

USA – MARYLAND



Law and Practice

Contributed by:

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Shawe Rosenthal LLP is one of the first law firms in the USA devoted exclusively to the representation of management in labour and employment matters. It represents employers throughout the country in federal and state courts and arbitral forums, as well as before the Equal Employment Opportunity Commission, the National Labor Relations Board, the Department of Labor, and other administrative agencies. Shawe Rosenthal's 18 attorneys have joined from judicial clerkships and federal agen-

cies, as well as large and small firms, to bring a wealth of practical experience on labour and employment matters. Shawe Rosenthal is the sole Maryland law firm belonging to two major alliances of management labour and employment lawyers, the Employment Law Alliance and the Worklaw Network. This membership affords the firm access to resources of the highest calibre across the USA and around the world, with which to better serve its clients, wherever they may be.

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1. Employment Terms

1.1 Employee Status

As under federal law, employees in Maryland are designated as either exempt or non-exempt from the minimum wage and overtime requirements set forth in state law.

Non-exempt employees must receive at least the state minimum wage rate of USD15 per hour. They must receive overtime pay at the rate of one-and-a-half times their regular hourly rate for all hours worked in excess of 40 hours in a working week.

Bona fide executive, administrative or professional (EAP) employees are exempt from these minimum wage and overtime provisions. This exemption is commonly referred to as the “white-collar” exemption. To qualify for this exemption, a white-collar employee must meet three tests:

- the employee must be paid on a salary basis;
- the employee’s salary must be at least USD844 per week (or USD43,888 annually), with an increase on 1 January 2025 to USD1,128 per week (or USD58,656 annually); and
- the employee’s primary duties must meet requirements specific to the EAP exemption in question.

Maryland recognises other work-based but non-employee relationships, including interns and independent contractors. Notably, the Maryland Department of Labor (MDOL) has a particular interest in the issue of employee misclassification – ie, when an employee is incorrectly designated as an independent contractor, thereby enabling the employer to avoid paying employment taxes and benefits. Where the MDOL finds that an employer has knowingly misclassified

workers, a penalty in the amount of no more than USD5,000 per employee is payable for a first violation and USD10,000 per employee for subsequent violations. There is also a separate misclassification law specific to the construction and landscaping industries.

Whether an individual is deemed to be an employee or an independent contractor is subject to different tests depending on the law at issue. By way of example, the Maryland Unemployment Insurance Law and the Maryland Workplace Fraud Act (which applies only to the landscaping and construction industries) utilise the ABC test, under which a worker is presumed to be an employee unless all of the following criteria are met:

- the individual is free from direction and control;
- the individual is customarily engaged in an independent business of the same nature as that involved in the work; and
- the work is outside the usual course of business of the person for whom it is performed or the work is performed outside any place of business of the person for whom it is performed.

On the other hand, both the Maryland Workers’ Compensation Act and the common law apply a “right to control” test, under which an employer-employee relationship exists when the employing entity has the right to control and direct the individual performing the services. Many factors are reviewed under the “right to control” test – none of which are individually determinative.

1.2 Employment Contracts

In Maryland, employment agreements are not required, and the employment relationship is otherwise presumed to be “at will”. This means

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that either the employer or employee may terminate the relationship at any time – with or without cause or notice – so long as the termination is not prohibited by law, by an individual contract or by a collective bargaining agreement.

An individual contract that modifies the at-will relationship may be either express or implied and may be based on either verbal statements or written documents, such as offer letters, employee handbooks, or employment agreements that provide for a term of employment or termination for cause. An employer may expressly disclaim the creation of such contracts by placing a clear and conspicuous disclaimer in all such written documents that reiterates the employee's at-will status.

Additionally, although the implied covenant of good faith and fair dealing is an implied term of a contract under state law, Maryland does not recognise this implied covenant in at-will relationships.

In the context of the “Me Too” movement, Maryland passed the Disclosing Sexual Harassment in the Workplace Act, which prohibits an employer from requiring a waiver of future sexual harassment or retaliation claims and prohibits an employer from taking adverse action against an employee for refusing to enter into an agreement with such a waiver.

