

SB0233_Employer_Adverse_Actions_Prohibition_MLC_FA

Uploaded by: Cecilia Plante

Position: FAV



TESTIMONY FOR SB0233
Employment Standards, Prevailing Wage, and Living Wage - Employer
Adverse Actions - Prohibition

Bill Sponsor: Chair, Finance Committee

Committee: Finance

Organization Submitting: Maryland Legislative Coalition

Person Submitting: Cecilia Plante, co-chair

Position: **FAVORABLE**

I am submitting this testimony in favor of SB0233 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of activists - individuals and grassroots groups in every district in the state. We are unpaid citizen lobbyists and our Coalition supports well over 30,000 members.

MLC supports legislation that expands employee whistleblowing protections. This legislation protects employees from recrimination for simply asking about their rights or employer responsibilities. Moreover, this legislation strengthens the Commissioner of Labor and Industry's ability to investigate violations, participate in mediation, issue orders, and enforce penalties.

Whistleblower protections can encourage people to voice their concerns without fear of retaliation. Employees are in a unique position to identify fraud, corruption, safety issues, injuries, discrimination, and waste. Thus, employees are a first line of defense against anti-competitive and anti-social activities. We need to protect people willing to perform this role for a well-functioning society.

We support this bill and recommend a **FAVORABLE** report in committee.

sb233- labor rights, state law- FIN 2-1-2024.pdf

Uploaded by: Lee Hudson

Position: FAV



Delaware-Maryland Synod
Evangelical Lutheran Church in America
God's work. Our hands.

Testimony Prepared for the
Finance Committee
on
Senate Bill 233
February 1, 2024
Position: **Favorable**

Madam Chair and members of the Committee, thank you for the opportunity to support the dignity of human effort by acknowledging a human right within State law. I am Lee Hudson, assistant to the bishop for public policy in the Delaware-Maryland Synod, Evangelical Lutheran Church in America. We are a faith community with three judicatories in every part of our State.

Our community supports the human rights of workers in the interest of fair wages and safe, just work conditions. A 2017 message among us concerning human rights as principle and instrument, affirmed a 1999 ELCA statement about justice in the *oikos*, the economy.

Workers do have rights in Maryland and it should not be permissible that those rights be abridged or eliminated by employers dissenting from them.

For those reasons we support **Senate Bill 233** ask your favorable report.

Lee Hudson

Testimony in support of SB0233.pdf

Uploaded by: Richard KAP Kaplowitz

Position: FAV

2/1/2024

Richard Keith Kaplowitz
Frederick, MD 21703

TESTIMONY ON SB#0233 - FAVORABLE

**Employment Standards, Prevailing Wage, and Living Wage – Employer Adverse Actions -
Prohibition**

TO: Chair Wilson, Vice Chair Crosby, and members of Economic Matters Committee

FROM: Richard Keith Kaplowitz

My name is Richard Keith Kaplowitz. I am a resident of District 3. I am submitting this testimony in support of SB#0233, Employment Standards, Prevailing Wage, and Living Wage – Employer Adverse Actions - Prohibition

My Jewish faith teaches that there are Jewish Ethics that govern the relationships between employers and employees. SB#0233 closely mirrors that ethical framework in creating a climate of moral treatment that governs labor relations.

In the article “Jewish Employee-Employer Relations” (<https://www.myjewishlearning.com/article/jewish-employee-employer-relations/>) the dimensions of employer’s conduct is discussed.

While making certain demands on workers, the bulk of Jewish labor law imposes obligations on employers. This emphasis on the responsibilities of employers reflects an understanding of the essential power imbalance between employers and employees, as well as an internalization of the Exodus narrative. Often cited within discussions of labor law is the biblical verse, “they are my servants” (Leviticus 25:43), understood by the rabbis to imply “and not servants to servants.” The experience of slavery and redemption instills within the lawmakers a wariness about any situation in which one person might, de facto, become the servant of another.

The essence of the proposed bill is to create an environment in which employer conduct towards employees is restricted in the imposition of a negative outcome for an employee’s lawful actions. It will add certainty to employees’ exercise of their employment rights without fear of reprisals.

