

**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.



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