

CAROLYN A. QUATTROCKI
Chief Deputy Attorney General

LEONARD J. HOWIE III
Deputy Attorney General

CARRIE J. WILLIAMS
Deputy Attorney General

SHARON S. MERRIWEATHER
Deputy Attorney General

ZENITA WICKHAM HURLEY
Chief, Equity, Policy, and Engagement



PETER V. BERNS
General Counsel

CHRISTIAN E. BARRERA
Chief Operating Officer

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

ANTHONY G. BROWN
Attorney General

February 24, 2025

The Honorable C.T. Wilson
Chair, Economic Matters Committee
230 House Office Building
6 Bladen Street
Annapolis, MD 21401

Re: House Bill 1096 - Fraud Prevention and Worker Protections - Prohibitions, Penalties,
and Enforcement

Dear Chair Wilson,

House Bill 1096 is a comprehensive piece of legislation with a straightforward purpose: to equip both the Office of the Attorney General (OAG) and the Maryland Department of Labor (MDOL) with the necessary tools to effectively combat worker misclassification and wage theft in the State of Maryland. By doing so, the bill seeks to protect Maryland workers and safeguard the state's financial resources. The bill will reform the Workplace Fraud Act, amend other wage and hour laws, and establish the Worker Protection Unit within OAG to empower the agency in addressing the pervasive and growing issues of wage theft and worker misclassification.

Worker misclassification deprives employees of wages, benefits, and workplace protections while costing the state millions of dollars in lost payroll taxes and contributions to unemployment insurance and workers' compensation funds. The Workplace Fraud Act, as it currently stands, is an inadequate law that fails to effectively address misclassification. It applies only to the construction and landscaping industries, but in the 16 years since its enactment, it has done little to curb misclassification in Maryland's construction sector.

House Bill 1096 will amend the Workplace Fraud Act in two critical ways, as recommended by the Joint Employment Task Force (JETF). First, it will expand the Act's coverage to all industries. This is essential, as misclassification is prevalent in numerous sectors, including home health care, security services, janitorial work, and housekeeping services.

Second, in accordance with JETF's recommendations, the bill will impose liability on general contractors and higher-tier contractors in the construction industry for misclassification by lower-tier subcontractors under their oversight. This provision is crucial because general contractors often incentivize worker misclassification by accepting low bids from subcontractors who rely on misclassifying workers to turn a profit. On the rare occasions when penalties for misclassification are enforced, they typically fall on lower-tier subcontractors, who operate on thin margins, rather than on general contractors. By holding general contractors accountable for misclassification occurring on their job sites, House Bill 1096 will encourage them to ensure that subcontractors classify workers properly.

One of the reasons the Workplace Fraud Act has been ineffective is that it is enforced by the Labor Commissioner through an administrative process that provides violators with numerous opportunities to evade liability or significant penalties. House Bill 1096 will strengthen enforcement by making it more difficult for employers to avoid penalties and by equipping the Labor Commissioner with additional tools for enforcement. Furthermore, the bill grants OAG the authority to investigate and bring lawsuits under the law. Currently, while private parties have the right to sue under the Workplace Fraud Act, no state entity has that authority. House Bill 1096 will change this by allowing OAG to take legal action against violators, mirroring the existing private right of action.

Concerns about duplicating enforcement efforts are unfounded, given that current enforcement mechanisms are demonstrably insufficient. This is not to diminish the efforts of the Labor Commissioner, the Comptroller, the Division of Unemployment Insurance, and the Workers' Compensation Commission in addressing misclassification. However, the magnitude of the problem necessitates a multi-faceted approach. There should be no wrong doors for workers seeking to report misclassification. The agencies participating in the JETF already refer cases to one another and are working to improve information sharing and coordination to ensure violations are addressed effectively.

MDOL has suggested that worker misclassification could be tackled using existing enforcement tools, but it is clear that these tools are inadequate. In states that have been more successful in addressing misclassification, the attorney general has concurrent authority with the state labor department to enforce misclassification laws. At the invitation of the Labor Commissioner, representatives from labor agencies in Minnesota and Illinois presented their states' approaches to JETF. They explained that the Attorneys General of Minnesota and Illinois share enforcement authority with their respective labor departments, which has been critical to their success. These states have found that it is effective for labor agencies to focus on routine enforcement while attorneys general handle larger cases and novel legal challenges. The District of Columbia employs a similar model, as evidenced by its recent lawsuit against two Maryland-based contractors who orchestrated a widespread misclassification scheme to deny hundreds of construction workers the wages and benefits they were owed under D.C. law.