SB0233 is a common-sense application of regulations on how we treat the imbalance created when an employer does not respect their employees’ rights. It enforces the safety of an employee whose actions vis-à-vis their employers could be met with negative consequences on their continued employment. **I respectfully urge this committee to return a favorable report on SB0233.**

EASRCC Carpenters testimony_SB 233_HB 136_FAV.pdf

Uploaded by: Roger Manno

Position: FAV



Eastern Atlantic States

REGIONAL COUNCIL OF CARPENTERS

8500 Pennsylvania Avenue, Upper Marlboro, MD 20772 | Phone: 301-735-6660 | EASCARPENTERS.ORG

TESTIMONY

SB 233 / HB 136 - Employment Standards, Prevailing Wage, and Living Wage - Employer Adverse Actions – Prohibition

FAVORABLE

Dear Chairs Beidle and Wilson, and honorable members of the Senate Finance Committee and the House Economic Matters Committee:

On behalf of the Eastern Atlantic States Council of Carpenters (EASRCC), representing 42,000 members throughout the region, I write today to express our support for SB233 / HB136 - Employment Standards, Prevailing Wage, and Living Wage - Employer Adverse Actions – Prohibition, and to ask for a favorable report.

This legislation expands existing Maryland law with regard to employer retaliations against employees. Currently, Maryland prohibits threats, statements, actions or policies that are materially adverse to employees exercising their equal employment opportunity (EEO) rights in the workplace, whether or not that employee has exercised those rights through a legal proceeding in an employment discrimination case. Such rights include complaints about discrimination, refusal to submit to employment policies believed to be discriminatory, requesting reasonable accommodations, resisting or filing complaints against sexual harassment, among others.

This legislation creates additional investigative authorities for the Commissioner of Labor and Industry, as well as additional civil remedies, in this case within both the Labor and Employment Article and Title 18 of the State Finance And Procurement Article.

While it continues to be the strong position of the Eastern Atlantic States Regional Council of Carpenters, the Building Trades and others, that much stronger investigative resources and penalties, specifically a more robust field inspection program and the adoption of criminal penalties, must be added to the Maryland statutes, this bill adds a modicum of enforcement authority to the Department.

We ask for a favorable report.

Sincerely,

Mungu Sanchez

SB233_MSBA_ADRSection_FAV

Uploaded by: Shaoli S. Katana, Esq.

Position: FAV



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To: Members of the House Economic Matters Committee and the Senate Finance Committee

From: Alternative Dispute Resolution Section, Maryland State Bar Association

Date: February 9, 2024

Subject: HB 136 and SB 233 - Employment Standards, Prevailing Wage, and Living Wage - Employer Adverse Actions - Prohibition

The Alternative Dispute Resolution Section Council of the Maryland State Bar Association (MSBA) supports HB 136 and SB 233. This bill allows the Commissioner of Labor and Industry to conduct an investigation on the Commissioner's own initiative or on receipt of a written complaint. In addition, within 90 days of receiving a written complaint related to the five affected statutes, the Commissioner must investigate and attempt to resolve the issue informally through mediation.

We appreciate and support this provision of this bill. Informal mediation is an effective tool to resolve disputes before further legal actions are taken. We believe that this specific language gives the parties an opportunity to settle their differences without the expense of going to court. At the same time, courts will benefit from the likely reduction in the number of cases filed which crowd our dockets.

Should you have any questions, please contact Erin Gable, Esq., Chair of the Alternative Dispute Resolution Section Council, edgable@aacc.edu.

1.31.24 SB 233 Testimony_FWA.pdf

Uploaded by: Christian Gobel

Position: FWA

FAVORABLE WITH AMENDMENTS
Senate Bill 233
Employment Standards, Prevailing Wage, and Living Wage – Employer
Adverse Actions – Prohibition

Senate Finance Committee
February 1, 2024

Christian Gobel
Government Relations

The Maryland State Education Association supports Senate Bill 233 with amendments. Senate Bill 233 prohibits an employer from taking or threatening to take adverse retaliatory actions against an employee because the employee engages in certain conduct regarding rights and responsibilities, complaints, investigations, proceedings, or hearings in connection with specified state employment statutes. Additionally, the legislation authorizes the Commissioner of Labor to investigate a violation of the law on their own initiative or after receiving a written complaint, attempt to resolve disputes informally through mediation, and obtain recovery for employees who have been harmed under the law. Finally, the legislation provides methods for recovery if an employer does not comply with an order issued by the Commissioner.

MSEA represents 75,000 educators and school employees who work in Maryland's public schools, teaching and preparing our almost 900,000 students so they can pursue their dreams. MSEA also represents 39 local affiliates in every county across the state of Maryland, and our parent affiliate is the 3-million-member National Education Association (NEA).

