

New Maryland Employment Laws Go Into Effect October 1

October 1, 2013

The following new employment law provisions about which employers should be aware become effective Oct. 1, 2013, for employers with employees who work or are sited in Maryland. These laws relate to accommodations for pregnant employees, institute state leave for employees with immediate family members in the armed services, establish a mechanism for employees to obtain liens for unpaid wages and prevent employers from requiring tipped employees to pay when their customers “dine and dash.”

Accommodations For Pregnant Employees

(Md. Code Ann., State Gov’t § 20-609)

This law requires an employer, if an employee requests a reasonable accommodation for a disability caused or contributed to by pregnancy, to explore with the employee certain means of reasonably accommodating the disability; requiring an employer to transfer an employee to a less strenuous or less hazardous position for a certain period of time under certain circumstances; authorizing an employer to require an employee to provide a certain certification from a health care provider under certain circumstances; and generally relating to reasonable accommodations for temporary disabilities due to pregnancy.

In this case, “Reasonable Accommodation” means an accommodation: For an employee’s disability caused or contributed to by pregnancy; and that does not impose an undue hardship on the employee’s employer.

Disabilities caused or contributed to by pregnancy or childbirth: (1) are temporary disabilities for all job-related purposes; and (2) shall be treated as temporary disabilities under any health or temporary disability insurance or sick leave plan available in connection with employment.

Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions of leave, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

If an employee requests a reasonable accommodation, the employer shall explore with the employee all possible means of providing the reasonable accommodation, including:

- Changing the employee’s job duties;
- Changing the employee’s work hours;
- Relocating the employee’s work area;
- Providing mechanical or electrical aids;
- Transferring the employee to a less strenuous or less hazardous position; or
- Providing leave.

If an employee requests a transfer to a less strenuous or less hazardous position as a reasonable accommodation, the employer shall transfer the employee for a period of time up to the duration of the employee’s pregnancy if: 1) the employer has a policy, practice, or collective bargaining agreement requiring or authorizing the transfer of a temporarily disabled employee to a less strenuous or less hazardous position for the duration of the disability; or 2) the employee’s health care provider advises the transfer and the employer can provide the reasonable accommodation by transferring the

employee without:

- Creating additional employment that the employer would not otherwise have created;
- Discharging any employee;
- Transferring any employee with more seniority than the employee requesting the reasonable accommodation; or
- Promoting any employee who is not qualified to perform the job.

An employer may require an employee to provide a certification from the employee's health care provider concerning the medical advisability of a reasonable accommodation to the same extent a certification is required for other temporary disabilities.

- The date the reasonable accommodation became medically advisable;
- The probable duration of the reasonable accommodation; and
- An explanatory statement as to the medical advisability of the reasonable accommodation.

Liens For Unpaid Wages

(Md. Code Ann., Lab. & Empl. § 3-1101 et seq.)

Another Maryland law creates a mechanism for employees or the Maryland Commissioner of Labor and Industry to establish a lien for unpaid wages (not including commissions) against an employer's real or personal property before a lawsuit is filed. Like other wage and hour laws, the definition of employer is not limited to entities, such that individuals may be liable.

In order to establish a lien, the employee must first formally serve the employer (in accordance with the Maryland Rules) with written notice of the wages claimed and the property against which the lien for unpaid wages is sought. The statute requires that the Commission create a form.

In order to dispute the claim and prevent the automatic imposition of a lien, the employer must file a complaint in circuit court within 30 days of service that includes the names of the employer and employee, a copy of the notice, a statement of any defense to the lien and an affidavit containing a statement of facts in support. The employer or employee may also request an evidentiary hearing. Within 45 days after the filing of the complaint, the court will determine whether to issue an order establishing the lien. The burden of proof remains with the employee to establish the lien. If an employer fails to file such a complaint within 30 days, a lien will be automatically established.

The rights and remedies under the statute cannot be waived by contract or agreement between the employer and employee. However, employers are protected from frivolous or bad faith filings through the imposition of court costs and reasonable attorney's fees on filers.

Leave For Deployments of Family Members

(Md. Code Ann., Lab. & Empl. § 3-803)

Maryland's new deployment law authorizes certain employees to take leave from work on the day that an immediate family member is leaving for or returning from active duty outside the United States as a member of the armed forces.

The law applies to employers with 50 or more employees and to full- or part-time employees who have worked for the employer for a minimum of 12 months and worked at least 1,250 hours in the prior 12-

month period. Immediate family members under the law include a spouse, parent, stepparent, child, stepchild or sibling.

Employers may not require the employee to use any compensatory, sick or vacation time when the employee takes leave under this new law. An employer may, however, require documentation that leave qualifies for this exception.

Deductions From Tipped Employees

(Md. Code Ann, Lab. & Empl. § 3-713)

For the purpose of prohibiting certain employers from requiring a tipped employee to reimburse or pay the employer certain amounts under certain circumstances; prohibiting certain employers from deducting certain amounts from a tipped employee under certain circumstances; and generally relating to tipped employees and unpaid customer charges.

A “tipped employee” means an employee who is engaged in an occupation in which the employee customarily and regularly receives more than \$30 each month in tips or gratuities. An employer may not require a tipped employee to reimburse the employer or pay to the employer an amount equivalent to a customer’s charge for food or beverages if the customer leaves the employer’s place of business without paying the charge for food or beverages.

An employer may not make a deduction from the wage of a tipped employee to reimburse the employer for an amount equivalent to a customer’s charge for food or beverages if the customer leaves the employer’s place of business without paying the charge for food or beverages.