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HB 39: Residential Service Agencies – Reimbursement – Personal Assistance Services

House Health & Government Operations Committee | January 22, 2024

Position: SUPPORT

The National Women’s Law Center (NWLC) submits this testimony in strong support of HB 39, which will better ensure that Maryland’s Medicaid dollars support residential service employers who recognize that personal care aides—most of whom are women, disproportionately Black women—are employees who deserve all the benefits and protections of Maryland’s labor and employment laws. In so doing, HB 39 will also curb abusive misclassification practices that are particularly prevalent in the home care industry and improve home care services for families throughout the state.

Since 1972, NWLC has fought for gender justice—in the courts, in public policy, and in our society—working across the issues that are central to the lives of women and girls. NWLC advocates for improvement and enforcement of our nation’s employment and civil rights laws, with a particular focus on the needs of LGBTQI+ people, women of color, and women with low incomes and their families. Ensuring that working people who are in fact employees under our employment laws are entitled to a minimum wage, overtime pay, and other rights and protections associated with employee status is a critical way to advance higher wages and better working conditions, benefiting the communities we serve.

Misclassification harms workers, their families, and the families they serve.

As Maryland’s Office of the Attorney General and the Department of Labor have explained, “[i]n general, independent contractors are in business for themselves, while employees are not.”¹ Maryland’s labor and employment laws define “employees” broadly,² and it is clear that personal care aides working for residential service agencies should fall within that definition because they do not operate their own businesses; instead, the agency pays them an hourly rate to perform specific duties for the agency’s clients.³ But misclassification persists: home care employers often view classifying their workers as independent contractors as a strategy to achieve “attractive financial returns,” notwithstanding numerous court decisions affirming that home care workers are employees.⁴

Classification as an independent contractor requires workers to forego not only minimum wage and overtime protections, but also rights to important benefits, including paid sick days, travel time compensation, unemployment insurance, and workers’ compensation under Maryland laws as well as employer-provided health insurance, retirement contributions, and more.⁵ Misclassified home care

¹ MD Office of the Attorney General, MD Dep’t of Labor & MD Dep’t of Health, *Understanding How Maryland’s Employee Protection Laws Apply to Residential Service Agencies (RSAs) and Personal Care Aides (PCAs)*, [RSA-PCA Guidance Document.pdf \(maryland.gov\)](#).

² *Id.*

³ David J. Rodwin, *Independent Contractor Misclassification Is Making Everything Worse: The Experience of Home Care Workers in Maryland*, 14 ST. LOUIS U.J. HEALTH L. & POL’Y 47, 49-50 (2020), <https://scholarship.law.slu.edu/cgi/viewcontent.cgi?article=1249&context=jhlp>.

⁴ *Independent Contractor Misclassification in Home Care*, NELP 1-3 (May 2015), <https://s27147.pcdn.co/wp-content/uploads/Home-Care-Misclassification-Fact-Sheet.pdf>.

⁵ *See id.* *See also, e.g.*, Sarah Leberstein & Catherine Ruckelshaus, *Independent Contractor vs. Employee: Why Independent Contractor Misclassification Matters and What We Can Do to Stop It*, NELP 3 (May 2016), <https://s27147.pcdn.co/wp-content/uploads/Policy-Brief-Independent-Contractor-vs-Employee.pdf>.

workers are thus deprived of the benefits and protections they are due under labor and employment laws, without additional compensation or autonomy in exchange.⁶

It is no coincidence that corporate misclassification is rampant in low-paid, labor-intensive industries in which women and people of color are overrepresented,⁷ with home care being a prime example. Black women, Latinas, and other women of color make up the majority of home care workers and other direct care workers⁸—and they often are forced to work long hours at poverty-level wages, on average making \$14.50 per hour.⁹ In Maryland, 70 percent of home care workers are Black women, many of whom must hold multiple jobs in order to support their own families while providing critical in-home support for clients. Nearly half (46 percent) of home care workers in Maryland rely on means-tested public assistance.¹⁰

At the individual level, misclassification costs workers thousands of dollars a year,¹¹ causing stress and hardship for many home care workers and their families. And in the aggregate, these inequities exacerbate and perpetuate the racial and gender wage and wealth gaps that persist in Maryland and across the country. Moreover, the poor quality of home care jobs contributes to high turnover and an ongoing shortage of workers in the field¹²—making it even harder for Maryland’s disabled community to secure the care they need.

HB 39 can help improve job quality and reduce misclassification, especially for women and people of color, and ensure that state Medicaid dollars are well spent.

Maryland has long sought to ensure that businesses receiving state money create decent jobs, as shown by Maryland’s Prevailing Wage and Living Wage Laws. This legislature has also demonstrated a commitment to reducing race- and gender-based disparities and building an economy that works for all Marylanders. Enacting HB 39 will achieve all of these objectives, benefiting workers, consumers, and the state.

HB 39 will help combat abusive employer misclassification practices and ensure that more home care workers are correctly classified as employees, with the benefits and protections that status provides—which will particularly benefit the women of color who hold the majority of the affected jobs. And taxpayer dollars will go to support better quality home care jobs—and better quality care—for Maryland residents. **For all of these reasons, we urge the Committee to pass HB 39, and respectfully request a favorable report.**

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Please do not hesitate to contact Veronica Faison at vfaison@nwl.org if you have questions or require additional information. Thank you for your consideration.

⁶ See, e.g., 87 Fed. Reg. 62,268 (Oct. 13, 2022) (citing 2017 Contingent Worker Supplement data indicating that independent contractors are more likely than employees to report earning less than the federal minimum wage and to work overtime hours).

⁷ Charlotte S. Alexander, *Misclassification and Antidiscrimination: An Empirical Analysis*, 101 MINN. L. REV. 907, 924 (2017) (finding that “seven of the eight high misclassification occupations were held disproportionately by women and/or workers of color”).

⁸ *Direct Care Workers in the United States*, PHI 6 (Sept. 11, 2023), <https://www.phinational.org/resource/direct-care-workers-in-the-united-states-key-facts-2023/#:~:text=Key%20Takeaways&text=Between%202021%20and%202031%2C%20the,care%20workers%20were%20only%20%2423%2C688>.

⁹ *Id.*

¹⁰ Rodwin, *supra* note 3, at 54.

¹¹ See *id.* at 52.

¹² See, e.g., Elizabeth Shwe, *Home Care for Older Adults Increased During COVID, but Direct Care Workers Remain Hard to Find*, MARYLAND MATTERS (Oct. 7, 2021), <https://www.marylandmatters.org/2021/10/07/home-care-for-older-adults-increased-during-covid-but-direct-care-workers-remain-hard-to-find/>.