency planning;
- the employer has exhausted all good faith, reasonable attempts to obtain voluntary workers during the succeeding shifts;
- the nurse has critical skills and expertise that are required for the work;
- the standard of care for a patient assignment requires continuity of care through completion of a case, treatment, or procedure; and
 - the employer has informed the nurse of the basis for the employer's direction; and
 - that basis satisfies the other requirements for mandatory overtime listed under this subsection;
- a condition of employment includes on-call rotation; or
- the nurse works in community-based care.

The law related to nurses and overtime provides that a nurse may voluntarily agree to work more than the number of scheduled hours provided for under the nurse overtime law. . 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 <https://www.dol.gov/> or (410) 962-6211.

VI. Employer Discretion in the Workplace: Employment At-Will

(Not under the enforcement powers of the Employment Standards Service)

- A. Employment At-Will: 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 - Reduction 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, Nurses](#)), 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: Unless the worker is under 18 years old or is an employee who works in certain retail establishments, there is no law requiring an employer to provide breaks, including lunch breaks. 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 certain benefits. Examples include vacation 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. Also, see [Pay for Lunch and Other 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

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.

- Employment Discrimination -- Maryland Commission on Civil Rights, 410-767-8600 or 800-637-6247, or Equal Employment Opportunity Commission at 410-962-3932.
- Minimum Wage and Overtime -- U.S. Department of Labor, Wage and Hour Division, 410-962-6211.
- Retirement Benefits (including 401(k) and ERISA) -- U.S. Department of Labor, Employee Benefits Security Administration, 866-444-3272, TTY 877-889-5627.
- Health Care Benefits After Termination of Employment (COBRA) -- U.S. Department of Labor, Employee Benefits Security Administration, 1-866-444-3272. If less than 20 employees, Maryland Insurance Administration, 410-468-2000.
- State Scale or "Prevailing" Wage (State funded construction contract wage questions) -- Maryland Division of Labor and Industry, Prevailing Wage Unit, 410-767-2342.
- Federal Scale or "Prevailing" Wage (Federally funded construction contract wage questions under the Davis-Bacon Act) -- U.S. Department of Labor, Wage and Hour Division, 1-866-487-9243.
- 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, 1-866-487-9243.
- Unemployment Insurance Benefits --
Claimants: calling from Baltimore area - 410-949-0022 or 410-853-1600, For Maryland Relay, call 711
Employers: 410-949-0033, 1-800-492-5524
- Workers' Compensation (for work related injuries and illnesses) -- Maryland Workers' Compensation Commission, 410-864-5100. [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].
- Immigration Verification for Employment, I-9 Requirements -- U.S. Citizenship and Immigration Service, 1-800-357-2099 or 1-800-375-5283. 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.
- Unions and Collective Bargaining Agreements -- National Labor Relations Board, 410-962-2822.
- Severance Pay -- U.S. Department of Labor, Employee Benefits Security Administration, 866-444-3272.
- Occupational Safety and Health -- Maryland Occupational Safety and Health (MOSH), 410-527-4499.
- Displaced Workers and Reductions in Force (WARN Act) -- Maryland Dislocated Workers Unit, 410-767-2833.

- Child Labor -- Maryland Division of Labor and Industry, 410-767-2357.
- Family and Medical Leave -- U.S. Department of Labor, 866-487-9243.

VIII. Labor and Employment Publications in Maryland

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 areas 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.

A list of required publications/posters for employers is below. To download and print, visit <https://www.labor.maryland.gov/labor/wages/wagehrfacts.shtml>

- Maryland Minimum Wage and Overtime Law
- Equal Pay for Equal Work
- Employment of Minors Fact Sheet
- Lie Detector Signature Sheet
- Notice to Tipped Employees

Workers' Compensation Commission
410-864-5100

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:

- First Report of Injury (form to be filed by employer upon notice of an injury) (http://www.wcc.state.md.us/wfms/med_webforms.html)
- Workers' Compensation Poster (http://www.wcc.state.md.us/PDF/Publications/C24_EmpNotice.pdf)

Division of Unemployment Insurance

Claimants: calling from Baltimore area - 410-949-0022, For Maryland Relay, dial 711;
calling from Maryland but outside the Baltimore area - 1-800-827-4839

Employers: 410-949-0033, 1-800-492-5524

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:

- Health Insurance Coverage (<https://www.labor.maryland.gov/employment/empguide/healthinsposter.pdf>)
- To Employees (unemployment benefits eligibility) (<https://www.labor.maryland.gov/employment/empguide/uibenefitposter.pdf>)

Maryland Commission on Civil Rights (MCCR)
1-800-637-6247, 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:

Employment Discrimination is Illegal

[http://mccr.maryland.gov/Documents/publications/Publications_2edb.Discrimination%20Overview%20-%20Employment%20\(PosterBW\).pdf](http://mccr.maryland.gov/Documents/publications/Publications_2edb.Discrimination%20Overview%20-%20Employment%20(PosterBW).pdf)

Maryland Occupational Safety and Health (MOSH)

410-527-4499

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

Required Publications/Posters For Employers:

- MOSH Poster (for employees) (<https://www.labor.maryland.gov/labor/mosh/moshforemployees.pdf>)
- Recordkeeping: Injuries and Illnesses Forms, OSHA 200 (<https://www.osha.gov/recordkeeping/>)