1.3 Working Hours

There is no limitation on the number of hours that most employees may be scheduled to work per day or per week. The employer may agree to or require a part-time schedule. Regardless of whether it is part-time or full-time, the schedule may be set at the discretion of the employer. The only statutory limitations on the number of hours that may be worked each day are for those

under the age of 18 and for registered nurses, who cannot be required to work more than their regularly scheduled hours except in certain emergency situations. Additionally, full-time, non-managerial retail employees are entitled to one day of rest each week on Sunday or their Sabbath.

As mentioned in **1.1 Employee Status**, most non-exempt employees must receive overtime pay at the rate of one-and-a-half times their regular rate for all hours worked in excess of 40 hours in a working week. Like federal law, Maryland recognises exemptions from the overtime requirements for certain salaried EAP employees, as well as outside salespersons, commissioned employees, and minors under 16 years old. Maryland does not recognise the federal exemption for highly compensated employees, however. Maryland further provides overtime exemptions to a lengthy list of specialised jobs and industries, including some railway, lodging, and entertainment categories. Non-exempt employees in certain other industries are entitled to overtime pay only after a higher number of hours worked, such as 48 hours for those providing on-premises care to sick, aged or disabled individuals, and 60 hours for agricultural workers.

1.4 Compensation

The minimum wage rate in Maryland is USD15 per hour, applicable to all employers regardless of size. The law permits an employer to pay a training wage at 85% of the state minimum wage rate for employees under the age of 18 years. Tipped employees must be paid at a rate of USD3.63 per hour. The tipped wage rate for tipped employees, together with any tip credit, must meet the applicable minimum wage, with employers responsible for making up any shortfall.

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Several Maryland counties have a higher wage rate. In Montgomery County, effective 1 July 2024, the rate is USD17.15 per hour for employers with more than 50 employees, USD15.50 for those with 11–50 employees, and is currently at the state minimum wage rate of USD15 for all other employers – with future annual increases to be determined by Montgomery County. In Howard County, the current USD15 state rate will rise on 1 January 2025 to USD16 per hour for employers with 15 or more employees, whereas smaller ones will increase to at USD15.50 on 1 January 2026.

Maryland has a prevailing wage law, under which contractors on certain public work contracts must pay employees working on such contracts a wage rate established by the Commissioner of Labor and Industry. Maryland also has a living wage law, under which contractors on certain state service contracts must pay an enhanced wage rate set by the Commissioner of Labor and Industry.

Bonuses and other incentive payments are not required by law. However, if non-discretionary, any such payments are considered wages and must be paid even after the employee has left employment.

1.5 Other Employment Terms

Maryland has a number of laws that govern or provide for certain leave rights, as well as offering other employee protections.

Vacation

Maryland does not require an employer to provide vacation leave. However, if the employer does provide vacation leave, the vacation benefit must be paid out upon termination unless the employer has provided notice of the vacation benefit upon hiring and the vacation policy spe-

cifically states that vacation benefit will not be paid out at termination.

Other Statutory Leaves

Beyond vacation, Maryland has a number of legally mandated leaves. One recent major development is a family and medical insurance (FAMLI) programme that will provide eligible employees with 12 weeks of paid family and medical leave, with the possibility of an additional 12 weeks of paid parental leave (for a possible total of 24 weeks of paid leave). This USD1.6 billion programme will be administered by the state and funded by contributions from employers and employees. Contributions begin 1 July 2025 and benefits will be paid starting 1 July 2026. The MDOL will issue regulations to implement the provisions of the law.

Maryland law also provides for statutory leave in the following circumstances.

