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New Employment Laws Likely in Maryland

?By former Associate Jack Blum

2013 has so far been a busy year for the Maryland legislature. While many of the higher profile legislative items - gun control, repealing the death penalty, and medical marijuana - may not have a major effect on businesses operating in Maryland, others will effect the ever-changing employment law landscape. Paley Rothman's Employment Law Group continues to be committed to analyzing and helping clients understand and react appropriately to the latest changes to Maryland's employment laws.

Each year, a large number of bills are sponsored on a wide variety of employment law issues. This year has been no different as the legislature proposed bills restricting the enforceability of non-compete agreements, implementing state family medical leave, requiring sick leave policies and mandating a minimum amount of sick leave, expanding the right of employees to recover attorneys' fees in lawsuits, establishing that an employee is civilly liable to his or her employer for embezzlement, and more. As is usually the case, however, few make their way to the Governor or become law.

At the close of this year's session, five employment law measures passed both houses of Maryland's legislature. If the governor signs them, or does nothing by May 28, they all become law. It is likely that each of the five will be enacted.

By far the most significant is the **Civil Rights Tax Relief Act** (SB0639/HB1169), a rare piece of legislation that will prove beneficial to both employers and employees by increasing the attractiveness to employees - and decreasing the cost to employers - of settling employment law litigation. The bill is scheduled to take effect July 1, 2013.

The State of Maryland currently follows federal law as to the taxation of payments received in settlement of litigation. Under current law, only payments made to settle claims for physical injuries are excluded from the injured party's income. Payments received to settle claims for emotional distress are only excluded from income to the extent that the payment compensates the recipient for medical care to treat the emotional distress.

The Civil Rights Tax Relief Act changes this rule for purposes of Maryland state income tax by amending § 10-207 of the Tax-General Article to add a deduction for payments received for any noneconomic damages resulting from a claim of unlawful discrimination. "Noneconomic damages" are defined to include any amounts received by a plaintiff other than lost wages, salary, or compensation and punitive damages. Accordingly, payments for so-called "garden variety" emotional distress claims, those unaccompanied by a need for substantial medical treatment, are now deductible for purposes of Maryland state income tax.

In settling employment lawsuits, employers can now benefit by allocating settlement payments towards the plaintiff's emotional distress claim and attorney fees (which are already deductible under federal and Maryland law), and away from wages or salary. By doing so, an employer can provide the plaintiff with the same post-tax payment at a lower cost. Of course, the old maxim that "pigs get slaughtered" applies: if a plaintiff is claiming lost wages or salary, some amount must be allocated to that category or the Comptroller of Maryland may challenge the transaction. Through careful documentation and a plausible justification of the allocation of the settlement proceeds, however, employers can now potentially reduce the cost of settling claims.

The other four employment law measures that passed both Maryland houses are comparatively minor and will become effective October 1, 2013 if enacted:

HB0127/SB0405 amends § 3-415 of the Labor and Employment Article to exempt employers subject to the federal Railway Labor Act, which applies to the railroad and airline industries, from the requirement to pay overtime to certain employees under the Maryland Wage and Hour Law unless a collective bargaining

agreement provides otherwise. These employers are already exempt from the federal Fair Labor Standards Act. Railroad and airline employers now need not pay overtime to employees who work more than 40 hours in a week due to a voluntary agreement to trade scheduled hours with other employees.

SB0012 adds § 3-803 to the Labor and Employment Article to require employers to allow an employee to take leave from work on the day that an immediate family member - defined as a spouse, parent, stepparent, child, stepchild, or sibling - is leaving for or returning from active military duty outside of the United States. Employers cannot require such employees to use compensatory, sick, or vacation leave. This provision applies only to employers who are covered by the federal Family Medical Leave Act (FMLA) and employees who are eligible for FMLA leave.

HB0348 amends § 8-638 of the Labor and Employment Article to extend the time for an employer that has overpaid its state unemployment insurance contributions to seek an adjustment or refund from the Department of Labor, Licensing, and Regulation. Currently, overpaying employers have three years from the last day of the calendar quarter for which the payment was made to apply for an adjustment or refund. HB0348 extends that deadline to four years

SB0553 is perhaps the most focused of the five measures. This one adds § 3-713 to the Labor and Employment Article and prohibits employers from requiring tipped employees to reimburse the employer for food and beverages ordered by a customer who leaves the employer's place of business without paying. Employers are also forbidden from deducting such amounts from the tipped employee's wages, and must post conspicuously a notice of § 3-713's provisions in any place where tipped employees are employed.

