

SB436 Support.pdf

Uploaded by: Balfour Albacarys

Position: FAV

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS - LOCAL UNION No. 24

AFFILIATED WITH:

Baltimore-D.C. Metro Building Trades Council — AFL-CIO
Baltimore Port Council
Baltimore Metro Council — AFL-CIO
Central MD Labor Council — AFL-CIO
Del-Mar-Va Labor Council — AFL-CIO
Maryland State - D.C. — AFL-CIO
National Safety Council



AFL-CIO-CLC

BALTIMORE, MARYLAND 21230

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Written Testimony of

Rico Albacarys, Assistant Business Agent, IBEW LOCAL 24

Before the Senate Finance Committee On

SB 436 Workplace Fraud and Prevailing Wage - Violations - Penalties and Referrals

Support

February 14, 2023

Madame Chair Beidle and Committee Members,

I am writing to express my **support** for **SB 436**, which seeks to address the extensive underground economy in the construction industry. This issue occurs when employees are misclassified as independent contractors or paid off the books, resulting in a shortfall of tax revenue for the government and inadequate labor protections for workers.

The scope of this issue has expanded beyond individual residential projects to encompass major commercial construction endeavors, including publicly funded projects. This presents a challenge to ethical businesses that adhere to proper employment practices, leading to lost work opportunities for law-abiding firms or the pressure to consider evading the law to compete on an uneven playing field. Additionally, taxpayers bear the burden of subsidizing the losses incurred by those who exploit this system.

It is time to combat this labor shadow market and ensure that all workers are properly classified and paid, while promoting fair competition in the industry.

I ask you vote **favorably** on **SB 436**, addressing this issue and protecting both workers and taxpayers.

Sincerely,

Rico Albacarys

Assistant Business Agent IBEW Local 24

SB436 - Workplace Fraud and Prevailing Wage - Viol

Uploaded by: Brooke Lierman

Position: FAV

**Letter of Information on SB436
Workplace Fraud and Prevailing Wage - Violations - Penalties and Referrals
Finance Committee – February 15, 2024**

I am pleased to offer the following information on SB436 and appreciate the opportunity to share my thoughts on the merits of this specific legislation and the benefits it would provide to the Comptroller's Office.

What this bill does

This legislation builds on the Governor's January 11, 2024 Executive Order that renewed and expanded a cross-governmental task force to strengthen investigations and enforcement of laws regarding workplace fraud. Employers that hire workers and misclassify them to circumvent tax and labor laws are stealing from employees in a way that erodes their basic rights and benefits, saddles them with an undue financial burden, and undermines the economic well-being of our state.

- SB436 adds an additional penalty under §3-904 of the Labor and Employment Article for employers found by the Department of Labor to have knowingly failed to properly classify an individual as an employee.
 - Under current law, such an employer would be assessed a civil penalty of up to \$5,000 for each employee not properly classified.
 - SB436 makes such willful misclassification a misdemeanor and, if convicted, subject to another fine of up to \$5,000, or up to 60 days imprisonment, for each misclassified employee.
- Under current law, State agencies must share information about any employer suspected of not properly classifying an individual as an employee.
 - SB436 expands this obligation to require the Commissioner of Labor and Industry to refer to the Comptroller any employer shown by clear and convincing evidence to have violated §3-904 of the Labor and Employment Article and any complaint that alleges a violation of Tax-General Article §13-1007 (willfully failed to file a required income tax withholding return, withhold the required tax, pay the tax required to be withheld, provide an income tax withholding statement) or TG §13-1024 (a person who willfully or with the intent to evade payment, or prevent the collection of a tax under the Tax General Article).
- SB436 adds another penalty under §17-227 of the State Finance and Procurement Article for violating a requirement to pay prevailing wages to an employee by a contractor or subcontractor under a public work contract.



- If the contractor or subcontractor is found to have knowingly violated this subtitle, they would be guilty of a misdemeanor and, if convicted, subject to a fine of up to \$5,000 or up to 60 days imprisonment for each violation.
- If there is clear and convincing evidence that a violation occurred, the Commissioner of Labor and Industry would also be required to refer to the Comptroller complaints that allege a violation of TG Commissioner of Labor and Industry §13-1007 or TG §13-1024.

Why this bill matters

- When employers misclassify workers, they do not withhold from and/or pay certain taxes (i.e., unemployment insurance, social security, Medicare, and federal/state taxes) or maintain workers' compensation insurance for that individual, as required by law.
 - This failure to appropriately withhold taxes, pay into Social Security, or maintain workers' compensation insurance can have devastating effects on workers who believe they are paying their taxes appropriately or get injured on the job. It also robs the state of revenue that is owed – and that is being paid by law-abiding employers.
- As Comptroller, I can confirm that this legislation will assist our agency with auditing withholding taxes and other violations of state tax law. The Compliance Division anticipates that requiring the Commissioner of Labor and Industry to refer violations to the Comptroller – as directed by SB436 – will improve our investigations into withholding tax matters, potentially leading to increased revenues and voluntary tax compliance by would-be scofflaws deterred by enhanced penalties.



Brooke Lierman
Comptroller of Maryland

SB0436_Workplace_Fraud_And_Prevaling_Wage_MLC_FAV

Uploaded by: Cecilia Plante

Position: FAV



**TESTIMONY FOR SB0436
WORKPLACE FRAUD AND PREVAILING WAGE – VIOLATIONS – PENALTIES AND
REFERRALS**

Bill Sponsor: Senator Gile, et al

Committee: Finance

Organization Submitting: Maryland Legislative Coalition

Person Submitting: Cecilia Plante, co-chair

Position: FAVORABLE

I am submitting this testimony in favor of SB0436 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.

Classification of employees affects not only the employee, but also the state's tax base. There are many businesses today who classify employees as contractors in order to avoid paying their portion of taxes and benefits. They transfer the cost of getting health insurance and other benefit costs onto the employee and they deprive the state of tax revenue. This is fraud.

This bill, if enacted, would make it a misdemeanor to knowingly misclassify employees as contractors. It would penalize the employer with a fine of up to \$5,000 or imprisonment of up to 60 days for each employee who was misclassified. Our members understand that businesses must make a profit in order to survive, but if they mistreat employees in this way and defraud the state of tax revenue, they should be penalized.

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

Darwin Bonilla- Support - SB436- Workplace Fraud

Uploaded by: Darwin Bonilla

Position: FAV



House Economic Matters Committee

To: Senator Pam Beidle, Chairwoman; Senator Kathy Klausmeier, Vice-Chairwoman; and Members of the Committee.

From: Darwin Bonilla, Executive Director, Mid-Atlantic Pipe Trades Association.

SUPPORT SB 436 – Workplace Fraud and Prevailing Wage – Violations – Penalties and Referrals

My name is Darwin Bonilla, and I immigrated from El Salvador in 1998. After high school, I worked for ten years as a community organizer at CASA de Maryland, in 2018, I graduated from the Steamfitters Local 602 apprenticeship program and earned my license as an HVAC Journeyman from the State of Maryland. Later that same year, I became the Lead Organizer of the Mid-Atlantic Pipe Trades Association. I'm here to ask you to **SUPPORT SB 436**.

I lead a group of 9 organizers at the Mid-Atlantic Pipe Trades Association. Our job involves recruiting new members and bringing new signatory contractors to our local unions. But one of the biggest challenges we see every day is that many nonunion workers, some of them because of their immigration status, are being exploited by low-road contractors. These contractors hire Labor Brokers to provide the workforce they need. These Labor Brokers misclassify these workers as independent contractors and cheat them of their hard-earned wages. In doing this, they are also cheating the state of Maryland out of workers' compensation and unemployment insurance while cheating the Federal government, the State of Maryland, and its localities of income taxes. We find these Labor Brokers on private sector jobs and State and Locally funded projects. Some prominent examples are William Wirt Middle School in Prince George's County, Eva Turner Elementary School in Charles County, Neillsville Middle School in Montgomery County, and Parcel 4 in Baltimore.

HB 465 will help solve the wage theft and misclassification problem by creating meaningful criminal penalties for contractors who knowingly cheat and misclassify their workers. This bill makes Wage Theft a criminal misdemeanor while also acknowledging the other violations hidden in the act of wage theft. It does this by putting mandatory referrals to the Maryland Comptroller, the States Attorney's office, the U.S. Department of Justice, the U.S. Department of Labor, and the U.S. Department of Treasury, where these violations of tax fraud, worker comp fraud, and unemployment insurance fraud are all criminal acts. It will also allow a stiffer penalty of \$ 5,000 per worker and jail time of up to 60 days for each harmed worker.

Wage theft and Misclassification are rarely done by accident. For these reasons, I ask that you **SUPPORT SB 436**

Sincerely,

Darwin Bonilla

Executive Director

Mid-Atlantic Pipe Trades Association

SB 436 - Workplace Fraud and Prevailing Wage - Vio

Uploaded by: Donna Edwards

Position: FAV



MARYLAND STATE & D.C. AFL-CIO

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President

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Secretary-Treasurer

Gerald W. Jackson

**SB 436 - Workplace Fraud and Prevailing Wage - Violations - Penalties and Referrals
Senate Finance Committee
February 15, 2024**

SUPPORT

**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 436. 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.

Worker misclassification is a crime. It is fraud. By illegally classifying workers as independent contractors, employers cheat the federal, state, and local governments of taxes and revenues. SB 436 imposes real penalties by labeling workplace fraud as a misdemeanor, subject to \$5,000 and potentially 60 days imprisonment for each violation. By requiring the Commissioner of Labor and Industry to refer clear and convincing evidence of workplace fraud violations to the Comptroller, the state can seek to reclaim the money that it is owed.

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 still continue with

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.

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.

Failing to treat wage theft for the crime that it is, with stiff financial penalties and even threats of imprisonment, continues to reward unscrupulous businesses at the cost of good businesses and workers. We urge a favorable report for SB 436.