- The Healthy Working Families Act requires employers with 15 or more employees to provide up to 40 hours of paid leave to eligible employees for specified sick and safe (ie, domestic violence) purposes, whereas smaller employers must provide unpaid leave.
- The Parental Leave Act requires employers with 15–49 employees to provide six weeks of unpaid leave to eligible employees to care for a child after birth, adoption or foster placement.
- The Flexible Leave Act – although not providing for a separate bank of leave – allows employees to use any existing paid leave for illness or bereavement of an immediate family member (meaning child, spouse or parent).
- The Organ Donation Leave Act requires employers with 15 or more employees to provide eligible employees with:

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- (a) up to 60 business days of unpaid leave during any 12-month period to serve as an organ donor; and
- (b) up to 30 business days of unpaid leave during any 12-month period to serve as a bone marrow donor.
- The Deployment Leave Act enables eligible employees to take leave on the day that an immediate family member of the employee is leaving for or returning from active duty outside the USA as a member of the US armed forces.
- The Essential Workers Protection Act, enacted in the context of the COVID-19 pandemic, requires essential employers to provide their essential workers with paid public health emergency leave to be used for certain specified reasons during a declared catastrophic health emergency related to a communicable disease – albeit only if there is federal or state funding for the leave.

Other Aspects of Employment Relationship

There are also state laws governing other aspects of the employment relationship, including the following.

Military preferences in hiring

Maryland law allows employers to grant a preference in hiring or promotion to the spouse of an eligible military member without violating state or local equal employment opportunity laws. This preference extends to eligible veterans, as well as veterans who have a service-connected disability, or – if such veteran is deceased – the veteran’s spouse.

Medical questions

Under the Medical Questions Law, Maryland employers may not require an applicant to answer oral or written questions that relate to a physical, psychiatric or psychological disability,

illness, handicap or treatment unless that condition has a direct, material and timely relationship to the capacity or fitness of the applicant to perform the job properly. Employers may, however, require a proper medical evaluation by a physician to assess the applicant’s ability to perform the job.

Wage transparency and salary history ban

Effective 1 October 2024, the Maryland Equal Pay Act will require an employer to provide the wage range, benefits and any other compensation for the position in question in any internal or external job posting. The law also prohibits an employer from asking about or relying upon an applicant’s wage history in screening, hiring or determining wages. Employers may not retaliate against an applicant for exercising their rights under the law. The law acknowledges that an applicant may voluntarily provide their wage history and, after a conditional offer of employment is made, permits the employer to confirm and to rely on this information to support a higher wage offer than initially offered.

Lie detector testing

Applicants and employees may not be required to undergo lie detector testing. The law specifies that Maryland applications must contain – in bold-faced, upper-case type – the following statement, with a separate signature line: “UNDER MARYLAND LAW, AN EMPLOYER MAY NOT REQUIRE OR DEMAND, AS A CONDITION OF EMPLOYMENT, PROSPECTIVE EMPLOYMENT, OR CONTINUED EMPLOYMENT, THAT AN INDIVIDUAL SUBMIT TO OR TAKE A LIE DETECTOR OR SIMILAR TEST. AN EMPLOYER WHO VIOLATES THIS LAW IS GUILTY OF A MISDEMEANOUR, AND SUBJECT TO A FINE NOT EXCEEDING \$100.”

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Drug testing

Maryland has passed a law that permits employers to drug test applicants and employees. The law contains detailed requirements that must be met, including the use of state-approved laboratories, specific notice requirements, and restrictions on the type of specimens (blood, urine, saliva, and – in the pre-employment context – hair samples) that may be used. If the applicant or employee tests positive, the employer must provide the employee with a copy of the lab results, the employer's written substance abuse policy, notice of any intent to take adverse action, and a statement or copy of the statutory provisions regarding the employee's right to request independent testing of the same sample.

Anti-Strikebreakers Law

Maryland employers may not refer, obtain or recruit for employment individuals who customarily and repeatedly offer to be employed in place of labour strikers.

Credit history checks

Under the Job Applicant Fairness Act, employers are prohibited from using an applicant's or employee's credit report or credit history to deny employment, terminate employment or otherwise make decisions about compensation or other terms of employment – except where expressly authorised by the law.

