IN THE COURT OF APPEALS OF MARYLAND

No. 56

September Term, 2013

BONITA H. MARSHALL,

Appellant,

v.

SAFEWAY INC.,

Appellee.

On Appeal from the Circuit Court for Prince George's County
(Sean D. Wallace, Judge)
Pursuant to a Writ of Certiorari to the Court of Special Appeals

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BRIEF OF *AMICI CURIAE* THE PUBLIC JUSTICE CENTER, MARYLAND EMPLOYMENT LAWYERS ASSOCIATION, METROPOLITAN WASHINGTON EMPLOYMENT LAWYERS ASSOCIATION, AND D.C. EMPLOYMENT JUSTICE CENTER

Debra Gardner
Public Justice Center
One North Charles Street, Suite 200
Baltimore, MD 21201
T: 410-625-9409
F: 410-625-9423
gardnerd@publicjustice.org

Counsel for Amici Curiae

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SUMMARY OF ARGUMENT

Although this case involves a relatively small amount of money being unlawfully garnished from workers' paychecks, some of the issues decided in the Court of Special Appeals will have far-reaching effects on workers who are subjected to much greater illegal deprivations of wages they have rightfully earned. Wage theft—the unlawful withholding of wages by employers—is a surprisingly widespread practice that affects vast numbers of workers in America. *Amici* urge this Court to render a decision that preserves the ability of low-wage workers in Maryland to obtain meaningful redress against wage theft through the Maryland Wage Payment and Collection Law (WPCL) and class action litigation. The intermediate court's holding that the WPCL does not require employers to pay workers in full not only contradicts the statute's plain language but also threatens to leave Maryland workers without any effective judicial remedy against many forms of wage theft. And the intermediate court's determination that class certification was properly denied on commonality grounds will, if affirmed, undermine the important function of class action litigation in providing access to justice for large groups of employees whose employers systematically—and illegally—withhold relatively small amounts of wages owed.

INTERESTS OF *AMICI*

The Public Justice Center (PJC), a non-profit civil rights and anti-poverty legal services organization, has a longstanding commitment to protecting the rights of low-wage workers. Towards that end, the PJC has filed *amicus curiae* briefs in several cases

involving the rights of such workers to collect unpaid wages and attorneys' fees under Maryland's wage and hour laws and the Fair Labor Standards Act (FLSA). *See Ocean City, Md., Chamber of Commerce, Inc. v. Barufaldi*, No. 77, 2013 WL 5311223 (Md. Sept. 24, 2013); *Perez v. Mountaire Farms, Inc.*, 650 F.3d 350 (4th Cir. 2011); *Jackson v. Estelle's Place, LLC*, 391 F. App'x 239 (4th Cir. 2010) (unpublished); *Friolo v. Frankel*, 403 Md. 443 (2008); *Friolo v. Frankel*, 373 Md. 501 (2003). In addition, the PJC has represented thousands of employees seeking to recover unpaid wages from their employers through collective and/or class actions under state wage and hour laws and the FLSA. *See In re Tyson Foods, Inc., Fair Labor Standards Act Litig.*, MDL Docket No. 1854 (M.D. Ga.); *Trotter v. Perdue Farms, Inc.*, 2001 WL 1002448, 144 Lab. Cas. ¶ 34,364 (D. Del. Aug. 16, 2001) (unpublished); *Heath v. Perdue Farms, Inc.*, 87 F. Supp. 2d 452 (D. Md. 2000).

The Maryland Employment Lawyers Association (MELA) and the Metropolitan Washington Employment Lawyers Association (MWELA) are sister local affiliates of the National Employment Lawyers Association, a national organization of attorneys, primarily plaintiffs' counsel, who specialize in employment law. The joint membership of MELA/MWELA comprises over 300 members who represent and protect the interests of employees under state and federal law. The purpose of MELA/MWELA is to bring into close association employee advocates and attorneys to promote the efficiency of the legal system and fair and equal treatment under the law. MELA and/or MWELA have frequently participated as *amici curiae* in cases of interest to their members, including the following: *Ocean City, Md., Chamber of Commerce, Inc. v.*

Barufaldi, No. 77, 2013 WL 5311223 (Md. Sept. 24, 2013); *Addison v. Lochearn*, 411 Md. 251 (2009); *Newell v. Runnels*, 407 Md. 578 (2009); *Hoffeld v. Shepherd Elec. Co., Inc.*, 404 Md. 172 (2008); *Friolo v. Frankel*, 403 Md. 443 (2008); *Haas v. Lockheed Martin Corp.*, 396 Md. 469 (2007); *Manor Country Club v. Flaa*, 387 Md. 297 (2005); and *Friolo v. Frankel*, 373 Md. 501 (2003).

Members of MELA and MWELA have represented numerous clients seeking to enforce federal and state wage laws. As longtime advocates in employment law, MELA/MWELA appreciate having this opportunity to offer the Court their wide-ranging expertise and unique perspective on the issues presented in this appeal. MELA/MWELA have a significant interest in this case to ensure that Maryland courts construe state wage laws to fulfill the legislative intent to protect Maryland employees by encouraging competent counsel to represent them in wage cases.

The D.C. Employment Justice Center (EJC) is a non-profit organization whose mission is to secure, protect, and promote workplace justice in the D.C. metropolitan area. The EJC provides legal assistance on employment law matters to the working poor and supports a local workers' rights movement, bringing together low-wage workers and advocates for the poor. Established on Labor Day of 2000, EJC advises and counsels well over 1000 workers each year on their rights in the workplace at weekly Workers' Rights Legal Clinics.

Much of the EJC's work is in response to wage theft, including situations in which employers illegally deduct from employees' paychecks. Without comprehensive laws that protect low-income employees from illegal wage deductions, companies have little

incentives to refrain from wage theft. Legal remedies, such as liquidated damages and attorneys' fees, are needed to protect workers from wage theft as well as to provide victims of wage theft with access to justice.

Additionally, the EJC represents low-income workers in state and federal courts, including in several class and/or collective actions. Class and collective actions provide low-wage workers with a practical and economical means by which to pursue their rights; indeed, many of the workers whom the EJC represents would be precluded from vindicating their workplace rights at all if their only option was to proceed on an individual basis. In addition, such legal means are necessary to avoid piecemeal litigation of similar claims that would otherwise be too onerous for workers to pursue on their own and too costly for non-profit organizations to litigate.

STANDARDS OF REVIEW

A lower court's interpretation of a statute—the issue addressed in Part II of this brief—is reviewed *de novo*. *E.g.*, *Gleneagles, Inc. v. Hanks*, 385 Md. 492, 496 (2005).

A circuit court's decision whether to grant or deny class certification—the issue addressed in Part III—is ordinarily reviewed for abuse of discretion. *Creveling v. Gov't Emps. Ins. Co.*, 376 Md. 72, 90 (2003). "Implicit in this standard is a recognition that the basis of the certification inquiry is essentially a factual one, and thus, deference is due. However, whether the trial court used a correct legal standard in determining whether to grant or deny class certification is a question of law that we review *de novo*." *Id.* (citation omitted).

ARGUMENT

While the facts of this case involve a relatively modest unlawful deduction of wages from workers' paychecks, this Court's interpretation and application of the Maryland Wage Payment and Collection Law (WPCL) and Rule 2-231 could have dramatic effects on cases that involve far greater amounts of money and far more egregiously illegal actions by employers. Both the WPCL and class action litigation provide crucial avenues for Maryland workers to obtain redress against unscrupulous employers that effectively steal money from their employees through a variety of tactics and schemes collectively known as wage theft.

Part I of this brief discusses the various forms of wage theft, the surprising frequency with which it occurs, and the limited extent of law enforcement by state and federal agencies which makes it essential for low-wage workers to have access to justice through private litigation. Part II explains why, if this Court were to interpret the WPCL as providing no remedy for the failure to pay wages in full, many of Maryland's most vulnerable workers would be effectively deprived of any remedy for wage theft. Part III addresses why class action litigation that tests the legality of company policies and systemic practices is a vital means of ensuring that low-wage workers get all the wages they have earned.

I. Wage theft is a widespread problem, and low-wage workers need to have meaningful access to the courts in order to defend themselves against it.

Employers have many ways of committing wage theft. *See generally* Kim Bobo, *Wage Theft in America: Why Millions of Working Americans Are Not Getting Paid—And What We Can Do About It* 25-41 (2009) (discussing various forms of wage theft); Nantiya Ruan, *What's Left to Remedy Wage Theft?: How Arbitration Mandates That Bar Class Actions Impact Low-Wage Workers*, 2012 Mich. St. L. Rev. 1103, 1107-10 (2012) (same). Some employers promise to pay when a job is finished but renege on that promise when the work is done. Some employers distribute paychecks that bounce, while some disappear in order to avoid paying their workers. Some employers keep false records and pay employees for fewer hours than they actually worked. Some pay a lower hourly rate than what was promised when the workers agreed to do the job. Some demand that their employees work during unpaid meal breaks, clock their employees in after the employees have already started working, or clock their employees out before the employees have stopped working. Some steal tips from tip pools that are supposed to be reserved for waiters and other restaurant staff.[1]

Some employers pay their workers for a forty-hour work week while requiring them to work longer hours for no additional pay.[2] Others pay straight time but not time-

[1] "Every court that has considered the issue has unequivocally held that the FLSA expressly prohibits employers from participating in employee tip pools." *Gionfriddo v. Jason Zink, LLC*, 769 F. Supp. 2d 880, 893 (D. Md. 2011).

[2] Of course, not all classes of workers are legally entitled to overtime pay. *See* 29 U.S.C. § 213; Md. Code Ann., Lab. & Emp. §§ 3-403, 3-415(b). But, for those who are entitled to overtime pay, the failure to provide it is a form of wage theft.

and-a-half for overtime.[3] Some employers use inventive schemes to avoid paying in full for overtime, such as having one employee work up to forty hours at each of two different locations of the same business, or paying one employee under two different names and Social Security numbers. Some employers pay piece rates (paying per unit of work done); this is unlawful if it results in the employee's effective hourly rate falling below the minimum wage.[4] Some employers deduct money from workers' paychecks for expenses like transportation between job sites, bogus administrative fees, or cleaning of uniforms, which again is unlawful if it reduces a worker's effective hourly rate below the minimum wage.[5] Some employers fraudulently misclassify their workers as independent contractors even when the workers are obviously not independent, which allows employers to evade several legal obligations, including paying their share of Social Security and Medicare taxes, paying for unemployment insurance and workers' compensation insurance, and paying for overtime.[6] Some employers refuse to pay the

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[3] *See* 29 U.S.C. § 207(a)(1); Md. Code Ann., Lab. & Empl. § 3-415(a) (both requiring employers to pay time-and-a-half for hours in excess of forty per week).

