



Creating a Private Cause of Action for Non-Payment of Wages

HB 2524: Del. R. Campbell (R-Raphine)

HB 1687: Del. Krizek (D-Alexandria)

LIS Bill Descriptions: HB 2524 provides that an employee has a private cause of against an employer who fails to pay wages. The measure provides that if the court finds that the employer knowingly failed to pay the wages, it shall also award the employee reasonable attorney fees and other costs. If the court finds that the employer's failure to pay wages was willful and with intent to defraud the employee, the court shall award the employee reasonable attorney fees and other costs plus an additional sum equal to treble the amount of wages due. HB 1687 is the same except it adds eight percent interest annually to the wages due the worker.

What is a Private Cause of Action for Non-Payment of Wages? A “private cause of action” on non-payment of wages means that private individuals can take their non-payment of wages cases to court. Currently, workers cannot sue under the Virginia Payment of Wage Act, only DOLI can. Although workers can currently sue in court under a “breach of contract” theory, it makes more sense to allow private individuals and their attorneys to enforce the law that is already on the books. These bills clearly state that workers will get their owed back wages and reasonable attorney fees. Without getting paid, attorneys can’t afford to take the cases. And most workers, especially low-wage workers, cannot afford to pay attorney fees out of their unpaid wages. Consequently, the bill explicitly states that the cases can be taken to court and if the employer is found to have not paid workers’ wages, the employer must pay the back wages plus reasonable attorney fees.

Why do workers need a private cause of action? In 1990, the Department of Labor and Industries (DOLI), the Virginia agency that helps workers recover their unpaid wages, had 20 investigative staff for non-payment of wage complaints. Today, the agency only has three. Unless Virginia wants to dramatically increase the number of DOLI investigative staff, the best way (and most cost-effective for Virginia) to enforce the payment of wages law is to create a private cause of action and ensure that workers can hire attorneys to assist them with the case.

Federal wage law has a private cause of action. Most enforcement of the Fair Labor Standards Act, the main federal wage law, is done by the private bar and not by the federal Department of Labor, because attorneys can take cases to court on behalf of workers and can collect reasonable attorney fees.

Virginia’s Consumer Protection Act has a private cause of action and allows for reasonable attorney fees. Why should attorneys be able to get paid for representing consumers, but not workers?

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