

ATTACHMENT 1

Employers Need to Know

Employment Law Alerts from Ober|Kaler's Employment & Labor Group

Employment
& Labor Group

APRIL 15, 2008

Jerald J. Oppel, Chair
Harold G. Belkowitz
Sharon A. Snyder
Neil E. Duke
Carla N. Murphy
Matthew W. Green, Jr.
Stacy Bekman Radz

Maryland Lawmakers Toss *Catapult*: Troubling Changes in Leave Pay Practices Reversed by Emergency Legislation

We are pleased to report that the Maryland Legislature has passed emergency legislation reversing the effects of a 2007 decision that turned some long-established wage practices upside down.

The decision of the Maryland Court of Special Appeals in *Catapult Tech Ltd. v. Wolfe* (Md. Ct. Spec. App. 2007) held that employees must be paid for accrued but unused vacation at the time of termination of employment, on the grounds that leave was an earned wage and it could not be forfeited at termination. This decision was initially unexpected and contradicted two earlier cases interpreting the Maryland wage payment statute. It has caused Maryland employers some angst, and has had them and their counsel revisiting employment policies so as to be in compliance with the new twist on what has been an established employer practice.

With the passage of Senate Bill 797, Maryland lawmakers reversed the effects of *Catapult*, in essence restoring the heretofore long accepted practice of allowing employers not to pay accrued leave under certain circumstances, provided those circumstances are set forth in a written policy communicated to the employee.

The Act takes effect on the date of enactment, and it is expected that the Governor will sign the bill on April 24, 2008. The bill specifically states that for those employees who were terminated between November 1, 2007 (the date the *Catapult* was accepted as law by the Maryland Department of Labor and Industry) and the effective date of the Act, employers need only pay for accrued leave if an employee is entitled to payment under the terms of the employer's written policy.

Maryland employers should review their policies to make certain they are in compliance with the requirements of the new law, as failure to comply could result in the employer having to pay not only the vacation pay improperly withheld, but also up to treble damages and attorneys' fees.

View a copy of Senate Bill 797 [here](#) (pdf). If you have any questions, please contact a member of Ober|Kaler's [Employment & Labor Group](#).

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Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 797

(Senators Astle and Kittleman)

Finance

Economic Matters

**Labor and Employment - Wage Payment on Termination of Employment -
Accrued Leave**

This emergency bill requires an employer to provide notice of the employer's leave benefits to each new employee. At termination of employment, an employer must pay accrued leave to an employee only if the employer has a written policy that limits the compensation of accrued leave and the employee is entitled to payment of accrued leave under the terms of the policy.

The bill requires an employer to pay accrued leave to an employee terminated on or after November 1, 2007, with an employee entitled to payment only if eligible under the terms of the employer's written policy, as communicated to the employee prior to termination. This provision does not apply to any case for which a final judgment has been rendered with all judicial appeals exhausted

Fiscal Summary

State Effect: The bill pertains to private-sector activities and would not materially affect State finances or operations.

Local Effect: None.

Small Business Effect: Potential minimal.

Analysis

Current Law: At the time of hiring, an employer must provide a new employee with notice of the employee's rate of pay and the employer's regular paydays.

An employer is required to pay an employee all wages due for work that the employee performed prior to the termination of employment. This payment must be made by the date on which the employee would have otherwise been paid if employment had not been terminated.

Once two weeks have elapsed from the date on which an employer is required to have paid the wages, the employee may bring an action against the employer to recover any unpaid wages. If a court finds that an employer withheld the wage in violation of Maryland Wage Payment and Collection Law, the court may award the employee an amount of up to three times the wage as well as reasonable counsel fees and other costs.

Background: In *Catapult Technology, LTD v. Paul Wolfe*, No. 997 (2007), the Maryland Court of Special Appeals held that accrued leave constitutes a wage under Maryland Wage Payment and Collection Law. The case arose when Catapult Technology lost a contract with the U.S. Department of Transportation, causing 14 employees to resign to pursue employment with the new contractor. These employees did not provide the two weeks notice as required by Catapult Technology's employee handbook.

The Circuit Court for Montgomery County held that leave that accrues based on the number of hours worked constitutes a wage that must be paid at termination of employment, regardless of an employer's written policies. The Court of Special Appeals affirmed the decision, citing *Medex v. McCabe*, 372 Md. 28 (2002), which held that employees are entitled to incentive and commission payments "when the employee does everything required to earn the wages." Given that Catapult Technology's employees accrued leave based on hours worked, the court held that these employees were entitled to be paid for the value of their unused leave.

The *Maryland Guide to Wage Payment and Employment* published by the Department of Labor, Licensing, and Regulation's Division of Labor and Industry was revised in November 2007 to reflect the court's decision, stating:

When an employee has earned or accrued his or her leave in exchange for work, an employee has a right to be compensated for unused leave upon the termination of his or her employment regardless of the employer's policy or language in the employee handbook.

The bill applies retroactively to employees whose employment terminated since the department's revision to wage payment and employment standards.