Anti-retaliation statutory protections are necessary to ensure employees are free from intimidation, coercion, harassment, or economic harm when they seek to assert their rights under the law. Retaliation can take many forms including firing, demotion, reduction in pay or benefits, unfavorable scheduling or hours change, harassment, or



threatening to report a worker or their family to immigration authorities.¹ Unfortunately, survey data reveals that workers are frequently subjected to retaliatory actions from their employer or fear retaliation from their employer for seeking to assert their rights under various labor and employment laws, such as forming a union, reporting wage and hour violations, filing anti-discrimination claims, or raising workplace health and safety concerns.² Retaliatory actions carried out by employers against their employees can have a chilling effect in the workplace, which may dissuade workers from reporting violations, participating in investigations, or attending hearings. This legislation represents a crucial step forward to make certain workers are free from retaliation when they seek to assert their rights under various state labor and employment statutes.

MSEA respectfully urges the committee to extend the protections of this Act to claims involving the Maryland Wage Payment and Collection Law.

We urge the committee to issue a Favorable with Amendments report on Senate Bill 233.

¹ Laura Huizar, *Exposing Wage Theft Without Fear: States Must Protect Workers from Retaliation*, National Employment Law Project (June 2019), <https://s27147.pcdn.co/wp-content/uploads/Retal-Report-6-26-19.pdf>.

² *Id.* See also, Annette Bernhardt, et al. *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities* (2009), <https://www.nelp.org/wp-content/uploads/2015/03/BrokenLawsReport2009.pdf>.

PJC - SB233 - FWA - with amendments .pdf

Uploaded by: David Rodwin

Position: FWA



David Rodwin, Attorney
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SB 233: Employment Standards, Prevailing Wage, and Living Wage - Employer Adverse Actions - Prohibition

Hearing of the Senate Finance Committee, Feb. 1, 2024

Position: Favorable with Amendments

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 SB233, which would protect workers from retaliation when they complain about unpaid wages, with amendments to (1) strengthen enforcement by allowing worker victims of wage-related retaliation to seek get the immediate relief they need in court without having to wait for the end of a 120-day administrative process and (2) ensure that the bill's anti-retaliation protections cover complaints under Maryland's Wage Payment and Collection Law.**

Some employers use actual or threatened retaliation to steal workers' wages, and Maryland law doesn't protect these workers.

- Put simply, it is bad policy to provide a legal right such as the right to minimum wage but then fail to provide any protection when workers complain about a violation of that right. By failing to protect workers from retaliation when they make wage complaints, Maryland law is failing Maryland workers.
- Many low-wage workers are paid less than the law requires but are afraid to complain. They know there's a high risk that their employer will retaliate against them: fire them, cut their hours, reassign them to a worse position, or call ICE. As an example, one of our clients—a restaurant worker—told us that when he and his coworkers started complaining to a supervisor about receiving wages of just \$5/hour, the restaurant owner responded by saying, "if I were a real [jerk], I could call up immigration." The threat had the desired effect: many of the workers chose not to complain and continued working for wages far less than minimum wage.
- Many other workers—including PJC's clients—are actually fired after complaining about unpaid wages. Unfortunately, Maryland law generally does not provide a remedy when this sort of retaliation occurs. There is an urgent need to create such a remedy—to prevent such retaliation from happening and to make workers whole when it does.

We support SB233, which is an important step in the right direction. But the bill would better protect workers if it let them go to court directly without first going through a 120-day administrative process.

- **We support amending the bill to allow workers who have faced wage-related retaliation to go to court to get the urgent relief they need, as they can under the Fair Labor Standards Act and under state laws in many other states.** We support the bill's creation of an administrative remedy for wage-related retaliation. But we believe that workers should also have the right to go to court. As drafted, the bill would create a situation where a worker who is fired for suing their employer in state court for MWHL violations could not simply amend their complaint to add a retaliation claim. The worker could add a retaliation claim to that existing suit only if (1) the employee first complains to MDOL, (2) MDOL is

unable to resolve the issue informally through mediation, (3) MDOL issues an order, and (4) the employer fails to comply with that order. This process would prevent an employee from obtaining immediate reinstatement (or immediate remediation of other egregious retaliation causing irreparable harm) through a temporary restraining order.¹ Moreover, a private right of action would alleviate the burden on MDOL, allowing it to focus its staff time on assisting workers unable to find an attorney.

