



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

**Testimony in Support of SB0436 - Workplace Fraud and Prevailing Wage - Violations -
Penalties and Referrals**

Madame Chair, Madame Vice Chair, and Fellow Members of the Senate Finance Committee:

SB0436 elevates the maximum penalties for intentional violations of misclassification, wage theft, workers' compensation fraud, unemployment insurance fraud, federal FICA withholding fraud, and establishes referrals to both state and federal agencies in such cases.

Background

Existing Law

The Workplace Fraud Act established a presumption that work performed by an individual paid by an employer creates an employer-employee relationship, subject to specified exemptions. The "ABC test" incorporated in the Workplace Fraud Act is used by the Maryland Department of Labor (MDL) to establish whether an employer-employee relationship exists for the purpose of determining whether an employee has been misclassified under the Act. While only used to detect workplace fraud in the specified industries, MDL is required to use the ABC test in determining whether an individual is an employee in any industry for the purpose of determining whether the employer should pay unemployment insurance for the individual. The ABC test has three components, all of which must be met to establish that an individual is an independent contractor and not an employee:

- A. the individual is free from control and direction over his or her performance both in fact and under the contract (Alone);
- B. the individual customarily is engaged in an independent business or occupation (Business); and
- C. the work performed is outside the usual course of business, or outside the place of business, of the person for whom work is performed (Control).

The Act distinguishes between an employer who improperly misclassifies an employee and an employer who knowingly misclassifies an employee, and civil penalties are more severe for an employer who is guilty of knowingly misclassifying an employee. The maximum penalty for a knowing violation is a \$5,000 fine for each employee who was not properly classified.

Contractors and subcontractors working on eligible public works projects in Maryland must pay their employees the prevailing wage rate. The Commissioner of Labor has the authority to enforce contractors' compliance with the prevailing wage law, including assessing liquidated damages of \$250 per day per employee that is not paid the proper prevailing wage.

Among other related penalties, a person who is required to withhold income tax and who willfully fails to withhold the tax as required under Title 10 of the Tax-General Article is guilty of a misdemeanor and subject to a maximum penalty of a \$10,000 fine and/or five years imprisonment.

Generally, a person who willfully or with the intent to evade payment of a tax under the Tax-General Article, or to prevent the collection of the tax, fails to provide information as required or provides false or misleading information is guilty of a misdemeanor and subject to a maximum penalty of a \$5,000 fine and/or 18 months imprisonment.

Issue at Hand

Worker misclassification is a crime, and it is fraud. By illegally classifying workers as independent contractors, employers cheat the federal, state, and local governments of taxes and revenues. Wage theft is the largest form of theft in this country.¹ The Northwestern Institute for Policy Research found that stricter state laws lead to less wage theft, even when controlling for demographic, economic, and political factors.² The same study found that victims of wage theft were disproportionately, "low-wage workers, especially women, minorities, non-U.S. citizens, and nonunion workers." One study found that Minnesota, a state with a comparable population size to Maryland, lost, "\$136 million in state tax revenues due to construction payroll fraud—including \$65 million in income taxes, \$13 million in unemployment insurance contributions, and \$58 million in workers' compensation premiums."³

Wage theft and misclassification robs our state unemployment and workers compensation systems. Current state penalties fail to dissuade some contractors from committing wage theft and misclassification. With only 15 wage and hour enforcement officials for the entire state, unscrupulous companies can price in the cost and risk of current penalties if they are caught and continue with their wage theft practices.⁴ This is workplace fraud, and the state must intervene to allow contractors that play by the rules to have a fair and equitable business environment.

Solution

¹ Brady Meixell and Ross Eisenbrey. "Wage Theft is a Much Bigger Problem Than Other Forms of Theft—But Workers Remain Mostly Unprotected." Economic Policy Institute.

² Daniel Galvin, "Policies to Protect Workers from Wage Theft." Northwestern Institute for Policy Research. Policy Research Brief: July 2017.

³ Nathaniel Goodell and Frank Manzo IV. "The Costs of Wage Theft and Payroll Fraud in the Construction Industries of Wisconsin, Minnesota, and Illinois." Midwest Economic Policy Institute. January 2021.

⁴ CBS News, Maryland workers say they're owed millions in unpaid overtime and benefits as WJZ investigates wage theft." January 25, 2023.

SB0436 will establish criminal penalties for employers knowingly failing to properly classify individuals as employees, and for contractors and subcontractors that knowingly violate State prevailing wage laws. In addition, it would require the Commissioner of Labor and Industry to refer complaints that allege violations of tax laws under certain circumstances to the correct administrative authorities.

Enacting SB0436 would position Maryland among several other states that rightfully recognize wage theft as a criminal offense, including California, Colorado, Illinois, Minnesota, and New Jersey.

Per the Fiscal Note, the Department of Legislative Services believes SB0436 would not require additional state staff and therefore would have a minimal fiscal impact.

For these reasons, I respectfully request a favorable report on SB0436.