

New Maryland Laws Protect Current and Prospective Employees

By Oren D. Saltzman and Matthew D. Royack

November 1, 2011

Posted in: News

To protect the rights of Maryland employees, the 2011 Maryland General Assembly enacted the Job Applicant Fairness Act and the Maryland Wage and Hour Law. Effective Oct. 1, these laws make it easier for Marylanders to get jobs and hold onto them.

The Job Applicant Fairness Act

The Job Applicant Fairness Act (Chapter 29, House Bill 87; Md. Code, Labor and Employment § 3-711) limits the criteria upon which job applicants can be evaluated. It prohibits employers from using an applicant's or an employee's credit report or credit history in determining whether to deny employment to an applicant, discharge an employee, determine compensation or determine terms of employment.

This action levels the playing field for those who were unemployed for an extended period of time and may have relied on credit to survive.

As with most rules, this act contains exceptions, but the exceptions are limited to the types of employers and job functions. Specifically, financial institutions, credit unions and registered investment advisers are excepted, as are job functions involving personal information of customers, managerial decisions of the employer, or employees who are provided an expense account or company credit card.

Because credit reports cannot be used for most employment decisions, combined with the cost and time delay of obtaining a report, there appears to be little advantage to Maryland employers to obtain and review an applicant's credit report.

Wage and Hour Law

The 2011 General Assembly amended the Maryland Wage and Hour Law by adding Chapter 495, House Bill 1130; Md. Code, Labor and Employment § 3-428. This new provision prohibits employers from taking adverse action against an employee who either makes a complaint that the employee has not been paid as agreed, brings an action for non-payment of wages or has testified in an action for non-payment of wages.

It is important to note that a complaint may be oral or written, and may be made either to the employer or directly to the office of the Maryland Commissioner of Labor and Industry.

Additionally, the statute defines adverse action to mean discharge, demotion, the threat of either discharge or demotion or any other retaliatory action that would dissuade a reasonable employee from making a complaint, bringing an action or testifying in an action.

This code section tracks the national trend of protecting whistleblowers and enables Maryland employees to assert their rights without fear of retribution. At a time when employers still may be feeling the effects of recession, Maryland law prioritizes the payment of wages to employees and now protects the rights of those who stand up for themselves.

Impact

It is important for Maryland employees and employers to be aware of these laws. Rather than merely paying lip service to these issues, the General Assembly has put teeth into both of the aforementioned code sections in order to assure their enforceability. Each provision contains a penalty to a violator and provides for enforcement by the Commissioner of Labor and Industry.

The Job Applicant Fairness Act allows applicants or employees to file a written complaint with the commissioner and allows the commissioner to assess a civil penalty of up to \$500 for the first violation and \$2,500 for a repeat violation. Meanwhile, the Wage and Hour Law allows employees to file complaints directly with the commissioner and subjects violators to a civil penalty not exceeding \$1,000.

At first glance these two statutes may not seem to have anything in common, but looking at the two acts together reveals the legislative goal to support Maryland workers in a time when employers are able to take advantage of current economic circumstances.

This goal is accomplished by eliminating a potential barrier to entry into the job market and by removing the fear of retaliation in the event of an unfair practice. While their impact on employees and employers may not be felt immediately, the intent of the General Assembly is clear: to get Maryland citizens back to work and keep them there.

Oren Saltzman, Esq., is a member and Matthew Royack, Esq., is an associate with the law firm of Adelberg, Rudow, Dorf & Hendler LLC (www.AdelbergRudow.com). They may be reached at 410-539-5195.