

HOUSE BILL 1262

K3, P4

8lr3244

By: **Delegates Adams, Arentz, Carozza, and W. Miller**

Introduced and read first time: February 9, 2018

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Healthy Working Families Act – Enforcement – Modifications**
3 **(Healthy Working Families Enforcement Consistency Act)**

4 FOR the purpose of repealing the rebuttable presumption that an employer that fails to
5 keep certain records or refuses to allow the Commissioner of Labor and Industry to
6 inspect certain records has violated certain provisions of law; repealing a
7 requirement that the Commissioner investigate a certain complaint within a certain
8 number of days; altering the steps the Commissioner is required to take if the
9 Commissioner receives a certain complaint; altering the amount of a certain penalty
10 that the Commissioner may assess against an employer for a violation of certain
11 provisions of law; requiring the Commissioner to consider whether the employee has
12 been deprived of a right under certain provisions of law in determining whether there
13 is a violation of certain provisions of law; repealing the requirement that an employer
14 comply with a certain order within a certain number of days; repealing the authority
15 of the Commissioner to ask the Attorney General to bring a certain action;
16 authorizing the Attorney General or a certain employee to bring a certain action if
17 an employer fails to comply with a certain order; altering the damages that a court
18 may award in a certain action; repealing the authority of a court to award certain
19 relief in a certain action; and generally relating to the enforcement of the Healthy
20 Working Families Act.

21 BY repealing and reenacting, with amendments,
22 Article – Labor and Employment
23 Section 3–1307 and 3–1308
24 Annotated Code of Maryland
25 (2016 Replacement Volume and 2017 Supplement)
26 (As enacted by Chapter 1 of the Acts of the General Assembly of 2018)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Labor and Employment

1
2 3–1307.

3 (a) An employer shall keep for at least 3 years a record of:

4 (1) earned sick and safe leave accrued by each employee; and

5 (2) earned sick and safe leave used by each employee.

6 (b) The Commissioner may inspect a record kept under subsection (a) of this
7 section for the purpose of determining whether the employer is complying with the
8 provisions of this subtitle.

9 (c) [(1) An employer that fails to keep accurate records or refuses to allow the
10 Commissioner to inspect a record kept under subsection (a) of this section creates a
11 rebuttable presumption that the employer violated this subtitle.

12 (2)] The Commissioner may waive a civil penalty assessed under this
13 subtitle if the penalty was assessed for a violation that was due to an error caused by a
14 third-party payroll service provider with whom the employer in good faith contracted for
15 services.

16 3–1308.

17 (a) If an employee believes that an employer has violated this subtitle, the
18 employee may file a written complaint with the Commissioner.

19 (b) (1) [Within 90 days after the receipt of a written complaint] **IF THE**
20 **COMMISSIONER RECEIVES A COMPLAINT UNDER SUBSECTION (A) OF THIS SECTION,**
21 the Commissioner shall [conduct an investigation and attempt to resolve the issue
22 informally through mediation]:

23 (I) **TRY TO RESOLVE THE ISSUE INFORMALLY; OR**

24 (II) **DETERMINE WHETHER THE EMPLOYER HAS VIOLATED THIS**
25 **SUBTITLE.**

26 (2) [(i)] If the Commissioner [is unable to resolve an issue through
27 mediation during the period stated in paragraph (1) of this subsection and the
28 Commissioner] determines that an employer has violated this subtitle, the Commissioner
29 [shall issue an order.

30 (ii) An order issued under subparagraph (i) of this paragraph:

31 1. shall describe the violation;

1 2. shall direct the payment of the full monetary value of any
2 unpaid earned sick and safe leave and any actual economic damages;

3 3. may, in the Commissioner's discretion, direct the payment
4 of an additional amount up to three times the value of the employee's hourly wage for each
5 violation; and

6 4. may, in the Commissioner's discretion, assess a civil
7 penalty of up to \$1,000 for each employee for whom the employer is not in compliance with
8 this subtitle.]:

9 **(I) SHALL ISSUE AN ORDER TO THE EMPLOYER COMPELLING**
10 **COMPLIANCE WITH THIS SUBTITLE; AND**

11 **(II) MAY, IN THE COMMISSIONER'S DISCRETION, ASSESS A CIVIL**
12 **PENALTY OF UP TO:**

13 **1. \$300 FOR EACH EMPLOYEE FOR WHOM THE**
14 **EMPLOYER IS NOT IN COMPLIANCE WITH THIS SUBTITLE; AND**

15 **2. \$600 FOR EACH EMPLOYEE FOR WHOM THE**
16 **EMPLOYER IS NOT IN COMPLIANCE WITH THIS SUBTITLE IF THE VIOLATION**
17 **OCCURRED WITHIN 3 YEARS AFTER AN EMPLOYEE FILED A PREVIOUS COMPLAINT**
18 **THAT RESULTED IN A COMMISSIONER'S DETERMINATION THAT A VIOLATION OF**
19 **THIS SUBTITLE OCCURRED.**

20 (3) The actions taken under [paragraphs (1) and] **PARAGRAPH (2)** of this
21 subsection are subject to the hearing and notice requirements of Title 10, Subtitle 2 of the
22 State Government Article.

23 **(C) (1) IN DETERMINING WHETHER THERE IS A VIOLATION OF THIS**
24 **SUBTITLE, THE COMMISSIONER SHALL CONSIDER WHETHER THE EMPLOYEE HAS**
25 **BEEN DEPRIVED OF A RIGHT UNDER THIS SUBTITLE.**

26 **(2) IN DETERMINING THE AMOUNT OF A CIVIL PENALTY IMPOSED**
27 **UNDER SUBSECTION (B)(2)(II) OF THIS SECTION, THE COMMISSIONER SHALL**
28 **CONSIDER:**

29 **(I) THE SERIOUSNESS OF THE VIOLATION;**

30 **(II) THE SIZE OF THE EMPLOYER'S BUSINESS;**

31 **(III) THE EMPLOYER'S GOOD FAITH IN COMPLYING WITH THIS**

1 SUBTITLE; AND

2 (IV) THE EMPLOYER'S HISTORY OF VIOLATIONS UNDER THIS
3 SUBTITLE.

4 [(c)] (D) (1) [Within 30 days after] AFTER the Commissioner issues an order,
5 an employer shall comply with the order.

6 (2) If an employer does not comply with an order [within the time period
7 stated in paragraph (1) of this subsection]:

8 (i) the Commissioner may[:

9 1. with the written consent of the employee, ask the Attorney
10 General to bring an action on behalf of the employee in the county where the employer is
11 located; or

12 2.] bring an action to enforce the order [for the] AND ANY civil
13 penalty in the county where the employer is located; and

14 (ii) THAT INCLUDES A CIVIL FINE FOR A SUBSEQUENT
15 VIOLATION AGAINST THE SAME EMPLOYEE ASSESSED UNDER SUBSECTION
16 (B)(2)(II)2 OF THIS SECTION within 3 years after the date of the order, THE ATTORNEY
17 GENERAL OR an employee may bring a civil action to enforce the order in the county where
18 the employer is located.

19 (3) If an employee prevails in an action brought under paragraph (2)(ii) of
20 this subsection to enforce an order, the court may award[:

21 (i) three times the value of the employee's unpaid earned sick and
22 safe leave;

23 (ii) punitive] ACTUAL damages [in an amount to be determined by
24 the court;

25 (iii)] AND reasonable counsel fees and other costs[;

26 (iv) injunctive relief, if appropriate; and

27 (v) any other relief that the court deems appropriate].

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 October 1, 2018.