



David Rodwin, Attorney
Public Justice Center
201 North Charles Street, Suite 1200
Baltimore, Maryland 21201
410-625-9409, ext. 249
rodwind@publicjustice.org

HB465: Workplace Fraud and Prevailing Wage - Violations - Penalties and Referrals

Hearing of the House Economic Matters Committee, Jan. 31, 2024

Position: FAVORABLE

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 HB465, which would help prevent employers from misclassifying their employees as independent contractors, and ensure that violators face appropriate consequences.**

Combatting the illegal misclassification of employees as independent contractors—also known as “workplace fraud”—is a priority for Governor Moore, Comptroller Lierman, and Attorney General Brown.

- Real independent contractors have their own businesses, while employees do not. Calling an employee an “independent contractor” to avoid paying employment taxes and providing employee benefits like sick leave is called “misclassification” or “workplace fraud.”
- Just weeks ago, Governor Moore issued an executive order establishing a task force to combat this harmful practice. As the Governor’s press release noted, “Workplace fraud deprives workers of basic protections such as rights to minimum wage and overtime pay, health insurance coverage, and access to unemployment benefits. Businesses may also be put at a disadvantage when competitors misclassify workers. As a result, required taxes may be unpaid, which lowers state revenue and impacts funding to pay for critical public services.”¹
- As Gov. Moore noted, ending misclassification is “an important step toward a more equitable, competitive, and prosperous economy that lifts all Marylanders.”
- The press release also quotes Comptroller Lierman and Attorney General Brown, both of whom explained that misclassification hurts workers and law-abiding businesses alike.

When employees are misclassified as independent contractors, it is both illegal and harmful.

- If a worker’s pay rate and schedule are set by an employer, and the employer can control how the work is done, that worker is an employee under the law even if the employer calls the worker an “independent contractor.”
- Misclassification prevents workers from getting ahead. When employees are misclassified as independent contractors, they are cut out of the social safety net and lose protections like *sick leave*,

¹ <https://governor.maryland.gov/news/press/pages/governor-moore-issues-executive-order-establishing-crossgovernmental-task-force-to-combat-workplace-fraud.aspx> The press release is also attached to this testimony.

workers' compensation, health insurance, and more – and they face a higher “self-employment” tax when they should be getting a tax refund. Most hourly workers are not tax experts and do not understand the tax consequences of being classified as an independent contractor. As a result, many get into thousands of dollars of tax debt because they are unable to pay higher self-employment taxes.

- Misclassification also hurts law-abiding businesses by forcing them to compete on an uneven playing field with RSAs that save money by misclassifying their workers.

HB465 is a win-win for Maryland’s workers, law-abiding businesses, and the State of Maryland itself—which will increase its tax revenue when employers pay the employment taxes the law already requires them to pay.

- The bill calls for referrals to the Comptroller when clear and convincing evidence shows that an employer has misclassified its employees as independent contractors. When the Comptroller takes action, that will ensure that our state receives the employment tax revenue it is owed.
- In the past, some have argued that we need better enforcement of existing employment laws, not new rules. This bill improves enforcement of existing laws—it does not create any new requirements on employers.
- HB465 would also advance the recommendations in DLS’s just-released evaluation of Maryland’s Worker Classification Protection Unit, which include improving information sharing between government agencies to better address and remedy misclassification.²

For these reasons, the PJC **SUPPORTS HB465** and urges a **FAVORABLE** report. Should you have any questions, please call David Rodwin at 410-625-9409 ext. 249.

² <https://dls.maryland.gov/pubs/prod/ProgEval/EvaloftheWorkerClassificationProtectionUnit.pdf>



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Governor Moore Issues Executive Order Establishing Cross-Governmental Task Force to Combat Workplace Fraud

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ANNAPOLIS, MD — Governor Wes Moore this week signed an [executive order](#) to renew and expand a cross-governmental task force dedicated to strengthening investigations and enforcement of laws regarding workplace fraud. The nine-member Joint Enforcement Task Force on Workplace Fraud, chaired by Maryland Department of Labor Secretary Portia Wu, includes Maryland Attorney General Anthony G. Brown and Comptroller Brooke E. Lierman.

"We will never tolerate the exploitation of Maryland workers," **said Gov. Moore.** "This order will help ensure that employees receive the pay and benefits they've earned while driving fair competition in the private sector. Today, we take an important step toward a more equitable, competitive, and prosperous economy that lifts all Marylanders."

[Workplace fraud](#) deprives workers of basic protections such as rights to minimum wage and overtime pay, health insurance coverage, and access to unemployment benefits. Businesses may also be put at a disadvantage when competitors misclassify workers. As a result, required taxes may be unpaid, which lowers state revenue and impacts funding to pay for critical public services.

"Companies that hire workers and misclassify them to circumvent our tax and labor laws are committing serious fraud that erodes basic rights and benefits, saddles workers with an undue financial burden, and undermines the economic well-being of our state," **said Comptroller Brooke E. Lierman.** "This executive order expands our ability to share information, coordinate resources, and investigate suspected workplace fraud to protect Marylanders and their families. We should all stand against this form of egregious theft. I thank Governor Moore for prioritizing this issue and I look forward to working as a partner in this initiative to build a stronger and fairer Maryland."

As outlined in the executive order, the task force will collaborate to share information and data across agencies and drive strategic and effective enforcement. It will identify industries where workplace fraud is more prevalent and focus efforts to address the problem, including stronger outreach to businesses and workers. The task force will also make recommendations on where regulations and laws may be strengthened.

"I commend Governor Moore's work to combat workplace fraud and protect Maryland workers and their families," **said Attorney General Anthony G. Brown.** "The reestablishment of the Joint Enforcement Task Force on Workplace Fraud is an important effort, along with our work with the Department of Labor to improve and enhance the role of my office and our resources to advance this critical priority. I look forward to continuing our work with the administration to ensure the relationship between Maryland employers and their employees remains fair and equitable."

The task force will advance the Moore-Miller Administration's efforts to make Maryland a fair and equitable place to work and do business. [Studies have shown](#) that workers of color, immigrants, young workers and those in low-wage employment are most at risk for exploitation, including misclassification and wage theft.

"This is a win for both businesses and workers," **said Maryland Department of Labor Secretary Portia Wu.** "Employees need to be classified correctly and paid fairly, and this keeps our businesses on a level-playing field in the competitive