Small Business Effect: The bill could reduce an employer's liability in compensating an employee at termination of employment, provided that the employer establishes a written policy regarding payment of accrued leave. It is expected that this will apply in a relatively limited number of circumstances; however, small businesses could be positively affected by the provisions of the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; Jackson Lewis; Department of Legislative Services

Fiscal Note History: First Reader - March 11, 2008
mll/ljm Revised - Senate Third Reader - March 25, 2008

Analysis by: Suzanne O. Potts

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

SENATE BILL 797

K3

EMERGENCY BILL
ENROLLED BILL

(8lr2956)

—Finance / Economic Matters—

Introduced by Senators Astle and Kittleman

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 Labor and Employment - Wage Payment on Termination of Employment -
3 Accrued Leave

4 FOR the purpose of requiring that employers give certain notice of certain leave
5 benefits to employees; requiring specifying that an employer with a certain
6 written policy is not required to pay accrued leave to an employee on
7 termination of employment only under certain circumstances; providing for the
8 payment of accrued leave to an employee whose employment terminated during
9 a certain time period; providing for the application of this Act; making this Act
10 an emergency measure; and generally relating to the payment of wages upon
11 termination of employment.

12 BY repealing and reenacting, with amendments,

13 Article - Labor and Employment

14 Section ~~3-505~~ 3-504 and 3-505

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber / conference committee amendments.



1 Annotated Code of Maryland
2 (1999 Replacement Volume and 2007 Supplement)

3 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
4 MARYLAND, That the Laws of Maryland read as follows:

5 **Article - Labor and Employment**

6 3-504.

7 (a) An employer shall give to each employee:

8 (1) at the time of hiring, notice of:

9 (i) the rate of pay of the employee; [and]

10 (ii) the regular paydays that the employer sets; AND

11 (iii) LEAVE BENEFITS;

12 (2) for each pay period, a statement of the gross earnings of the
13 employee and deductions from those gross earnings; and

14 (3) at least 1 pay period in advance, notice of any change in a payday
15 or wage.

16 (b) This section does not prohibit an employer from increasing a wage
17 without advance notice.

18 3-505.

19 (A) [Each] EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION,
20 EACH employer shall pay an employee or the authorized representative of an
21 employee all wages due for work that the employee performed before the termination
22 of employment, on or before the day on which the employee would have been paid the
23 wages if the employment had not been terminated.

24 (B) ~~IF AN EMPLOYER HAS A WRITTEN POLICY REGARDING THE~~
25 ~~PAYMENT OF ACCRUED LEAVE TO AN EMPLOYEE AND THAT POLICY IS~~
26 ~~COMMUNICATED TO AN EMPLOYEE PRIOR TO THE TERMINATION OF~~
27 ~~EMPLOYMENT, THE AN EMPLOYER SHALL IS NOT REQUIRED TO PAY ACCRUED~~
28 ~~LEAVE TO AN EMPLOYEE ONLY IF:~~

29 (1) THE EMPLOYER HAS A WRITTEN POLICY THAT LIMITS THE
30 COMPENSATION OF ACCRUED LEAVE TO EMPLOYEES;

1 (2) THE EMPLOYER NOTIFIED THE EMPLOYEE OF THE
 2 EMPLOYER'S LEAVE BENEFITS IN ACCORDANCE WITH § 3-504(A)(1) OF THIS
 3 SUBTITLE; AND

4 (3) THE EMPLOYEE IS *NOT* ENTITLED TO PAYMENT FOR ACCRUED
 5 LEAVE AT TERMINATION UNDER THE TERMS OF THE EMPLOYER'S WRITTEN
 6 POLICY.

7 SECTION 2. AND BE IT FURTHER ENACTED, That, for an employee whose
 8 employment terminated on or after November 1, 2007, and before the effective date of
 9 this Act, if the employer of the employee had a written policy regarding the payment of
 10 accrued leave and, before termination of the employee's employment, communicated
 11 that policy to the employee, the employer is required to pay accrued leave to the
 12 employee only if the employee is entitled to the payment under the terms of the
 13 employer's written policy.

14 SECTION 3. AND BE IT FURTHER ENACTED, That this Act may not be
 15 applied to any case for which a final judgment has been rendered and for which all
 16 judicial appeals have been exhausted prior to the effective date of this Act.

17 SECTION ~~2~~ 4. AND BE IT FURTHER ENACTED, That this Act ~~shall take~~
 18 ~~effect October 1, 2008~~ is an emergency measure, is necessary for the immediate
 19 preservation of the public health or safety, has been passed by a yea and nay vote
 20 supported by three-fifths of all the members elected to each of the two Houses of the
 21 General Assembly, and shall take effect from the date it is enacted.

Approved:

 Governor.

 President of the Senate.

 Speaker of the House of Delegates.

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Division of Labor and Industry

The Maryland Guide to Wage Payment and Employment Standards - Wages and Compensation - 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.*

[Deductions for Unemployment and Workers' Compensation](#)

[Return to the Maryland Guide to Wage Payment and Employment Standards home page](#)

[Unused Sick Leave at Termination -- Is It Payable?](#)

[Return to the Labor and Industry home page](#)

Please direct any questions about the Division of Labor and Industry to dli@dllr.state.md.us.
Questions or comments regarding the DLLR website may be directed to webmaster@dllr.state.md.us.

Updated April 14, 2008