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

Statement FHC Maryland SB436.pdf

Uploaded by: Fred Coddling

Position: FAV

**STATEMENT OF FRED CODDING
IRON WORKERS EMPLOYERS ASSOCIATION
SENATE BILL 436**

I AM FRED H. CODDING AND I REPRESENT THE IRON WORKERS EMPLOYERS ASSOCIATION AND ACE. WE WELCOME THE OPPORTUNITY TO EXPRESS OUR SUPPORT FOR SENATE BILL 436 ENTITLED "WORKPLACE FRAUD AND PREVAILING WAGE - VIOLATIONS - PENALTIES AND REFERRALS". THE IRON WORKERS EMPLOYERS ASSOCIATION (IWEA) WAS INCORPORATED IN 1959 AND HAS NUMEROUS MEMBERS HEADQUARTERED IN MARYLAND. ITS MEMBER CONTRACTORS WORK THROUGHOUT MARYLAND. ITS CONTRACTOR MEMBERS, WHICH INCLUDE MINORITY CONTRACTORS, WORK ON BOTH SMALL AND LARGE PROJECTS. THEY EMPLOY IRON WORKERS WHO ARE WORKING ON JOBS WHICH INCLUDE PUBLIC WORK CONTRACTS.

FAILURE TO PAY PREVAILING WAGES ON PUBLIC WORK PROJECTS AND MISCLASSIFICATION OF EMPLOYEES AS INDEPENDENT CONTRACTORS BOTH HAVE NUMEROUS CONSEQUENCES. THOSE CONSEQUENCES INCLUDE THE FOLLOWING:

- 1. MARYLAND IS LOSING REVENUE EVERY YEAR THROUGH EMPLOYERS NOT PAYING PREVAILING WAGES AND MISCLASSIFYING EMPLOYEES AS INDEPENDENT CONTRACTORS.**

2. **NON-PAYMENT OF PREVAILING WAGES AND MISCLASSIFICATIONS PENALIZE THOSE CONTRACTORS WHO COMPETE AND WITHHOLD INCOME, SOCIAL SECURITY AND MEDICARE TAXES, PLUS PAY UNEMPLOYMENT TAXES.**
3. **NON-PAYMENT OF PREVAILING WAGES AND MISCLASSIFICATION RESULTS IN MARYLAND LOSING UNCOLLECTED INCOME TAXES.**
4. **THE UNEMPLOYMENT INSURANCE FUND LOSES REVENUES.**
5. **NON-PAYMENT OF PREVAILING WAGES AND MISCLASSIFICATION DENY WORKERS PROTECTIONS AND BENEFITS THEY ARE ENTITLED TO – SUCH AS WORKERS COMPENSATION INSURANCE COVERAGE.**
6. **MISCLASSIFICATION PENALIZES THOSE CONTRACTORS WHO WITHHOLD INCOME, SOCIAL SECURITY AND MEDICARE TAXES. IT PENALIZES CONTRACTORS WHO PAY UNEMPLOYMENT TAXES AND PROVIDE EXPENSIVE WORKERS COMPENSATION INSURANCE COVERAGE.**
7. **AS NOTED, FAILURE TO PAY THE PREVAILING WAGE AND MISCLASSIFICATIONS CAUSE LAW-ABIDING CONTRACTORS TO SUFFER UNFAIR COMPETITION.**
8. **A RECENT STUDY BY THE CENTURY FOUNDATION STATES THAT “UP TO 2.1 MILLION U.S. CONSTRUCTION WORKERS ARE ILLEGALLY MISCLASSIFIED OR PAID OFF THE BOOKS.” THE**

TWENTY-FOUR (24) PAGE STUDY BY CONSTRUCTION DIVE CAN BE FOUND AT THE FOLLOWING LINK:

<https://tcf.org/content/report/up-to-2-1-million-u-s-construction-workers-are-illegally-misclassified-or-paid-off-the-books/>

- 9. YOU WILL HEAR OPPOSITION TO THE BILL. THIS WILL INCLUDE THAT YOU HAVE ENOUGH LAWS ALREADY TO ADDRESS THESE ISSUES. BUT WHAT YOU HAVE IS NOT WORKING! ASK THE 45 IRON WORKERS ON A CLINTON, MARYLAND, HMW, LLC, PROJECT. THE COMPANY FALSIFIED ITS CERTIFIED PAYROLLS AND HID THE FACT THAT THEY WERE MAKING AT LEAST \$14 AN HOUR LESS PER HOUR THAN THE PROJECT'S REQUIRED WAGE FOR IRON WORKERS.**
- 10. NEIGHBORING JURISDICTIONS ARE DISBARRING EMPLOYERS FOR MISCLASSIFICATION OF EMPLOYEES. ONE EXAMPLE IS SET FORTH IN VIRGINIA CODE SECTION 58.1-1902. DEBARMENT: CIVIL PENALTY. (A COPY OF THE SECTION IS ATTACHED.) THE ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA RECENTLY SETTLED A DRYWALL CONTRACTOR CASE FOR A LARGE MONETARY SUM AND DISBARMENT FOR A YEAR. WE RECOMMEND THAT MARYLAND ENACT SIMILAR DISBARMENT PROVISIONS.**

WE REQUEST THAT SENATE BILL 436 BE APPROVED.

Code of Virginia
Title 58.1. Taxation
Chapter 19. Worker Misclassification

§ 58.1-1902. Debarment; civil penalty.

A. Whenever the Department determines that an employer failed to properly classify an individual as an employee under the provisions of § 58.1-1900, the Department shall notify such employer of the determination. This notification shall serve as an action by the Department with respect to debarment that allows the employer to apply for relief pursuant to §§ 58.1-1821 and 58.1-1825.

B. Upon an employer's subsequent violations of subsection A, and after all rights of administrative and judicial appeals have been exhausted or the time period for bringing such appeals has expired, the Department shall provide notice to all public bodies and covered institutions of the name of such employer. Public bodies and covered institutions shall not award a contract to such employer or to any firm, corporation, or partnership in which the employer has an interest in the following manner:

1. For a period of up to one year, as determined by the Department, from the date of the notice provided pursuant to this subsection for a second offense.
2. For a period of up to three years, as determined by the Department, from the date of the notice provided pursuant to this subsection for a third or subsequent offense.

2020, cc. 681, 682; 2023, cc. 518, 519.

SB436 Workplace Fraud.pdf

Uploaded by: Gerald Jackson

Position: FAV



PLUMBERS AND STEAMFITTERS

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Harry M. Schleicher Jr.

Business Agent

Stephen M. Nitsch

Business Agent

Todd E. Eckley

Recruiter

Finance Committee

Chair: Pam Beidle **Vice Chair:** Katherine Klausmeier

Senate Bill 436: Workplace Fraud & Prevailing Wage – Violations- Penalties and Referrals

Position: Support

Chair Beidle and Committee members:

My name is Gerald Jackson. I am the Assistant Business Manager for the Plumbers & Steamfitters Local Union 486 and I am the Secretary Treasurer for the Maryland State & D.C. AFL-CIO. I'm writing this testimony in support of SB436.

In this climate of decriminalization, crimes against working families should not be considered as minor nuisances. We need to stop making excuses for businesses who deliberately cheat Maryland out of taxes, unemployment insurance, Workers' Compensation insurance and more importantly cheat the hardworking men and women of this great state out of their guaranteed wages and benefits.

In Maryland, if you cheat on your taxes it's a crime punishable by harsh penalties, but if you're a business deliberately that cheats the state and workers out of their money we ignore the problem?

We have evidence that unscrupulous contractors in the construction industry have taken advantage of workers, most of whom are people of color and/or immigrants. These workers depend upon the state legal system to protect their right to be paid correctly. It's estimated that there is close to \$60 million in **Wage Theft** in Maryland every year. **Misclassification** has become a business model in the State of Maryland. Maryland's reputation as a State that doesn't protect its' workers attracts rogue, unscrupulous businesses that can be thwarted by **SB436**. We should not and cannot be the State that's soft on **Labor Trafficking**.

In addition **SB436** requires that these cases be referred to the State Comptroller, certain State's Attorneys, the U.S. Department of Justice, the U.S. Department of Labor and the U.S. Department of the Treasury,

For these reasons I'm asking for a favorable report for SB436.

Respectfully Submitted,

Gerald W. Jackson

Assistant BM Plumbers & Steamfitters 486

Secretary-Treasurer MD & DC AFL-CIO

SB436 – Workplace Fraud and Prevailing Wage Testim

Uploaded by: Ivan Bates

Position: FAV



OFFICE OF THE STATE'S ATTORNEY FOR BALTIMORE CITY

February 15, 2024

The Honorable Pamela Beidle, Chairwoman
Finance Committee
3 East Miller Senate Office Building
Annapolis, MD 21401

RE: Support of SB436 – Workplace Fraud and Prevailing Wage - Violations - Penalties and Referrals

Dear Chairwoman Beidle and Members of the Finance Committee,

I am writing to express my strong support for Senate Bill 436 which is an essential piece of legislation aimed at addressing fraudulent classification of workers in violation of prevailing wage laws in our state. As Baltimore City State's Attorney and a concerned citizen, I will always advocate for fair labor practices. I believe enacting this bill is crucial for protecting the rights and well-being of workers across Maryland.

Senate Bill 436 establishes significant penalties for employers who knowingly misclassify individuals in violation of applicable labor laws. Enactment of this bill will expose violators to criminal liability by making such actions a misdemeanor subject to penalty of sixty (60) days or \$5,000 thereby sending a clear message that such acts will not be tolerated.

Furthermore, the provisions outlined in the bill ensure that penalties are assessed based on the gravity of the violation, the size of the employer's business, their history of violations, and whether they have previously been found to have deprived employees of their rights under state labor laws. This comprehensive enforcement approach serve as a deterrent for employers from engaging in unlawful practices while holding them accountable.

