



WRITTEN TESTIMONY FOR THE SENATE FINANCE COMMITTEE
IN SUPPORT OF SB 641

FEBRUARY 27, 2020

The Maryland Employment Lawyers Association (MELA) is the state chapter of the National Employment Lawyers Association, a national organization of attorneys, primarily plaintiffs' counsel, who specialize in employment law. MELA advocates for laws that protect Maryland employees and ensure fair treatment by their employers.

MELA supports SB 641 because it closes loopholes that leave Maryland employees vulnerable to wage theft and too often unable to challenge their employers' failures to pay. Currently, unscrupulous employers may *legally* fire employees for opposing illegal wage theft that under the Maryland Wage Payment and Collection Law ("MWPCCL"). The MWPCCL is designed to ensure that Maryland workers receive the pay they have earned on time and in the proper amount. Likewise, though some forms of retaliation are prohibited under the Maryland Wage and Hour Law (MWHL), the criminal misdemeanor penalty is not effective because it cannot restore the employee to their position if they are fired. These two bedrock laws are designed to ensure that Maryland workers receive the pay they have earned on time and in the proper amount.

SB 641 fulfills the promise made by the MWPCCL and MWHL in three ways. First, SB 641 provides for protection against retaliation should an employee speak out about non-payment, underpayment, or delayed payment. Second, SB 641 requires that employers make paychecks transparent so workers can see if they were paid the right amount. Currently, some unscrupulous businesses mask wage theft with paychecks that provide no information on how pay was calculated; they only provide a gross amount and deductions. And, third, SB 641 makes sure that employees are not improperly classified as independent contractors, such that they are protected as employees under Maryland's wage and hour laws.

A right to payment of wages on time and in the full amount is meaningless if your employer can fire you simply to bringing issues regarding payment to light. The lack of an effective anti-retaliation provision silences people who need to be paid on time to pay for healthcare, to pay for their care, to make rent and to make sure such payment actually happens.

And it should not be this way. Nearly every employment statute has an anti-retaliation provision where employees can bring their own lawsuits when they suffer adverse actions for speaking out. This is true of the Maryland anti-discrimination laws, and it should be true of the wage laws. The widespread adoption of anti-retaliation or whistleblower provisions recognizes that unchecked retaliation guts the substantive right by silencing workers. SB 641 corrects this legislative gap by adding an anti-retaliation provision to the wage laws.

Similarly, the ability of employers to provide paychecks with scant information, and which do not inform employees of the number of hours or pieces for which the employee is being paid,

can mask wage theft. In those cases, how can the employee tell if she is being paid the right amount? SB 641 fixes this concern by ensuring employers disclose basic information on the paycheck which gives the employee basic information every time she is paid.

Finally, wage and hour laws by and large do not apply to independent contractors; they protect employees. True independent contractors are in business for themselves; they generally supply a finished product or service that is distinct from the product or service offered by the business to which they supply it, and they work free from any direction or control over their work. The distinction between an employee and an independent contractor is critical; it is the difference between being protected as an employee and entitled to minimum and overtime wages or being responsible for yourself and any employees you have as an independent business. SB 641 clarifies the definition of who is, and who is not, an independent contractor to ensure that only people truly in business for themselves are exempt from the wage and hour protections.

As the representatives of employees, MELA's goals are to ensure that Maryland employees are fairly treated, and that existing protections already codified live up to their promise. The MWHL and MWPCCL currently fall short of their goals but can be corrected with the modest changes in SB 641.

We **urge you to support SB 641** and help ensure that Maryland's wage laws live up to their promise.