[4] *See, e.g.*, *Bueno v. Mattner*, 829 F.2d 1380, 1386 (6th Cir. 1987) ("Defendants were obligated to pay the workers at least the equivalent of the minimum wage, even though in the form of a piece-rate wage as opposed to an hourly wage.").

[5] *See, e.g.*, *Arriaga v. Fla. Pac. Farms, L.L.C.*, 305 F.3d 1228, 1236 (11th Cir. 2002) ("An employer may not deduct from employee wages the cost of facilities which primarily benefit the employer if such deductions drive wages below the minimum wage.").

[6] Misclassification has other illicit benefits for employers as well:

> Federal labor and employment laws impose other financial and legal obligations on employers, including liability for discrimination under Title VII of the Civil Rights Act of 1963, the Age Discrimination in Employment

last paycheck that a worker has earned when the worker quits or is fired—and some of those employers churn through the most unsophisticated and vulnerable workforces by hiring employees, working them for two weeks, terminating them, not paying them, hiring replacements for another two weeks, and so on.

This array of methods of dodging legal obligations to pay workers is the moral and practical equivalent of theft: it takes money out of the pockets of those who have worked for it and who are legally entitled to it.[7] Some types of wage theft violate the federal Fair Labor Standards Act (FLSA); others violate state wage laws like the Maryland Wage and Hour Law (MWHL); and others are breaches of contract that may also be actionable under state laws requiring prompt payment of all wages that are due, like the WPCL (the application of which to wage theft is discussed more specifically in Part II below). Wage theft harms not only the workers whose wages are stolen, but also businesses that want to follow the law and treat workers fairly but have to compete with unscrupulous rivals that use wage theft to lower their labor costs. Furthermore, when employers commit wage

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> Act (ADEA), and the Americans with Disabilities Act (ADA); a duty to provide employees with unpaid leave pursuant to the Family and Medical Leave Act (FMLA); requirements with regard to pension plans; and an obligation to negotiate wages and working conditions with eligible employees under the [National Labor Relations Act].

Elizabeth Kennedy, Comment, *Freedom from Independence: Collective Bargaining Rights for "Dependent Contractors,"* 26 Berkeley J. Emp. & Lab. L. 143, 150 (2005) (footnotes omitted).

[7] Some states, including New York, have recently begun treating wage theft as a crime like other kinds of theft. *E.g.*, Juan Gonzalez, *Breaking Bad Bosses?*, N.Y. Daily News, July 13, 2012, *available at* http://articles.nydailynews.com/2012-07-13/news/32652078_1_labor-laws-tortilleria-chinantla-schneiderman (reporting on jail sentences and other criminal penalties for perpetrators of wage theft). Maryland has not yet done likewise.

theft, they also underpay Social Security and Medicare taxes and reduce the taxable income and tax withholdings of employees, thereby harming public coffers.

The available studies indicate that wage theft affects millions of American workers, especially those in industries that tend to pay the lowest wages. *See generally* Siobhan McGrath, Brennan Center for Justice, *A Survey of Literature Estimating the Prevalence of Employment and Labor Law Violations in the U.S.* (2005).[8] The most comprehensive study to date addressing wage theft from low-wage workers was published in 2009. *See* Annette Bernhardt et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in American Cities* (2009).[9] The researchers surveyed 4,387 low-wage workers in Chicago, Los Angeles, and New York and found that more than 25% had been paid less than the minimum wage in just the previous week and more than 75% of those who had worked more than forty hours in the previous week had not been paid for overtime. *Id.* at 2. The same study found that wage theft cost low-wage workers an average of $51 per week, out of an average weekly wage of $339—a loss of about 15% from an already very low rate of pay. *Id.* at 5.

Studies of industries that tend to pay low wages similarly document the disturbing prevalence of wage theft. A U.S. Department of Labor (DOL) investigation of 51 randomly selected poultry processing plants found that *every single one of them* failed to pay workers for all the hours they worked. U.S. Dep't of Labor, Wage & Hour Div.,

[8] *Available at* http://brennan.3cdn.net/bdeabea099b7581a26_srm6br9zf.pdf.

[9] *Available at* http://www.nelp.org/page/-/brokenlaws/BrokenLawsReport2009.pdf.

Poultry Processing Compliance Survey Fact Sheet 2 (2001).[10] A nationwide survey of 2,660 day laborers, who commonly do landscaping and construction work, found that in just the two months prior to the survey, almost half of them had suffered wage theft. Abel Valenzuela Jr. et al., *On the Corner: Day Labor in the United States* at i-ii (2006).[11] A DOL study showed that 60% of nursing homes failed to follow federal minimum wage, overtime, or child labor laws. U.S. Dep't of Labor, Wage & Hour Div., *Nursing Home 2000 Compliance Survey Fact Sheet* (2000).[12]

Wage theft is a serious problem at the local level as well. *See* Yvonne Wenger, *'Wage theft' prevails in post-recession economy: Employers sidestep wage and labor laws to pay workers less than owed*, Baltimore Sun, Feb. 2, 2013.[13] A study of 476 day laborers in the Baltimore/Washington metropolitan area found that 58% had simply not been paid at all by an employer at least once. Abel Valenzuela Jr. et al., *In Pursuit of the American Dream: Day Labor in the Greater Washington, D.C. Region* 13 (2004).[14] A survey of 286 domestic workers in Montgomery County found that 75% of the live-in workers did not receive overtime pay to which they were entitled, that approximately

[10] *Available at* http://www.ufcw.org/docUploads/Usdept~1.pdf?CFID=13276200&CFTOKEN=71550433.

[11] *Available at* http://www.sscnet.ucla.edu/issr/csup/uploaded_files/Natl_DayLabor-On_the_Corner1.pdf.

[12] *Available at* http://www.dol.gov/whd/healthcare/surveys/nursing2000.htm.

[13] *Available at* http://articles.baltimoresun.com/2013-02-02/news/bs-md-wage-theft-20130202_1_wage-theft-wage-and-labor-catherine-ruckelshaus.

[14] *Available at* http://www.sscnet.ucla.edu/issr/csup/uploaded_files/DC_Day_Labor_Study.pdf.

half of the live-in workers were paid below the minimum wage, and that 82% of the live-out workers did not receive overtime pay. Gregory Gaines et. al., *Workplace Conditions of Domestic Workers in Montgomery County, Maryland* 8-10 (2006).[15] A survey of 75 South Asian workers in Baltimore City found that 76% did not receive required overtime pay. CASA of Maryland, *Wage Theft: How Maryland Fails to Protect the Rights of Low-Wage Workers* 5 (2007).[16] And a recent survey of 510 restaurant workers in Washington, D.C. found that 35.4% of them had worked off the clock without pay, 11.4% were paid less than the minimum wage, and 9.3% had tips stolen by management. Restaurant Opportunities Center of Washington, D.C. et al., *Behind the Kitchen Door: Inequality & Opportunity in Washington, D.C.'s Thriving Restaurant Industry* 13, 19 (2011).[17]

The federal government and most states, including Maryland, unfortunately devote very limited resources to enforcing laws against wage theft; consequently, private litigation is often the only way for workers who have suffered wage theft to obtain a remedy. An investigation in 2009 revealed major shortcomings in the DOL's ability to investigate wage theft claims under the FLSA: there was such a backlog of complaints that it would take eight to ten months even to begin an investigation, many investigations were perfunctory at best, and many complaints were never answered or recorded at all.

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[15] *Available at* http://www6.montgomerycountymd.gov/content/council/pdf/agenda/cm/2006/060516/20060516_hhs01.pdf.

[16] *Available at* http://www.casademaryland.org/storage/documents/wagetheft.pdf.

[17] *Available at* http://rocunited.org/roc-dc-behind-the-kitchen-door/.

GAO's Undercover Investigation: Wage Theft of America's Vulnerable Workers: Hearing Before the H. Comm. On Education & Labor, 111th Cong. 47, 59, 60, 65 (2009) (statement of Gregory D. Kutz, Managing Director, Forensic Audits and Special Investigations, Government Accountability Office).[18] Although the DOL has recently hired more investigators, it still acknowledges that "every year there are thousands of workers whose claims we cannot resolve because of limited capacity." U.S. Dep't of Labor, Wage & Hour Div., *Bridge to Justice: Wage and Hour Connects Workers to New ABA-Approved Attorney Referral System*, http://www.dol.gov/whd/resources/ABA ReferralPolicy.htm (last visited September 22, 2013). The DOL advises such workers to seek redress through private litigation. *See id.*

In Maryland, the Department of Labor, Licensing and Regulation (DLLR) has just 7.5 full-time employees investigating violations of the state's wage laws, including four full-time investigators and three to four "senior citizen volunteers." Irene Lurie, *Enforcement of State Minimum Wage and Overtime Laws: Resources, Procedures, and Outcomes*, 15 Emp. Rts. & Emp. Pol'y J. 411, 421, 437 (2011). That means DLLR has approximately one investigator or volunteer for every 386,240 workers in Maryland.[19] And in the recent past, the number of investigators has been as low as zero. The office

[18] *Available at* http://www.gpo.gov/fdsys/pkg/CHRG-111hhrg48054/pdf/CHRG-111hhrg48054.pdf.