Additionally, Senate Bill 436 mandates cooperation and information sharing among various state agencies, including the Department of Labor, the Department of Budget and Management, the Comptroller, and the Maryland Insurance Administration, to investigate and address suspected violations. This collaborative effort enhances the effectiveness of enforcement efforts and ensures that complaints alleging violations of both labor and tax laws are appropriately referred to relevant enforcement agencies at both the state and federal levels.



OFFICE OF THE STATE'S ATTORNEY FOR BALTIMORE CITY

The bill also extends penalties to contractors and subcontractors found to have knowingly violated prevailing wage laws, further safeguarding workers' rights and promoting fair compensation practices.

In conclusion, Senate Bill 436 represents a significant step forward in protecting workers from fraudulent labor practices in our state. I urge you to support this critical legislation and work towards its swift passage to benefit all Maryland residents.

Sincerely,

Yours in service,

Ivan J. Bates

Ivan J. Bates
State's Attorney for Baltimore City

By: Hassan Giordano
Chief, External Affairs

Jason Ascher - Support - SB436 - Workplace Fraud

Uploaded by: Jason Ascher

Position: FAV



Senate Finance Committee

To: Senator Pam Beidle, Chair; Senator Kathy Klausmeier, Vice-Chair; and Members of the Committee.
From: Jason Ascher, Political Director, Mid-Atlantic Pipe Trades Association.

SUPPORT SB 436 – Workplace Fraud and Prevailing Wage – Violations – Penalties and Referrals

On behalf of the Mid-Atlantic Pipe Trades Association and our five United Association of Plumbers and Steamfitters Locals, which represent 10,000+ Plumbers, Steamfitter, Welders, HVAC Techs, and Sprinkler Fitters across Maryland, I ask you to **SUPPORT SB 436**.

Wage theft is one of the biggest problems legitimate contractors face in the construction industry face. Unfortunately, it has become a way of doing business for some contractors. It allows them to beat out honest contractors and increase their profits by bidding 30% less and winning work. The act of Wage Theft can be as simple as not paying the minimum wage, prevailing wage, or overtime. It can also be as complicated as misclassifying workers based on the type of work they do during a given workday. These “bad actors” will misclassify workers, paying them as independent contractors when they should be employees. In doing this, they pay no federal, state, or local taxes, workers comp, or unemployment insurance. Doing these cheats the taxpayers and their workers out of hard-earned money. These contractors face little or no penalty if they get caught. It gets so bad that they can budget to pay the fines and back wages, treating it as a cost of doing business. Wage Theft is not something that happens accidentally. Many of these workers experiencing wage theft are victims of Labor Brokers or Labor Traffickers.

Every act of Wage Theft and Misclassification, which currently gets treated as a civil penalty, is adjudicated by the Maryland Department of Labor, which has precisely one investigator to track these complaints. That is unless the worker/s wants to come forward and file a private right of action for their back wages. Within each of these acts of wage theft is a criminal tax violation. There is an estimated \$60 million in wage theft yearly in Maryland. If \$60 million is lost by workers each year, how much are the state and local governments losing in taxes, unemployment insurance, and worker compensation?

SB 436 moves Maryland in the right direction by making Wage Theft a criminal misdemeanor. It also acknowledges the other violations hidden in the act of wage theft. It puts mandatory referrals to the Maryland Comptroller, the States Attorney’s office, the U.S. Department of Justice, the U.S. Department of Labor, and the U.S. Department of Treasury, where these violations of tax fraud, worker comp fraud, and unemployment insurance fraud are all criminal acts. It will also allow a stiffer penalty of \$ 5,000 per worker and jail time of up to 60 days for each harmed worker.

When the “bad actors” start facing real penalties that hurt them financially and may cost them their freedom, hopefully, they will start reconsidering their actions. Then, Wage Theft and Misclassification will begin to disappear.

For these reasons, I ask that you **SUPPORT SB 436**

Sincerely,

Jason Ascher
Political Director
Mid-Atlantic Pipe Trades Association

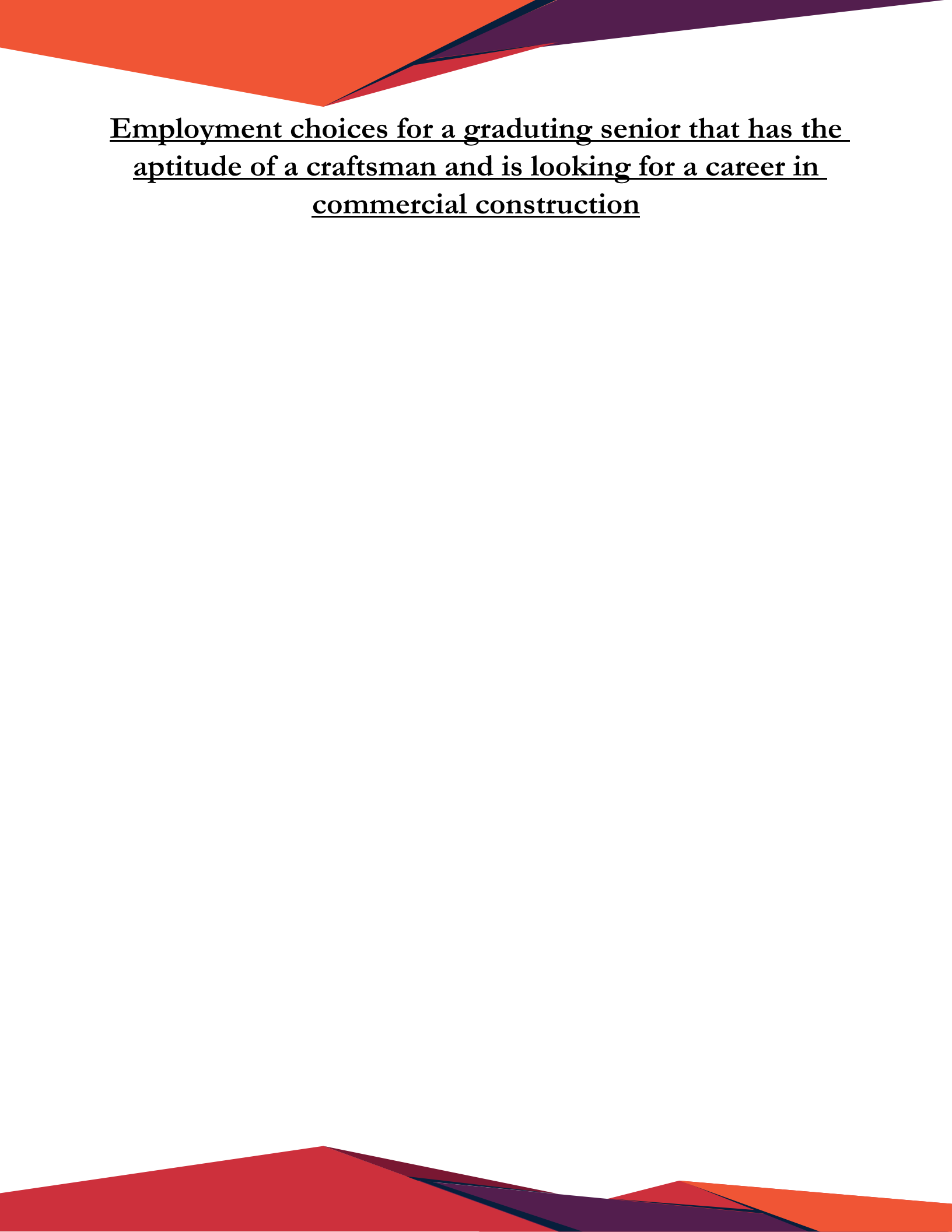
INDEPENDENT WORKER vs OPEN SHOP vs UNION.pdf

Uploaded by: Kenny Mallick

Position: FAV

Employment choices for a graduating senior that has the aptitude of a craftsman and is looking for a career in commercial construction

	INDEPENDENT WORKER	OPEN SHOP EMPLOYER	UNION
Paid vacation available	NO	YES	SOME
Paid holidays available	NO	YES	SOME
Paid sick leave available	NO	YES	SOME
Workers' compensation available if injured	NO	YES	YES
Eligible for Social Security at retirement age	NO	YES	YES
Federal and State taxes filed for individual	NO	YES	YES
Craft training provided	NO	YES	YES
Safety training provided	ONLY IF OFFERED BY PRIMARY SUB	YES	YES
Career path advancement options available	NO	YES	YES
Healthcare available (full or partial)	NO	YES	YES
Mentorship available	IF THEY ARE LUCKY	YES	YES
Bonuses/profit sharing	NO	MOST	NO
401K retirement plan	NO	MOST	YES
Company vehicle	NO	YES	YES
Uniforms/clothing	UNLIKELY	MOST	YES
Hand tools provided	NO	YES	YES



Employment choices for a graduting senior that has the
aptitude of a craftsman and is looking for a career in
commercial construction

Mallick Mechanical Senate Bill 436.pdf

Uploaded by: Kenny Mallick

Position: FAV

Maryland Senate Finance Committee

Chair: Senator Pamela Beidle

Vice Chair: Senator Katherine Klausmeier

Written testimony in support of Senate Bill 436

My name is Kenny Mallick and I own and operate Mallick Mechanical Contractors.

I am an Open Shop business owner that served as an ABC board member for 5 years.

In July of last year, I was burdened with the heaviest decision in my 30 year career. "Break the law by getting cheap labor through Illegal labor brokers" or "Shut down my contracting business because I can no longer compete legally. I chose to shut down my business.

This underground labor system exploits illegal immigrants and is discrimination. This is no different than the exploitation that happened during slavery.

This discrimination is padding the pockets of developers as their buildings are being built at a discount. Developers and General Contractors know that this is happening on public and private construction projects. I know this firsthand as I have indirectly participated in this "Illegal labor Broker system" on their jobs.

Several months ago, a GC asked me to increase my labor on a project. I told him that I didn't have the extra labor available but would instead bring in 20 illegal 1099 workers. He shrugged his shoulders, turned his head, and walked away without another word. This General Contractor ranks in the top 5 in the United States.

ABC knows this is happening but can't fix it as half of their members are addicted to this illegal labor practice.