The law does not apply to employers that are required by federal, state or local law to check an individual's credit history, nor does it apply to financial entities that are required to register as investment advisers with the SEC. Employers are permitted to procure the credit reports or credit histories of applicants (after a conditional offer of employment is extended) or employees if the employer has a bona fide reason for obtaining the information that is substantially job-related,

as defined in the law, and the employer discloses in writing that a report is being procured.

Social media checks

The User Name and Password Privacy Protection Act was the first workplace social media privacy law in the nation. Under this law, Maryland employers are prohibited from requiring employees or applicants to turn over passwords needed to access private websites, including those used for social media. Specifically, the law bars employers from requiring or even requesting that an applicant or employee divulge their "user name, password, or other means for accessing a personal account or service through an electronic communication device". Employers may, however, require employees to divulge passwords for "non-personal accounts or services that provide access to the employer's internal computer or information systems".

Criminal background checks

Maryland's "Ban the Box" law prohibits employers with 15 or more employees from asking about an individual's criminal record prior to the first in-person interview. During that interview, however, such information may be required to be disclosed. There are exceptions where an employer is required or authorised to seek such information by federal or state law or where an employer provides programmes, services, or direct care to minors or vulnerable adults. Of note, the law specifically does not pre-empt any local ban-the-box laws – for example, those previously enacted by Baltimore City, Prince George's County, and Montgomery County, which impose greater restrictions on employers than this law.

On the other hand, state law requires certain employers to conduct criminal background checks on applicants. These include schools,

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childcare centres, day or residential camps and recreation centres, and employers providing adult dependent care services.

The Maryland Second Chance Act permits an individual to petition the court to shield certain specific misdemeanour convictions from public disclosure, including to employers, unless an exception applies. The law further specifically prohibits employers who conduct a criminal background check from requiring applicants to disclose if they have any such shielded convictions or from discharging or refusing to hire an individual because that person refuses to disclose shielded convictions.

2. Restrictive Covenants

2.1 Non-competes

Maryland law prohibits employers from including a non-compete or conflict of interest provision in an employment contract with an employee earning less than 150% of the applicable minimum wage, as well as licensed veterinary professionals. Such provisions restricting the ability of the employee to work for a new employer or become self-employed in the same or similar business or trade are void as against public policy.

Effective 1 July 2025, non-compete or conflict of interest provisions are banned for licensed healthcare professionals earning USD350,000 or less in total annual compensation. For those licensed healthcare professionals earning more, any non-compete or conflict of interest provision cannot exceed one year from the last day of employment, and any geographical restriction may not exceed 10 miles from the primary place of employment. Employers, however, may still prohibit all employees from taking client lists or

other proprietary client- or patient-related information.

As regards higher-wage employees in other industries, restrictive covenants such as non-compete or non-solicitation agreements are generally enforceable in Maryland, as long as the restrictions as to geographic area and duration are reasonably necessary for the protection of the employer's business, do not impose an undue hardship on the employee and do not disregard the public interest. Continued employment is considered sufficient consideration to support a non-compete agreement. Maryland courts may "blue pencil" or revise such agreements if they deem the original provisions to be too onerous and thereby unenforceable.

Maryland employers may protect confidential and proprietary business information, including trade secrets, through the use of a confidentiality agreement that specifically identifies the protected information. Of relevance to this issue, Maryland has adopted the Model Uniform Trade Secrets Act. There are two types of trade secrets under the Act – namely, internal operating information and technological developments. Employers may seek injunctive relief for actual or threatened misappropriation of trade secrets, as well as damages for actual loss, unjust enrichment and – if the actions were wilful and malicious – attorney's fees and exemplary damages.

2.2 Non-solicits

As mentioned in **2.1 Non Competes**, non-solicitation agreements – whether as to customers or other employees – are generally enforceable in Maryland as long as the restrictions are reasonably necessary for the protection of the employer's business, do not impose an undue hardship on the employee and do not disregard the public interest. As with non-compete

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agreements, continued employment is considered sufficient consideration to support a non-solicitation agreement, and Maryland courts may “blue pencil” or revise such agreements if they deem the original provisions to be too onerous and thereby unenforceable.

