

MD Appeals Court Addresses Wage Payment, Attorney Fees

By Jessica Summers

A recent case involving the award of attorney fees for claims brought under the Maryland Wage Payment and Collection Law (WPCL) – captioned *Barufaldi v. Ocean City, Maryland Chamber of Commerce* and the opinion for which can be found here – bears close examination. The Maryland Court of Special Appeals reiterated that while attorneys’ fees are not automatic, they should be liberally awarded to employees, and that factors such as the degree of the employer’s bad faith and its ability to pay are not relevant. The WPCL is a favorite of attorneys representing employees and one that all employers should know about. Often the projected attorneys’ fees are much larger than the amount of wages due in WPCL cases. In other words, the tail wags the dog.

By way of background, the WPCL authorizes employees to bring lawsuits against their employers if the employer fails to pay wages due to an employee within two weeks of the scheduled payment date. If a court finds there is no bona fide dispute that the wages were owed, the employer may have to pay up to three times the original amount as well as the employee’s attorneys’ fees. Exactly how much of the attorneys’ fees an employer has to pay depends on many factors. In this case, the appellate court dealt with the “may” question (i.e., if the jury finds no actual dispute existed, does the trial court **have** to award fees and, if not, what factors should it apply?)

At trial, the jury returned a verdict in favor of the employee, finding that the employer violated the WPCL when it refused to pay the plaintiff his bonus. The Court of Special Appeals upheld the verdict, but remanded and ultimately reversed the trial court’s decision, ruling for the employer in rejecting the plaintiff’s motion for attorneys’ fees. Upon examination of the trial court’s decision to deny plaintiff attorneys’ fees, the Court of Special Appeals concluded that the lower court should not have used the federal courts’ ERISA fee-shifting factors, such as the merits of the parties’ positions, the degree of bad faith by the employer or the ability of an employer to pay and deterrence, in reaching its decision.

While the decision in *Barufaldi* makes clear how courts should not approach the WPCL fee shifting provision, it does not set forth an alternate test, nor list an explicit set of factors that may be considered in deciding whether to award attorneys’ fees. It simply opens the door for employers to argue that some special circumstances may exist to decrease or deny employee’s attorneys’ fee. Employers must keep in mind, however, that generally speaking, the appellate court clearly directed that the trial court should exercise its discretion liberally in favor of awarding fees.