

NOZZLE & WRENCH

WMDACAR

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AN OFFICIAL PUBLICATION OF THE WASHINGTON DC, MARYLAND & DELAWARE SERVICE STATION & AUTOMOTIVE REPAIR ASSOCIATION

INSIDE THIS ISSUE:

- >> Rising Crime and Video/
Audio Surveillance
- >> Changed Overtime Rule
for Salaried Employees
- >> FTC Announces Rule
Banning Noncompetes

KIRK'S CORNER

Maryland Legislative Session, U.S. Department of Labor, Comptroller's Tax Nightmare, Baltimore Dirt Bike Reminder



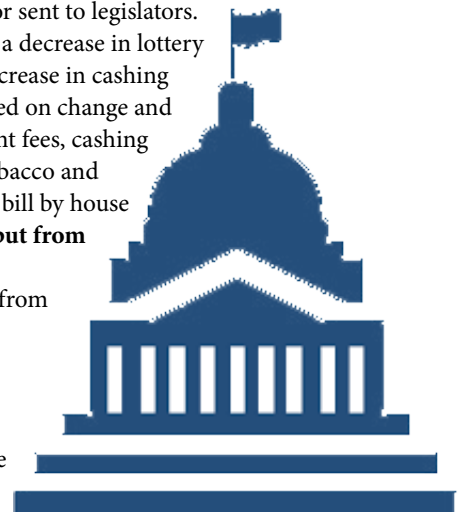
By Kirk McCauley, Director
Of Member Relations &
Government Affairs

[HB0352/SB0362](#) Budget Reconciliation Financing Act (BRFA)

This is the Budget bill that the governor sent to legislators. Within the bill from the governor was a decrease in lottery agent selling fee from 6%-5% and a decrease in cashing fee from 3% -2%. WMDA/CAR testified on change and ended up at reduction to 5.75% in agent fees, cashing stayed at 2%. We were blind side by tobacco and ESD increases in that they were put in bill by house and senate leaders – **no hearing or input from retailers.**

- Lottery commission from 6%-5.75% – cashing commission from 3%-2%
- Cigarette Tax – Increase \$1.25 Per Pack
- OTP – Increase from 53% to 60% of Wholesale Price (Not Cigars)
- Electronic Smoking Devices – Increase from 12% to 20% the Sales and Use Tax Rate
- Effective date for lottery change is June 1, 2024
- Effective date for tobacco retailers is July 1, 2024, there will be a floor tax on inventory. As of this writing the comptroller's office has not developed the procedure for collecting floor tax.
- Tax that is due on Floor Tax (inventory) – You will have until September 30, 2024 to remit to comptroller.

[SB1056/HB1180](#) Cigarettes, Other Tobacco Products, and Electronic Smoking Devices – Revisions (Tobacco Retail Modernization Act of 2024)



Continues on page 4

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Continued from cover

SB1056 passed the Finance committee, as written bill would ban tobacco and OTP license holders from continuing to sell electronic smoking devices (ESDs). Instead, ESDs would only be allowed to be sold by a “vape shop vendor” that exclusively sells vape products and their accessories. Bill would also increase licensing fee to \$300. **Economic Matter Committee amended bill (2 pages worth), Senate concurred with out a conference committee and bill passed. The license Fee increase is only change, no changes to license structure. Effective date 10/1/2024.**

[HB360](#) **Prince George’s County – Retail Service Station Dealers – Fuel Service PG 410-24**

Requires a retail service station dealer in Prince George’s County to provide fuel service upon request to an individual between 6:00am to midnight. **Withdrawn after hearing in Economic Matters Committee (EMC)**

[HB1218](#) **State Lottery – Internet Sales Authorization and Distribution of Proceeds**
Authorizes the State Lottery and Gaming Control Agency to develop and operate internet-based lottery games. **Did not receive a committee vote in House Ways & Means Committee (WMC)**

[HB844/SB582](#) **Business Regulation – Cigarette, Other Tobacco Product, and Electronic Smoking Device Retailers – Nicotine Replacement Therapy Products**

Status: SB582’s hearing held in the Senate Finance committee on 2/22. HB844 was **withdrawn by the sponsor**

Requiring licensees that sell cigarettes, OTP, or electronic smoking devices at retail to keep in stock and offer for sale at least one kind of nicotine replacement therapy product and post signs advertising their sale and the Maryland Tobacco Quitline phone number.

