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**SB 641: MARYLAND WAGE AND HOUR LAW AND MARYLAND WAGE PAYMENT AND COLLECTION ACT - REVISIONS (MARYLAND WAGE PROTECTION ACT)**

**Hearing before the Senate Finance Committee  
February 27, 2020**

**Position: SUPPORT**

The Public Justice Center (PJC) is a not-for-profit civil rights and anti-poverty legal services organization that advances social justice, economic and racial equity, and fundamental human rights in Maryland. Our Workplace Justice Project expands and enforces the right of low-wage workers to an honest day's pay for an honest day's work. The PJC **supports SB 641**, which will protect employees from retaliation, prevent misclassification of employees as independent contractors, and guarantee employees access to basic information on their paystubs.

**Wage theft – the practice of denying or failing to pay workers their earned minimum, overtime, and other promised wages – is all too common.** Low-wage workers nationwide are denied minimum wages to the tune of fifteen billion dollars per year.<sup>1</sup> They lose nearly quarter of their weekly earnings, an average of \$3,300 per year, leaving them to survive on a mere \$10,500 annually. **In Maryland, 580,000 workers are cheated out of a cumulative \$875 million in gross wages each year.**<sup>2</sup>

**Wage theft hurts Maryland families, law-abiding businesses, and government coffers.** Nearly a third of workers who suffer minimum wage violations turn to public assistance, leaving taxpayers to subsidize the cheaters; and many families are in poverty as a direct result of not receiving the wages they have earned.<sup>3</sup> Moreover, employers who misclassify their employees as independent contractors undercut their law-abiding competitors, who pay more in wages and in workers' compensation premiums and unemployment insurance taxes to cover for the cheaters. Businesses that misclassify employees also do not make unemployment insurance contributions on their behalf, thereby limiting the amounts collected by the state for unemployment funds.

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<sup>1</sup> David Cooper & Teresa Kroeger, Employers Steal Billions from Workers' Paychecks Each Year (Economic Policy Institute, May 10, 2017), <https://www.epi.org/files/pdf/125116.pdf>

<sup>2</sup> Center for Popular Democracy, Combatting Wage Theft with the Maryland Paystub Transparency Act of 2016 4 (2016), <https://populardemocracy.org/sites/default/files/MD%20Pay%20Stub-web.pdf>

<sup>3</sup> Cooper, *supra* n. 1, at 13-15.

**SB 641 is a common sense solution that will close 3 loopholes that unscrupulous businesses exploit. It will:**

**1. Enable employees to stand up to wage theft by protecting them from retaliation.** Employees often forego their hard-earned pay because they fear retaliation. And with good reason: one national study found that forty-three percent of respondents who had complained experienced reprisal in the form of firing, suspension, or threats to cut hours or pay or call immigration authorities.<sup>4</sup> Another twenty percent of workers chose not to complain at all in order to avoid these sorts of retaliatory responses.<sup>5</sup>

Maryland's wage laws provide employees virtually no protection from retaliation. The state Wage and Hour Law theoretically makes theft of minimum and overtime wages a criminal misdemeanor, but prosecutors rarely (if ever) pursue these cases, and the maximum penalty – a \$1,000 fine – does little to deter low-road employers.<sup>6</sup> Even a successful prosecution offers no relief to a worker who has lost a job or suffered a cut in pay. In the PJC's practice representing low-wage workers throughout the state, we routinely hear from workers who suffer wage theft but opt not to pursue claims because they are fearful of the consequences they will suffer.

**2. Prohibit low-road employers' ability to hide wage theft with paystubs that contain vague or misleading information.** Maryland law requires employers to record payroll information such as employees' hours, pay rates, deductions, and earned regular and overtime wages, but it does not require businesses to share this information each pay period; current law only requires a statement of gross wages and deductions. Paystubs that lump together all compensation make it nearly impossible to determine how the compensation was calculated or whether an employee has been paid all earned wages, including overtime. In addition, because Maryland law does not require paystubs to include basic identifying information for the issuing business, some employers – particularly those in low-wage industries – omit their address or telephone number, making it difficult for employees to even raise questions about their pay.

With its gaping omissions, **Maryland's paystub requirements are far weaker than those in Alaska, California, Colorado, Delaware, Hawaii, Massachusetts, Maine, Minnesota, New Mexico, Nevada, New York, Pennsylvania, Texas, Vermont, and Washington.**<sup>7</sup> Virtually all of these jurisdictions require that, in addition to gross wages and deductions, paystubs show hours worked. Majorities also require that paystubs report pay rate(s), net pay, and pay period ranges. Maryland thus lags behind a diverse array of other states in its failure to impose common sense standards to require transparency in paystubs generated within its borders.

**3. Clarify what an independent contractor is so that employees are not misclassified and benefit from the protections of our wage laws as intended.** Independent contractors are those who control their own work and are truly in business for themselves; a plumber that sets her own rate and schedule when servicing homes is an example. Maryland already has a well-established definition in the unemployment insurance code and Workplace Fraud Act, but that definition is

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<sup>4</sup> Nat'l Empl. Law Project, Broken Laws, Unprotected Workers 3 (2008), <https://www.nelp.org/wp-content/uploads/2015/03/BrokenLawsReport2009.pdf>.

<sup>5</sup> *Id.*

<sup>6</sup> Md. Code Ann. Lab. & Empl. § 3-402(b)(1).

<sup>7</sup> Center for Popular Democracy, *supra* n. 2, at 4.

not spelled out in our wage statutes. As a result, too many businesses label their employees independent contractors and deny them protections – such as bedrock rights to minimum wage and overtime – that Maryland’s wage laws afford to covered employees. This practice is particularly common in industries dominated by women, such as home health care and domestic services.<sup>8</sup> Clarifying the definition of “independent contractor” in the wage statutes will promote clarity and consistency, and ensure that employees are not exempt from the wage theft protections of the Wage and Hour and the Wage Payment and Collection Laws.

In sum, the Maryland Wage Protection Act simply closes three loopholes to combat wage theft and level the playing field for law-abiding businesses by:

- **Protecting employees from retaliation** so that victims of wage theft can enforce their right to be paid without fear of being fired, losing hours, being threatened, et cetera;
- **Promoting transparency by requiring that paystubs contain information showing how pay was calculated**, such as hours worked, pay rate, and overtime.
- **Clarifying that employees are broadly protected by wage laws** while independent contractors (people who are in business for themselves) are not, and incorporating the definition of “independent contractor” from the existing Unemployment Insurance law.

In doing so, this legislation takes an important step towards combatting wage theft in Maryland, and ensuring that all workers receive the wages they work hard to earn. **The PJC strongly urges a favorable report.**

For more information contact Monisha Cherayil, whose contact information is on the first page.

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<sup>8</sup> U.S. Gov’t Accountability Office, GAO-06-656, Employment Arrangements: Improved Outreach Could Help Ensure Proper Worker Classification 31 (2006), <https://www.gao.gov/new.items/d06656.pdf>; NELP, Independent Contractor Classification in Home Care (2015), <https://www.nelp.org/wp-content/uploads/Home-Care-Misclassification-Fact-Sheet.pdf>.