[19] There were approximately 2,896,800 people working in Maryland in August 2013. U.S. Dep't of Labor, Bureau of Labor Statistics, Economy at a Glance: Maryland, *available at* http://www.bls.gov/eag/eag.md.htm#eag_md.f.1 (last visited September 22, 2013).

within DLLR that investigates wage and hour complaints, the Employment Standards Service, was entirely stripped of funding in 1991, reestablished in 1994, defunded again in 2006, and restored in 2007. Eleanor M. Carey et al., *Report on the Department of Labor, Licensing and Regulation: Maryland Transition* 2-3 (2007).[20] *See also Ocean City, Md., Chamber of Commerce, Inc. v. Barufaldi*, No. 77, 2013 WL 5311223, at *5 n.8 (Md. Sept. 24, 2013). The state legislature created the private right of action for workers under the WPCL in 1993 because cuts in funding had made it impossible for the executive branch to enforce the law. *Friolo v. Frankel*, 373 Md. 501, 516 (2003); *Battaglia v. Clinical Perfusionists, Inc.*, 338 Md. 352, 363-64 (1995). Thus, the legislature recognized that given the shortage of resources for enforcement by the executive branch, workers would need to vindicate their rights under the WPCL through private litigation.

The private right of action that the legislature enacted is vitally important. Wage theft is a widespread and serious problem that hits the most vulnerable workers hardest. While there is some enforcement of laws against wage theft by the federal and Maryland governments, it is not nearly enough to protect all workers or to deter unscrupulous employers from continuing to practice various kinds of wage theft. Therefore, it is crucial for low-wage workers to have meaningful, affordable access to the courts in order to recover wages that have been withheld from them unlawfully. But the intermediate court's holdings regarding the WPCL and class certification would, if left intact,

[20] *Available at* http://www.governor.maryland.gov/documents/transition/Labor.pdf.

seriously and unfairly restrict access to justice for low-income workers who have suffered wage theft.

II. The Maryland Wage Payment and Collection Law should be interpreted as providing a remedy against employers that fail to pay wages in full.

The trial court dismissed the plaintiff's claim under the WPCL because it concluded that that Md. Code Ann., Lab. & Empl. § 3-502 does not require employers to pay employees their wages in full, and hence that § 3-507.2 does not provide an employee with a private right of action against an employer that pays less than the full amount of wages owed. The Court of Special Appeals affirmed that holding, finding that "section 3-502 addresses only the *timing* of paydays and the prohibition against social security numbers on pay documents." Op. at 26. This reading of § 3-502 was wrong as a matter of statutory interpretation, and it would have terrible practical consequences if affirmed by this Court. This interpretation of § 3-502 would make it essentially impossible for many low-wage Maryland workers to get access to justice in cases of wage theft.

The crucial statutory text at issue, § 3-502(a), states: "Each employer . . . shall pay each employee at least once in every 2 weeks or twice in each month." The interpretive question raised in this appeal is whether the employer's legal obligation to "pay each employee" means to "pay each employee in full," or merely to "pay each employee at least one penny" at least twice per month. This question can be answered by simply considering "the literal or usual meaning of the words" in the statute, "within the context

of the objectives and purposes of the enactment" and in accordance with "[c]ommon sense." *Marriott Employees Fed. Credit Union v. Motor Vehicle Admin.*, 346 Md. 437, 445 (1997). Section 3-502(a) is about timely payment: it requires employers to "set regular pay periods" and "pay each employee" at least twice per month. The usual, common-sense meaning of the word "pay," when timely payment is at issue, is "pay in full." For example, if a person attempts to pay a phone bill by sending a check for less than the full amount of money due, the phone company can charge a late fee even if the check arrives by the due date. The same is true of taxes, rent, mortgage payments, and any number of other payments that have regular due dates. When there is an obligation to pay by a particular date, the obligation is to pay in full by that date. Thus, the ordinary meaning of the word "pay" in § 3-502(a) is "pay in full," not "pay at least one penny." Moreover, this interpretation fits with the purpose of the WPCL, whereas the contrary interpretations of the courts below do not.[21]

[21] The common-sense reading of § 3-502(a) is further confirmed by DLLR, the agency that enforces the WPCL. *See* Md. Code Ann., Lab. & Empl. § 3-507.1 (giving the Commissioner of Labor and Industry the authority to enforce the WPCL). The Department maintains on its website, for the benefit of employers and employees, a guide to Maryland laws on wages and employment, which states that employers must pay employees in full: "Generally, an employer must set regular paydays, and *pay all earned wages* of an employee on time . . . ." Md. Dep't of Labor, Licensing & Regulation, Div. of Labor & Indus., *The Maryland Guide to Wage Payment and Employment Standards* § IV(D) (2010) (emphasis added), *available at* http://www.dllr.state.md.us/labor/wagepay/. *See also* Brief of *Amicus Curiae*, Commissioner of Labor and Industry, submitted in this case. The construction given to a statute by the agency that enforces it is generally entitled to judicial deference. *Marriott Employees Fed. Credit Union*, 346 Md. at 445.

If this Court were to affirm the mistaken conclusion of the Court of Special Appeals that § 3-502 does not require employers to pay wages in full, it would deprive Maryland workers of the ability to bring suit under the WPCL in most cases of wage theft. Section 3-507.2 of the WPCL provides a private right of action to workers whose employers have violated § 3-502 or § 3-505. *See* Md. Code Ann., Lab. & Empl. § 3-507.2(a). Under the interpretation of § 3-502 adopted by the Court of Special Appeals, an employee could bring suit only where (1) the employer commits violations relating to "the *timing* of paydays and the prohibition against social security numbers on pay documents" pursuant to § 3-502, Op. at 26; or (2) the employer has not paid the "employee all wages due for work that the employee performed before the termination of employment" pursuant to § 3-505. But this Court's characterizations of the private right of action available pursuant to the WPCL have never been limited solely to those narrow categories of cases. Instead, this Court has observed that the WPCL "establishes a private right of action for a worker to obtain compensation from an employer for unpaid wages," *Barufaldi*, 2013 WL 5311223, at *1, and that the WPCL "creates a private right of action for an employee to recover wages that have been wrongfully withheld," *id.* *2. This Court's recent recognition in *Barufaldi* of the importance of the WPCL in protecting employees is equally relevant to this case.

The cramped interpretation of § 3-502 that was adopted by the Court of Special Appeals would result in a correspondingly cramped interpretation of § 3-507.2. And without access to a private right of action pursuant to § 3-507.2, most workers would lose their only real opportunity to seek redress for wage theft. That is because § 3-507.2

provides two crucial protections to workers: a fee-shifting provision and a treble damages provision.

Section 3-507.2's fee-shifting provision allows courts to award reasonable attorneys' fees to successful plaintiffs against defendants who are found to have withheld wages in bad faith.[22] The provision is an important source of access to justice because it provides "an incentive, based on a realistic expectation of reasonable compensation, for attorneys to agree to take on wage dispute cases, even where the dollar amount of the potential recovery may be relatively small." *Friolo v. Frankel*, 403 Md. 443, 457-58 (2008). Wage theft frequently involves shaving off small but still badly needed amounts of money from low-wage workers' paychecks. A recent study found that workers who were victims of wage theft lost an average of $51 per week out of an average weekly wage of $339. Bernhardt et al., *supra*, at 5. Such amounts often do not add up to enough to make it economically feasible to hire an attorney to recover the lost wages. For that reason, "[t]he private right of action under the [WPCL]" includes a fee-shifting provision

[22] The statute says:

> (b) If, in an action under subsection (a) of this section, a court finds that an employer withheld the wage of an employee in violation of this subtitle and not as a result of a bona fide dispute, the court may award the employee an amount not exceeding 3 times the wage, and reasonable counsel fees and other costs.

Md. Code Ann., Lab. & Empl. § 3-507.2(b). "Bona fide" means "good faith." *See Admiral Mortg., Inc. v. Cooper*, 357 Md. 533, 543 (2000). "A finding of no 'bona fide dispute' is essentially a finding that the defendant acted in bad faith." *Barufaldi*, 2013 WL 5311223, at *8. "[C]ourts should exercise their discretion liberally in favor of awarding a reasonable fee" if the threshold finding of no bona fide dispute has been made. *Friolo v. Frankel*, 373 Md. 501, 518 (2003). *See also Barufaldi*, 2013 WL 5311223, at * 6 (same).

"designed to ensure that an employee will have the assistance of competent counsel in pursuing what is likely to be a relatively small claim." *Barufaldi*, 2013 WL 5311223, at *6.[23]

If this Court were to hold that § 3-502 does not require employers to pay workers in full, then the fee-shifting provision in § 3-507.2(b) would be unavailable in many wage theft cases. Workers could attempt to sue for violations of § 3-505 instead of violations of § 3-502; as noted previously, § 3-507.2 applies where either § 3-502 or § 3-505 has been violated.[24] But § 3-505 provides an enforcement mechanism only for the payment of wages due *after* the termination of an employment relationship. *See* Md. Code Ann, Lab. & Empl. § 3-505. Consequently, for most workers § 3-505 is not a reasonably available basis on which to sue.

There are two approaches that a worker could take in order to rely on § 3-505. First, a worker could wait until after the end of an employment relationship to sue for unpaid wages. But then the employer would doubtless argue that the worker is time-barred from seeking redress for any wages illegally withheld more than three years prior to the commencement of the suit. *See* Md. Code Ann., Cts. & Jd. Prc. § 5-101

[23] Additionally, "the attorneys' fee provision is part of general deterrence of unlawful wage withholding by employers. *Barufaldi*, 2013 WL 5311223, at *8.

[24] Section 3-507.2 provides:

> [I]f an employer fails to pay an employee in accordance with § 3-502 or § 3-505 of this title, after 2 weeks have elapsed from the date on which the employer is required to have paid the wages, the employee may bring an action against the employer to recover the unpaid wages.

Md. Code Ann., Lab. & Empl. § 3-507.2(a).

(establishing Maryland's general statute of limitations for civil suits at three years). Alternatively, a worker could quit his or her job in order to be able to argue that the employer had violated § 3-505 by failing to pay "all wages due for work that the employee performed before the termination of employment." But this course of action would have the huge disadvantage of requiring the worker to quit, a risky proposition for most workers in the current economic crisis. If this Court were to affirm the trial court's interpretation of § 3-502, it would produce the perverse result that only workers who relied on § 3-505 using one of these two unsatisfactory approaches, and not workers who continued working and relied on § 3-502, would be able to depend on the fee-shifting provision of the WPCL.