- **We also support amending the bill to cover complaints under the Maryland Wage Payment and Collection Law.** As introduced, SB233 does not cover protected activity under Maryland's Wage Payment and Collection Law. The bill must cover that law to ensure that workers are protected after making complaints concerning (1) an employer's failure to pay workers on time under Lab. & Empl. § 3-502 (e.g., an employer firing a worker for complaining about routinely getting paid several weeks late), (2) an employer's unlawful deductions under § 3-503 (e.g., an employer firing a worker for complaining about having hundreds of dollars deducted from their pay for a uniform without the required written consent of the employee), and (3) an employer's failure to pay promised wages under §§ 3-502 and 3-505 (e.g., an employer firing a worker for complaining about having received \$15/hour for weeks of work despite having been promised \$25/hour, because the failure to pay promised wages did not give rise to a minimum wage violation under the MWHL).
- **Proposed amendments addressing these issues are attached to this testimony.**

For the foregoing reasons, the PJC **SUPPORTS SB 233 with amendments** and urges a **FAVORABLE WITH AMENDMENTS** report. Should you have any questions, please call David Rodwin at 410-625-9409 ext. 249.

¹ The bill's administrative process is drawn from Maryland's sick and safe leave law, the Healthy Working Families Act ("HWFA"). *See* Md. Code Ann., Lab. & Empl. § 3-1308. However, wage-related retaliation—which frequently includes the sudden loss of a worker's job and livelihood—often requires immediate relief that an administrative process like the HWFA's (generally designed to address employer denials of earned leave) cannot provide.

AMENDMENTS TO SB233
(First Reader Bill)

Amendment No. 1

On page 2, line 1, after “(3)”, insert “SUBTITLE 5 OF THIS TITLE;”

On page 2, line 1, before “SUBTITLE 9” insert “(4)”

On page 2, line 2, strike “(4)” and insert “(5)”

On page 2, line 4, strike “(5)” and insert “(6)”

Amendment No. 2

On page 3, line 26, strike “(II)” and insert “(F)”

On page 3, line 26, strike from “THE DATE OF THE ORDER” and insert “AN ALLEGED VIOLATION OF SUBSECTION (B) OF THIS SECTION”

On page 3, line 27, strike “TO ENFORCE THE ORDER”

Amendment No. 3

On page 3, line 29, strike “(3)” and insert “(G)”

On page 3, line 30, strike “PARAGRAPH (2)(II) OF THIS SUBSECTION TO ENFORCE AN ORDER” and insert “SUBSECTION (F) OF THIS SECTION”

On page 4, line 1, strike “(I)” and insert “(1)”

On page 4, line 4, strike “(II)” and insert “(2)”

On page 4, line 1, strike “(III)” and insert “(3)”

On page 4, line 1, strike “(IV)” and insert “(4)”

On page 4, line 1, strike “(V)” and insert “(5)”

SB 233_MDL_Support with Amendments.docx.pdf

Uploaded by: Devki Virk

Position: FWA

Letter of Support

SB 233 - Employment Standards, Prevailing Wage, and Living Wage - Employer Adverse Actions - Prohibition

Dear Chair Beidle, Vice-Chair Klausmeier, and Members of the Finance Committee:

The Division of Labor & Industry is responsible for enforcing Maryland’s workplace standards, including child labor protections and wage and hour laws. Our effective enforcement of Maryland’s workplace standards depends, in great measure, on the ability of workers to report potential violations of those standards and cooperate in our investigations, free of fear that they will be fired or face other adverse employment consequences for doing so.

As the **chart of existing anti-retaliation provisions** below shows, some of Maryland’s current workplace laws do not prohibit retaliation at all. Others do, but the scope of protection, processes, and remedies vary statute by statute. Only one - the prevailing wage law – provides for full enforcement through the administrative process.

Article/Title	Sub title	Name	Anti-retaliation provision	Enforcement Process
Article: L& E, Title III	2	Minor Labor	None	N/A
Article: L& E, Title III	3	Equal Pay	3-308(a)(4)	Civil action by Commissioner only (3-308(c))
Article: L& E, Title III	4	Wage & Hour	3-428(b)	Criminal misdemeanor subject to fine up to \$1,000 (3-428(d))
Article: L& E, Title III	5	Wage Payment & Collection	None	N/A
Article: L& E, Title III	9	Workplace Fraud	3-912	Civil action by Commissioner only (3-912(c)(3))
Article: State Finance & Procurement, Title II	17	Prevailing Wage	17-224(h) & (i)	Administrative process by Commissioner (17-224(a)(3)-(5)) and direct civil lawsuit by employee (17-224(i))
Article: State Finance & Procurement, Title II	18	Living Wage	None	N/A

■

This bill is aimed at two things: first, providing protection for retaliation under all of our laws, and, second, providing the option of pursuing a retaliation claim through an administrative process from beginning to end, thereby reducing litigation costs and the delays of judicial proceedings.

