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SB 233: Employment Standards, Prevailing Wage, and Living Wage - Employer Adverse Actions - Prohibition

Hearing of the Senate Finance Committee, Feb. 1, 2024

Position: Favorable with Amendments

The Public Justice Center (PJC) is a not-for-profit civil rights and anti-poverty legal services organization which seeks to advance social justice, economic and racial equity, and fundamental human rights in Maryland. Our Workplace Justice Project works to expand and enforce the right of low-wage workers to receive an honest day's pay for an honest day's work. **The PJC supports SB233, which would protect workers from retaliation when they complain about unpaid wages, with amendments to (1) strengthen enforcement by allowing worker victims of wage-related retaliation to seek get the immediate relief they need in court without having to wait for the end of a 120-day administrative process and (2) ensure that the bill's anti-retaliation protections cover complaints under Maryland's Wage Payment and Collection Law.**

Some employers use actual or threatened retaliation to steal workers' wages, and Maryland law doesn't protect these workers.

- Put simply, it is bad policy to provide a legal right such as the right to minimum wage but then fail to provide any protection when workers complain about a violation of that right. By failing to protect workers from retaliation when they make wage complaints, Maryland law is failing Maryland workers.
- Many low-wage workers are paid less than the law requires but are afraid to complain. They know there's a high risk that their employer will retaliate against them: fire them, cut their hours, reassign them to a worse position, or call ICE. As an example, one of our clients—a restaurant worker—told us that when he and his coworkers started complaining to a supervisor about receiving wages of just \$5/hour, the restaurant owner responded by saying, "if I were a real [jerk], I could call up immigration." The threat had the desired effect: many of the workers chose not to complain and continued working for wages far less than minimum wage.
- Many other workers—including PJC's clients—are actually fired after complaining about unpaid wages. Unfortunately, Maryland law generally does not provide a remedy when this sort of retaliation occurs. There is an urgent need to create such a remedy—to prevent such retaliation from happening and to make workers whole when it does.

We support SB233, which is an important step in the right direction. But the bill would better protect workers if it let them go to court directly without first going through a 120-day administrative process.

- **We support amending the bill to allow workers who have faced wage-related retaliation to go to court to get the urgent relief they need, as they can under the Fair Labor Standards Act and under state laws in many other states.** We support the bill's creation of an administrative remedy for wage-related retaliation. But we believe that workers should also have the right to go to court. As drafted, the bill would create a situation where a worker who is fired for suing their employer in state court for MWHL violations could not simply amend their complaint to add a retaliation claim. The worker could add a retaliation claim to that existing suit only if (1) the employee first complains to MDOL, (2) MDOL is

unable to resolve the issue informally through mediation, (3) MDOL issues an order, and (4) the employer fails to comply with that order. This process would prevent an employee from obtaining immediate reinstatement (or immediate remediation of other egregious retaliation causing irreparable harm) through a temporary restraining order.¹ Moreover, a private right of action would alleviate the burden on MDOL, allowing it to focus its staff time on assisting workers unable to find an attorney.

- **We also support amending the bill to cover complaints under the Maryland Wage Payment and Collection Law.** As introduced, SB233 does not cover protected activity under Maryland's Wage Payment and Collection Law. The bill must cover that law to ensure that workers are protected after making complaints concerning (1) an employer's failure to pay workers on time under Lab. & Empl. § 3-502 (e.g., an employer firing a worker for complaining about routinely getting paid several weeks late), (2) an employer's unlawful deductions under § 3-503 (e.g., an employer firing a worker for complaining about having hundreds of dollars deducted from their pay for a uniform without the required written consent of the employee), and (3) an employer's failure to pay promised wages under §§ 3-502 and 3-505 (e.g., an employer firing a worker for complaining about having received \$15/hour for weeks of work despite having been promised \$25/hour, because the failure to pay promised wages did not give rise to a minimum wage violation under the MWHL).
- **Proposed amendments addressing these issues are attached to this testimony.**

For the foregoing reasons, the PJC **SUPPORTS SB 233 with amendments** and urges a **FAVORABLE WITH AMENDMENTS** report. Should you have any questions, please call David Rodwin at 410-625-9409 ext. 249.

¹ The bill's administrative process is drawn from Maryland's sick and safe leave law, the Healthy Working Families Act ("HWFA"). *See* Md. Code Ann., Lab. & Empl. § 3-1308. However, wage-related retaliation—which frequently includes the sudden loss of a worker's job and livelihood—often requires immediate relief that an administrative process like the HWFA's (generally designed to address employer denials of earned leave) cannot provide.

AMENDMENTS TO SB233
(First Reader Bill)

Amendment No. 1

On page 2, line 1, after “(3)”, insert “SUBTITLE 5 OF THIS TITLE;”

On page 2, line 1, before “SUBTITLE 9” insert “(4)”

On page 2, line 2, strike “(4)” and insert “(5)”

On page 2, line 4, strike “(5)” and insert “(6)”

Amendment No. 2

On page 3, line 26, strike “(II)” and insert “(F)”

On page 3, line 26, strike from “THE DATE OF THE ORDER” and insert “AN ALLEGED VIOLATION OF SUBSECTION (B) OF THIS SECTION”

On page 3, line 27, strike “TO ENFORCE THE ORDER”

Amendment No. 3

On page 3, line 29, strike “(3)” and insert “(G)”

On page 3, line 30, strike “PARAGRAPH (2)(II) OF THIS SUBSECTION TO ENFORCE AN ORDER” and insert “SUBSECTION (F) OF THIS SECTION”

On page 4, line 1, strike “(I)” and insert “(1)”

On page 4, line 4, strike “(II)” and insert “(2)”

On page 4, line 1, strike “(III)” and insert “(3)”

On page 4, line 1, strike “(IV)” and insert “(4)”

On page 4, line 1, strike “(V)” and insert “(5)”