Unfavorable Report from ECM

[HB882/SB651](#) **Business Regulation – Sale of Motor Fuel – Pricing Signage**
Status: HB882 has passed both the House and Senate. As amended, repeals requirement that a retail service station dealer must post the lowest price of regular gasoline and replaces it with a requirement to post the credit and debit price if higher than the cash price *or* the credit and debit price and the cash price. Retailers can use a separate sign to meet these requirements if numerals are same size, ground sign is okay if it is visible from road and lighted at night. In meetings with bill sponsor we were able to come to agreements that made for a good bill for our retailers and consumers. There are 4 authorities in the state with different sign laws enacted or in process of enactment, this bill has preemption and all retailers in the state will now fall under these regulations.

Effective date 10/1/24
[HB1073](#) **Tobacco Tax – Cigarettes – Rate Alteration**
Increases the tobacco tax from \$3.75 to \$4.50 for a pack of 20 cigarettes; and from 17.5 cents to 22.5 cents for each cigarette in a package of more than 20. **Did not receive committee vote in WMC.**

[HB1226/SB994](#) **Maryland Predictable Scheduling Act**
Status: SB944’s hearing held in

the Senate Finance Committee on 3/14. HB1226 was withdrawn by the sponsor. Requires retail and food establishment retailers to post a 7-day work schedule at least 14 days in advance. The employer must also respond to an employee’s scheduling requests. An employer may also be responsible for paying ½ an employee’s regular rate of pay if the employer employee was scheduled. As written would cost the employer 4 hours’ pay if an employee worked 15 minutes’ overtime. **Unfavorable report from EMC.**

[HB1515](#) **Sales and Use Tax - Rate Reduction and Services**
Status: Hearing scheduled in the House Ways and Means Committee on 3/11
Expands the state’s sales and use tax to include all professional services – accounting, HR, legal, and tax on labor for vehicle repair or any kind of labor and repair service. The sales and use tax would be reduced from 6% to 5%. **Did not receive vote in WMC.**

[HB1272](#) **Department of the Environment – Cap-and-Invest Program - Establishment**
Requires the Maryland Department of the Environment to develop a cap-and-trade program by December 31, 2024., Cap and trade program would cap the sales of motor fuel that oil company could sell at wholesale, to the amount they purchase at auction held by the state. Remarkably like a California program, which creates the nation’s highest prices. **Did not receive vote in EMC.**

[HB0465/SB0436](#) **Workplace Fraud and Prevailing Wage – Civil Penalty and Referrals**



This bill will increase the penalty from \$5,000 to \$10,000 for an employer found to have knowingly failed to properly classify an individual employee. Bill was amended to eliminate criminal penalty, 60 days in jail and take the Right of Private Action(RPA) out of bill. **Passed out of EMC and Finance as amended, effective 10/1/24**

[SB0525/HB0649](#) Labor and Employment – Equal Pay for Equal Work – Wage Range Transparency

This bill, as written, would have required employers to pay an apprentice the same as journeymen if they were doing the same work. Also had a Right of Private Action which gave employee the right to sue for actual damage or \$10,000 which every is greater and attorney fees and costs. Both were amended out. Put in the bill was an amendment that department of labor would create a form to bring uniformity to other regulation in bill. **Passed out of Finance and EMC, as amended, effective date 10/1/24**

[HB0571/SB0485](#) Family and Medical leave Modification

Changed dates of contributions and start of leave payout, and other changes of wage information and technical changes. This is still a work in progress, and more changes are likely.

