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SB 502

Labor and Employment

Labor and Employment – Agricultural Stands, Retail Farms, Farmers’ Market Exemptions Hearing of the Senate Finance Committee, February 18, 2021

Position: UNFAVORABLE

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 **OPPOSES SB 502** and requests an **UNFAVORABLE** report.

SB 502 is an Unconscionable Response to a Non-existent Problem.

In the midst of a global pandemic when families are struggling to pay rent and keep food on the table, this bill would exempt more hard-working Marylanders from the very bare minimum wages to which they might otherwise be entitled. This effort to deny the bedrock minimum wages to more Marylanders is not only unconscionable, it is not necessary. Maryland’s Wage and Hour Law contains myriad exemptions that already deny far too many workers their basic right to earn the state’s minimum wage, including many who would likely be twice exempt if this bill passes. For example, the following individuals are already denied the right to be compensated even at the bedrock lowest rate applicable in Maryland:

- individuals at least 62 years old and employed no more than 25 hours in a week;
- children, parents, spouses, or other members of the immediate family of the employer;
- individuals working for an employer engaged in canning, freezing, packing, or first processing of perishable or seasonal fresh fruits, vegetables, or horticultural commodities, poultry, or seafood
- certain individuals working in agriculture;
- individuals compensated on a commission basis;
- individuals working principally in the range production of livestock; and/or
- certain individuals working as a hand-harvest laborer and is paid on a piece-rate basis in an operation that, in the region of employment, has been and customarily and generally is recognized as having been paid on that basis.

Some of these workers are likely employed at the various agricultural stands, retail farms, or farmers markets this bill seeks to add, and therefore already exempt.

Moreover, there is no economic justification for this exemption. This is nothing more than a windfall for businesses at the expense of the employees who work for them. By selling directly to consumers or the public via stands, retail farms, or farmers’ markets, these farms increase their profits. Selling directly is a business decision that maximizes

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efficiencies and cuts out the middlemen; businesses save costs by avoiding having to pay for transportation or shipping to grocery stores or elsewhere. Thus, from an economics perspective, increased profit is baked into the direct-sale arrangement, and there is no compelling economic reason to relieve these businesses of any obligation to pay their employees the minimum wage. As such, this bill is a solution in search of a problem. Maryland should instead work to ensure that its minimum wage is guaranteed to more workers, not fewer.

SB 502 is anything but a ‘technical fix.’ It is a dangerous loophole.

Far from a technical fix, the bill would create a dangerous loophole given the combination of vague language and broad of the terms. It would exempt any individual who:

IS EMPLOYED AT AN AGRICULTURAL STAND, A RETAIL FARM, OR A FARMERS’ MARKET THAT PRIMARILY SELLS AGRICULTURAL PRODUCTS THAT THE EMPLOYER HAS PRODUCED.

Relevant terms are undefined and subject to manipulation. For example, what is an “agricultural stand”? The term is not limited by square footage, nor number of employees, nor by whether it is enclosed or free standing. Further, the bill exempts those workers employed by entities that “primarily” sell “agricultural products that the employer has produced” but what constitutes “primarily” and who determines whether the employer produced the products is unclear. Relatedly, the terms are exceedingly broad, with the addition of “retail farms” and “farmers markets.” Last year’s fiscal note indicated that Maryland had approximately 147 farmers markets and 1,347 farms that sell to the public. Baltimore City alone hosts at least one large farmers market under the Jones Falls Expressway, with dozens of vendors and their employees working each weekend. Assuming farmers market average 20 employees, and each retail farm averages 5 employees, close to 10,000 workers could lose minimum wage coverage under this bill.

SB 502 Would Disproportionately Hurt Black, Immigrant, and Women Workers.

Over the last several decades, wages have stagnated despite increased worker productivity. Large percentages of workers earn wages that fall below what is needed to pay rent, buy food, and care for their families, with one in nine workers paid wages that fall below the poverty guideline for a family of their size.¹ Yet the racial composition of workers struggling with poverty level wages is not consistent across the board. To the contrary, racism in its various manifestations –occupational and housing segregation, barriers to education, anti-immigrant policies and criminal injustice –relegates many workers of color to the bottom rungs of the economic caste system. While fewer than 9% of white workers earned poverty level wages in 2017, nearly 20% of Latino workers and more than 14% of Black workers were paid such wages.² These disparities have not decreased over time: since the 1980’s the share of Black workers earning poverty-level wages has consistently been 1.5 times that of white workers, while the ratio of the Latino workers earning such low wages has actually grown to 2.2 from 1.8 since 1986. At the same time, women are also overrepresented in low-wage jobs.³ In light of these stark disparities, any attempt to withdraw even the already-insufficient minimum wage should be flatly rejected.

For the foregoing reasons, the PJC **OPPOSES SB 502** and urges an **UNFAVORABLE** report. Should you have any questions, please call Sally Dworak-Fisher at 410-625-9409 ext. 273.

¹ David Cooper, *One In Nine Are Paid Wages That Can Leave Them In Poverty, Even When Working Full Time*, Econ. Pol. Inst. (June 15, 2018), <https://www.epi.org/publication/one-in-nine-u-s-workers-are-paid-wages-that-can-leave-them-in-poverty-even-when-working-full-time/>.

² David Cooper, *Workers of Color are Far More Likely to be Paid Poverty Level Wages than White Workers*, Econ. Pol. Inst. (June 21, 2018), <https://www.epi.org/blog/workers-of-color-are-far-more-likely-to-be-paid-poverty-level-wages-than-white-workers/>.

³ Anne Morrison & Katherine Gallagher Robbins, *Women’s Overrepresentation in Low-Wage Jobs*, Nat’l Women’s Law Ctr. (Oct. 2015), https://nwlc.org/wp-content/uploads/2015/08/chartbook_womens_overrepresentation_in_low-wage_jobs.pdf.

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