I watched the Construction industry come together and figure out how to build buildings and keep the workers safe during Covid. The industry needs to come together and figure out how to build buildings and legally pay the people who are doing the work. They chose not to.

We let these immigrants into America and are working them. It's time to legally pay them for doing the work. The work that we need done that our citizens don't want to do.

Construction companies used to operate with morals, values and within the law. We are now being forced to exploit people and break the law as there are not enough US citizens entering the construction industry.

We need government intervention as our industry is addicted to cheap illegal labor and can't help itself.

Please support SB 436

Kenny Mallick

MALLICK

MECHANICAL CONTRACTORS

Questions for the future of OPEN SHOP construction

Uploaded by: Kenny Mallick

Position: FAV

Questions for the future of OPEN SHOP construction

Staffing for GCs and trade contractors in the future

Based on the attached comparison who will future graduating legally employable teen citizens go to work for given the choice between working for Labor Brokers, Open Shop contractors or Union Contractors? What advice/guidance would you provide to your child in this choice?

What advice would you give the teen if the self-performing open shop contractor didn't exist? Legally operating open shops can't compete against the Labor Broker model. Unions have a hard time competing against legally operated open shops. Unions have zero chance in competing against Labor Brokers. Open shops will have to convert to Federal work only or die unless they adopt the "currently illegal" Labor Broker model.

What is the path to becoming a legally employable foreman for a trade contractor and will it exist in the future? Where will legally employable trade foreman come from in the future if the undocumented 1099 market continues to grow? Open shop, Union or Labor Broker

What is the path to becoming a legally employable project manager for a trade contractor and will it exist in the future? Open shop, Union or Labor Broker

Where will legally employable safety professionals come from in the future if the undocumented 1099 market continues to grow? Open shop, Union or Labor Broker

Where did our safety professions in our organizations get their start at and was it for an open shop or a union shop? Where will legally employable safety professionals come from in the future if the undocumented 1099 market continues to grow? Open shop, Union or Labor Broker

Where did the trade specific estimators that work for GCs as well as trade contractors get their start at? Where will legally employable trade estimators come from in the future if the undocumented 1099 market continues to grow? Open shop, Union or Labor Broker

Labor Brokers

Where do the labor brokers find their people?

Why do the labor brokers have access to so many people?

Why do the people that are working for labor brokers want to work for the labor brokers?

Do the people that are working for the labor brokers have the option to work as an employee for a subcontractor?

Can law abiding employers hire these people directly?

Do the people that work for the labor brokers have a Social Security card/number?

Are any of your people eligible for hire through EVerify?

Do the people that work for the labor brokers pay into Social Security?

Do the people that work for the labor brokers pay Federal and State taxes?

How many people are currently being paid by labor brokers in the DC area?

How large is the 1099 market?

Diversity, inclusion, discrimination, pay inequality and other social injustices

What actions are reputable GC firms applying towards these endeavors?

Do you expect your subcontractors to apply the same efforts?

Do you see any opportunities with regards to these social injustices with the labor broker model?

Are all of these subject issues laws or moral issues?

Do these social injustices only apply to people that have a US issued Social Security card?

Competitive advantage

What are the costs to an employer to provide reasonable benefits and required taxes for an employee? Labor brokers pay their people as independent workers and are not subject to ANY Social Security match, unemployment insurance, workers compensation, vacation, holidays, sick leave, etc. Their labor is 40% cheaper than law abiding employers. This equates to being beat by 10% to 15% minimum on projects that use labor brokers to install their products.

Adopt the illegal employee misclassification labor broker model or close up shop? What would you do?

Legal implications/Risk

If the one paying knows that taxes are not being paid does that make you an accessory to the crime?

If the one paying knows before it happens does it make it premeditated?

What happens to the construction industry should we ever get an elected official to uphold the current immigration laws and the workers that are employed by labor brokers get deported?

Safety

Why do companies have to fill out an OSHA 300 log?

Do labor brokers fill out an OSHA 300 log?

Do labor brokers have a Workers Comp MOD?

What drives a company's Workers Comp MOD?

Are 1099 workers required to fill out an OSHA 300 log?

Who do 1099 workers have to report injuries to?

Are there statistics for injuries for 1099 workers?

From my experience

Edison Center: Our company was invited to a hiring fair at the Edison Center (Montgomery County Public Schools trade school) earlier this year and I personally interviewed 20 teens. The interview was very basic as I eased into seeing if they would have 2 forms of ID as a condition of employment. Shockingly only 2 out of the 20 teens I spoke with had 2 forms of ID that is required of law abiding employers. They would not have a Social Security card. I approached the school administrator about my findings only to have him say that its true and there is nothing that MCPS can do to fix the issue. 10% of these teens are legally employable.

Labor broker #1 conversation certified payroll: I was having a conversation with our labor broker around him being able to provide assistance on a project that required certified payrolls. He stated that he has 12 people that he could place with us. He employs a total of 66 total tradesman. 18% of his people are legally employable.

Labor broker #2 conversation certified payroll: I had a conversation with our second favorite labor broker around him being able to provide staffing assistance on a project that required certified payrolls. He stated that he has 23 people that he could place with us. He employs 78 total tradesman. 29% of his people are legally employable.

Labor broker #2 conversation multifamily staffing: During our conversation I asked him his thoughts on the percentage of people that were legally employable on a typical multifamily project. He stated only around 30% of the workers were legally employable.

Labor broker #1 conversation Getting Busted: We were discussing the lawsuits coming down from the DC AG and his plans if he were to have a suit filed against him. He stated that he would shut down the operation in his name and open up again the same day in the name of one of his friends. He would give his friend 20% of the profits for his efforts and adopt a new alias/name.

Labor broker #2 conversation hiring legal employees and taxes: When questioning the broker about where he is finding people to work for him that are legal, he stated that he hires them away from larger companies for the same money. They don't need the benefits and they only look at their take home amount after cashing their paycheck. They make more money because they are being paid as 1099 staff and are responsible for paying their taxes on their own. The Fed Govt will issue them a FED ID# which will allow them to pay into taxes but will not allow them to file a return to collect any overpayment due to not having a SS number or work visa. Why pay in if you can't file for a refund? Why pay in if you cant collect Social Security at retirement age?

Federal ID #s: Providing a FED ID number to a broker is checking the box keeping the broker out of trouble with the IRS. The federal government will issue a FED ID number to anyone that applies with zero proof of identity. See the picture accepting FED IDs in Frederick MD.

MVA and the REAL ID: The MVA was forced to comply with the REAL ID drivers license from the federal govt in an effort to combat terrorist traveling on airplanes with fake IDs in which they have done. They have also taken it one step further by issuing a NOT FOR FEDERAL USE drivers license.

Reach out direct if you want more info.....

Wake up ABC members.pdf

Uploaded by: Kenny Mallick

Position: FAV

Wake up ABC members! You are outsourcing open shop craftsman jobs.

The choice in the future will be between “Illegal Shop” or “Union Shop” if the use of labor brokers is not stopped and ABC will not be needed.

From ABC National “THE VOICE OF THE MERIT SHOP” website

“ABC merit shop philosophy, we help our members [develop people](#), [win work](#) and deliver [work safely](#), [ethically](#) and [profitably](#) for the [betterment of the communities](#) in which they work”.

By supporting the 1099 labor market you are not helping “law abiding trade contractors” develop people.

By supporting the 1099 labor market you are not helping “law abiding trade contractors” win work.

By supporting the 1099 labor market you are not helping “law abiding trade contractors” work safely.

By supporting the 1099 labor market you are not helping “law abiding trade contractors” work ethically.

By supporting the 1099 labor market you are not helping “law abiding trade contractors” work profitably.

By supporting the 1099 labor market you are not helping “law abiding trade contractors” better our communities.

PRINCIPLES OF THE MERIT SHOP

We believe employees and employers should have the right to determine wages and working conditions through either individual or collective bargaining, as they choose, within the boundaries of the law.

ABC supporting the 1099 labor market does not demonstrate support of the law of employee misclassification

We support sound legislation in the areas of workers compensation, safety and unemployment compensation.

ABC supporting the 1099 labor market does not demonstrate support for workers compensation, safety or unemployment.

We believe the law should protect the right of employees to work regardless of race, color, creed, age, sex, national origin or membership or non-membership in a labor organization. We believe work opportunities should be made available to all legal residents and we support programs toward this end.

ABC supporting the 1099 labor market does not demonstrate support for work opportunities for the legal residents in the United States.

We believe it is incumbent upon all branches of government to be responsible stewards of taxpayer dollars and we believe that government should award contracts only to the lowest responsible bidder. We oppose unjust pressure to violate these principles.

ABC supporting the 1099 labor market does not demonstrate support for awarding of contracts to the lowest responsible bidder.

We believe monopolies or any kind of price or wage fixing, in either the public or private sector, are detrimental to our system of free enterprise.

ABC supporting the 1099 labor market does not demonstrate support against monopolies or wage fixing.

We believe the destiny of all Americans can be best served by cooperation, reconciliation and following the tenants of free enterprise and a democratic government. We believe business leaders can best preserve these tenets by becoming active in politics and civic affairs.

ABC supporting the 1099 labor market does not demonstrate active leadership in politics towards the support of American citizens in or out of the construction industry.

Questions for ABC and their members

Do labor brokers send their people to the Craft Training Academy? If NO why not?

Why does ABC or the Union offer Craft Training?

Who will be attending ABCs Craft Training Academy in the future?

Will ABCs Craft Training Academy be needed in the future?

Are any labor brokers members of ABC?

Will self-performing non union subcontractors exist in the future?

If ABC trade contractors convert to using the labor broker/1099 model who will ABC General Contractors use to build Federal Davis Bacon projects?

How can we say that we are equally as good as a union competitor when we are overly reliant on labor brokers that are not training their people in the craft, that are not providing safety training?

Is safety amongst the Independent 1099 worker being reported or measured?