- Collections will be split 50/50 employer and employee and will start July 1, 2025
- Leave and payout from

program will start July 1, 2026
[HB0922/SB0680](#) State Government – Public Welfare Actions-Determinations and Settlements

Office of Attorney General Brown is author of this bill that would have exposed every one of our members to liability of “Green House Gases” and anyone that owned a fossil fuel car. I do not think that was his intent, but it would give Maryland A.G. unprecedented power to bring litigation. Below are line 10-22 of page 2 and it will give you a synopsis of what bill could do.

- “PUBLIC WELFARE ACTION” MEANS ANY CIVIL ACTION IN WHICH, THE STATE OR THE ATTORNEY GENERAL HAS ASSERTED A PUBLIC WELFARE CLAIM. “PUBLIC WELFARE CLAIM” MEANS ANY CLAIM, COUNTERCLAIM, CROSS CLAIM, OR OTHER DEMAND FOR RELIEF OF ANY KIND BROUGHT OR ASSERTED BY THE ATTORNEY GENERAL OR THE STATE UNDER COMMON LAW, STATUTORY LAW, OR ANY OTHER BASIS: FOR CONSUMER PROTECTION; OR ARISING FROM OR RELATED TO ALLEGED INJURIES TO OR THREATENED INJURIES TO THE HEALTH, SAFETY, ENVIRONMENT, OR WELFARE OF THE RESIDENTS OF MARYLAND.

“RESPONSIBLE PERSON” MEANS ANY PERSON ALLEGEDLY LIABLE IN WHOLE OR IN PART FOR ANY PUBLIC WELFARE CLAIM.

This is an unbelievably bad bill for our industry and truthfully for consumers also. WMDA/CAR gave written and testified orally in both chambers in February and I thought odds were good, bill would die. Then I was looking at my bill tracker one morning in April and next to SB680 was “returned passed”. I opened bill and it became apparent that this horrible bill was now a good bill. On page 2 was the amended statement and Public Welfare was amended out of HB922/SB680 and applies only to Key Bridge and a ship called Dali.

- THIS SECTION APPLIES TO AN ACTION BROUGHT OR ASSERTED BY THE STATE ARISING FROM OR RELATED TO ALLEGED OR THREATENED INJURIES TO THE ENVIRONMENT, INFRASTRUCTURE, OR THE NATURAL RESOURCES OF THE STATE ASSOCIATED WITH THE ALLISION BETWEEN THE VESSEL KNOWN AS THE DALI AND THE FRANCIS SCOTT KEY BRIDGE ON MARCH 26, 2024. **Emergency Bill – Governor sign -in effect now.** Full list of Legislation that WMDA/CAR worked on is posted on our website, any question can be directed to kmccauley@wmda.net.

Continued from page 5

U.S. Department of Labor - Salaried Workers - Finale Rule

I have had inquiries this week about the salaried workers finale rule that U.S. Department of Labor says will go in effect July 1, 2024. In talks with our coalition groups that do federal legislation I was told that U.S. Chamber of Commerce will be acting against this regulation saying U.S. DOL is overreaching its authority to make this rule and I am sure other also plan a response. Time is short but I would think this rule will be delayed at the very least.

I took below from a DOL blog: The department's final rule, which will go into effect on July 1, 2024, will increase the standard salary level that helps define and delimit which salaried workers are entitled to overtime pay protections under the FLSA.

Starting July 1, most salaried workers who earn less than \$844 per week will become eligible for overtime pay under the final rule. And on Jan. 1, 2025, most salaried workers who make less than \$1,128 per week will become eligible for overtime pay. As these changes occur, job duties will continue to determine overtime exemption status for most salaried employees. Link to Blog - [What the New Overtime Rule Means for Workers | U.S. Department of Labor Blog \(dol.gov\)](#)

Maryland comptroller's office - Issues With retail Tax Portal and inability to Pay Sales Tax - New Information

Paying retail sales online tax has been an ongoing issue since December of 2023. As of now any fines or penalties are forgiven through May, of 2024.