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The goal of House Bill 1096 is to position Maryland among the states leading the fight against worker misclassification and wage theft, rather than remaining a state that lags behind in this area. For these reasons, the Office of the Attorney General urges a favorable report on House Bill 1096.

Sincerely,

A handwritten signature in black ink, appearing to read "AG Brown", is positioned above the printed name.

Anthony G. Brown

Enclosure

States Where the Attorney General Has a Role in Enforcing Wage and Hour Laws

States Where AG has Independent Authority to Enforce Wage and Hour Laws	States Where AG's Office has a Worker's Rights Unit to Enforce Wage and Hour Laws	States Where AG is Active in Wage and Hour Enforcement without a Dedicated Unit
California	New Jersey	Delaware
New York	Pennsylvania	Rhode Island
Massachusetts	Michigan	Maine
District of Columbia	Colorado	Washington
Minnesota	Arizona	
Illinois		

OAG Amendments to House Bill 1096

On page 7, in line 8, strike “on behalf of an employee”.

On page 8, strike beginning with “on” in line 19 down through “employees” in line 20.

On page 11, strike beginning with “entitled” in line 1 down through “benefits” in line 4 and substitute “employed within the meaning of § 3-101(c) of this title.

On pages 13 and 14, strike the lines beginning with line 27 on page 13 down through line 12 on page 14, inclusive, and substitute “(A)(1) A GENERAL CONTRACTOR, HIGHER-TIERED CONTRACTOR, AND INTERMEDIATE SUBCONTRACTOR SHALL BE JOINTLY AND SEVERALLY LIABLE FOR ANY VIOLATION OF THIS SUBTITLE THAT IS COMMITTED BY A SUBCONTRACTOR, REGARDLESS OF WHETHER THE SUBCONTRACTOR IS IN A DIRECT CONTRACTUAL RELATIONSHIP WITH THE GENERAL CONTRACTOR, HIGHER-TIERED CONTRACTOR, OR INTERMEDIATE SUBCONTRACTOR.

(2) A SUBCONTRACTOR SHALL INDEMNIFY A GENERAL CONTRACTOR, HIGHER-TIERED CONTRACTOR, AND INTERMEDIATE SUBCONTRACTOR FOR ANY WAGES, DAMAGES, INTEREST, PENALTIES, OR ATTORNEY’S FEES OWED AS A RESULT OF THE SUBCONTRACTOR’S VIOLATION UNLESS:

(I) INDEMNIFICATION IS PROVIDED FOR IN A CONTRACT BETWEEN THE SUBCONTRACTOR AND THE GENERAL CONTRACTOR, HIGHER-TIERED CONTRACTOR, OR INTERMEDIATE SUBCONTRACTOR; OR

(II) A VIOLATION OF THE SUBTITLE AROSE DUE TO A LACK OF PROMPT PAYMENT IN ACCORDANCE WITH THE TERMS OF THE CONTRACT BETWEEN THE GENERAL CONTRACTOR, HIGHER-TIERED CONTRACTOR, OR INTERMEDIATE SUBCONTRACTOR.”.

On page 24, strike beginning with “on” in line 22 down through “classified” in line 23, inclusive.

On page 26, in line 22, strike “(1)”; in line 25, strike “(i)” and substitute “(1)”; and in line 27, strike “(ii)” and substitute “(2)”.

On page 27, strike lines 4 through 6 in their entirety.

On page 31, in line 5, strike “or the commissioner on behalf of the employee”; after line 10, insert “

(I) THE MATTER IS REFERRED TO THE ATTORNEY GENERAL BY THE COMMISSIONER IN ACCORDANCE WITH SUBSECTION (A)(4)(I)(2) OF THIS SECTION; OR”;

and in lines 11 and 14, strike “(i)” and “(ii)” and substitute “(ii)” and “(iii)”.

On page 32, in line 11, strike “Commissioner” and substitute “Attorney General”; in line 22, strike the colon; in line 23, strike “(i)”; and strike beginning with “; or” in line 25 down through “situated” in line 29, inclusive.

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On page 40, strike “on” in line 20 down through “been” in line 21 and substitute “against an employer that has”; in line 21, after “against” insert “an employee”.