MDCEP
MARYLAND CENTER ON ECONOMIC POLICY

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Maryland Worker Protections Weakened by Duplication, Inconsistency, Loopholes

Position Statement in Support of Senate Bill 224

Given before the Senate Finance Committee

Strong legal protections for workers are an essential tool to steer our economy along a healthy growth path that delivers broadly shared prosperity. Maryland has made important advances in recent years by guaranteeing most workers the opportunity to earn paid sick days and gradually raising the minimum wage to $15 per hour. However, our current system of worker protections currently uses multiple overlapping but distinct definitions of "employer" in different sections of law. This leads to unnecessary duplication and confusion. Most importantly, current law includes loopholes that allow companies to shirk their responsibilities to workers through complicated subcontracting schemes. **The Maryland Center on Economic Policy supports Senate Bill 224 because it would create a single, consistent definition of "employer" and close loopholes that harm workers.**

Researchers have linked increased "fissuring" of the workplace to increased levels of labor standard violations and more difficulty enforcing worker protections. Fissuring refers to structures such as subcontracting, franchising, and use of temp agencies (among others) that put middle-men between workers and the entities responsible for making decisions that affect pay, benefits, and working conditions. These structures can allow companies to offload responsibilities to abide by labor law to legally separate entities, even while continuing to make decisions that affect workers' terms of employment. The Economic Policy Institute identifies three ways that fissuring increases the risk of labor law violations:[i]

> Growth of fissured workplaces over the past several decades contributes to workplace law violations. Lower-level contractors are often less capitalized and may exist within the underground economy. Also, mid-level firms, such as temp agencies, must make a profit themselves, leaving smaller margins and pressure to cut corners to make a profit by paying less money to workers at the bottom level. In addition, **effective enforcement of minimum wage requirements, overtime pay obligations, and other workplace standards is often more difficult in a fissured workplace, because it can be difficult for enforcers to impose liability on higher-level "up-chain" entities that drive working conditions and have the ability to bring about lasting compliance**.

The consistent definition adopted in Senate Bill 224 would close loopholes in three sections of Maryland labor law that currently open space for employers to shirk their responsibilities:[ii]

- Maryland Wage Payment and Collection Law (Labor and Employment § 3-501 *et seq.*)

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- Use of lie detector tests (Labor and Employment § 3-701 *et seq.*)
- Maryland Workplace Fraud Act (independent contractor misclassification in selected industries) (Labor and Employment § 3-901 *et seq.*)

We should measure the health of our economy not simply by the number of dollars exchanged or the number of people who go to work each day, but by its ability to raise all families' standard of living. Yet our economy has largely moved in the opposite direction over the last half century, as typical workers saw little improvement in their wages despite explosive growth for the wealthiest 1%.[iii] Basic standards push against this negative trend, helping to ensure that everyone shares in the benefits of a growing economy—and these standards are meaningful only if they are backed by effective enforcement.

For these reasons, the Maryland Center on Economic Policy respectfully requests that the Senate Finance Committee make a favorable report on Senate Bill 224.

Equity Impact Analysis: Senate Bill 224

Bill summary

Senate Bill 224 adopt a single, consistent definition of "employer" for the purposes of Maryland worker protection laws. This standard would ensure that all worker protections apply equally to so-called "joint employers" that employ workers through separate entities such as subcontractors.

Background

Maryland labor law currently uses multiple distinct definitions of "employer" in different sections of law. Some, but not all, labor standards include joint employers in the definition of employer. Researchers have linked workplace fissuring, which includes joint employer relationships, to more frequent violation of worker protections. Recent judicial decisions have further weakened Maryland labor law by exempting joint employers from responsibility to comply with labor standards.

Equity Implications

Current labor law provides especially weak protections to part-time workers, low-wage workers, tipped workers, and workers born outside the United States. These weaknesses heighten economic roadblocks facing many workers who already face obstacles in the labor market. For example, about two-thirds of tipped workers nationwide are women,[iv] and workers of color—particularly Latinx workers—are more likely than their white counterparts to work for low wages.

Nationwide, wage theft – including minimum wage violations, overtime violations, off-the-clock work, and other forms of illegal underpayment – rivals or exceeds the value of all other forms of theft, according to multiple credible estimates. While limited data on wage theft exist (partly because of inadequate enforcement), a 2017 analysis found that minimum wage violations alone add up to about $15 billion per year nationwide, more than the sum of robberies, burglaries, larcenies, and motor vehicle thefts.[v]

Senate Bill 224 would reduce barriers facing marginalized workers by making it easier for them to enforce their existing rights.

Impact

Senate Bill 224 would likely **improve racial, gender, immigration, and economic equity** in Maryland.

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[i] Terri Gerstein, "How District Attorneys and State Attorneys General Are Fighting Workplace Abuses," Economic Policy Institute, 2021, https://www.epi.org/publication/fighting-workplace-abuses-criminal-prosecutions-of-wage-theft-and-other-employer-crimes-against-workers/

[ii] HB 299 Fiscal and Policy Note.

[iii] Christopher Meyer, "What a $15 Minimum Wage Would Mean for Maryland: Good Jobs, Secure Families, and a Healthy Economy," Maryland Center on Economic Policy, 2018, http://www.mdeconomy.org/wp-content/uploads/2018/02/MDCEP_FF15_report-2.pdf

[iv] Elise Gould and David Cooper, "Seven Facts about Tipped Workers and the Tipped Minimum Wage," Economic Policy Institute, 2018, https://www.epi.org/blog/seven-facts-about-tipped-workers-and-the-tipped-minimum-wage/

[v] David Cooper and Teresa Kroeger, "Employers Steal Billions from Workers' Paychecks Each Year," Economic Policy Institute, 2017, https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/