While we still have time in May I urge any members who have not paid to click on link below and look at online seminar and if problems still exist, schedule a phone call through link below. I am still getting calls every week on the issue and those that have scheduled a call are getting problem solved. There are some changes in this email that is dated May 3, so look if your still having problems

Happy May! We would like to provide two updates about Maryland Tax Connect and the ways our agency is working to help you transition to our new, upgraded business tax portal.

First, we will continue to offer one-on-one appointments and group webinars through the first two weeks of May that provide guidance on the new system's features.

- We will offer four more webinar sessions with Maryland Tax Connect experts in May, beginning next week; [click here to RSVP!](#)
- To get personalized help, schedule a phone call with an agent in our office! [Just click here to make an appointment!](#)

Second, if you scheduled a callback due to a PIN issue, please note that there is a new alternative registration option available. To bypass the requirement for a PIN, you can enter the following account verification criteria to link your account.

- Your Federal Employer Identification Number or FEIN
- Your Maryland Central Registration Number or CRN
- The **Period End Date** for your last return filed, associated with the submitted CRN
- A single payment made in the

last 120 days for the submitted CRN (If none, enter "0")

If you no longer need assistance, we ask that you please cancel your scheduled appointment with our call center. We have limited staff and want to ensure we can help taxpayers who need our assistance.

Thank you for your commitment to your business and to Maryland. We are dedicated to finding new ways to support you.

Reminder on Baltimore City Dirt bike, ATV Fueling Law - Post

DIRT BIKES – ATV – Print off Computer and Post Required Notice

1. Sale, transfer, or dispensing of motor fuel for delivery into a dirt bike by a service station or any other person is prohibited by the Baltimore City Code, Article 19, § 40.9. Violators may be subject to a civil penalty of \$100.
2. Dispensing of motor fuel into a dirt bike from a retail pump at a service station is prohibited by Transportation Article, § 21-1128, Annotated Code of Maryland. Violators may be subject to a driver's license suspension of up to 30 days, up to \$1,000 fine and 90 days in jail.
3. Dirt bikes are motorcycles or similar vehicles not required to be registered with the Maryland Motor Vehicle Administration. Dirt bikes include motorized minibikes (2 or 3 wheels) and all-terrain vehicles (3 or 4 wheels). Mopeds, motor scooters, and farm tractors are not dirt bikes. Enacted 2010.

[Baltimore City Police Department - Dirt Bike Violators](#) Call me if you have any questions or Email kmccauley@wmda.net ■



OCT. 22, 2024

**TRADESHOW & AWARDS DINNER
MARYLAND LIVE CASINO & HOTEL**

If You are in the Fuel, Convenience Store or Repair Business, MAFCAS is for YOU!

Mid-Atlantic Fuel, Convenience & Auto Repair Show (MAFCAS) will be held at Maryland Live Casino & Hotel. The one constant facing our members is change, unless you keep up with buying trends, technology, what is hot

PRELIMINARY SCHEDULE

TUES., OCT. 22

9:00 am-11:00 am
11:00 am-5:30 pm
12:00 pm-6:00 pm
6:00 pm-7:00 pm
7:00 pm
7:30 pm-9:30 pm

EXHIBITOR CHECK IN
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in the market, you quickly fall behind. Don't become another statistic of change! One day at MAFCAS can get you up to date and pay dividends all year. Mark Your Calendar Now!

Blast From The Past

Maryland OK's Seat Belt Legislation for mid-64

The biggest slaughter in the nation has been highway accidents taking a far larger toll than war even in war years. Now someone's doing something about it. Maryland became the fourth state to pass legislation requiring seat belts. They are to be installed on all new cars after June 1, 1964. The bill was the number one piece of safety legislation in the General Assembly. California Oil Co. said it's launching a \$1 million advertising and public relations programs to promote seat belt installation by nearly 2,500 Chevron stations from Maine to Virginia and the District. The drive began Memorial Day and continues through the new year with belts going for \$5.95 installed. Meanwhile in Congress a bill to require national standards for seat belts has been OKed by the House Commerce committee. Kenneth A. Roberts (D., Ala.), chairman of the subcommittee on health and safety said he is confident the bill will be enacted. It's designed to give the seat belt user the assurance the belt he buys will do the job. One problem is the failure to use the seat belts after they're installed. Mrs. Dexter Arnold, president of the General Federation of Women's Clubs, said only 54 per cent of the motorists having the belts use them all the time. The women's group has done a lot to persuade people to buy the belts. The women have teamed up with the Auto Industries Highway Safety Committee in a Crusade for Seat Belts. They have found that:

- More than half of the injuries and deaths occur at speeds less than 40 mph.
- Three of four traffic deaths occur

within 25 miles of home.

- Traffic injuries are cut more than a third by use of seat belts. She also commended the manufacturers for putting seat belts on all new cars making installation "as simple as opening a can of peaches." Under the Maryland bill all private passenger cars made or assembled after June 1, 1964 must be equipped with two sets of seat belts on the front seats to be registered in Maryland. Dealers are prohibited from selling new cars that don't meet the requirements. District law with the 1964 models will require that seat belts must be in cars before the car can pass inspection. Standards for belts are to be maintained. The Director of Motor Vehicles is required to publish lists of all approved seat belts. The Virginia law applied to 1963 automobiles. But the laws don't require the belts be used while the car is in operation. The American Seat Belt Council, a non-profit trade association, is working with the California government with U.S. Public Health money to measure user acceptance of belts. Some 1,500 new car buyers are to get free seat belts and their use is to be surveyed at the end of six months. Here are some tips from the Seat Belt Council on judging seat belts:

- Remember that the entire assembly of adult seat belts and children's harnesses should meet safety standards of SAE or GSA: yarn, nylon webbing, hardware fastening to anchorage points, and buckle.

- Inspect belts carefully to protect against variability in workmanship. Test the holding power of the buckle after installation by pulling yourself forward with all your might; check its

ability to be released easily under this kind of strain.

- Metal fastening should be free of burrs and sharp edges, webbing should not slip through the closed buckle, whether you pull hard or gently, straight or at an angle.

- See that anchorage is accomplished by a skilled mechanic, following manufacturer's directions. If you have a pre-1962 model, anchorage holes must be properly located in the car chassis—drilled—never punched—with bolts connected from underneath. Once installed, make this a regular maintenance point.

- Watch out for misleading claims on any labels. The use of safety belts is endorsed by The American Medical Association, U.S. Department of Health, Education and Welfare, Society of Automotive Engineers, National Safety Council, and Federation of Women's Clubs. Such groups never endorse specific makes and models of belts, as some manufacturer's imply. And here are some tips on using them:

- Seat belts and harnesses should be worn snugly, and used by one person only. (Never wear a seat belt around you and a child in your lap).

- Small children like to see the passing scenery. If car seat is used, regulation floor-fastened seat belt should be worn. A four to six inch pillow can also give the child height.

- Infants are best placed in a car crib secured by straps, fastened to the front and back seats, parallel with the car wheels.

- Pregnant women can wear seat belts without harm to the child; if worn properly, low over the hips and pelvis, not across abdomen. ■

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WMDA/CAR

GOLF OUTING

TUES., JUNE 11, 2024

Renditions Golf Course • Davidsonville, MD

- 8:00 a.m. Registration and breakfast**
- 9:00 a.m. Shotgun Start (4-Man Scramble Format)**
- 1:00 p.m. Lunch with contest prize distribution**

\$169 per Golfer/\$650 for Foursome

Price includes Greens Fee, Cart fee, bag drop, Grab n Go Breakfast and Buffet Lunch. Each Golfer will get two Drink tickets redeemable for Alcoholic/Non-Alcoholic Beverages at the Beverage cart. Refreshments will be available on the course. WMDA/CAR will assist in pairing individual registered golfers to make a foursome if requested.