3. Data Privacy

3.1 Data Privacy Law and Employment

Maryland has several laws that govern data privacy in the employment context.

The Maryland Wiretap Act prohibits an employer from listening to or recording a confidential communication without the consent of all parties. The law further prohibits the interception of oral, wire or electronic communications and thereby encompasses the monitoring of email. Employers should inform employees through a written policy or a message at the point of logging into the communications system that their communications are not private and may be monitored and that employees consent to such monitoring by using the system.

The Maryland Personal Information Protection Act governs the disposal of personal information, including employee data, and provides for notification of the breach of electronically maintained personal information. Of particular interest, the definition of personal data includes biometric data.

Maryland has also enacted a law governing the use of facial recognition technology in the hiring process. The Facial Recognition in Employment Act prohibits the use of a facial recognition technology during an applicant’s interview without their consent, which must meet specific statutory requirements.

The Wage Payment and Collection Act prohibits the display of social security numbers on employee checks, notices of direct deposit or notice of wage credits to debit cards or card accounts.

4. Foreign Workers

4.1 Limitations on Foreign Workers

Maryland has not enacted any laws specific to foreign workers. Immigration issues and the use of foreign workers are governed by federal law.

4.2 Registration Requirements for Foreign Workers

See 4.1 Limitations on Foreign Workers.

5. New Work

5.1 Mobile Work

Maryland has not enacted any laws related to mobile work. Remote workers performing services in Maryland may be entitled to state-mandated benefits, such as sick and other leaves (including the forthcoming FAML leave), and unemployment insurance, as well as other employee protections.

5.2 Sabbaticals

Maryland has not enacted any laws related to sabbatical leave. The granting of such leave and any related conditions are at the employer’s discretion.

5.3 Other New Manifestations

Maryland has not enacted any laws regarding new manifestations in the field of “new work.”

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6. Collective Relations

6.1 Unions

Maryland has experienced an increased and well-publicised interest in union membership, initially arising out of workplace challenges from the COVID-19 pandemic and the “Black Lives Matter” movement. The prospect of lay-offs in the face of economic uncertainty, along with increased worker activism, has also led to a rising interest in unionisation of companies and organisations that have historically remained union-free.

The percentage of those employed in Maryland who are union members has increased in recent years, reversing a years-long decline, according to the US Bureau of Labor Statistics. There have been high-profile and successful union-organising campaigns in this state, including the first Apple store to be unionised, as well as the Baltimore Museum of Art, the Walters Art Gallery, the University of Maryland Medical Center, and St Agnes Hospital. Additional efforts are ongoing at other hospitals, Starbucks stores, Amazon warehouses, and within the burgeoning cannabis industry. Given the Biden administration’s support for unions, it is expected that union membership in Maryland will continue to grow.

6.2 Employee Representative Bodies

Unions typically serve as the representative bodies for employees in the USA, including in Maryland. Employee selection of union representation is governed by federal law and typically involves either voluntary recognition by the employer or a secret ballot election overseen by the National Labor Relations Board.

6.3 Collective Bargaining Agreements

If employees have unionised, their union and employer will negotiate a collective bargaining

agreement that governs wages, hours, and other terms and conditions of employment for those employees. This process is governed by federal – not Maryland – law.

7. Termination

7.1 Grounds for Termination

Termination of at-will employees may take place at any time, with or without cause or notice. If the employee has a contract for a specific period or that provides for termination only for cause, then the terms of the contract must be followed. Similarly, if the employee is subject to a collective bargaining agreement, termination must comply with the terms of the collective bargaining agreement.

7.2 Notice Periods

No notice is required for the termination of an individual at-will employee. With regard to mass or group lay-offs, Maryland has a notice law similar to the Federal Worker Adjustment and Retraining Notification (WARN) Act. Compliance with the state law, the Economic Stabilization Act, was originally voluntary but this law was amended in 2020 to make its requirements mandatory and further amended in 2021 to better – but not wholly – conform to the federal law. The mandatory provisions will not be enforced, however, until the MDOL issues final regulations to implement the revisions.

