

employees and employers would be subject to the same procedures, whether redress is sought under the State or federal statute. Thus, complaints under the Maryland statute could draw on the body of federal case law that has developed under the Equal Pay Act. The General Assembly also may wish to consider whether the Human Relations Commission should have responsibility for enforcement.

Some of the existing discrepancies that the Committee has noted are as follows. Section 3-301(c)(2) of this subtitle, which defines "wage" to include certain advantages provided to an employee "for the convenience of the employer", contradicts the scope of "wage" under Subtitle 4 of this title. Section 3-418 of this title provides for computation of a "wage" on the basis of the cost to an employer in providing an advantage that an employer "customarily provides to an employee". Regulations that the Commissioner adopted under the provisions now revised as Subtitle 4 of this title state that a wage may not include the cost of an advantage provided primarily "for the convenience of the employer". See COMAR 09.12.41.18F. The federal Equal Pay Act and minimum wage law both are part of the federal Fair Labor Standards Act, which contains a single uniform definition of "wage". The federal law defines "wage" to include the cost of board, lodging, or other advantages that are "customarily furnished" by the employer. See 29 U.S.C. § 203(m).

The Committee also notes that the scope of § 3-307(a)(1) of this subtitle is unclear in light of the limited reference to employees who do the "same type" of work. In § 3-304(a) of this subtitle, which sets out the prohibition against discrimination in payment of wages, the reference to work of the "same type" is only one of the factors to be considered in comparing work performed by employees "in the same establishment".

The first sentence of former Art. 100, § 55D(a) provided that an employer who violates this subtitle "shall be liable" for the difference between the wages paid to male and female employees and "an additional equal amount as liquidated damages". See § 3-307(a)(1) of this subtitle. Under the federal Fair Labor Standards Act, liquidated damages are available for a violation of the statute in an amount equal to the back pay awarded. See 29 U.S.C. § 316(b). As to a violation of 29 U.S.C. § 206(d), however, federal courts have reduced or refused to award liquidated damages if an employer can prove a good faith defense for the violation. See, e.g., Grove v. Frostburg National Bank, 549 F. Supp. 922 (D. Md. 1982).

Former Art. 100, § 55D(b), as that subsection related to the statute of limitations for criminal prosecutions, now appears as CJ § 5-106(n).

SUBTITLE 4. WAGES AND HOURS.

PART I. DEFINITIONS; GENERAL PROVISIONS.

3-401. DEFINITIONS.

(A) IN GENERAL.

IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.