REGISTRATION INFORMATION

Golfer #1: _____ Email: _____ Phone: _____
 Golfer #2: _____ Email: _____ Phone: _____
 Golfer #3: _____ Email: _____ Phone: _____
 Golfer #4: _____ Email: _____ Phone: _____

Please assist in making a foursome if less than 4 golfers listed above.

Contact Person: _____ Company Name: _____
 Mailing Address: _____ City: _____ State: _____ Zip: _____

REGISTRATION FEES

- Golfers x \$169 = \$ _____
- Foursome \$650
- Lunch only \$69

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Rising Crime and Video/ Audio Surveillance

Brought to you by James L. Parsons, Jr., [Lynott, Lynott & Parsons, P.A.](#)

According to statistics released last year by the Federal Bureau of Investigation (FBI), robbery increased 1.3% across the country in 2022. Those statistics also showed that convenience stores and gas stations accounted for 13.8% of robberies in 2022, and 4.5% of all violent crime. In addition, inventory shrinkage rate for 2022 increased to 1.6% in 2022, up from 1.4% in 2021, representing a c-store industry loss of more than \$40 million every day.

In order to address rising crime (both by customers and employees), owners of gas stations and convenience stores should train their staff on how to respond if criminal activity is observed. Ensuring that shelves are stocked properly, with items front-faced so that it is easy to tell if stock is missing, is one method to try to minimize shoplifting. Another method to address potential crime using modern technology is to display real-time video of customers as they shop. Installing cameras in a high position is a way to let customers know that they are being monitored without interfering with their shopping experience.

DeKalb County, Georgia recently passed legislation requiring that gas stations and convenience stores have high-resolution video cameras that run 24 hours a day, seven days a week. They must also keep the recordings for at least 30 days and provide recordings to police within 72 hours of a request. Local jurisdictions in Maryland do not appear to have taken similar measures, but many store operators in this area voluntarily install surveillance equipment in their stores to deter criminal activity.

Maryland law treats audio and video recordings differently. For audio recordings, all parties to the communication must give their prior consent to the recording. *See*, Maryland Wiretap Act, Md. Code Ann., Cts & Jud Proc. §10-402(c)(3). Under the Electronic Communications Privacy Act (the federal wiretap law), the consent of only one party to the communications is required. 18 U.S.C. §§ 2510-2523. Violation of the Maryland Wiretap Act can subject a person to imprisonment of up to 5 years or a fine of up to \$10,000, or both. Maryland Wiretap Act, §10-402(b). There is no consent requirement with regards to video surveillance in a commercial establishment, but the video cameras may not be placed in an area where a person has a reasonable expectation of privacy (*i.e.*, a public restroom).

If any type of video or audio recording device is used, a prominent sign should be placed in the establishment, to include a statement in large bold face lettering notifying the public that all activity is being recorded. If the audio recording is challenged as violating the Maryland Wiretap Act, the store owner could claim that the person's entry into the store with the sign prominently posted amounted to consent of the audio recording. However, a person challenging an audio recording could claim that they did not see the sign. Aside from the consent issue, an argument can be made that an audio recording in a convenience store open to the public is not the type of secret recording that the Maryland Wiretap Act was intended to prohibit.



In order to address rising crime (both by customers and employees), owners of gas stations and convenience stores should train their staff on how to respond if criminal activity is observed.

Continues on page 10

FUNDRAISER FOR

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6th Annual
WMDACAR
GOLF
 OUTING

SPONSORSHIP OPPORTUNITIES

TUES., JUNE 11, 2024

Renditions Golf Course • Davidsonville, MD

LEGENDS OF GOLF SPONSORSHIP PACKAGES (Please check desired sponsorship package)

| <input type="checkbox"/> THE TIGER WOODS - \$2,500 | <input type="checkbox"/> THE JACK NICKLAUS - \$1,800 | <input type="checkbox"/> THE ARNOLD PALMER - \$1,500 |
|---|---|--|
| <ul style="list-style-type: none"> • One Free Foursome Team • Signs at Registration & Awards Lunch • 18th Hole Sponsorship | <ul style="list-style-type: none"> • Two Free Players • Signs at Awards Lunch • 9th Hole Sponsorship | <ul style="list-style-type: none"> • One Free Player • Signs at Awards Lunch |

