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Small Issues Become Big Problems for Inattentive Employers

By [Greg Currey](#)

On July 9 and 11, 2018, the Department of Labor ("DOL") announced three large settlements on behalf of employees whose employers had made relatively small errors in recording and paying overtime. These three cases arose out of two common mistakes made by the employers.

First, the employers had set up their payroll systems to automatically deduct half an hour from employees' reported work hours for meal breaks without first confirming that employees were actually taking half hour meal breaks. Second, the employers paid employees only for their scheduled work hours and failed to compensate employees for work-related duties performed after the end of their scheduled shifts. In each of these cases, the employer paid in excess of \$100,000 in back wages to resolve the employees' claims, which largely arose out of half an hour of unpaid work per day.

These cases serve as an excellent illustration of how quickly small problems can become big problems for employers. All employers should ensure that their timekeeping and payroll procedures are fully compliant with state and federal law. Employers should remember that employees are not required to be paid for meal breaks only when they are fully relieved from all job duties during their meal breaks. If employees work through lunch or are not fully relieved from their duties, they must be paid. As a result, employers should be cautious about implementing any system that automatically deducts time for meal breaks without first confirming that such deductions are accurate. Similarly, work done after an employee's scheduled shift ends is compensable, regardless of what the employee's schedule says. If employees are routinely staying late or working after hours to complete their job duties, they need to be paid regardless of whether the overtime was approved.

While the DOL settlements were substantial, they could have been even more damaging for the employers if the employees had instead filed a private lawsuit. Under the Fair Labor Standards Act, if these employees had brought a collective action, they could have chased and received double the amount of back wages owed plus attorneys' fees, pushing their collective recovery above the half million-dollar mark. If these events had occurred in Maryland, the employees may have also recovered three times the amount of back wages owed, driving the claims even higher. Given the high potential cost of small violations, employers should ensure that their timekeeping and payroll practices result in employees' being paid for all of the hours that they are working.

What's in Your Contract?

By [Michael Stover](#)

You negotiated your contract and you think that you know every term and provision that is in the contract. But, what about the terms that are not in the contract, do you know about those? Conversely, what about the provisions that are in the contract, but which may not be enforceable? What is actually in the contract includes far more than what the eye can see. Certain laws, statutes or regulations may become part of the contract automatically by operation of law even when the parties were not aware of such laws, statutes or regulations.

As an example, if a supplier provides goods to a construction project (lumber, steel, misc. metal, ducts, wire, paint, etc.) which are defective and give rise to the buyer's right to reject such goods, unless timely notice is provided of the defects, the buyer's right to reject the goods or claim damages may be waived.

Section 2-605 of Maryland's Commercial Law Article provides that if notice of the defective condition is not provided by the buyer within a reasonable time, the ability to claim a breach or assert a warranty claim for those defective goods may be waived.

Similarly, once a contractor performs work for an owner, Maryland law requires that the owner pay for that work in a prompt manner. Under Maryland's Prompt Payment Act, if there is no stated time for payments in the contract, the Act requires payment for undisputed work to be made within 30 days after the day on which the occupancy permit is granted or 30 days after the day on which the owner or the owner's agent takes possession. If the contract between the owner and the contractor provides for specific dates or times of payment, the Act requires the owner to pay to the contractor undisputed amounts owed within 7 days after the date or time specified in the contract.

Not only can the "operation of law" include contract terms that are not specifically discussed or noted in the contract, the operation of law can also void terms and conditions that are in the contract. For example, if your contract has a provision which waives your right to file a Mechanics' Lien against the property, Maryland law will void that provision. Any provision of a contract made in violation of the statute is void as against the public policy of the State. Similarly, under Maryland law, any provision in a contract which seeks to waive the rights of a claimant to sue on a payment bond is also void and unenforceable as against public policy. Finally, the fact that the contract documents may contain a "pay if paid clause" or a "pay when paid clause" does not abrogate the right of a claimant to assert a claim against a payment bond or a Mechanics' Lien because Maryland law voids such provisions.

Therefore, while it is important to be aware of what is in your contract, it is also important to be aware of what is not "in your contract" and to be aware of what may not be enforceable in your contract because of the operation of law.



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