How many educational sessions on "Employee Misclassification" has ABC Metro put on for their members over the past 15 years?

Does anyone at ABC know approximately how large the 1099 workforce really is in the USA?

What would ABC and its members do if they woke up and found that the 1099 labor broker workforce was actually larger than the open shop workforce?

Who is morally responsible for the deaths of undocumented workers being smuggled into the USA that die during transport? The organizations that use the labor brokers to staff their projects, the brokers that fill the orders, the US Govt/border patrol?

Who is morally responsible for the undocumented workers once they arrive on your job to do your work?

ABC General Contractors of today

The ABC General Contractors of today are disconnected from the issues caused by lack of a functioning immigration policy.

The ABC General Contractors of today are disconnected from what the original fight was all about.

The ABC members of today are here because of subcontractors.

Back in 1950 how much trade work did a general contractor self perform?

More than likely they self performed excavation, concrete, carpentry, etc.

They then hired the licensed plumber, electrician, etc.

The union organizations argument/story was that their craftsman did better quality work, operated safer, etc.

All 7 contractors got together on behalf of their own self performed trades and fought over merited items.

One could say that ABC was formed to level the playing field for work that tradesman do.

I'm not even sure if the word subcontractor was used in 1950 as most trades were self performed by the contractors.

Contractors that self performed.

General contractors of today do not self perform work.

Because of this, they have lost the identity that caused ABC to be formed in the first place.

They have forgotten where they came from.

They have forgotten about the tradesman.

They have forgotten about the paths that were cut, the tracks that were laid, that have given all of you General Contractors the lives that you currently have.

This gives the illusion that one standing today would think that they have accomplished all of the past successes on their own.

NOT TRUE

The original fight was not over general contractors. It was over what we call these days "subcontractors".

Is ABC going to stand for their subcontractors now?

Testimony in support of SB0436.pdf

Uploaded by: Richard KAP Kaplowitz

Position: FAV

2/15/2024

Richard Keith Kaplowitz
Frederick, MD 21703

TESTIMONY ON SB#0436 - FAVORABLE
Workplace Fraud and Prevailing Wage - Violations - Penalties and Referrals

TO: Chair Beidle, Vice Chair Klausmeier, and members of Finance 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#0436, Workplace Fraud and Prevailing Wage - Violations - Penalties and Referrals

The United States Department of Labor has discussed the problems this bill would work to solve in Maryland in concert with new regulations from the USDOL.

A worker is entitled to minimum wage and overtime pay protections ... Employers are responsible for determining whether a worker is an employee under the FLSA. Misclassification occurs when an employer treats a worker who is an employee under the FLSA as an independent contractor. Misclassifying employees as independent contractors is a serious problem because misclassified employees may not receive the minimum wage and overtime pay to which they are entitled under the FLSA or other benefits and protections to which they are entitled under the law.

While I would hope the situation described is not taking place in Maryland there have been documented cases in which this is and has occurred. There are lawyers in Annapolis who specialty in the law is representation of employees harmed by this conduct. This bill is an attempt to give the government power to enforce the laws governing this misconduct and provide appropriate relief and penalties.

The essence of the proposed bill is to create an environment in which employer conduct towards employees includes giving them a more complete picture of the work they are doing and how they are compensated for it. During my time working in food service as a tipped employee I had an employer where I had to calculate how my credit tips were being applied to the tip credit being claimed by my employer to ensure that the totals earning were minimum wage.

HB0385 is a common-sense application of regulations on how we treat the imbalance created when an employer does not fully inform their employee in a pay stub of all the earnings and deductions and how they were applied. It enforces the ability of the employee to ensure they are being compensated fairly and correctly.

I respectfully urge this committee to return a favorable report on SB#0436.

EASRCC testimony_HB465_SB436_FAVORABLE.pdf

Uploaded by: Roger Manno

Position: FAV



Eastern Atlantic States
REGIONAL COUNCIL OF CARPENTERS

801 West Patapsco Avenue, Baltimore, MD 21230 | Phone: 443-915-0462 | EASCARPENTERS.ORG

TESTIMONY

HB436 / SB436 - WORKPLACE FRAUD AND PREVAILING WAGE - VIOLATIONS -
PENALTIES AND REFERRALS

FAVORABLE

Dear Chair Wilson, Chair Beidle, and members of both the Economic Matters Committee and the Finance 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 strongest support for HB436 / SB436 - Workplace Fraud And Prevailing Wage - Violations - Penalties And Referrals, and to ask for a favorable report.

This legislation is extremely consequential, in that it addresses two of the most egregious practices of social, racial and economic injustice: Wage Theft and Misclassification. Within these two practices exist a range of other injustices that harm workers, government, and the general public, by draining public revenues that serve public social services, health care and education: Tax Fraud, Payroll Fraud, Insurance Fraud, and Workers Compensation Fraud.

As you may be aware, the Joint Audit and Evaluation Committee recently instructed the Office of Program Evaluation and Government Accountability to conduct an evaluation of the Worker Classification Protection Unit (WCPU) of the Maryland Department of Labor. Among the issues found, the Maryland Department of Labor, Licensing and Regulation, has one field inspector for the entire state of Maryland, which explains the exorbitant wage theft, UI Insurance fraud, Workers Comp fraud, misclassification, and other payroll violations uncovered, that can be attributable to both the structure of the state agency, and the inadequacy of the state statutes as means to enforce these practices.

When employers target defenseless workers through Misclassification and wage theft, particularly large numbers of workers of color with certain sectors of the construction industry, it stifles the very progress and upward mobility of hard-working Maryland families.

In addition, these practices allow for unscrupulous employers to gain an unfair bidding advantage of up to 30 percent by knowingly misrepresenting the classification of workers as independent contractors, hiring off the books, and utilizing exploitative human trafficking labor brokers. In doing so, these employers engage in wholesale Tax Fraud, Payroll Fraud, Overtime Fraud, Insurance Fraud, and Workers Compensation Fraud.



EASTERN ATLANTIC STATES REGIONAL COUNCIL OF CARPENTERS

Representing members in New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, Washington D.C., and 10 counties in North Carolina

That's why the Eastern Atlantic States Council of Carpenters (EASRCC) strongly supports this legislation. By elevating Misclassification from a mere civil violation to a misdemeanor criminal violation, Maryland will begin to address the "safe haven" that Maryland has become for bad actors from other states. In addition, by requiring referrals from the Maryland Department of

Labor to the Comptroller of Maryland, this legislation enables prosecution of tax violations,

which are already a crime in the state, by effectively cross referencing the Labor and Employment Article of the statute (which addresses wage violations as civil violations) with the Tax General Article of the statute (which currently addresses tax and other related frauds as criminal violations).

For these reasons, we urge a favorable report on HB436 / SB436.

Sincerely,

Mungu Sanchez

Deputy Political Director

REGIONAL OFFICES:

1803 Spring Garden Street
Philadelphia, PA 19130
Phone: 215-569-1634

650 Ridge Road, Suite 200
Pittsburgh, PA 15205
Phone: 412-922-6200

91 Fieldcrest Avenue, Suite A18
Edison, NJ 08837
Phone: 732-417-9229

8500 Pennsylvania Avenue
Upper Marlboro, MD 20772
Phone: 301-735-6660

Erlich Testimony HB 465 SB 436 FAVORABLE.pdf

Uploaded by: Roger Manno

Position: FAV

MARK ERLICH
FELLOW, CENTER FOR LABOR & A JUST ECONOMY
HARVARD LAW SCHOOL
CAMBRIDGE, MA

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

I come before you to testify in favor of HB 465 / SB 436, a bill that would establish criminal penalties for employers that knowingly fail to classify workers properly as employees and address the problems of workplace fraud and wage theft.

The issue of the misclassification of employees as independent contractors, the practice of cash compensation, and the use of labor brokers have unfortunately become severe problems across occupations and industries in our economy. As a participant and researcher in the construction industry for nearly fifty years, I have witnessed and studied the negative consequences of the growth of the underground economy. I am the author of three books and numerous articles and reports, many of which detail the expansion of this business model over the last several decades.

Construction is a highly competitive and straightforward industry. Bids are submitted based on the use of materials and labor. Since materials costs are relatively similar for all contractors, the ability to save money on labor is an enticing and effective method to underbid competitors. The illegal and unethical business model that relies on misclassification offers savings up to 30% because of the simple ability to avoid legally required payments of state and federal taxes as well as workers compensation premiums, a sizable factor given the dangerous nature of the industry. The competitive advantage that this business model offers has diminished standards in the industry, both in terms of compensation and safety.

These practices run rampant in the industry, no longer limited to minor projects. A 2023 study by the Century Foundation found that between 1.1 and 2.1 million construction workers are either misclassified or paid in cash off the books.

This is not a victimless crime.

If these workers were properly treated as the employees that they are, they would be protected by state and federal laws governing employment status, such as minimum wage, overtime, and anti-discrimination laws. Wage theft is common in this underground economy environment. Workers are frequently paid less than they are owed and, on occasion, not paid at all for the work they perform. Responsible employers and their workforce are also victimized by this business model. Those employers who continue to fulfill their legal obligations find themselves regularly underbid by those who cheat, resulting in lost opportunities and declining revenue.

And even taxpayers are ultimately victimized. The Century Foundation report found that these unscrupulous employers shortchange the Social Security, unemployment insurance, and workers compensation systems to the tune of \$12 billion per year, costing taxpayers between \$5 and \$10 billion per year.

It will take years to undo the damage that has been done by the widespread abuses in the construction industry. HB 465 / SB 436 is not a silver bullet but will bring Maryland more in line with statutes in other states. But even if improved legislation is enacted, the Worker Classification Protection Unit of the Maryland Department of Labor has to have the resources and the clear direction to vigorously enforce

the laws of the land. For these reasons, I strongly urge the committee to give a favorable report to this bill.