Workers might still be able to get attorneys' fees in cases that involve violations of the FLSA or the MWHL, since those statutes have their own fee-shifting provisions. *See* 29 U.S.C. § 216(b); Md. Code Ann., Lab. & Empl. § 3-427(d). But when an employer commits wage theft in a manner that does not violate the FLSA or the MWHL—for example, by paying a wage that is lower than was agreed upon but still greater than or equal to the minimum wage, or by routinely requiring employees to work off the clock—the victims of such practices would be unable to recover attorneys' fees through the WPCL, and hence unable to get representation. A few workers in this predicament might be able to get representation on a pro bono basis, but the demand for pro bono representation far exceeds the supply, and there are many societal problems other than

wage theft that demand the attention of legal services providers and private attorneys who do pro bono work.[25]

Section 3-507.2(b) of the WPCL is crucial to the legislative scheme not only because of its provision for attorneys' fees, but also because of its provision allowing courts to award up to treble damages against employers that are found to have withheld wages in bad faith.[26] Absent the deterrent effect of treble damages and attorneys' fees, an unscrupulous employer has a strong economic incentive to commit wage theft, because even in the unlikely event of an employee successfully bringing suit, the employer would only be liable for the amount of money that was owed to the employee in the first place. Consequently, without the WPCL's treble damages and fee-shifting provisions, it would

[25] A 2009 study by the Legal Services Corporation determined that nationwide, "roughly one-half of the people who seek help from LSC-funded legal aid providers are being denied service because of insufficient program resources." Legal Servs. Corp., *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans* 12 (2009), *available at* http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf. Likewise, a 2006 report of the Maryland Court of Appeals' Committee on Pro Bono Legal Service cited several studies showing that considerably less than half of low-income Marylanders with legal needs were able to obtain representation. Standing Comm. of the Court of Appeals on Pro Bono Legal Serv., *State Action Plan & Report* 3-5 (rev. 2006), *available at* http://www.courts.state.md.us/probono/pdfs/stateactionplan12-18-06.pdf.

[26] Md. Code Ann., Lab. & Empl. § 3-507.2(b) ("If . . . a court finds that an employer withheld the wage of an employee in violation of this subtitle and not as a result of a bona fide dispute, the court may award the employee an amount not exceeding 3 times the wage.").

frequently be cost-effective for unscrupulous employers to commit wage theft—and correspondingly difficult for law-abiding businesses to compete fairly.[27]

The applicability of § 3-507.2(b) is particularly important because it is the only possible source of treble damages in wage theft cases under state law. The MWHL has no similar provision.[28] But under the interpretation of § 3-502 adopted by the Court of Special Appeals, § 3-507.2(b) would not apply to any case in which an employee is paid regularly but is paid less—even far less—than he or she is owed.

Section 3-502 of the WPCL plays an important role in protecting workers. The courts below mistakenly held that § 3-502 does not require employers to pay employees

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[27] The treble damages provision also has another important purpose: it compensates workers for the harm they often suffer as a result of not being paid on time and in full, as the Court of Appeals has eloquently explained:

> The additional amount . . . may also have a compensatory element to it, especially in a wage-withholding case. The Legislature no doubt recognized, as we do, that most working people are dependent on the regular payment of the wages due them. If payment is withheld, they may face more than just the economic loss of the money, which pre-judgment interest allowable as a matter of common law ordinarily reimburses. They may suffer significant consequences from being unable to meet their own weekly or monthly obligations, ranging from embarrassment, to late charges, to repossessions, eviction, and, if the employee is responsible for child support, the prospect of coercive court proceedings and the loss of various licenses and privileges. Recovery later of just the unpaid wages . . . , even if accompanied by pre-judgment interest, may not begin to compensate for those consequential losses.

Admiral Mortg., Inc. v. Cooper, 357 Md. 533, 549-50 (2000).

[28] The FLSA requires courts to award liquidated damages equal to the amount of unpaid minimum wages or overtime wages recovered by the employee. 29 U.S.C. § 216(b). Thus, in cases where it applies, the FLSA has some deterrent effect on wage theft, but a court can award a higher amount under the WPCL than under the FLSA, and the FLSA only addresses failure to pay minimum wage and overtime.

in full. If affirmed by this Court, this holding will make it easier for employers to commit wage theft with impunity and will deprive many hard-working Marylanders of any effective judicial remedy. Under the lower courts' interpretation of the WPCL, a worker who has suffered wage theft essentially can only sue for breach of contract (or quantum meruit), unless the type of wage theft at issue also violates the MWHL or FLSA. Breach-of-contract suits are an ineffective remedy for low-wage workers because they provide no way to recover attorneys' fees and hence no way to obtain representation from private counsel. And the MWHL addresses only minimum wage and overtime and lacks the deterrent and compensatory effects provided by the WPCL's treble damages provision. In order that the WPCL may effectively protect low-wage workers from wage theft, this Court should apply the ordinary, common-sense meaning of the word "pay" and hold that § 3-502(a) requires employers to pay workers in full.

III. Class action suits are a crucial means of defending workers against wage theft, especially when small amounts of wages have been withheld from numerous workers through an employer's unlawful policy or practice.

The Court of Special Appeals affirmed the trial court's denial of class certification on the basis that Marshall had not satisfied the Rule 2-231(a) requirement of commonality. *See* Md. Rule 2-231(a)(2). If this Court agrees that there was a lack of commonality, such a holding would seriously impair the ability of many low-wage workers in Maryland to recover unlawfully withheld wages. Class action suits are often the only practical and effective way to challenge the legality of an employer's policies and practices regarding wage payment.

This case calls for the Court to decide whether to apply the holding in *Creveling v. Government Employees Insurance Co.*, 376 Md. 72 (2003) to a proposed class action in a case concerning low-wage workers. The Court of Special Appeals based its finding that there was no commonality on *Creveling*'s holding that, where the only remaining issues in a case are individual in nature, a class action is inappropriate. However, *Creveling* is readily distinguishable from the instant case. *Creveling* concerned proposed class actions against two auto insurance companies, alleging breach of contract for the companies' failure to pay the full amount of the plaintiffs' Personal Injury Protection (PIP) insurance claims where a third party had incurred some or all of the costs of treatment. *Id*. at 79. Prior to *Creveling*, this Court had held in *Dutta v. State Farm*, 363 Md. 540 (2001), that insurers must pay PIP benefits to an insured regardless of who incurred the actual expense of treatment. *See id.* at 563-64. Thus, at the time the plaintiffs filed suit in *Creveling*, it was clearly established that "an insurer must pay PIP benefits to an insured when an expense is incurred on his or her behalf, regardless of whether a collateral source paid the bill." *Creveling*, 376 Md. at 92. Because the only legal question common to the *Creveling* class had already been answered, this Court found that "only individual issues remain to be resolved in this litigation," such as whether the medical treatment received by a particular claimant was necessary, and whether the charges for that treatment were reasonable. *Id*. at 95. Accordingly, this Court affirmed the trial court's ruling that plaintiffs had failed to satisfy the commonality requirement of § 2-231(a). *Id*. at 104.

In contrast to *Creveling*, this case does not involve a Safeway policy that has clearly been declared illegal. Rather, counsel for Safeway stated at trial that Safeway had

changed its policy in regards to garnishment to bring that policy into compliance with federal requirements. There is no court ruling, in this case or otherwise, holding that Safeway's former policy violated state or federal law, as in *Creveling*. For that reason, there is nothing to prevent Safeway from returning to its unlawful practice in the future.

Furthermore, the individualized determinations that would need to be made in the case at issue are quite different from those in *Creveling*. Unlike insurance claims, where a court would have to determine whether there was an accident, whether the insured was injured, if the treatment charges were reasonable, and so forth, here, a court would only need to review simple calculations based on Safeway's payroll records and determine whether Safeway paid all wages due. Based on the differences between the instant case and *Creveling*, and the important remedial purposes of the WPCL not present in *Creveling*, the Court's holding regarding commonality in that case should not bar class certification in this context.

It is important that the Court maintain class action litigation as an option in cases of this kind because a class action has many significant advantages over individual litigation as a vehicle for enforcing laws against wage theft. Class actions are efficient. A potential class plaintiff is more likely than an individual employee to find legal representation. As a practical matter, class actions make it less likely that workers will be deterred by the time commitment necessary to bring litigation or intimidated by the too-real threat of retaliation. And class actions are a particularly effective way to encourage employer compliance with wage and hours laws. Without the availability of class

actions, it would be much more difficult for workers to enforce their rights to the wages that they have earned.

Class actions are an important litigation tool for wage and hour cases because they provide by far the most efficient resolution of multiple related claims. Many forms of wage theft are the result of employers' illegal policies or practices that affect numerous workers in essentially the same way. For example, an employer may misclassify all its workers as independent contractors in order to avoid paying overtime wages and payroll taxes. Or an employer may regularly require its employees to work off the clock for some length of time, or may routinely shave an hour or two off each worker's paycheck. Indeed, probably most instances of wage theft happen because of some unlawful practice that affects many, if not all, of an employer's workers. Thus, it is not surprising that class action litigation (as well as collective action litigation under the FLSA[29]) has played an important role in recovering stolen wages, putting a stop to illegal practices by employers, and deterring similar practices by other employers. When the central issue that is contested in a case is whether an employer has unlawfully withheld wages that its employees have rightfully earned, a class action is often the preferable way to resolve the issue; litigating one case instead of many should require the least amount of work by judges, court staff, attorneys on both sides, and the parties themselves. This is especially

[29] The principal difference between a class action and a FLSA collective action is that "the FLSA requires potential plaintiffs to opt *in* to participate in an action, while the plaintiffs in a . . . class action are included in the case unless they opt *out*." *Ervin v. OS Rest. Servs., Inc.*, 632 F.3d 971, 973 (7th Cir. 2011). Both a class action for state law violations and a collective action for FLSA violations can be maintained in the same case. *Id.* at 977.

clear when the amount of money owed to each employee can be determined using the employer's records, resulting in minimal need for individualized litigation to determine facts such as how many hours each employee worked.[30]

The relatively small amounts of money involved in many wage theft cases also make class action litigation particularly appropriate. As the Supreme Court has explained, the purpose of a class action is to be employed in just these types of cases:

> The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights. A class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone's (usually an attorney's) labor.

Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 617 (1997) (quoting *Mace v. Van Ru Credit Corp.*, 109 F.3d 338, 344 (7th Cir. 1997)). Even where statutory attorneys' fees are available, these fees are often insufficient to justify taking a case where "the typically modest settlement amounts do not leave much for fees and courts routinely reduce even prevailing attorneys' fees." Scott A. Moss & Nantiya Ruan, *The Second-Class Class Action: How Courts Thwart Wage Rights by Misapplying Class Action Rules*, 61 Am. U.

[30] When an employer's records do *not* reflect the actual hours worked by each employee (because the employer did not keep honest records or failed to keep such records at all), that does not necessarily mean that class action litigation is inappropriate. Under those circumstances, workers "need only produce evidence sufficient to show 'as a just and reasonable inference' the amount and extent of work for which employees were not compensated adequately"; they are "not required to identify with specificity each and every employee who was undercompensated and for exactly what time period." *Martin v. Deiriggi*, 985 F.2d 129, 132 (4th Cir. 1992) (quoting *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687 (1946)) (applying the FLSA). This approach allows workers to attempt to establish the approximate number of hours they worked through a process of class-wide rather than individual litigation.

L. Rev. 523, 562 (2012). The availability of class actions is thus important to ensure that victims of wage theft—who often do not have the knowledge, the time, or the language skills to represent themselves—can find counsel willing and able to represent them.

Class actions also increase the likelihood that more workers will have access to justice as a practical matter. Due to cost and time constraints, individual low-wage workers often find it too difficult to obtain legal representation and file suit, particularly since they are often busy working well over forty hours per week in order to support their families. In a class action, only one or two workers must put in the time and effort, and the entire class is provided with representation before a court.

For similar reasons, class actions make it more likely that workers will have access to justice despite the threat of retaliation. Unlawful retaliation is a significant barrier to workers who are not being paid the wages that they are owed. A 2009 study found that employers had illegally retaliated against 43% of the low-wage workers surveyed who had either attempted to form a union or made a complaint to their employers within the past year. *See* Bernhardt et. al., *supra*, at 25. The retaliation took various forms, including cutting the workers' pay and hours, firing them, and threatening to call immigration enforcement about them. *Id.* The study also found that 20% of the workers surveyed reported that they had not complained despite serious problems on the job. *Id.* at 24. Over 60% of this group reported that they had refrained from complaining because they were afraid that their employers would retaliate against them by cutting their wages or hours or by firing them. *Id.* In a class action, most workers can avoid the risk of retaliation because all but a few of the class may remain anonymous until damages are

assessed. Consequently, the availability of class actions makes it more likely that the rights of more workers will be redressed despite workers' justified fear of retaliation.

Finally, class actions are particularly helpful in the wage theft context because they are an effective way to encourage employers to pay their workers in accordance with the law. "[P]laintiffs' attorneys note that upon service of a class complaint, workers report that the employer changes its wage practices to come into compliance with the law." Ruan, *supra*, at 1122. "The sheer magnitude and scope of class litigation enhances the likelihood that a targeted employer will comply with the law." *Id.* By contrast, even if an individual successfully litigates a wage and hour suit involving a small sum, an employer may have little to no incentive to follow the law with respect to its other employees. The availability of class actions thus enhances the likelihood that those workers who never would have brought an individual suit—including those who did not even know that they were being underpaid in violation of the law—will be paid the full amount of wages that they are owed.

Although the facts of the present case are atypical in some ways (including the relatively small amount of money withheld and the fact that the employer apparently did not pocket that money itself), this case nonetheless shares with other wage theft cases some major features that make class actions superior to individual litigation. The case involves amounts of money that are almost surely too low to justify litigating individual cases for each worker affected; the amount of money owed to each member of the

proposed class can be calculated using the employer's business records;[31] and only one employee has risen to the challenge of finding a lawyer and filing suit. Furthermore, unlike in *Creveling*, where the defendant insurance companies had initiated a "remediation" program to reimburse insureds for medical bills paid by third parties on their behalf, *see Creveling*, 376 Md. at 86, Safeway has given no indication that it intends to return all improperly garnished wages to the affected class of employees. Thus, the only way that the class members will recover the wages owed them, absent class certification, is through hundreds of individual suits.

In order to ensure the efficient resolution of disputes involving allegations of systematic wage theft from low-wage workers, and in order to make sure that such workers will have meaningful access to justice in future cases, this Court should reverse the holding of the Court of Special Appeals affirming the trial court's denial of class certification. This Court should find that the facts as presented by Marshall satisfy the commonality prerequisite of Rule 2-231(a).

[31] This calculation would involve finding the difference between how much was actually garnished from an employee's wages and how much could properly have been garnished under applicable law.

CONCLUSION

For the reasons given above, this Court should reject the lower court's holding that Md. Code Ann., Lab. & Empl. § 3-502 does not require employees to pay workers in full, and accordingly reverse the dismissal of the plaintiff's claim under the WPCL. In addition, this Court should reverse the lower courts' determination that a class action is not an available method of adjudication under the circumstances of this case.

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Respectfully submitted,

Debra Gardner
Public Justice Center
One North Charles Street, Suite 200
Baltimore, MD 21201
T: 410-625-9409
F: 410-625-9423
gardnerd@publicjustice.org

Counsel for Amici Curiae

STATUTES AND RULES

Maryland Wage Payment and Collection Law
Md. Code Ann., Lab. & Empl. §§ 3-501 to 3-509

§ 3-501. Definitions

(a) In this subtitle the following words have the meanings indicated.

(b) "Employer" includes any person who employs an individual in the State or a successor of the person.

(c) (1) "Wage" means all compensation that is due to an employee for employment.

(2) "Wage" includes:

(i) a bonus;

(ii) a commission;

(iii) a fringe benefit;

(iv) overtime wages; or

(v) any other remuneration promised for service.

§ 3-502. Payment of wage by employer

(a) (1) Each employer:

(i) shall set regular pay periods; and

(ii) except as provided in paragraph (2) of this subsection, shall pay each employee at least once in every 2 weeks or twice in each month.

(2) An employer may pay an administrative, executive, or professional employee less frequently than required under paragraph (1)(ii) of this subsection.

(b) If the regular payday of an employee is a nonworkday, an employer shall pay the employee on the preceding workday.

(c) Each employer shall pay a wage:

(1) in United States currency; or

(2) by a check that, on demand, is convertible at face value into United States currency.

(d) (1) In this subsection, "employer" includes a governmental unit.

(2) An employer may not print or cause to be printed an employee's Social Security number on the employee's wage payment check, an attachment to an employee's wage payment check, a notice of direct deposit of an employee's wage, or a notice of credit of an employee's wage to a debit card or card account.

(e) This section does not prohibit the:

(1) direct deposit of the wage of an employee into a personal bank account of the employee in accordance with an authorization of the employee; or

(2) credit of the wage of an employee to a debit card or card account from which the employee is able to access the funds through withdrawal, purchase, or transfer if:

(i) authorized by the employee; and

(ii) any fees applicable to the debit card or card account are disclosed to the employee in writing in at least 12 point font.

(f) An agreement to work for less than the wage required under this subtitle is void.

§ 3-503. Deductions by employer

An employer may not make a deduction from the wage of an employee unless the deduction is:

(1) ordered by a court of competent jurisdiction;

(2) authorized expressly in writing by the employee;

(3) allowed by the Commissioner because the employee has received full consideration for the deduction; or

(4) otherwise made in accordance with any law or any rule or regulation issued by a governmental unit.

§ 3-504. Notice regarding wages and paydays

(a) An employer shall give to each employee:

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

(i) the rate of pay of the employee;

(ii) the regular paydays that the employer sets; and

(iii) leave benefits;

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

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

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

§ 3-505. Payment on cessation of employment

(a) Except as provided in subsection (b) of this section, each employer shall pay an employee or the authorized representative of an employee all wages due for work that the employee performed before the termination of employment, on or before the day on which the employee would have been paid the wages if the employment had not been terminated.

(b) An employer is not required to pay accrued leave to an employee if:

(1) the employer has a written policy that limits the compensation of accrued leave to employees;

(2) the employer notified the employee of the employer's leave benefits in accordance with § 3-504(a)(1) of this subtitle; and

(3) the employee is not entitled to payment for accrued leave at termination under the terms of the employer's written policy.

§ 3-506. Reciprocal agreements by Commissioner

To collect wages that employers unlawfully withhold, the Commissioner may enter into a reciprocal agreement with a labor department or other similar unit that has jurisdiction in another state over wage collection.

§ 3-507. Enforcement by Commissioner

(a) Whenever the Commissioner determines that this subtitle has been violated, the Commissioner:

(1) may try to resolve any issue involved in the violation informally by mediation;

(2) with the written consent of the employee, may ask the Attorney General to bring an action in accordance with this section on behalf of the employee; and

(3) may bring an action on behalf of an employee in the county where the violation allegedly occurred.

(b) (1) If, in an action under subsection (a) of this section, a court finds that an employer withheld the wage of an employee in violation of this subtitle and not as a result of a bona fide dispute, the court may award the employee an amount not exceeding 3 times the wage, and reasonable counsel fees and other costs.

(2) If wages of an employee are recovered under this section, they shall be paid to the employee without cost to the employee.

§ 3-507.1. Order to pay wages

(a) On receipt of a complaint for failure to pay wages that do not exceed $3,000, the Commissioner shall:

(1) send a copy of the complaint to the employer alleged to have failed to pay wages; and

(2) require a written response to the complaint within 15 days.

(b) (1) The Commissioner:

(i) shall review the complaint and any response to it; and

(ii) may investigate the claim.

(2) On the basis of the review and any investigation, the Commissioner may:

(i) issue an order to pay wages under subsection (c) of this section if the Commissioner determines that this subtitle has been violated; or

(ii) dismiss the claim.

(c) (1) The Commissioner may issue an order to pay wages that:

(i) describes the alleged violation;

(ii) directs payment of wages to the complainant; and

(iii) if appropriate, orders the payment of interest at the rate of 5% per year accruing from the date the wages are owed.

(2) The Commissioner shall send the order to pay wages to the complainant and to the employer at the employer's last known business address by both regular mail and certified mail, return receipt requested.

(3) Within 30 days after receipt of the order to pay wages, the employer may request a de novo administrative hearing, which shall be conducted in accordance with Title 10, Subtitle 2 of the State Government Article.