Under that state law, employers with at least 50 employees will need to provide 60 days’ advance notice to employees and certain other entities of a reduction in operations, which is defined as:

- the relocation of a part of the employer’s business from one workplace to another existing or proposed site that may result in

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the reduction in the number of employees by at least 25% or 15 employees, whichever is greater; or

- shutting down a workplace that reduces the number of employees by the greater of at least 25% or 15 employees over a three-month period.

There are certain statutory exceptions to this notice requirement. If there is a violation, the Maryland Secretary of Labor can issue an order compelling compliance and may assess a discretionary civil penalty of up to USD10,000 per day.

In addition, the law is intended to provide assistance to employers and employees to mitigate the impact of a reduction. Through its “Quick Response Program”, the Department of Economic and Employment Development provides services such as on-site registration for mass unemployment claims, job placement, and referrals for job training opportunities.

7.3 Dismissal for (Serious) Cause

No cause is required for the termination of an at-will employee. If the employee has a contract or is subject to a collective bargaining agreement, termination for cause will be governed by that agreement.

7.4 Termination Agreements

Termination agreements containing a release of claims in exchange for severance pay are permissible under state law. The release must contain certain language to comply with federal law (eg, Age Discrimination in Employment Act language, carve-out for filing of charges with the Equal Employment Opportunity Commission (EEOC), and whistle-blower language), but there are no specific state requirements.

7.5 Protected Categories of Employee

Maryland has no statutory protections against dismissal for particular categories of employees.

8. Disputes

8.1 Wrongful Dismissal

In addition to applicable federal laws, numerous Maryland laws contain protections against adverse employment actions – including termination from employment – for exercising rights under those laws. The following are among the more significant state laws with such protections:

- the Civil Rights Law (prohibiting discrimination and harassment) (Sections 20-601 et seq of the Maryland Code, State Government);
- the Healthy Working Families Act (requiring paid sick leave) (Section 3-1301 of the Maryland Labor and Employment Code);
- the Occupational Safety and Health Act (Sections 5-101 et seq of the Maryland Labor and Employment Code);
- the Wage and Hour Law (Sections 3-401 et seq of the Maryland Labor and Employment Code);
- the Wage Payment and Collection Law (Sections 3-501 et seq of the Maryland Labor and Employment Code); and
- the Workers’ Compensation Act (Sections 9-101 et seq of the Maryland Labor and Employment Code).

Maryland also recognises a cause of action for “abusive discharge” in violation of public policy as an exception to at-will employment. The public policy must be clearly articulated in law. Thus, employers may not terminate an employee for refusing to engage in conduct that violates the law or for asserting rights protected by law.

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This cause of action is not available where the law contains a specific statutory procedure and remedy for violations.

8.2 Anti-discrimination

Maryland law protects employees, independent contractors, and interns from employment discrimination and harassment on the basis of race, protective hairstyles (arising from the heightened awareness of racial equity issues), colour, religion, sex, age, pregnancy, national origin, marital status, military status, sexual orientation, gender identity, disability, or genetic information (or because of the individual's refusal to submit to a genetic test or make available the results of a genetic test). In addition, individuals are protected from retaliation for asserting rights under the law. The law further requires employers to provide reasonable accommodations to employees and applicants with disabilities, specifically including conditions caused or contributed to by pregnancy.

The law applies to employers with 15 or more employees, unless a harassment claim is involved – in which case, it applies to employers with a single employee. Revisions to the law in 2018 and 2022, spurred by the “Me Too” movement, expanded the definition of harassment beyond the federal law. Until then, state law was consistent with federal law in requiring conduct to be “severe or pervasive” (among other things) in order to constitute unlawful harassment. Now Maryland law specifically removes that requirement in the following three situations involving “unwelcome and offensive conduct”:

- where submission to the conduct is made a term or condition of an individual's employment, whether explicitly or implicitly;

- where submission to or rejection of the conduct is used as the basis for employment decisions about the individual; and
- where, based on the totality of the circumstances, the conduct unreasonably creates a working environment that a reasonable person would perceive to be abusive or hostile.