ADDITIONAL SPONSORSHIP OPTIONS (Please check desired sponsorship)

| | | |
|--|--|---|
| <input type="checkbox"/> Lunch Sponsor - \$1,000 x 2 | <input type="checkbox"/> Cigar Sponsor - \$500 x 2 | <input type="checkbox"/> Closest to Pin Sponsor - \$300 |
| <input type="checkbox"/> Breakfast Sponsor - \$500 x 2 | <input type="checkbox"/> Best Score Team Award Sponsor - \$600 | <input type="checkbox"/> Longest Drive Sponsor - \$300 |
| <input type="checkbox"/> Goodie Bag Sponsor - \$1,500 | <input type="checkbox"/> Event Supporter - \$300 | <input type="checkbox"/> Hole Sponsorship - \$150 |
| <input type="checkbox"/> Beverage Cart Sponsor - \$500 x 4 | <input type="checkbox"/> Hole Sponsor with table - \$300 (Limited) | <input type="checkbox"/> Door Prize Donation _____ |

I don't play golf but would like to contribute \$69 (Your contribution includes lunch for one person)

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Contact Person: _____ Company Name: _____
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 Phone: _____ E-mail: _____

PAYMENT INFORMATION SPONSORSHIP TOTAL: \$ _____

Check enclosed (payable to WMDA), WMDA, 1532 Pointer Ridge Place, Suite F Bowie, MD 20716
 Bill my credit card: Visa MasterCard American Express Discover

Account # _____ Exp.Date: _____ CVV Code: _____ Billing Zip Code: _____
 Account Name (print): _____ Signature: _____ or Checking this box is my electronic signature

REGISTER TODAY! EMAIL: wmdacar2024@gmail.com CALL: 301.390.0900 FAX: 301-383-2725 www.wmdacar.com

While there is no Maryland case law directly on point on this issue, in the case of *Holmes v. State*, 236 Md. 636 (2018), the Maryland Court of Appeals addressed a secret recording by a mother with her cell phone to record her daughter's private conversations. The court found that the recordings were not admissible in the criminal case, but said that the purpose of the Maryland Wiretap Act is to "prohibit secret recordings of private oral communications." In a case out of Massachusetts, a criminal

defendant argued for suppression under the Massachusetts wiretap statute of an audio recording by a convenience store security camera, on the theory that he lacked actual knowledge that the security cameras recorded audio as well as video. The court found that the defendant's unawareness of the audio recording capabilities of the security cameras did not render the recordings "secret" under the wiretap statute where the cameras were in plain sight. *Commonwealth v. Rivera*, 445 Mass. 119, 833 N.E.2d 1113 (2005).

While there are no reported Maryland cases directly on point, a Maryland court, relying on the *Rivera* case referenced above, could find that audio surveillance recordings made at a convenience store open to the public are not prohibited by the Maryland Wiretap Act. Despite that possibility, to minimize exposure under the Maryland Wiretap Act, a store owner may wish to limit surveillance equipment to video recordings only. ■



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Changed Overtime Rule for Salaried Employees



By Roy Littlefield IV

SSDA-AT for the past several months has attended DOL roundtables and has long monitored the threat of changes being made with overtime rules.

The U.S. Department of Labor announced on Tuesday, April 23, 2024, the release of a final rule raising the minimum annual salary threshold for overtime pay eligibility. This primarily applies to executive, administrative, and professional employees, commonly referred to as the “White Collar Overtime Exemptions.” The 383 page Final Rule can be seen here and is briefly

summarized below.

The Fair Labor Standards Act (“FLSA”) is a federal law that regulates when employees must be paid minimum wage and overtime. Under the FLSA, overtime pay, which is due to all employees who do not fall within a specified exemption, is one and one-half times an employee’s regular pay rate for every hour that is worked beyond 40 hours in a work week.