Ironworkers Local 5 Testimony_HB465_SB436_FAVORABL

Uploaded by: Roger Manno

Position: FAV



HB465 / SB436

Workplace Fraud and Prevailing Wage - Violations - Penalties and Referrals

FAVORABLE

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

As Business Manager and Financial Secretary Treasurer of Ironworkers Local 5, on behalf of our 1,000 Ironworkers, Journeymen, Apprentices and Retirees, I write to express our support for HB465 / SB436 - Workplace Fraud and Prevailing Wage - Violations - Penalties and Referrals, and to ask for a favorable report.

Among non-Right-To-Work states within the Mid Atlantic region, Maryland has the unfortunate distinction of being among the most egregious with regard to the lack of both enforcement and statutory clarity for wage theft, misclassification, and the full range of payroll withholding frauds. This fact is the subject of a recently released Office of Program Evaluation and Government Accountability report evaluating the Worker Classification Protection Unit (WCPU) of the Maryland Department of Labor, Licensing and Regulation, which uncovered significant structural problems with regard to investigating and prosecuting wage theft, misclassification, Unemployment Insurance fraud, Workers Compensation Insurance fraud, among a litany of related payroll violations.

Maryland's problems with regard to these violations, both civil and criminal, also stems from the state's anemic statutory structure, whereby wage and hour violations are deemed to be civil violations, while the related / underlying payroll withholding frauds are criminal violation on bot the state and federal levels.

While HB465 / SB436 does not address the myriad of issues withing the Department of Labor, Licensing and Regulation, it brings Maryland in line with many other states which prosecute wage and hour violations criminally, in this case, as misdemeanors.

For these reasons, we ask for a favorable committee report.

Sincerely,

Aaron Bast

Business Manager and Financial Secretary Treasurer

Ironworkers Local 5

RSC Mechanical_testimony_HR465 SB436_FAVORABLE.pdf

Uploaded by: Roger Manno

Position: FAV



DC: 6035 Dix Street N.E., Washington, DC 20019 • (P) 202-398-7957 • (F) 202-388-0329
MD: 5426 Addison Rd • Fairmount Heights, MD 20743 • (P) 301-773-0414 • (F) 301-773-1401

www.rsccompany.com

January 29, 2024

House Economic Matters Committee
90 State Circle, Room 231
Annapolis, MD 21401

Re: Penalties Bill HB465 / SB436

Dear Chairs Wilsons and Beidle, and Honorable Members of the House Economic Matters Committee and Senate Finance Committee:

My name is Jonathan Bolden. I am a union Steamfitter, have my own company, RSC Electrical & Mechanical Contractors, Inc., and I am a proud union certified MBE minority contractor. My company is over 30 years old. We operate with a full Union Shop of twelve (12) Journeymen, three (3) apprentices, five (5) Electricians, and three (3) Master Mechanics. We pay our workers good wages, sometimes struggling to do so, so that they can have good, middle-class careers. But it's never easy.

As a small MBE, competing for qualified workers has always been difficult when other contractors pay workers off the books, misclassify workers, employ labor traffickers, and under-report wages on their payrolls. These practices create a completely rigged competitive disadvantage and are an existential threat to businesses like mine. In fact, these problems seem to be getting worse each year.

I support HB465 / SB436, which begins to get to the heart of these problems by elevating penalties, as many other states have done. Without this legislation, small MBEs like RSC Electrical & Mechanical Contractors, Inc. can not compete legally in Maryland against low-bid contractors, and from out of state contractors, engaging in all matter of illegal practices.

For these reasons, I urge you to pass this critical legislation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan Bolden', written in a cursive style.

Johnathan Bolden
President

UA Plumbers and Gasfitters Local 5_ HB465_ SB436_ FA

Uploaded by: Roger Manno

Position: FAV



PLUMBERS LOCAL UNION NO. 5

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO

4755 Walden Ln. Lanham, MD 20706 • 301-899-7861 (T) • 301-899-7868 (F)



HB465 / SB436

Workplace Fraud and Prevailing Wage - Violations - Penalties and Referrals
FAVORABLE

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

As Business Manager/Financial Secretary Treasurer of UA Plumbers & Gasfitters Local 5, I write today to ask the committee for a favorable report of HB465 / SB436, and to thank Senator Gile and Delegate Boafu for your sponsorship.

The IJA Plumbers & Gasfitters Local 5 have been installing, maintaining and servicing the waste, water & gas systems in the Washington D.C. area since 1890. We represent some 1,800 of the most highly-skilled construction workers to be found anywhere, including over 300 apprentices, which provide the workforce excellence across some 65 signatory construction contractors throughout the Washington, DC Metropolitan area.

We support HB465 / SB436 because it significantly improves enforcement and prosecution of extremely heinous violations against government and the taxpayers — payroll fraud, tax fraud, and insurance fraud — and two of the most egregious social and economic justice exploitations that there is: wage theft and Misclassification of workers.

The practice of Misclassification robs workers of their status and their wages by treating them and the value of their work as less than the law requires. It is both classist, in that it stifles economic mobility for workers trying to provide for their family and move up the economic ladder, and in many cases, it is patently racist, in that it tends to target specific sectors of the construction trades where large numbers of workers of color are employed.

Within each and every instance of Misclassification and wage theft are also underlying instances of payroll fraud, tax fraud, and insurance fraud, in that the underreporting or misreporting of earnings constitutes under collection of workers' compensation withholdings, unemployment insurance withholdings, and federal FICA withholdings.

As drafted, HB465 / SB436 begin to address this issue by making willful Misclassification a misdemeanor offense, and requiring referrals of wage theft cases from the Department of Labor to the Comptroller. This is necessary because wage theft is a civil offense with the Labor and Employment Article of the Maryland statutes, while tax and payroll fraud are criminal violations (misdemeanors) within the Tax General Article of the Maryland Statute. This is an oversight and a loophole in the statute. By appropriately cross referencing jurisdictions from both these two sections of the Maryland statutes, Maryland can begin to reign in these heinous acts, as many other states have already done.

For those reasons, we ask for a favorable committee report.

Sincerely,

Terriea "T" Smalls
Business Manager / Financial Secretary Treasurer

Terriea "T" L. Smalls
Business Mgr. / Financial Sec-Treas.

James L. "Lou" Spencer
Asst. Business Manager

Anthony A. Solis
Business Rep. and Organizer

Micheal S. Canales, Jr.
Business Rep. and Organizer

UA Steamfitters 602 Testimony HB465_SB436_FAVORABL

Uploaded by: Roger Manno

Position: FAV

Journeyman Pipe Fitters and Apprentices



Local Union No. 602

8700 ASHWOOD DRIVE • 2ND FLOOR • CAPITOL HEIGHTS, MD 20743

TELEPHONE: (301) 333-2356 • FAX: (301) 333-1730

AFFILIATED WITH AFL-CIO

HB465 / SB436

Workplace Fraud and Prevailing Wage - Violations - Penalties and Referrals

FAVORABLE

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

As Business Manager/Financial Secretary Treasurer of UA Steamfitters Local 602, please accept this letter in strong support of HB465 / SB436 - Workplace Fraud and Prevailing Wage - Violations - Penalties and Referrals, which addresses the pervasive acts of Misclassification, wage theft, tax fraud, payroll fraud and insurance fraud

The UA Steamfitters Local 602 represents some 4,900 Journeymen, 1100 Apprentices, and 205 signatory Mechanical Construction and Service Contractors in the Heating, Air Conditioning, Refrigeration and Process Piping Industry throughout the Washington, DC Metropolitan area. Our economic and workforce footprint is enormous, including having performed some 7,231,500 work hours in 2020 alone. We understand how to make Maryland work, because it's what we do, each and every day.

Our work is a business-labor partnership, and our contractor affiliates, represented by the Mechanical Contractors Association of Metro Washington (MCAMW), is a powerful driver of local economies throughout the region, generating some \$2 BILLION in annual revenue, and some \$500 MILLION in state, federal and local taxes each and every year.

This legislation addresses the pernicious practice of Misclassification, and its inevitable underlying practices of wage theft, tax fraud, payroll fraud and insurance fraud. These practices run rampant in most states, including in Maryland, where few investigative tools are available, and fewer resources are deployed to address the practices.

Misclassification, whether intentional or unintentional, wrongly classifies workers as independent contractors, or worse, paid entirely off the books, when, in fact, those workers are employees. This practice occurs across all workforce sectors, but is particularly rampant in the construction industry.

Within each instance of misclassification, exists multiple instances of wage and hour violations, including violations of minimum wage laws, overtime laws, prevailing wage laws, and so on. Importantly, by definition, each violation also constitutes payroll fraud, tax fraud, and insurance fraud, including underreporting, misreporting, or under collection of workers' compensation withholding, unemployment insurance withholdings, and federal FICA withholding. These are

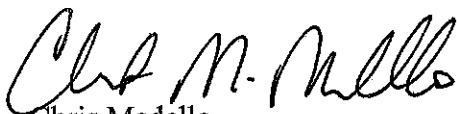
problematic for the workers themselves, for state and federal government and taxpayers who are being deprived of revenues, and for law abiding businesses who are at a competitive disadvantage.

As you may be aware, at the request of the Joint Audit and Evaluation Committee, the Office of Program Evaluation and Government Accountability has conducted an evaluation of the Worker Classification Protection Unit (WCPU) of the Maryland Department of Labor. This evaluation uncovered abject wage theft, misclassification, and a range of payroll violations, that are directly related to the structure of the Maryland Department of Labor, Licensing and Regulation, and the statutes which enable these atrocious practices.

While HB465 / SB436 does not speak to the need for reforms with the structure of the Department of labor, Licensing and regulation, it does begin to address this problem holistically, as other states have, by appropriately elevating willful acts of Misclassification to a misdemeanor, while requiring referrals from Department of Labor to the Comptroller, for enforcement of the underlying tax fraud, and payroll fraud that are baked-in to each and every act of Misclassification. In addition, this committee should also require mandatory referrals to the Maryland Attorney General and the Maryland Insurance Commission. And while the United States Department of Labor's Wage and Hour Division, the Maryland Department of Labor's Division of Unemployment Insurance, and the Maryland Department of Labor's Division of Labor and Industry are parties to a 2022 MOU to improve collaborative information sharing and to some extent prosecutorial resources, this committee should require mandatory referrals to the US Department of Labor and the US Department of Justice for willful violations of federal law.