The law also adds a new definition of “sexual harassment” as conduct “that consists of unwelcome sexual advances, requests for sexual favours, or other conduct of a sexual nature”. Again, such conduct need not be severe or pervasive under the same three circumstances set forth here.

Maryland's Equal Pay for Equal Work Statute prohibits discriminatory pay practices based on sex or gender identity – and, as of 1 October 2024, sexual orientation, religious beliefs, and disability – against employees who work in the same establishment and perform work of comparable character or work on the same operation, in the same business or of the same type. The law also contains pay transparency provisions that protect employees' rights to discuss their pay and, as of October 2024, wage range posting requirements.

8.3 Digitalisation

Maryland has no laws or regulations regarding the digitalisation of employment disputes. At this time, state courts and agencies are utilising both remote and in-person proceedings, at their discretion.

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9. Dispute Resolution

9.1 Litigation

Different types of employment claims may be subject to different processes under Maryland law.

Discrimination and Harassment Claims

An employee, intern, or independent contractor who believes that they have been a victim of discrimination or harassment may file a complaint with the Maryland Commission on Civil Rights (MCCR) within 300 days of any alleged discriminatory act or within two years of any alleged harassment. Such complaints are considered “dual filed” with the federal EEOC. One of the agencies will conduct an investigation into the complaint. If the MCCR concludes that discrimination or harassment occurred, it will attempt to settle the matter through conciliation. If the parties cannot reach agreement, the case may be certified for a public hearing, an MCCR attorney will prosecute the matter, and a subsequent finding of violations will result in damages being awarded to the employee or independent contractor (interns are only eligible for non-monetary remedies). If the MCCR concludes that there has been no discrimination, it will dismiss the matter..

The agency filing is an administrative prerequisite to bringing a lawsuit in court, and an employee or independent contractor may file suit even if the MCCR finds no discrimination. Any lawsuit must be filed within two years of the alleged discriminatory act or three years of the alleged harassment – although this period is tolled (ie, put on hold) during the administrative proceedings before the MCCR or the EEOC. The damages available under Maryland’s anti-discrimination law generally mirror those under federal law, including back pay, front pay, injunctive relief,

attorney’s fees and costs, and the tiered caps on punitive and compensatory damages:

- USD50,000 for employers with 15-100 employees;
- USD100,000 for employers with 101-200 employees;
- USD200,000 for employers with 201-500 employees; and
- USD300,000 for employers with more than 500 employees.

Class action claims are permitted under the state anti-discrimination law. Such claims may be brought by the Maryland Attorney General separate from this administrative process.

Minimum Wage and Overtime Claims

Under the Maryland Wage and Hour Law, an employee who failed to receive either the minimum wage rate or premiums can bring a claim before the state circuit court for the amount that was underpaid. The court may award the difference in wages, attorney’s fees and costs. In addition, the court may award an equal amount of the wage differential as liquidated damages, unless the employer can show that it acted in good faith and reasonably believed it was in compliance with the law – in which case, the court may either waive or reduce the liquidated damages amount. An employee may also request the Commissioner of Labor and Industry to take an assignment of the claim in trust for the employee and the Commissioner of Labor and Industry may then direct the Attorney General to bring an action on behalf of the employee. This process may be utilised for class actions as well.

In addition, any violations of the law – including the employer’s failure to co-operate with the Commissioner of Labor and Industry’s investigation into a complaint or retaliatory action against

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an employee who asserts rights under this law – will result in the employer being found guilty of a misdemeanour and subject to a fine not exceeding USD1,000.

Wage Payment Violations

Under the Maryland Wage Payment and Collection Law, if wages are not timely paid, the employee may file a complaint with the Commissioner of Labor and Industry. If the Commissioner of Labor and Industry finds a violation, they may attempt to mediate the dispute or may direct the Attorney General to bring suit on behalf of the employee. If the amount in dispute is less than USD5,000, the Commissioner of Labor and Industry may issue an order to pay the wages – in response to which, the employer may request an administrative hearing. The Commissioner of Labor and Industry may seek enforcement of a wage order in district court. Additionally, violations will be considered a misdemeanour and subject the employer to a fine not exceeding USD1,000.