While hourly workers are generally entitled to overtime pay, salaried workers are not if they earn above a certain pay level and supervise other workers, use professional expertise or judgment, or hire and fire workers.

Currently, salaried workers making less than \$35,568 annually qualify for overtime pay when they work more than 40 hours in a week. Starting July 1, 2024, the threshold will increase from \$35,568 to \$43,888 per year. It will then increase again to \$58,656 on January 1, 2025.

The change will be most critical for employers which are now claiming an overtime exemption for employees earning more than \$35,568 annually, but less than \$58,656 annually.

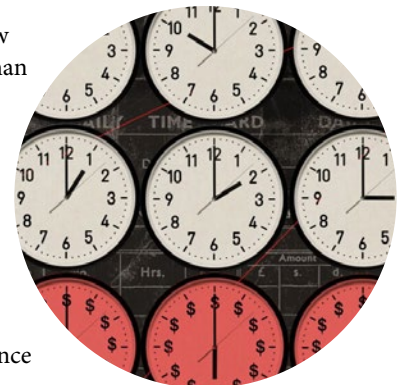
Upon enactment, these employees, occupying this \$23,088 band, would lose their current status as overtime-exempt.

The new standard will likely be challenged in court by affected industry groups that have argued that excessively raising the standard exceeds the Labor Department’s authority.

Unless and until there is court intervention, employers should prepare as follows:

- Review salaried employee classifications to confirm compliance with new salary thresholds to remain exempt.
- Review salaried employee classifications to determine whether employees should be reclassified as nonexempt.
- For employees reclassified as nonexempt, ensure all hours worked are properly recorded.
- For employees reclassified as nonexempt, review budgets, set hours expectations, and development policies for approval of overtime.

SSDA-AT will continue to report on developments and voice our concerns with the DOL. Please reach out with any concerns you may have with these changes. ■



The Fair Labor Standards Act (“FLSA”) is a federal law that regulates when employees must be paid minimum wage and overtime.



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FTC Announces Rule Banning Noncompetes



By Roy Littlefield III

On Tuesday, April 23, 2024, the Federal Trade Commission (FTC) voted 3-2 along party lines to approve its new rule on non-competes. The new rule, which will take effect in 120 days, essentially bans non-competes for all workers, finding them “an unfair method of competition – and therefore a violation of Section 5 of the FTC Act.”

Notably, a non-compete clause is broadly defined by the new rule as a “contractual term or workplace policy that prohibits a worker from, penalizes a worker for, or functions to prevent a worker from seeking or accepting work in

the United States with a different person where such work would begin after the conclusion of the employment or operating a business in the United States after the conclusion of the employment.”

The new rule applies retroactively to prior agreements, other than those for senior executives earning more than \$151,164 a year in a “policy-making position.” Employers must provide notice to other workers subject to non-compete agreements that they are no longer enforceable.

Not limited to employees, the non-compete ban extends to independent contractors, externs, interns, volunteers, apprentices, and sole proprietors who provide a service to a person. It does not include non-competes entered into pursuant to a bona fide sale of a business entity or in a franchisor-franchisee relationship.

While the rule is final, expect legal challenges to follow. For example, the U.S. Chamber of Commerce, the nation’s largest business lobby, told reporters it plans to sue over the rule, claiming the FTC is not authorized to make this rule, that non-competes are not categorically unfair, and the rule is arbitrary. The Chamber’s thoughts were echoed by the opposing Republican FTC Commissioners, who cited concerns about the FTC’s authority.

However, it’s important to clarify that while non-compete agreements are no longer permissible, other forms of employment contracts, such as non-disclosure and confidentiality agreements, remain unaffected.

As the dust settles on this landmark decision, it is clear that legal challenges and debates over the FTC’s authority will continue to unfold. Stay tuned for further developments on the regulation of non-compete agreements and the ensuing legal battles.

WMDA/CAR will continue to monitor this issue through SSDA-AT on the federal level. ■



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