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Commentary

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I read, with great interest, the article entitled "Revitalizing the Maryland Wage Compensation Law" in the Summer 1989 edition of The Law Forum. The misinformation and the lack of information in the article will be a disservice to both practitioners and to the general public who find themselves in the position of requiring protection of the law. I cannot assess too much blame to the author, however, in that he did not have the advantage of being responsible for the enforcement of the law since its enactment. Nevertheless, I would like to comment on the article and, so to speak, set the record straight.

Perhaps an examination of the history of the Maryland Wage Payment and Collection Law, Article 100, Section 94, Annotated Code of Maryland and the administration of the law by the Commissioner of Labor and Industry will lead to a better understanding of both the accomplishments and the problems of the law.

The law was enacted in 1966 as a result of numerous complaints alleging that wages were earned but not paid. The Maryland Minimum Wage Law, Article 100, Section 81-93A, Annotated Code of Maryland, permitted recovery of the minimum wage (at that time, $1.00 per hour) for covered employees only. Coverage was limited to establishments with seven or more employees, and there were some dozen additional exemptions. Obviously, the Minimum Wage Law offered little relief.

The Wage Collection bill, which was introduced in 1966, was an exact duplicate of the Virginia law. There was opposition to the law by lawyer–delegates until an explanation on the floor by Alan Resnick (D.5th Baltimore City) saved the bill. He explained that the intent of the legislation was to assist those employees who had no other recourse, where the amount in question was too small to seek the service of a lawyer, or where the employee did not have the knowledge or the time to file a court action in proper person. The bill then passed without opposition. In his administration of the law, the Commissioner is guided by this intent.

Between 1966 and 1973 certain serious problems arose in the administration of the law. In 1974, the law was repealed and re–enacted to deal with these problems. The lack of a practical penalty was another problem which was not addressed until 1983, with the enactment of the section which permits imposition of court–awarded treble damages.

In 1988, the last complete year for which statistics are available, the Commissioner investigated and resolved 3,018 claims, 47% of which were valid, 29% were invalid, 5% resulted in the discovery that the employer was insolvent or bankrupt. The employer could not be located in 3% of the claims. There was no jurisdiction in 4% of the claims, 5% of the claims were administratively closed, and 6% were forwarded to the Attorney General for appropriate legal action. A total of $545,509 was collected and disbursed to employees.

Each claim forwarded to the Attorney General was settled by negotiation or litigated in the District Court of Maryland. Unless there are multiple claims against one employer, it is highly unlikely that the action is filed in a court other than district court because of the dollar amount claimed. Since the law is simple in language, it has been unnecessary to appeal a case to a court of record in Maryland. Unless a claim involves highly unusual circumstances the Commissioner will not accept that claim if the amount is in excess of $2,500.00.

If the claim is litigated, and a judgment is rendered in favor of the Commissioner, the Attorney General executes on the judgment, conducting supplementary proceedings and seizing whatever is legally available. Every claim received and investigated by the Commissioner is disposed of in a timely and proper manner.

Can the law be amended to provide better service to those in need of such service? Can the law be amended to persuade employers to comply voluntarily because of severe penalties for non–compliance? Can the law be amended to provide increased protection for wage–earners? *Of course it can.* There are, however, practical and political ramifications which make enactment of such amendments difficult if not a virtual impossibility. The legislative body in Maryland consists of a large number of members, each with his or her own agenda.

Nearly a decade ago, legislation was introduced to hold officers of corporations personally liable for wages. It was limited to corporations with few assets and to those which had been established for a short period of time. It failed to receive a favorable committee report and was not reported out. In 1988, 5% of the claims investigated resulted in the discovery that the establishment was insolvent or bankrupt. Virtually all these establishments were corporations with no corporate assets. A law imposing personal liability upon the responsible corporate official would be a boon to those employees. The difficulty lies in having such a law enacted.

Laws providing for increased penalties would, no doubt, promote increased voluntary compliance on the part of the employer. A strong incentive to comply might be accomplished by permitting the Commissioner to award up to treble damages at his discretion.

Perhaps mandatory interest on the wages due at a rate of 12% from the time they are due to the time they are paid would persuade a recalcitrant employer to move quickly. Perhaps a court's power to award attorney's fees would permit speedier relief for an employee due wages. How much of an attorney's fee would a court award where the wages due amount to $170.00? How many attorneys would accept claims where a deduction of $40.00 was made for broken dishes?

Because the law does not specifically provide that one seeking relief is required to exhaust all administrative remedies, there is no question that a private cause of action is permitted. Had the General Assembly wished to limit the relief to administrative remedies, it would have done so as it has in many other laws. Further, the employee may base his action in contract

rather than on section 94. In fact, many judges in the district courts ignore the law and base their decisions on contract common law. Whether or not a court may award treble damages in a private cause of action is not yet settled. Because the intent of the treble damage amendment was to impose a heavy risk on the employer not willing to settle, a good argument can be made for imposition of the penalty in a private cause of action. It is a punitive scheme. Why should the punishment be imposed if the State brings the action and not if the individual brings the action?

The preemption imposed by the LMRA is not a problem. The employee due wages is represented by a union and, therefore, has the benefit of capable assistance. A recent case has held that ERISA does not preempt benefit claims where the benefits are paid out of current funds and not out of a fund specifically established for that purpose. Thus, vacation pay, holiday pay, bonuses, and, in most cases, severance pay is covered by state wage collection laws and not preempted by ERISA.

Prompt payment of wages earned is vital. The scheme of enforcement by the state practiced today permits recovery in an average of 30 days. A court date is not generally available until 60 days after suit is filed. It is obvious which scheme is more prompt. Further, the courts will not become clogged with some 3,000 additional small claims.

The Commissioner of Labor and Industry stands ready to accept claims and collect wages where due in a timely manner.

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