(4) On receipt of a request for a hearing, the Commissioner shall schedule a hearing.

(5) If a hearing is not requested, the order to pay wages shall become a final order of the Commissioner.

(6) (i) If a petition for review is not filed within 30 days of the issuance of the final order, the Commissioner may proceed in District Court of the county where the employer resides or has a place of business to enforce payment.

(ii) In a proceeding under this subsection, the Commissioner is entitled to judgment in the amount of the order to pay wages and any interest due on a showing that:

1. the order to pay wages and interest, if any, was assessed against the employer;

2. no appeal is pending;

3. the ordered wages and interest, if any, are wholly or partly unpaid; and

4. the employer was duly served with a copy of the order to pay wages and interest, if any, in accordance with this section.

§ 3-507.2. Recovery of unpaid wages

(a) Notwithstanding any remedy available under § 3-507 of this subtitle, if an employer fails to pay an employee in accordance with § 3-502 or § 3-505 of this subtitle, after 2 weeks have elapsed from the date on which the employer is required to have paid the wages, the employee may bring an action against the employer to recover the unpaid wages.

(b) If, in an action under subsection (a) of this section, a court finds that an employer withheld the wage of an employee in violation of this subtitle and not as a result of a bona fide dispute, the court may award the employee an amount not exceeding 3 times the wage, and reasonable counsel fees and other costs.

§ 3-508. Acts prohibited; penalties

(a) An employer may not willfully violate this subtitle.

(b) An employee may not knowingly make to a governmental unit or official of a governmental unit a false statement with respect to any investigation or proceeding under this subtitle, with the intent that the governmental unit or official consider or otherwise act in connection with the statement.

(c) (1) An employer who violates subsection (a) of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $1,000.

(2) An employee who violates subsection (b) of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $500.

§ 3-509. Short title

This subtitle may be cited as the Maryland Wage Payment and Collection Law.

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Maryland Wage and Hour Law
Md. Code Ann., Lab. & Empl. §§ 3-401 to 3-431 (Excerpts)

§ 3-403. Extent of Subtitle

(a) This subtitle does not apply to an individual who:

(1) is employed in a capacity that the Commissioner defines, by regulation, to be administrative, executive, or professional;

(2) is employed in a nonadministrative capacity at an organized camp, including a resident or day camp;

(3) is under the age of 16 years and is employed no more than 20 hours in a week;

(4) is employed as an outside salesman;

(5) is compensated on a commission basis;

(6) is at least 62 years old and is employed no more than 25 hours in a week;

(7) is a child, parent, spouse, or other member of the immediate family of the employer;

(8) is employed in a motion picture or drive-in theater;

(9) is employed as part of the training in a special education program for emotionally, mentally, or physically handicapped students under a public school system;

(10) is employed by an employer who is engaged in canning, freezing, packing, or first processing of perishable or seasonal fresh fruits, vegetables, or horticultural commodities, poultry, or seafood;

(11) engages in the activities of a charitable, educational, not for profit, or religious organization if:

(i) the service is provided gratuitously; and

(ii) there is, in fact, no employer-employee relationship; or

(12) is employed in a cafe, drive-in, drugstore, restaurant, tavern, or other similar establishment that:

(i) sells food and drink for consumption on the premises; and

(ii) has an annual gross income of $250,000 or less.

(b) This subtitle does not apply to an individual who:

(1) is employed in agriculture if, during each quarter of the preceding calendar year, the employer used no more than 500 agricultural-worker days;

(2) is engaged principally in the range production of livestock; or

(3) is employed as a hand-harvest laborer and is paid on a piece-rate basis in an operation that, in the region of employment, has been and customarily and generally is recognized as having been paid on that basis, if:

(i) the individual:

1. commutes daily from the permanent residence of the individual to the farm where the individual is employed; and

2. during the preceding calendar year, was employed in agriculture less than 13 weeks; or

(ii) the individual:

1. is under the age of 17;

2. is employed on the same farm as a parent of the individual or a person standing in the place of the parent; and

3. is paid at the same rate that an employee who is at least 17 years old is paid on the same farm.

§ 3-415. Payment of overtime to employees

(a) Except as otherwise provided in this section, each employer shall pay an overtime wage of at least 1.5 times the usual hourly wage, computed in accordance with § 3-420 of this subtitle.

(b) This section does not apply to an employer that is:

(1) subject to 49 U.S.C. § 10501;

(2) an establishment that is a hotel or motel;

(3) an establishment that is a restaurant;

(4) considered a gasoline service station because the employer is engaged primarily in selling gasoline and lubricating oil, even if the employer sells other merchandise or performs minor repair work;

(5) a bona fide private country club;

(6) a not for profit entity and is engaged primarily in providing temporary at-home care services, such as companionship or delivery of prepared meals, to aged or sick individuals, individuals with disabilities, or individuals with a mental disorder;

(7) a not for profit concert promoter, legitimate theater, music festival, music pavilion, or theatrical show; or

(8) an amusement or recreational establishment, including a swimming pool, if the establishment:

(i) operates for no more than 7 months in a calendar year; or

(ii) for any 6 months during the preceding calendar year, has average receipts in excess of one-third of the average receipts for the other 6 months.

(c) This section does not apply to an employer with respect to:

(1) an employee for whom the United States Secretary of Transportation may set qualifications and maximum hours of service under 49 U.S.C. § 31502;

(2) a mechanic, partsperson, or salesperson who primarily sells or services automobiles, farm equipment, trailers, or trucks, if the employer is engaged primarily in selling those vehicles to ultimate buyers and is not a manufacturer; or

(3) a driver if the employer is engaged in the business of operating taxicabs.

§ 3-427. **Action against employer**

(a) If an employer pays an employee less than the wage required under this subtitle, the employee may bring an action against the employer to recover the difference between the wage paid to the employee and the wage required under this subtitle.

(b) On the written request of an employee who is entitled to bring an action under this section, the Commissioner may:

(1) take an assignment of the claim in trust for the employee;

(2) ask the Attorney General to bring an action in accordance with this section on behalf of the employee; and

(3) consolidate 2 or more claims against an employer.

(c) The agreement of an employee to work for less than the wage to which the employee is entitled under this subtitle is not a defense to an action under this section.

(d) If a court determines that an employee is entitled to recovery in an action under this section, the court may allow against the employer reasonable counsel fees and other costs.

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Federal Fair Labor Standards Act
29 U.S.C. §§ 201-219 (Excerpts)

29 U.S.C. § 207(a)(1). Maximum hours

(a) Employees engaged in interstate commerce; additional applicability to employees pursuant to subsequent amendatory provisions

(1) Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

29 U.S.C. § 213. Exemptions

(a) Minimum wage and maximum hour requirements

The provisions of section 206 (except subsection (d) in the case of paragraph (1) of this subsection) and section 207 of this title shall not apply with respect to--

(1) any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of subchapter II of chapter 5 of Title 5, except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 per centum of his hours worked in the workweek are devoted to such activities); or

(2) Repealed. Pub.L. 101-157, § 3(c)(1), Nov. 17, 1989, 103 Stat. 939

(3) any employee employed by an establishment which is an amusement or recreational establishment, organized camp, or religious or non-profit educational conference center, if (A) it does not operate for more than seven months in any calendar year, or (B) during the preceding calendar year, its average receipts for any six months of such year were not more than 33 ⅓ per centum of its average receipts for the other six months of such year, except that the exemption from sections 206 and 207 of this title provided by this paragraph does not apply with respect to any employee of a private entity engaged in providing services or facilities (other than, in the case of the exemption from section 206 of this title, a private entity engaged in providing services and facilities directly related to skiing) in a national park or a national forest, or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture; or

(4) Repealed. Pub.L. 101-157, § 3(c)(1), Nov. 17, 1989, 103 Stat. 939

(5) any employee employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any such employee; or

(6) any employee employed in agriculture (A) if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agricultural labor, (B) if such employee is the parent, spouse, child, or other member of his employer's immediate family, (C) if such employee (i) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) commutes

daily from his permanent residence to the farm on which he is so employed, and (iii) has been employed in agriculture less than thirteen weeks during the preceding calendar year, (D) if such employee (other than an employee described in clause (C) of this subsection) (i) is sixteen years of age or under and is employed as a hand harvest laborer, is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (ii) is employed on the same farm as his parent or person standing in the place of his parent, and (iii) is paid at the same piece rate as employees over age sixteen are paid on the same farm, or (E) if such employee is principally engaged in the range production of livestock; or

(7) any employee to the extent that such employee is exempted by regulations, order, or certificate of the Secretary issued under section 214 of this title; or

(8) any employee employed in connection with the publication of any weekly, semiweekly, or
daily newspaper with a circulation of less than four thousand the major part of which circulation is within the county where published or counties contiguous thereto; or

(9) Repealed. Pub.L. 93-259, § 23(a)(1), Apr. 8, 1974, 88 Stat. 69

(10) any switchboard operator employed by an independently owned public telephone company which has not more than seven hundred and fifty stations; or

(11) Repealed. Pub.L. 93-259, § 10(a), Apr. 8, 1974, 88 Stat. 63

(12) any employee employed as a seaman on a vessel other than an American vessel; or

(13), (14) Repealed. Pub.L. 93-259, §§ 9(b)(1), 23(b)(1), Apr. 8, 1974, 88 Stat. 63, 69

(15) any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary); or

(16) a criminal investigator who is paid availability pay under section 5545a of Title 5; or

(17) any employee who is a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker, whose primary duty is--

(A) the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;

(B) the design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

(C) the design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or

(D) a combination of duties described in subparagraphs (A), (B), and (C) the performance of which requires the same level of skills, and
who, in the case of an employee who is compensated on an hourly basis, is compensated at a rate of not less than $27.63 an hour.

