

## **Beware of Maryland's Lien for Unpaid Wages Law**

By Maureen E. Carr, Esq.

On October 1, 2013, the Maryland Lien for Unpaid Wages law (Md. Labor and Employment Code §§ 3-1101, *et seq.*) went into effect, providing a mechanism for employees to file liens for unpaid wages against their employer's property. The Maryland Department of Labor, Licensing and Regulation (DLLR), Division of Labor and Industry is in the process of developing regulations to implement the new law.

To initiate a claim, an employee must provide written notice to his employer of the employee's intent to file a lien for unpaid wages. An employer may dispute such a claim by filing a lawsuit in the circuit court for the county where the employer's property is located. This must be done within 30 days, or the employee may proceed with recording the lien. If the employer disputes the claim, either party may request an evidentiary hearing before the court, and the court must determine whether to approve the lien within 45 days of the filing of the lawsuit. The court may award attorneys' fees to the employee or employer depending on the court's ruling on the lien.

If the employer fails to dispute the claim, or the court orders the establishment of a lien, the employee may record the lien against the employer's real or personal property by filing a wage lien statement within 180 days. A court order establishing a lien for unpaid wages has the same effect as any other judgment, and a lien for unpaid wages may be enforced for up to 12 years after the lien is recorded. Significantly, the law prohibits contract provisions whereby employees waive their right to pursue such liens.

The law has a number of interesting nuances that will likely be fleshed out when the related regulations are issued. For example, the law's definition of "employer" "includes a person who acts directly or indirectly in the interest of another employer with an employee," which certainly opens up the possibility of an employee asserting liens against not just his employer but also the principals of the employer and/or those who are responsible for making wage decisions. The law specifies that "wages" does not include "commissions," but the lien forms provided by the DLLR suggest that employees may assert liens for the employer's failure to pay for all hours worked, failure to pay minimum wage, failure to pay overtime, failure to pay the wage promised, and unlawful deduction from paychecks, which is reasonably broad.

In addition, the speedy timeframe established by the new law is noteworthy. Employers will likely find it burdensome to respond to employee claims by initiating legal proceedings within 30 days, which certainly does not allow significant time for investigation and/or informal resolution. Similarly, the court system may struggle to honor the law's 45-day determination period.

Finally, what is perhaps most significant about the new law is how relatively simple and swift the process is for employees to assert liens for unpaid wages against employers, especially compared to the more traditional avenues for pursuing wage and hour claims (i.e. filing a lawsuit, filing a complaint with the Department of Labor).

In light of this law, Maryland employers should train managers and supervisors on the new law and act quickly in responding to employee lien notices. Moreover, employers should take proactive steps to preempt such claims by carefully reviewing employees' exempt v. non-exempt classifications; establishing clear policies requiring advance authorization for overtime; closely monitoring overtime; carefully evaluating wage issues for departing employees; and promptly consulting with counsel when wage issues arise.

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