

Advance Notice Required for Change in Pay

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As employers struggle to cope with "stay at home" and business closure orders, adjustments are being made in years old compensation programs. Apart from being completely laid off, other arrangements are being developed in hopes that this business interruption will be temporary and valued employees will be ready to return to work. Among these are unpaid furlough status with paid benefits, lowering the rate of pay, conversion of salaried compensation to hourly and reductions in hours from full time to part time status.

These changes can have employee benefit implications in that many plans require full time work or pay above a certain grade. For salaried employees, this can mean that they no longer must be paid in full for any week in which they do any work and that they become entitled to overtime.

When an employer determines to implement a change in compensation, whether the dollar amount or the cost of benefits, all three area jurisdictions require advance notice to the employee.

Maryland

The Maryland Wage Payment and Collection Act, Labor and Employment, 3-501-09, provides that every employee shall be provided a written statement of all compensation and that notice of any change must be provided not less than one pay period (normally two weeks) in advance. Since Maryland requires all employees to provide written consent to all deductions from pay, the practical effect of this requirement is that a complete restatement of the entire work arrangement is appropriate if there is a change in any aspect of compensation. Failure to comply with this notice requirement is a criminal violation and also entitles the employee to up to three times improperly altered compensation plus attorneys' fees.

District of Columbia

The Wage Theft Prevention Act, 32-1307 Code of the District of Columbia requires every new employee to receive a "Notice of Hire" form that states the amount of all compensation and benefits, the overtime rate, all deductions, pay frequency and payday. The District provides a sample format for this notice on its Wage and Hour website. When a change is made, existing employees must be given the same information. This wage and benefits description must be provided in writing and in advance of any change and signed by the employee before implementation. Failure to do so on a negligent basis results in a \$2,500 administrative fine. Intentional violations give rise to a \$5,000 fine. Injured employees may be able to collect a \$50 per day fine.

Virginia

Virginia Statutes 40.1-29 requires advance notice of any change in compensation be provided to the employee. Failure to provide this notice would invalidate any change. The notice is to include all aspects of compensation, wages and benefits. Any amount to be withheld from wages, except taxes, must be approved in writing by the employee. Although this requirement is not stated with the specificity of other jurisdictions, a violation of this Virginia law can result in being charged with a misdemeanor or, if the amount improperly unpaid exceeds \$10,000, a felony. Civil remedies are provided and may include attorneys fees.

Summary

In the absence of a written contract, employers are generally free to prospectively alter the terms and conditions of employment. "Employment at will" is the prevailing standard and employee acceptance of such changes can be required. In this period of economic turmoil employers may be tempted to cut corners to more quickly adjust to rather dire circumstances. However, the notice requirements noted above have not been suspended and counsel who specialize in wage claims for employees will be looking for violations.