For these reasons, we ask for a favorable committee report.

Sincerely,



Chris Madello

Business Manager and Financial Secretary / Treasurer
UA Steamfitters Local 602

240214_SB0436_Workplace Fraud and Prevailing Wage

Uploaded by: Sarah Roth

Position: FAV



February 14, 2024

The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee
2 East, Miller Senate Office Building
Annapolis, Maryland 21401

The Honorable Jeff Waldstreicher
Vice Chair, Judicial Proceedings Committee
2 East, Miller Senate Office Building
Annapolis, Maryland 21401

Dear Chair Smith and Vice Chair Waldstreicher,

I would like to express my full support for *Senate Bill 436 - Workplace Fraud and Prevailing Wage - Violations - Penalties and Referrals*.

Wage theft is one of the most challenging obstacles that many workers in Maryland, especially those in the Building Trades industry, face every single day. There is an estimated \$60 million in wage theft yearly in Maryland and tactics can vary - theft can look as simple as failing to pay minimum wage, prevailing wage, or overtime, or as complex as misclassifying workers based on the type of work completed.

There is no question: Those who engage in wage theft are stealing money from the pockets of their workers. Period. This issue is far more widespread in Maryland than it should be, and is one that must be rectified immediately for the sake of all Marylanders.

Currently, all allegations of wage theft and misclassification statewide are reported to a single investigator at the Maryland Department of Labor, and penalties for wage theft amount to only a civil penalty of a small fine. Bad actors who commit wage theft are well versed in this lack of oversight and consequences and frequently budget for any penalties that may be issued. The current system has made punishment for wage theft the “cost of doing business in Maryland” and not an effective deterrent from future impropriety. To make matters even worse, no meaningful recourse exists for the victims who lose their hard earned money to theft, unless they pursue private civil action.

SB436 moves Maryland forward by making wage theft a criminal misdemeanor, as well as acknowledging the other violations hidden in the act of wage theft. This legislation also directs mandatory referrals to the Maryland Comptroller, the States Attorney’s office, the U.S. Department of Justice, the U.S. Department of Labor, and the U.S. Department of Treasury, where these violations of tax fraud, worker compensation fraud, and unemployment insurance fraud are all criminal acts. It will also allow a stiffer penalty of \$5,000 per worker and jail time of up to 60 days for each harmed worker.

It is my hope that by creating meaningful criminal sanctions for wage theft in Maryland, bad actors will think twice before stealing from their hardworking employees and that all employees will get what they earn in our great State. If unethical employers still choose to steal from their workers, this legislation will ensure that Maryland workers will have a better path to recourse.

For these reasons, I strongly urge this committee to give *Senate Bill 436 - Workplace Fraud and Prevailing Wage - Violations - Penalties and Referrals* the highest consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "David Trone", is positioned below the word "Sincerely,".

David Trone
Member of Congress

DG Written Testimony_SB0436

Uploaded by: Senator Dawn Gile

Position: FAV

DAWN D. GILE
Legislative District 33
Anne Arundel County

Finance Committee

Chair

Anne Arundel County
Senate Delegation



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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.

SB 436 Workplace Fraud & Prevailing Wage 2024.pdf

Uploaded by: Tom Clark

Position: FAV



International Brotherhood of Electrical Workers

JOSEPH F. DABBS: Business Manager • THOMAS C. MYERS: President • RICHARD D. WILKINSON: Vice President
CHRISTOPHER M. CASH: Financial Secretary • RICHARD G. MURPHY: Recording Secretary • PAULO C. HENRIQUES: Treasurer



TESTIMONY IN SUPPORT OF SB 436 WORKPLACE FRAUD & PREVAILING WAGE-VIOLATIONS-PENALTIES-REFERRALS Senate Finance Committee 2/15/24

TO: Chair Beidle, Vice Chair Klausmeier, and members of the Senate Finance Committee

FROM: Tom Clark, Political Director, International Brotherhood of Electrical Workers Local 26

Madam Chair, Madam Vice Chair, and distinguished members of the Committee. I encourage you to join me in full **support** of **SB 436**, a bill that addresses the exploitation of unknowing electricians and other construction workers throughout our state. I usually write testimony on behalf of the 6000 or so Local 26 Marylanders or the 17,000 IBEW members in the Freestate. Today, I am proud to speak up for the hundreds of thousands of construction workers, union and non-union alike.

Wage theft steals from workers, and unfortunately it is quite often those from the immigrant community. Too often afraid to step forward because of fear of retribution. **SB 436** and the Maryland General Assembly could be the ones that stand up for these Maryland citizens. When the state or a contract directs a specific wage rate, and that rate is underpaid, families suffer and those unscrupulous contracts profit...illegally.

Maryland has become a safe haven for out of state contractors, that use wage theft as a business model. With your favorable vote, Maryland will be open for business for those willing to abide by the law and closed to those willing to steal from hardworking mothers and fathers. **SB 436** protects the worker and the state. When wage theft occurs, the individual suffers, but so does the states coffers, because wage theft is tax fraud. This well-crafted bill sends referrals to the Maryland Comptroller, Attorney General and the US Dept. of Labor among others. It also can make this crime punishable by a fine and or prison time. This referral system and the threat of jail time, will send unscrupulous contractors to another state and keep those companies that play fair, here where they can profit by not having to compete with thieving competitors.

So, I ask you to join me, a union officer and representative, by helping those unorganized (non-union) workers to get a fair wage and level the playing field for all Maryland contractors. It is our chance to help those working families seeking a better life for themselves and their children. I respectfully ask that you give your vote and full **support of SB 436**. Thank you



SB 436 Greg Akerman BDCBT (SUPPORT).pdf

Uploaded by: Victoria Leonard

Position: FAV



Electrical Workers

Insulators

Boilermakers

United Association

Plumbers & Gas Fitters

Sprinkler Fitters

Steam Fitters

Roofers

Cement Masons

Teamsters

Laborers

Bricklayers

Ironworkers

Sheet Metal Workers

Elevator Constructors

Painters

Operating Engineers

Carpenters

February 15, 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 436: Workplace Fraud and Prevailing Wage - Violations –
Penalties and Referrals
Position - Support**

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 436.

The BDCBT represents 28 construction trade unions across Maryland, Northern Virginia, and the District of Columbia. Combined, our trade unions represent more than 30,000 skilled craft professionals in the construction industry.

The BDCBT supports SB 436. It establishes criminal penalties for employers who knowingly fail to properly classify individuals as employees, and contractors and subcontractors who knowingly violate State prevailing wage laws. SB 436 also requires, when there is clear and convincing evidence that a violation has occurred, that the Commissioner of Labor and Industry refer allegations of tax law violations to the Comptroller, State's Attorneys with jurisdiction over the alleged violation, the U.S. Department of Justice, the U.S. Department of Labor, and the U.S. Department of the Treasury.

Wage theft is a massive problem, and Maryland needs stronger laws to address it. According to a 2021 report from the Economic Policy Institute, workers are deprived of an estimated \$15 billion per year through minimum wage violations *alone*, but state and federal enforcement only recovered \$1.7 billion in unlawfully withheld wages between 2017 and 2020 — only 2.8 percent of the estimated \$60 billion stolen over that four-year period. Workers of color, immigrants, and women in low-wage sectors are especially likely to be victims of wage theft.

With SB 436, Maryland would be joining the ranks of several other states that treat wage theft as a crime. These states include California, Colorado, Illinois, New Jersey, Minnesota, and New Jersey. The BDCBT urges the Committee to issue a favorable report on SB 436.

Greg Akerman
President

Value on Display... Everyday.



SB 436_MDL_Support with Amendments.docx.pdf

Uploaded by: Andrew Fulginiti

Position: FWA

Letter of Support with Amendments

SB 436 - Workplace Fraud and Prevailing Wage - Violations - Penalties and Referrals

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

The Maryland Department of Labor, Division of Labor & Industry, enforces this State's labor standards laws, including the Workplace Fraud Act and the State Prevailing Wage Law. The Workplace Fraud Act ensures that workers in the construction and landscaping industries who are employees are classified as employees and are eligible to receive the protections and benefits available to employees. The Prevailing Wage Law maintains minimum labor standards for public work construction projects. Both of these laws also protect Maryland businesses, ensuring a transparent and level playing field for contractors and employers who follow our laws. And they protect the State as well: ensuring that the State receives all tax revenue that is due and unemployment contributions made to our trust fund, and ensuring that the millions of dollars this State spends on construction projects helps to create good jobs.

Currently, only civil remedies are available for violations. In the case of the Workplace Fraud Act, a citation and civil penalties may be issued if an employer, once notified of violation, fails to pay restitution to the worker and the relevant State funds. See, Labor & Employment Article, Section 3-907 (Workplace Fraud Act - Compliance); Section 3-908 (Civil Penalty- non-knowing violation - establishing maximum amount of \$5,000 per individual); Section 3-909 (Civil Penalty - knowing violation - establishing \$20,000 maximum amount per individual). Under the Prevailing Wage law, restitution may be ordered for violation, along with liquidated damages (payable to the public body) of up to \$20 per day per affected worker, with a maximum of \$250 per day per worker for deliberate refusal or failure to pay. See State Finance & Procurement Article, Section 17-222.

Our enforcement units are finally beginning to rebuild: thanks to the General Assembly, we are finally able to add staff to the prevailing wage unit for the first time in years, and we are filling our workplace fraud positions and seeking additional positions for that unit. And, thanks to the Governor's recent Executive Order re-establishing the Joint Enforcement Task Force, the issue of workplace fraud – and the damage that it does to workers, businesses, and our State – is on the front burner. We are once again issuing citations and investigating violations. Even so,

Widespread compliance is not achievable through investigation and citation alone. Our prevailing wage investigators cannot possibly visit every public project in the State, nor our workplace fraud investigators police every residential construction or landscaping company.