Based on input from stakeholders, and discussions with the members of the House Subcommittee on Business Regulation following the hearing on the cross-filed bill, the Department will be seeking certain amendments to this bill to better achieve these goals. First, we seek to apply these protections to Subtitle 2 (Employment of Minors) and Subtitle 5 (Wage Payment and Collection), as well as to the other laws. Second, we seek to ensure a single administrative process for handling retaliation claims under any of these laws (with the exception of prevailing wage, which already has an administrative process). A single process would require repeal of the existing separate (and differing) anti-retaliation measures in the Wage and Hour law, the Equal Pay law, and the Workplace Fraud Law. Finally, to acknowledge and address the burdens on businesses who must defend against bad faith, frivolous complaints, we seek to add a provision allowing an employer to pursue an administrative claim and sanctions for such complaints.

Transparency will result in greater knowledge of the law, greater compliance with the law, and efficient processing and resolution of claims. Violations are more likely to be reported, reported promptly, and remedied promptly. MDOL staff, as well as stakeholders, will have a single process for enforcement, instead of multiple different schemes, which will achieve greater and more efficient compliance with our workplace standards laws.

The Department respectfully requests a **favorable with amendments report** by the Committee on SB 233.

For questions, please contact andrew.fulginiti@maryland.gov.

SB 233 - Employment Standards, Prevailing Wage, an

Uploaded by: Donna Edwards

Position: FWA



MARYLAND STATE & D.C. AFL-CIO

AFFILIATED WITH NATIONAL AFL-CIO

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Gerald W. Jackson

**SB 233 - Employment Standards, Prevailing Wage, and Living Wage - Employer Adverse
Actions - Prohibition
Senate Finance Committee
January 31, 2024**

SUPPORT WITH AMENDMENT

**Donna S. Edwards
President
Maryland State and DC AFL-CIO**

Madame Chair and members of the Committee, thank you for the opportunity to provide testimony in support of SB 233. My name is Donna S. Edwards, and I am the President of the Maryland State and DC AFL-CIO. On behalf of the 300,000 union members in the state of Maryland, I offer the following comments.

Employers should not be able to retaliate against their employees for enforcing their rights. SB 233 standardizes anti-retaliation prohibitions in Maryland labor and employment law, by establishing a process for investigating and ruling on the complaints and applying it to our Workplace Fraud Act, Wage and Hour Law, prevailing wage law, equal pay law, and living wage law.

While we strongly support the bill and its intentions, we believe its intent would be more equitable to workers if it was expanded to cover Maryland's wage payment and collection laws. We also believe the administrative enforcement process would be strengthened if paired with a private right of action. We urge the committee to issue a favorable report with these amendments.

SB 233 Victoria Leonard LiUNA (SUPPORT W_AMENDMENT

Uploaded by: Victoria Leonard

Position: FWA



February 1, 2024

The Honorable , Pam Beidle, Chair
The Honorable Kathy Klausmeier, Vice Chair
Senate Finance Committee
3 East - Miller Senate Office Building
Annapolis, Maryland 21401

SB 233: Employment Standards - Prevailing Wage and Living Wage - Employer Adverse Actions - Prohibition Position - Support With Amendments

Thank you Chair Beidle and Vice Chair Klausmeier and members of the Senate Finance Committee for the opportunity to submit written testimony in support of SB 233, with some amendments.

My name is Victoria Leonard, Political and Legislative Director for the Baltimore-Washington area of the Philadelphia/Baltimore/Washington Laborers' District Council (PBWLDC), an affiliate of the Laborers' International Union of North America (LiUNA). The PBWLDC represents more than 13,000 members. Our members are proudly employed on many infrastructure construction projects across the region. Nationwide, LiUNA represents more than 500,000 members.

LiUNA supports SB 233 with amendments to 1) ensure that the bill's anti-retaliation protections cover complaints under Maryland's Wage Payment and Collection (MWPC) Law, and 2) strengthen enforcement by allowing worker victims of wage-related retaliation to seek get the immediate relief they need in court without having to wait for the end of a 120-day administrative process.