(b) Maximum hour requirements

The provisions of section 207 of this title shall not apply with respect to--

(1) any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 31502 of Title 49; or

(2) any employee of an employer engaged in the operation of a rail carrier subject to part A of subtitle IV of Title 49; or

(3) any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act [45 U.S.C.A. § 181 et seq.]; or

(4) Repealed. Pub.L. 93-259, § 11(c), Apr. 8, 1974, 88 Stat. 64

(5) any individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state; or

(6) any employee employed as a seaman; or

(7) Repealed. Pub.L. 93-259, § 21(b)(3), Apr. 8, 1974, 88 Stat. 68

(8) Repealed. Pub.L. 95-151, § 14(b), Nov. 1, 1977, 91 Stat. 1252

(9) any employee employed as an announcer, news editor, or chief engineer by a radio or television station the major studio of which is located (A) in a city or town of one

hundred thousand population or less, according to the latest available decennial census figures as compiled by the Bureau of the Census, except where such city or town is part of a standard metropolitan statistical area, as defined and designated by the Office of Management and Budget, which has a total population in excess of one hundred thousand, or (B) in a city or town of twenty-five thousand population or less, which is part of such an area but is at least 40 airline miles from the principal city in such area; or

(10)(A) any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers; or

(B) any salesman primarily engaged in selling trailers, boats, or aircraft, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers; or

(11) any employee employed as a driver or driver's helper making local deliveries, who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the Secretary shall find that such plan has the general purpose and effect of reducing hours worked by such employees to, or below, the maximum workweek applicable to them under section 207(a) of this title; or

(12) any employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, or operated on a sharecrop basis, and which are used exclusively for supply and storing of water, at least 90 percent of which was ultimately delivered for agricultural purposes during the preceding calendar year; or

(13) any employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on his own account or in conjunction with other farmers, if such employee (A) is primarily employed during his workweek in agriculture by such farmer, and (B) is paid for his employment in connection with such livestock auction operations at a wage rate not less than that prescribed by section 206(a)(1) of this title; or

(14) any employee employed within the area of production (as defined by the Secretary) by an establishment commonly recognized as a country elevator, including such an establishment which sells products and services used in the operation of a farm, if no more than five employees are employed in the establishment in such operations; or

(15) any employee engaged in the processing of maple sap into sugar (other than refined sugar) or syrup; or

(16) any employee engaged (A) in the transportation and preparation for transportation of fruits or vegetables, whether or not performed by the farmer, from the farm to a place of first processing or first marketing within the same State, or (B) in transportation, whether or not performed by the farmer, between the farm and any point within the same State of persons employed or to be employed in the harvesting of fruits or vegetables; or

(17) any driver employed by an employer engaged in the business of operating taxicabs; or

(18), (19) Repealed. Pub.L. 93-259, §§ 15(c), 16(b), Apr. 8, 1974, 88 Stat. 65

(20) any employee of a public agency who in any workweek is employed in fire protection activities or any employee of a public agency who in any workweek is employed in law enforcement activities (including security personnel in correctional institutions), if the public agency employs during the workweek less than 5 employees in fire protection or law enforcement activities, as the case may be; or

(21) any employee who is employed in domestic service in a household and who resides in such household; or

(22) Repealed. Pub.L. 95-151, § 5, Nov. 1, 1977, 91 Stat. 1249

(23) Repealed. Pub.L. 93-259, § 10(b)(3), Apr. 8, 1974, 88 Stat. 64

(24) any employee who is employed with his spouse by a nonprofit educational institution to serve as the parents of children--

> **(A)** who are orphans or one of whose natural parents is deceased, or
>
> **(B)** who are enrolled in such institution and reside in residential facilities of the institution,
>
> while such children are in residence at such institution, if such employee and his spouse reside in such facilities, receive, without cost, board and lodging from such institution, and are together compensated, on a cash basis, at an annual rate of not less than $10,000; or

(25), (26) Repealed. Pub.L. 95-151, §§ 6(a), 7(a), Nov. 1, 1977, 91 Stat. 1249, 1250

(27) any employee employed by an establishment which is a motion picture theater; or

(28) any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight;

(29) any employee of an amusement or recreational establishment located in a national park or national forest or on land in the National Wildlife Refuge System if such employee (A) is an employee of a private entity engaged in providing services or facilities in a national park or national forest, or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture, and (B) receives compensation for employment in excess of fifty-six hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or

(30) a criminal investigator who is paid availability pay under section 5545a of Title 5.

(c) Child labor requirements

(1) Except as provided in paragraph (2) or (4), the provisions of section 212 of this title relating to child labor shall not apply to any employee employed in agriculture outside of school hours for the school district where such employee is living while he is so employed, if such employee--

(A) is less than twelve years of age and (i) is employed by his parent, or by a person standing in the place of his parent, on a farm owned or operated by such parent or person, or (ii) is employed, with the consent of his parent or person standing in the place of his parent, on a farm, none of the employees of which are (because of subsection (a)(6)(A) of this section) required to be paid at the wage rate prescribed by section 206(a)(5) of this title,

(B) is twelve years or thirteen years of age and (i) such employment is with the consent of his parent or person standing in the place of his parent, or (ii) his parent or such person is employed on the same farm as such employee, or

(C) is fourteen years of age or older.

(2) The provisions of section 212 of this title relating to child labor shall apply to an employee below the age of sixteen employed in agriculture in an occupation that the

Secretary of Labor finds and declares to be particularly hazardous for the employment of children below the age of sixteen, except where such employee is employed by his parent or by a person standing in the place of his parent on a farm owned or operated by such parent or person.

(3) The provisions of section 212 of this title relating to child labor shall not apply to any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions.

(4)(A) An employer or group of employers may apply to the Secretary for a waiver of the application of section 212 of this title to the employment for not more than eight weeks in any calendar year of individuals who are less than twelve years of age, but not less than ten years of age, as hand harvest laborers in an agricultural operation which has been, and is customarily and generally recognized as being, paid on a piece rate basis in the region in which such individuals would be employed. The Secretary may not grant such a waiver unless he finds, based on objective data submitted by the applicant, that--

> **(i)** the crop to be harvested is one with a particularly short harvesting season and the application of section 212 of this title would cause severe economic disruption in the industry of the employer or group of employers applying for the waiver;
>
> **(ii)** the employment of the individuals to whom the waiver would apply would not be deleterious to their health or well-being;
>
> **(iii)** the level and type of pesticides and other chemicals used would not have an adverse effect on the health or well-being of the individuals to whom the waiver would apply;
>
> **(iv)** individuals age twelve and above are not available for such employment; and
>
> **(v)** the industry of such employer or group of employers has traditionally and substantially employed individuals under twelve years of age without displacing substantial job opportunities for individuals over sixteen years of age.

(B) Any waiver granted by the Secretary under subparagraph (A) shall require that--

> **(i)** the individuals employed under such waiver be employed outside of school hours for the school district where they are living while so employed;

(ii) such individuals while so employed commute daily from their permanent residence to the farm on which they are so employed; and

(iii) such individuals be employed under such waiver (I) for not more than eight weeks between June 1 and October 15 of any calendar year, and (II) in accordance with such other terms and conditions as the Secretary shall prescribe for such individuals' protection.

(5) (A) In the administration and enforcement of the child labor provisions of this chapter, employees who are 16 and 17 years of age shall be permitted to load materials into, but not operate or unload materials from, scrap paper balers and paper box compactors--

(i) that are safe for 16- and 17-year-old employees loading the scrap paper balers or paper box compactors; and

(ii) that cannot be operated while being loaded.

(B) For purposes of subparagraph (A), scrap paper balers and paper box compactors shall be considered safe for 16- or 17-year-old employees to load only if--

(i) (I) the scrap paper balers and paper box compactors meet the American National Standards Institute's Standard ANSI Z245.5-1990 for scrap paper balers and Standard ANSI Z245.2-1992 for paper box compactors; or

(II) the scrap paper balers and paper box compactors meet an applicable standard that is adopted by the American National Standards Institute after August 6, 1996, and that is certified by the Secretary to be at least as protective of the safety of minors as the standard described in subclause (I);

(ii) the scrap paper balers and paper box compactors include an on-off switch incorporating a key-lock or other system and the control of the system is maintained in the custody of employees who are 18 years of age or older;

(iii) the on-off switch of the scrap paper balers and paper box compactors is maintained in an off position when the scrap paper balers and paper box compactors are not in operation; and

(iv) the employer of 16- and 17-year-old employees provides notice, and posts a notice, on the scrap paper balers and paper box compactors stating that—

(I) the scrap paper balers and paper box compactors meet the applicable standard described in clause (i);

(II) 16- and 17-year-old employees may only load the scrap paper balers and paper box compactors; and

(III) any employee under the age of 18 may not operate or unload the scrap paper balers and paper box compactors.
The Secretary shall publish in the Federal Register a standard that is adopted by the American National Standards Institute for scrap paper balers or paper box compactors and certified by the Secretary to be protective of the safety of minors under clause (i)(II).

(C)(i) Employers shall prepare and submit to the Secretary reports--

(I) on any injury to an employee under the age of 18 that requires medical treatment (other than first aid) resulting from the employee's contact with a scrap paper baler or paper box compactor during the loading, operation, or unloading of the baler or compactor; and

(II) on any fatality of an employee under the age of 18 resulting from the employee's contact with a scrap paper baler or paper box compactor during the loading, operation, or unloading of the baler or compactor.

(ii) The reports described in clause (i) shall be used by the Secretary to determine whether or not the implementation of subparagraph (A) has had any effect on the safety of children.

(iii) The reports described in clause (i) shall provide--

(I) the name, telephone number, and address of the employer and the address of the place of employment where the incident occurred;

(II) the name, telephone number, and address of the employee who suffered an injury or death as a result of the incident;

(III) the date of the incident;

(IV) a description of the injury and a narrative describing how the incident occurred; and

(V) the name of the manufacturer and the model number of the scrap paper baler or paper box compactor involved in the incident.

(iv) The reports described in clause (i) shall be submitted to the Secretary promptly, but not later than 10 days after the date on which an incident relating to an injury or death occurred.

(v) The Secretary may not rely solely on the reports described in clause (i) as the basis for making a determination that any of the employers described in clause (i) has violated a provision of section 212 of this title relating to oppressive child labor or a regulation or order issued pursuant to section 212 of this title. The Secretary shall, prior to making such a determination, conduct an investigation and inspection in accordance with section 212(b) of this title.

(vi) The reporting requirements of this subparagraph shall expire 2 years after August 6, 1996.

