



Employees in Maryland Can Now Get Treble Damages for Overtime Claims

August 22, 2014

Paul M. Lusky

Executive Summary: On August 13, 2014, the Maryland Court of Appeals held in *Peters v. Early Healthcare Giver, Inc.* that unpaid overtime wages are recoverable under the Maryland Wage Payment and Collection Law (MWPCCL or "Wage Payment Act"). The ruling increases the potential liability for Maryland employers who misclassify their employees as exempt under the Maryland Wage and Hour Law (MWHL) and the federal Fair Labor Standards Act (FLSA). Employees who prove an entitlement to overtime pay can now seek an award of treble damages or three times the amount owed to them in unpaid overtime wages. Although an employer can avoid a treble damages award by proving that there was a good faith "bona fide dispute" over the validity of the employee's overtime claim, the court in *Peters* held that the employer has the burden of proof on the "bona fide dispute" issue.

Background

In *Peters*, the plaintiff claimed she consistently worked almost 60 hours each week but was not paid at a time-and-one-half rate for each hour over 40 in the week as required by state and federal wage and hour laws.

She sued her employer for overtime wages under the MWHL while also seeking to have any recovery of overtime pay trebled pursuant to Section 3-507.2 in the Wage Payment Act.

Prior to the *Peters* decision, the plaintiff's MWPCCL claim would have been summarily dismissed. Courts had consistently construed the Wage Payment Act as regulating the timing of wage payments upon termination and not whether overtime pay was due at all. See *Fisher v. Rite Aid Corporation*, 2010 U.S. Dist. LEXIS 56383 (D. Md. 2010); *Williams v. Maryland Office Relocators, LLC*, 485 F. Supp. 2d 616 (D. Md. 2007); *McLaughlin v. Murphy*, 372 F. Supp. 2d 465, 474-75 (D. Md. 2004).

The pertinent legal issues were summarized concisely in *McLaughlin v. Murphy*. The federal court dismissed the plaintiff's claim for overtime pay under the MWPCCL, stating:

The MWPCCL limits the availability of treble damages . . . to violations of § 3-502 or § 3-505. Section 3-502 deals with the timing of payment, and Section 3-505 deals with payment on cessation of employment. In contrast, *McLaughlin's* minimum wage and overtime claims are based on his entitlement to the wages themselves. He does not allege that [his employer] failed to pay him regularly, but that it failed to pay him enough; and he does not allege that [his employer] failed to pay him minimum wage and overtime due him upon his termination, but that it failed to pay him these wages at all.

Court of Appeals Decision

The Maryland Court of Appeals rejected this reasoning, however, in its *Peters* decision. Responding to the many federal court decisions that have construed the Wage Payment Act to exclude coverage for overtime claims, Maryland's highest court stated explicitly: "We echo, hopefully for the final time that both the [MWHL] and the [MWPCL] are vehicles for recovering overtime wages. Without a doubt, Peters has a right to bring a private cause of action under the [MWPCL] to recover any unlawfully withheld overtime wages."

Bottom Line for Employers:

Because of the potential for incurring treble damages for a misclassification of an employee as exempt from overtime under state and federal wage and hour laws, employers in Maryland should audit their job classifications to ensure that all exempt employees are properly classified. Language in job descriptions should also be reviewed to ensure it properly describes the duties justifying the exempt status of the employee. When in doubt, employers should seek the opinion of legal counsel as to the proper classification of employees for wage and hour overtime entitlement. The court of appeals said in *Peters* that even "an incorrect legal belief . . . may form the basis of a legitimate bona fide dispute." An employer must be prepared to articulate the reasons why it decided not to pay overtime to any employee seeking treble damages under the MWPCL.

Finally, employers should be aware that, in 2013, the Maryland legislature enacted a new law making it easier for employees to initiate a lawsuit for unpaid wages. Employees claiming unpaid overtime wages under the Wage Payment Act can now obtain a lien on the personal or real property of the employer in the amount of any wages allegedly owed. Rather than file a complaint in court detailing the reasons why wages are due and owing, the employee need only serve the employer with written notice identifying the amount of the wage claim and the property of the employer upon which a lien is sought.

Once the notice is served, the new statute requires the employer to file a complaint in circuit court within 30 days if it wants to dispute the lien and the claim for unpaid wages. An employer can waive its right to contest the lien by failing to file a timely response to the notice of lien. The new law allows the lien to be established without a court order if the employer fails to file a complaint within the required 30 day period.

If you have any questions regarding this Alert or other labor or employment related issues, feel free to contact the author, **Paul M. Lusky**, plusky@fordharrison.com, an attorney in FordHarrison's Baltimore office. You may also contact the FordHarrison attorney with whom you usually work.