By adding the possibility of criminal penalties in a select group of serious cases, this bill would increase compliance levels with these laws. Criminal penalties signal that these are serious violations, signal the seriousness of the General Assembly in addressing these issues, and ensure that businesses take notice, and take compliance seriously as well. In these ways, this bill complements and strengthens the civil enforcement scheme that already exists.

We have one suggested amendment, aimed at more closely targeting the criminal penalties to the most harmful conduct under the prevailing wage law. As currently written, the bill would subject any “knowing” violation of the Prevailing Wage Law to the possibility of criminal penalties. We suggest that this provision be amended to apply more narrowly to deliberate underpayment violations, as described in Section 17-222(a)(2) of the statute.

We also include a point of information for the Committee’s consideration. Sections 3-910(B) and 17-227(B) of the bill both contemplate a broad referral process by the Commissioner of Labor & Industry to various authorities for tax violations. However, the Department of Labor does not have expertise in the tax laws, and does not have an established referral pathway to the U.S. Department of Justice or the Internal Revenue Service. We suggest that those referral processes should be developed in cooperation with the affected State agencies, as part of the work of the Joint Enforcement Task Force.

The Department respectfully requests a **favorable with amendments report** by the Committee on SB 436..

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

SB 436_MDCC_Workplace Fraud and Prevailing Wage -

Uploaded by: Hannah Allen

Position: UNF



MARYLAND
Chamber of Commerce

LEGISLATIVE POSITION:

UNFAVORABLE

Senate Bill 436

Workplace Fraud and Prevailing Wage - Violations - Penalties and Referrals

Senate Finance Committee

Thursday, February 15, 2024

Dear Chairwoman Beidle and Members of the Committee:

Founded in 1968, the Maryland Chamber of Commerce (the Chamber) 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 growth and recovery for Maryland businesses, employees, and families.

Senate Bill 436 establishes additional criminal penalties for employers who knowingly misclassify an individual under the Workplace Fraud Act. The legislation also creates new criminal penalties for contractors and subcontractors who have been found to knowingly violate the State Prevailing Wage Law.

The Maryland Chamber was a vocal and active participant in the discussions and debate regarding the Workplace Fraud Act of 2009. During the 2009 Legislative Session the Chamber worked alongside the Maryland Department of Labor (MDDOL) to address areas of concern to the business community. The Chamber condemns companies that knowingly misclassify individuals as independent contractors when they clearly work as “employees” of such companies. When companies do this, they do not simply harm the individuals who are misclassified, but the law-abiding businesses who pay for the higher costs associated with properly classifying employees such as wages, benefits, and taxes.

However, dealing with those that break the law does not require new penalties potentially sending managers and business owners to jail over employee misclassification. Further, the Chamber is certain this legislation is unnecessary as provisions already exist in statute providing MDDOL authority to appropriately address intentional misclassification of employees and levy substantial fines on those bad actors found to be in violation of Maryland’s worker classification laws.

For these reasons, the Chamber respectfully requests an **unfavorable report** on SB 436.

MDCHAMBER.ORG

60 West Street, Suite 100, Annapolis 21401 | 410-269-0642

SB436_LOS_Workplace Fraud and Prevailing Wage-Viol

Uploaded by: Kevin O'Keeffe

Position: UNF



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8751 Freestate Drive
Suite 250
Laurel, MD 20723

February 15, 2024

To: Members of Senate Finance Committee

From: Independent Electrical Contractors (IEC) Chesapeake

Re: Oppose Senate Bill (SB) 436 – Workplace Fraud and Prevailing Wage – Violations, Penalties, and Referrals

Independent Electrical Contractors (IEC) Chesapeake represents more than 200 electrical and low voltage businesses who employ approximately 15,000 workers in the mid-Atlantic region. In addition, IEC Chesapeake has more than 1,000 electrical apprentices.

IEC Chesapeake opposes Senate Bill 436 because it proposes to create criminal penalties for employers who knowingly misclassify employees and contractors who knowingly violate state prevailing wage laws. The current civil penalties for worker misclassification and prevailing wage violations are sufficient. Creating a scheme to criminalize actions against employers is unwise public policy. The state of Maryland has recently sought to reduce criminal violations in a number of areas. Maryland policymakers should not add criminal offenses against employers who currently face sufficient civil charges. Employers face many challenges in operating their businesses.

Thank you for your consideration. If you have any questions, please contact Grant Shmelzer, Executive Director of IEC Chesapeake, at 1-301-621-9545, extension 114 or at gshmelzer@iec-chesapeake.com or Kevin O’Keeffe at 410-382-7844 or at kevin@kokeeffelaw.com.

About Us

Independent Electrical Contractors (IEC) Chesapeake represents members throughout Delaware, Maryland, Virginia, West Virginia, and Washington, D.C. Our headquarters are located in Laurel, Maryland. IEC Chesapeake has an extensive apprenticeship program for training electricians. In addition, IEC Chesapeake promotes green economic growth by providing education and working with contractor members, industry partners, government policy makers and inspectors to increase the use of renewable energy.



SB 436.pdf

Uploaded by: Kirk McCauley

Position: UNF



WMDA/CAR Service Station
and Automotive Repair Association

Chair: Melony Griffith and Members of Senate Finance Committee

SB436: Workplace Fraud and Prevailing Wage – Violations – Penalties and Referrals

Position: Oppose

My name is Kirk McCauley, my employer is WMDA/CAR, we represent service stations convenience stores and repair facilities across the state.

We opposed SB 436

SB 436 turns a civil penalty into a criminal penalty with prison term of up to 60 days for each employee not classified properly.

A criminal penalty for an employer who makes a mistake and then must depend on a commissioner or administrator law judge to decide if they knowingly made that mistake.

Does this legislative body really want to send a business owner to Jail for mistake in classifying an employee?

The current law allows for a \$5,000 penalty and can go to \$20,000 for a repeat offender. There are currently federal laws that apply also.

For these reasons I asked for a no vote on SB 436

Any questions can be addressed to Kirk McCauley, 301-775-0221,
kmccauley@wmda.net

sb436 - Workplace Fraud and Prevailing Wage - Viol

Uploaded by: Marcus Jackson

Position: UNF



**Maryland Joint
Legislative Committee**

The Voice of Merit Construction

February 15, 2024

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President

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TO: FINANCE COMMITTEE
FROM: ASSOCIATED BUILDERS AND CONTRACTORS
RE: S.B. 436 - WORKPLACE FRAUD AND PREVAILING WAGE VIOLATIONS - PENALTIES AND REFERRALS
POSITION: OPPOSE

Associated Builders and Contractors (ABC) opposes S.B.436 which is before you today for consideration.

This bill establishes certain criminal penalties for employers knowingly failing to properly classify individuals as employees and contractors and subcontractors who knowingly violating State prevailing wage laws. Provides maximum penalty of \$5,000 fine and imprisonment of 60 days.

As written, this bill seeks to make it impossible for businesses to engage with independent contractors for fear of possible criminal prosecution. Such an action would destabilize the construction industry in Maryland.

In 2022, the Maryland General Assembly passed a law which permits the Commissioner of Labor and Industry to stop work on a public project where any contractor working on the project fails to pay employees in accordance with Maryland's prevailing wage laws. The law (codified at Section 17-221 of the State Finance and Procurement Article) allows the state to stop an entire project, including the work of contractors that did not violate prevailing wage laws. The law also permits stop work orders based on prevailing wage violations by contractors of any tier, including subcontractors.

The law requires the state to notify the offending contractor of the basis for the violation, meet with the offending contractor within 48 hours of issuing the stop work order, and to "provide the contractor or subcontractor a reasonable timeframe ... to resolve the violation." If the stop work order is due to a wage violation of a subcontractor, the law also allows the general contractor on the project to terminate the contract of the offending subcontractor without incurring any liability. The termination of the offending subcontractor's contract would result in a lifting of the stop work order and allow non-offending contractors to resume work. The law also includes provisions allowing for an appeal and a hearing.

In addition, Maryland also imposes the following penalties:

- \$10 / calendar day for late filing of certified payrolls.
- \$20/ worker day for underpayment of wages. This would include worker misclassification.
- \$50/ day for failure to post wage rates on jobs.

We support the use of legitimate independent contractors that adhere to federal and state labor laws. With that said, we would welcome the opportunity to address this matter with other groups to simply enforce the stringent laws that are currently on the books in Maryland. This deterrent would be the best enforcement to eliminate bad actors from the workplace.

On behalf of the over 1,500 ABC members in Maryland, we respectfully request an unfavorable report on S.B. 436.

Marcus Jackson, Director
Government Affairs

SB 436-AOBA--UNF.pdf

Uploaded by: Ryan Washington

Position: UNF



Bill No: SB 436— Workplace Fraud and Prevailing Wage - Violations - Penalties and Referrals

Committee: Finance

Date: 2/15/2024

Position: Unfavorable

The Apartment and Office Building Association of Metropolitan Washington (AOBA) represents members that own or manage more than 23 million square feet of commercial office space and 133,000 apartment rental units in Montgomery and Prince George's Counties.

Senate Bill 436 seeks to expand criminal penalties for employers knowingly failing to correctly classify individuals as employees under the Workplace Fraud Act and contractors and subcontractors under the Prevailing Wage law. The charges can escalate to a misdemeanor, including a fine of up to \$5,000 or imprisonment for 60 days.

AOBA understands the intent of this legislation and already complies with existing statutes to ensure that they are not violating the law. The Maryland Department of Labor currently holds the authority to address the intentional misclassification of employees appropriately and imposes sanctions for those found to have violated the law. The current laws provide a framework for penalties for bad actors, and this bill is unnecessary and excessive.

For these reasons, AOBA requests an unfavorable report on SB 436. For further information, contact Ryan Washington, AOBA's Government Affairs Manager, at 202-770-7713 or email rwashington@aoba-metro.org.