As introduced, SB 233 does not cover protected activity under MWPC. The bill needs to be amended to ensure that workers are protected after making complaints concerning 1) an employer's failure to pay workers on time under Lab. & Empl. § 3-502 (e.g., an employer firing a worker for complaining about routinely getting paid several weeks late), 2) an employer's unlawful deductions under § 3-503 (e.g., an employer firing a worker for complaining about having hundreds of dollars deducted from their pay for a uniform without the required written consent of the employee), and 3) an employer's failure to pay promised wages under §§ 3-502 and 3-505 (e.g., an employer firing a worker for complaining about having received \$15/hour for weeks of work despite having been promised \$25/hour, because the failure to pay promised wages did not give rise to a minimum wage violation under the MWHL).

While SB 233 creates an administrative remedy for wage-related retaliation, it should be strengthened to also allow workers to go to court right-away to get the urgent relief they need, as they can under the Fair Labor Standards Act and under state laws in many other states. A private right of action would alleviate the burden on MDOL, allowing it to focus its staff time on assisting workers unable to find an attorney.

We urge the Committee to issue a favorable report for SB 233, with amendments.

SB 233_MDCC_Employment Standards, Prevailing Wage,

Uploaded by: Hannah Allen

Position: UNF



LEGISLATIVE POSITION:

Unfavorable

Senate Bill 233

Employment Standards, Prevailing Wage, and Living Wage - Employer Adverse Actions - Prohibition

Senate Finance Committee

Thursday, February 1, 2024

Dear Chair Beidle and Members of the Committee:

Founded in 1968, the Maryland Chamber of Commerce is the leading voice for business in Maryland. We are a statewide coalition of more than 6,800 members and federated partners working to develop and promote strong public policy that ensures sustained economic recovery and growth for Maryland businesses, employees, and families.

Senate Bill 233 would prohibit employers from taking or threatening to take adverse action against an employee because the employee takes certain actions regarding rights and responsibilities, complaints, investigations, proceedings, or hearings under certain provisions of law. It also would authorize the Commissioner of Labor and Industry to investigate a violation of the Act on the Commissioner's own initiative or on receipt of a written complaint.

The Chamber condemns companies that knowingly discriminate against or threaten employees. However, without a cap on punitive damages, employers will face financial uncertainty when it comes to potential liabilities, and an uncapped amount would be viewed as overly punitive, leaving employers more risk averse. Businesses seek legal frameworks that provide a balance between safeguarding and protecting the rights of employees and preventing undue and excessive financial burdens. A cap on punitive damages would strike this balance. The Equal Employment Opportunity Commission provides guidelines from the Civil Rights Act outlining punitive damages caps. Many states also have caps on punitive damages not to exceed three times the compensatory damages.

Finally, as drafted, the Commissioner, with the employee's consent, can ask the Attorney General to bring an action on the employee's behalf. This additional legal burden further opens Maryland's businesses to increased liability that would add yet another degree of uncertainty in these already turbulent times. Further, the bill as drafted would allow an employee to bring forward a civil action against the employer. It would also allow the Commissioner to bring forward an action to enforce the order for a civil penalty. It seems duplicative and unnecessary to allow the Commissioner to request the Attorney General bring forward an action on behalf of an employee.

We urge the committee to consider a well-balanced legal framework that takes into account both the rights of employees and the challenges faced by businesses in a competitive market.

For these reasons, the Maryland Chamber of Commerce respectfully requests an **unfavorable report** on **SB 233**.



SB233_LOO_Employment Standards, Prevailing Wage, a

Uploaded by: Kevin O'Keeffe

Position: UNF



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February 1, 2024

To: Members of the Senate Finance Committee

From: Independent Electrical Contractors (IEC) Chesapeake

Re: Oppose Senate Bill (SB) 233 – Employment Standards, Prevailing Wage, and Living Wage-Employer Adverse Actions-Prohibition

Independent Electrical Contractors (IEC) Chesapeake opposes Senate Bill 233 because the proposed penalties are excessive. On page 3, line 11, a proposed civil penalty up to \$1,000 per employee is too high. Allowing an employee three years to enforce an order creates uncertainty for employers. The provisions of SB 233 which allows the Court to impose treble damages, punitive damages and reasonable attorney's fees and costs are draconian. It is unwise public policy to have the Department of Labor, the Maryland Attorney General as well as private cause of actions available to sue Maryland contractors. It is important to note that there is no corresponding requirement that an employee plaintiff or the state of Maryland is required to pay attorney's fees if the employer prevails in a legal action. Being a contractor today is challenging. Inflation and a worker shortage have created many obstacles for contractors in recent years. This proposed legislation will create unnecessary and unfair burdens on Maryland contractors.