(6) In the administration and enforcement of the child labor provisions of this chapter, employees who are under 17 years of age may not drive automobiles or trucks on public roadways. Employees who are 17 years of age may drive automobiles or trucks on public roadways only if—

(A) such driving is restricted to daylight hours;

(B) the employee holds a State license valid for the type of driving involved in the job performed and has no records of any moving violation at the time of hire;

(C) the employee has successfully completed a State approved driver education course;

(D) the automobile or truck is equipped with a seat belt for the driver and any passengers and the employee's employer has instructed the employee that the seat belts must be used when driving the automobile or truck;

(E) the automobile or truck does not exceed 6,000 pounds of gross vehicle weight;

(F) such driving does not involve--

(i) the towing of vehicles;

(ii) route deliveries or route sales;

(iii) the transportation for hire of property, goods, or passengers;

(iv) urgent, time-sensitive deliveries;

(v) more than two trips away from the primary place of employment in any single day for the purpose of delivering goods of the employee's employer to a customer (other than urgent, time-sensitive deliveries);

(vi) more than two trips away from the primary place of employment in any single day for the purpose of transporting passengers (other than employees of the employer);

(vii) transporting more than three passengers (including employees of the employer); or

(viii) driving beyond a 30 mile radius from the employee's place of employment; and

(G) such driving is only occasional and incidental to the employee's employment. For purposes of subparagraph (G), the term “occasional and incidental” is no more than one-third of an employee's worktime in any workday and no more than 20 percent of an employee's worktime in any workweek.

(7)(A)(i) Subject to subparagraph (B), in the administration and enforcement of the child labor provisions of this chapter, it shall not be considered oppressive child labor for a new entrant into the workforce to be employed inside or outside places of business where machinery is used to process wood products.

(ii) In this paragraph, the term “new entrant into the workforce” means an individual who

(I) is under the age of 18 and at least the age of 14, and

(II) by statute or judicial order is exempt from compulsory school attendance beyond the eighth grade.

(B) The employment of a new entrant into the workforce under subparagraph (A) shall be permitted

(i) if the entrant is supervised by an adult relative of the entrant or is supervised by an adult member of the same religious sect or division as the entrant;

(ii) if the entrant does not operate or assist in the operation of power-driven woodworking machines;

(iii) if the entrant is protected from wood particles or other flying debris within the workplace by a barrier appropriate to the potential hazard of such wood particles or flying debris or by maintaining a sufficient distance from machinery in operation; and

(iv) if the entrant is required to use personal protective equipment to prevent exposure to excessive levels of noise and saw dust.

(d) Delivery of newspapers and wreathmaking

The provisions of sections 206, 207, and 212 of this title shall not apply with respect to any employee engaged in the delivery of newspapers to the consumer or to any homeworker engaged in the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths).

(e) Maximum hour requirements and minimum wage employees

The provisions of section 207 of this title shall not apply with respect to employees for whom the Secretary of Labor is authorized to establish minimum wage rates as provided in section 206(a)(3) of this title, except with respect to employees for whom such rates are in effect; and with respect to such employees the Secretary may make rules and regulations providing reasonable limitations and allowing reasonable variations, tolerances, and exemptions to and from any or all of the provisions of section 207 of this title if he shall find, after a public hearing on the matter, and taking into account the factors set forth in section 206(a)(3) of this title, that economic conditions warrant such action.

(f) Employment in foreign countries and certain United States territories

The provisions of sections 206, 207, 211, and 212 of this title shall not apply with respect to any employee whose services during the workweek are performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: a State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462) [43 U.S.C.A. § 1331 et seq.]; American Samoa; Guam; Wake Island; Eniwetok Atoll; Kwajalein Atoll; and Johnston Island.

(g) Certain employment in retail or service establishments, agriculture

The exemption from section 206 of this title provided by paragraph (6) of subsection (a) of this section shall not apply with respect to any employee employed by an establishment (1) which controls, is controlled by, or is under common control with,

another establishment the activities of which are not related for a common business purpose to, but materially support the activities of the establishment employing such employee; and (2) whose annual gross volume of sales made or business done, when combined with the annual gross volume of sales made or business done by each establishment which controls, is controlled by, or is under common control with, the establishment employing such employee, exceeds $10,000,000 (exclusive of excise taxes at the retail level which are separately stated).

(h) Maximum hour requirement: fourteen workweek limitation

The provisions of section 207 of this title shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any calendar year to any employee who--

(1) is employed by such employer--

(A) exclusively to provide services necessary and incidental to the ginning of cotton in an establishment primarily engaged in the ginning of cotton;

(B) exclusively to provide services necessary and incidental to the receiving, handling, and storing of raw cotton and the compressing of raw cotton when performed at a cotton warehouse or compress-warehouse facility, other than one operated in conjunction with a cotton mill, primarily engaged in storing and compressing;

(C) exclusively to provide services necessary and incidental to the receiving, handling, storing, and processing of cottonseed in an establishment primarily engaged in the receiving, handling, storing, and processing of cottonseed; or

(D) exclusively to provide services necessary and incidental to the processing of sugar cane or sugar beets in an establishment primarily engaged in the processing of sugar cane or sugar beets; and

(2) receives for--

(A) such employment by such employer which is in excess of ten hours in any workday, and

(B) such employment by such employer which is in excess of forty-eight hours in any workweek,
compensation at a rate not less than one and one-half times the regular rate at which he is employed.

Any employer who receives an exemption under this subsection shall not be eligible for any other exemption under this section or section 207 of this title.

(i) Cotton ginning

The provisions of section 207 of this title shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any period of fifty-two consecutive weeks to any employee who--

(1) is engaged in the ginning of cotton for market in any place of employment located in a county where cotton is grown in commercial quantities; and

(2) receives for any such employment during such workweeks--

(A) in excess of ten hours in any workday, and

(B) in excess of forty-eight hours in any workweek,
compensation at a rate not less than one and one-half times the regular rate at which he is employed. No week included in any fifty-two week period for purposes of the preceding sentence may be included for such purposes in any other fifty-two week period.

(j) Processing of sugar beets, sugar beet molasses, or sugar cane

The provisions of section 207 of this title shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any period of fifty-two consecutive weeks to any employee who--

(1) is engaged in the processing of sugar beets, sugar beet molasses, or sugar cane into sugar (other than refined sugar) or syrup; and

(2) receives for any such employment during such workweeks--

(A) in excess of ten hours in any workday, and

(B) in excess of forty-eight hours in any workweek,
compensation at a rate not less than one and one-half times the regular rate at which he is employed. No week included in any fifty-two week period for purposes of the preceding sentence may be included for such purposes in any other fifty-two week period.

29 U.S.C. § 216(b). Damages; right of action; attorney's fees and costs; termination of right of action

Any employer who violates the provisions of section 206 or section 207 of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Any employer who violates the provisions of section 215(a)(3) of this title shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of section 215(a)(3) of this title, including without limitation employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount as liquidated damages. An action to recover the liability prescribed in either of the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. The right provided by this subsection to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the Secretary of Labor in an action under section 217 of this title in which (1) restraint is sought of any further delay in the payment of unpaid minimum wages, or the amount of unpaid overtime compensation, as the case may be, owing to such employee under section 206 or section 207 of this title by an employer liable therefor under the provisions of this subsection or (2) legal or equitable relief is sought as a result of alleged violations of section 215(a)(3) of this title.

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Md. Rule 2-231. CLASS ACTIONS

(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) Class Actions Maintainable. Unless justice requires otherwise, an action may be maintained as a class action if the prerequisites of section (a) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions, (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class, (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum, (D) the difficulties likely to be encountered in the management of a class action.

(c) Certification. On motion of any party or on the court's own initiative, the court shall determine by order as soon as practicable after commencement of the action whether it is to be maintained as a class action. A hearing shall be granted if requested by any party. The order shall include the court's findings and reasons for certifying or refusing to certify the action as a class action. The order may be conditional and may be altered or amended before the decision on the merits.

(d) Partial Class Actions; Subclasses. When appropriate, an action may be brought or maintained as a class action with respect to particular issues, or a class may be divided into subclasses and each subclass treated as a class.

(e) Notice. In any class action, the court may require notice pursuant to subsection (f)(2). In a class action maintained under subsection (b)(3), notice shall be given to members of the class in the manner the court directs. The notice shall advise that (1) the court will exclude from the class any member who so requests by a specified date, (2) the judgment, whether favorable or not, will include all members who do not request exclusion, and (3)

any member who does not request exclusion and who desires to enter an appearance through counsel may do so.

(f) Orders in Conduct of Actions. In the conduct of actions to which this Rule applies, the court may enter appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument, (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in the manner the court directs to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action, (3) imposing conditions on the representative parties or intervenors, (4) requiring that the pleadings be amended to eliminate allegations as to representation of absent persons, and that the action proceed accordingly, (5) dealing with similar procedural matters. The orders may be combined with an order under Rule 2-504, and may be altered or amended as may be desirable from time to time.

(g) Discovery. For purposes of discovery, only representative parties shall be treated as parties. On motion, the court may allow discovery by or against any other member of the class.

(h) Dismissal or Compromise. A class action shall not be dismissed or compromised without the approval of the court. Notice of a proposed dismissal or compromise shall be given to all members of the class in the manner the court directs.

(i) Judgment. The judgment in an action maintained as a class action under subsections (b)(1) and (2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subsection (b)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subsection (e)(1) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

STATEMENT OF TYPE STYLE AND POINT SIZE

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of September, 2013, I caused to be mailed first class, postage prepaid, two copies each of the foregoing brief to:

Richard T. Seymour
Law Office of Richard T. Seymour, P.L.L.C.
Suite 900, Brawner Building
888 17th Street, NW
Washington, DC 20006-3307

Counsel for Appellant

Jerome C. Schaefer, Esq.
Whiteford, Taylor & Preston LLP
10500 Little Patuxent Parkway
Suite 750
Columbia, MD 21044

William F. Ryan, Jr., Esq.
Whiteford, Taylor & Preston LLP
7 St. Paul Street
Baltimore, MD 21202-1626

Counsel for Appellee

Douglas F. Gansler
Attorney General of Marlyland
Jonathan R. Krasnoff, Esq.
Assistant Attorney General
500 N. Calvert Street, Suite 406
Baltimore, MD 21202

Counsel for Amicus Curiae *the Commissioner of Labor and Industry*

Debra Gardner