If the failure to pay lasts longer than two weeks, an employee also has the option to file a private lawsuit with the circuit court. If a court or jury finds a violation, the employer will be liable for the amount of the withheld wages and – if the withholding was not the result of a bona fide dispute – up to three times the amount of the lost wages, in addition to attorney's fees and costs. Notably, an individual owner or supervisor with the power to hire and fire, supervise and control terms and conditions of employment, determine the rate and method of payment and maintain employment records can be held individually liable under the law.

In addition, Maryland has enacted a wage lien law providing a mechanism for an employee or the Commissioner of Labor and Industry to

obtain a lien on an employer's personal or real property in order to secure an amount of unpaid wages and penalties allegedly due before any judgment has been entered.

Other Statutory Claims

All of the various employment laws in Maryland provide for complaints to the Commissioner of Labor and Industry, who may mediate the dispute or direct the Attorney General to bring suit on behalf of the employee for damages, injunctive relief or other relief. The employer may also be liable for administrative or civil penalties.

In addition, some but not all of the laws provide a private right of action for violations of those laws and specify the damages that may be obtained. In addition to the anti-discrimination, wage and hour, and wage payment laws, these laws include:

- the Healthy Working Families Act;
- the Parental Leave Act (Sections 3-1207 et seq of the of the Maryland Labor and Employment Code); and
- the Workplace Fraud Act (Section 3-911 of the Maryland Labor and Employment Code).

Contract and Tort Claims

In addition to statutory discrimination or harassment claims or wage claims, employees often bring contract or tort claims against their employer. These claims are governed by state law. Contract claims arise from the breach of a formal employment agreement, but employees have also asserted contract claims based on – among other things – handbook policies, oral statements, and offer letters. Tort claims are premised on emotional or other harm experienced by an employee in the context of their employment. (Physical injury is covered by workers' compensation.)

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Claims based on contracts and torts may be brought before Maryland district courts or circuit courts. Maryland district courts hear civil cases involving claims up to USD30,000; circuit courts hear cases exceeding USD5,000 (there is concurrent jurisdiction between USD5,000–USD30,000). In addition, state contract and tort claims may be asserted in a lawsuit in federal court as pendant claims to a federal claim or if there is federal diversity jurisdiction between the parties.

There is a one-year statute of limitations for assault, libel and slander claims. All other tort claims – such as for abusive discharge, negligent misrepresentation, negligent hiring or supervision or tortious interference with contractual relations – are subject to a three-year statute of limitations. Contract claims are also subject to a three-year statute of limitations.

In a contract claim, a plaintiff may obtain actual damages arising from the breach of contract. Liquidated damages are not available unless the contract provides for their recovery. As for tort claims, a plaintiff may receive compensatory damages and – if actual malice is shown by clear and convincing evidence – punitive damages. There is no cap on economic compensatory damages; however, for 2024, there is a USD935,000 cap on non-economic compensatory damages such as pain and suffering.

9.2 Alternative Dispute Resolution

Maryland has adopted the Uniform Arbitration Act, mirroring the federal Uniform Arbitration Act (under which, an agreement to arbitrate is enforceable). In the employment context, any arbitration agreement must specify that the Maryland Uniform Arbitration Act applies. Otherwise, the arbitration will be governed by Maryland common law – under which, the agreement is enforceable only where both parties mutually promise to submit to arbitration and the agreement provides for a neutral forum to resolve any disputes.

9.3 Costs

Whether a prevailing employee or employer can be awarded attorney's fees or other costs depends on the applicable statute. Certain statutes provide for the award of such relief, whereas others are more limited. For the most common claims, which arise under the state anti-discrimination laws or wage and hour/wage payment laws, attorney's fees and costs are recoverable.