IEC Chesapeake represents nearly 200 electrical contractors who employ approximately 15,000 workers in the mid-Atlantic region. In addition, IEC Chesapeake has nearly 1,000 apprentices and is a leader in renewable energy training.

Thank you for your consideration. If you have any questions, please contact Grant Shmelzer, Executive Director of IEC Chesapeake, at 301-621-9545, extension 114 or at gshmelzer@iec-chesapeake.com or Kevin O'Keeffe at 410-382-7844 or at kevin@kokeeffelaw.com.



sb233test - Employer Adverse Actions.pdf

Uploaded by: Marcus Jackson

Position: UNF



**Maryland Joint
Legislative Committee**

The Voice of Merit Construction

February 1, 2024

Mike Henderson

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TO: FINANCE COMMITTEE
FROM: ASSOCIATED BUILDERS AND CONTRACTORS
RE: S.B. 233 – EMPLOYMENT STANDARDS, PREVAILING WAGE, AND LIVING WAGE – EMPLOYER ADVERSE ACTIONS -- PROHIBITION
POSITION: OPPOSE

Associated Builders and Contractors (ABC) opposes S.B. 233 which is before you today for consideration. This bill as written, proposes to add a new legal process for determining and enforcing penalties for retaliating against employees asserting labor and wage violations against their employers under numerous subtitles of Title 3 of the Labor Employment Article (subtitles 3, 4 and 9) and Titles 17 and 18 of the State Finance and Procurement Article.

The first objection by ABC is that the bill does not appear to account for removing, streamlining or otherwise reconciling analogous enforcement provisions under subtitles of Title 3 of the Labor Employment Article (subtitles 3, 4 and 9) and Titles 17 and 18 of the State Finance and Procurement Article with the new enforcement procedure contemplated in S.B. 233. See, e.g., Maryland Code, Labor and Procurement Article §§ 3-307 to 3-308, 3-401 to 3-405, 3-907 to 3-916 and State Finance and Procurement Article §§ 17-219 to 17-226 and 18-107 to 18-109. If the General Assembly’s goal is to create an omnibus enforcement section for these various subtitles, ABC objects as a point of draftmanship that the enforcement provisions of the other titles and subtitles should be removed and re-draft so they are set forth in a single wage enforcement code section that is internally consistent and accounts for reconciling these new procedures to existing procedures in a comprehensive way. Otherwise, there is risk for confusion and inconsistency of the various enforcement regimes in the Maryland Code.

Secondly, the code section does not expressly account for a process by which the contractor may appeal an adverse decision. It is a fundamental principle of due process to account for an appeal right, especially where the initial finder of fact (the Commissioner) has a mission of protecting the rights of labor and not employers.

While the construction industry believes strongly in an employee’s right to fair pay and employment benefits, the proposed legislation seeks to implement a confusing and potentially duplicative enforcement regime that is not balanced in protecting the rights of the employer and could lead to unnecessary confusion and litigation. On behalf of the over 1,500 ABC members in Maryland, we respectfully request an unfavorable report on S.B. 233.

Marcus Jackson, Director of
Government Affairs

2024-02-01 SB 233 (Letter of Information).pdf

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February 1, 2024

TO: The Honorable Pamela Beidle
Chair, Finance Committee

FROM: Tiffany Johnson Clark
Chief Counsel, Legislative Affairs, Office of the Attorney General

RE: Senate Bill 233 – Employment Standards, Prevailing Wage, and Living Wage- Employer Adverse Actions – Prohibition – **Letter of Information**

The Office of the Attorney submits this letter of information to the Finance Committee on Senate Bill 233 – Employment Standards, Prevailing Wage, and Living Wage – Employer Adverse Actions – Prohibition. Senate Bill 233 prohibits employers from taking or threatening to take adverse action against employees who take specified actions relating to Equal Pay for Equal Work, Maryland Wage and Hour, Workplace Fraud, Prevailing Wage, and Living Wage laws and creates a uniform enforcement process. The bill creates new anti-retaliation provisions for the Living Wage law and standardizes and/or strengthens existing anti-retaliation provisions and enforcement within the other laws.

When the Commissioner of Labor and Industry has determined that the State's Equal Pay for Equal Work law has been violated, Senate Bill 233 requires the Commissioner to (1) try to resolve any issue informally by mediation or (2) ask the Attorney General to bring an action on behalf of the applicant or employee.

In our initial read of the bill, the OAG believed we could absorb the requirements of the bill with existing resources. However, upon closer examination, we believe that the OAG will be required to create an employment law unit within the Civil Division of the OAG to fully comply with the bill. Since the OAG does not currently have a division or unit that specializes in employment law, the OAG would require an Assistant Attorney General, a paralegal, and an investigator all with experience and knowledge in employment law.

SB 233_MAA_LOI.pdf

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February 1, 2024

Senator Pamela Beidle, Chair
Senate Finance Committee
3 East, Miller Senate Office Building
Annapolis, MD 21401

**RE: SB 233 – LETTER OF INQUIRY – Employment Standards, Prevailing Wage, and Living Wage
– Employer Adverse Actions – Prohibition**

Dear Chair Beidle and Members of the Committee:

The Maryland Asphalt Association (MAA) is comprised of 19 producer members representing more than 48 production facilities, 25 contractor members, 25 consulting engineer firms and 41 other associate members. MAA works proactively with regulatory agencies to represent the interests of the asphalt industry both in the writing and interpretation of state and federal regulations that may affect our members. We also advocate for adequate state and federal funding for Maryland's multimodal transportation system.

Senate Bill 233 would prohibit employers from taking or threatening to take adverse action against an employee when the employee takes certain actions, including making a complaint or inquires about his or her rights. The bill permits the Commissioner to investigate a violation, conduct an investigation, and issue an order, including assessing civil penalties. Additionally, within 3 years after the order, an employee may bring a private right of action to enforce the order. If the employee prevails, the court may award damages, including punitive and injunctive relief.

We don't disagree with this legislation in parts. We recognize that where a dispute comes up, mediation between the parties is necessary. But we have concerns over the bill's unintended consequences, primarily as it relates to the punitive portions of this legislation. There are no caps to the damages that the court can award and we worry this could allow employees to take advantage of employers. We are submitting this letter of inquiry to see if the sponsor and the committee could look further into this legislation and review these issues.

We appreciate you taking the time to review Senate Bill 233.

Sincerely,

Tim E. Smith, P.E.
President
Maryland Asphalt Association

SB 233_MTBMA_LOI.pdf

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Position: INFO



February 1, 2024

Senator Pamela Beidle, Chair
Senate Finance Committee
3 East, Miller Senate Office Building
Annapolis, MD 21401

RE: SB 233 – LETTER OF INQUIRY – Employment Standards, Prevailing Wage, and Living Wage – Employer Adverse Actions – Prohibition

Dear Chair Beidle and Members of the Committee:

The Maryland Transportation Builders and Materials Association (“MTBMA”) has been and continues to serve as the voice for Maryland’s construction transportation industry since 1932. Our association is comprised of 200 members. MTBMA encourages, develops, and protects the prestige of the transportation construction and materials industry in Maryland by establishing and maintaining respected relationships with federal, state, and local public officials. We proactively work with regulatory agencies and governing bodies to represent the interests of the transportation industry and advocate for adequate state and federal funding for Maryland’s multimodal transportation system.

Senate Bill 233 would prohibit employers from taking or threatening to take adverse action against an employee when the employee takes certain actions, including making a complaint or inquires about his or her rights. The bill permits the Commissioner to investigate a violation, conduct an investigation, and issue an order, including assessing civil penalties. Additionally, within 3 years after the order, an employee may bring a private right of action to enforce the order. If the employee prevails, the court may award damages, including punitive and injunctive relief.

We don’t disagree with this legislation in parts. We recognize that where a dispute comes up, mediation between the parties is necessary. But we have concerns over the bill’s unintended consequences, primarily as it relates to the punitive portions of this legislation. There are no caps to the damages that the court can award and we worry this could allow employees to take advantage of employers. We are submitting this letter of inquiry to see if the sponsor and the committee could look further into this legislation and review these issues.

We appreciate you taking the time to review our questions on Senate Bill 233.

Thank you,

Michael Sakata
President and CEO
Maryland Transportation Builders and Materials Association