

## **Testimony of Sally Dworak-Fisher**

National Employment Law Project

### **H.B 632 – Labor and Employment – Workplace Fraud – Application - SUPPORT**

### **Hearing before the House Economic Matters Committee**

February 13, 2025

Sally J. Dworak-Fisher  
Senior Staff Attorney

National Employment Law Project  
90 Broad Street, Suite 1100  
New York, NY 10004

202-869-3286  
[sdworak-fisher@nelp.org](mailto:sdworak-fisher@nelp.org)

The National Employment Law Project (NELP) is a nonprofit organization with more than fifty years of experience advocating for the labor and employment rights of low-wage workers. NELP works extensively at the federal, state and local levels to promote policies that expand worker protections and support a good jobs economy. We have particular expertise in independent contractor misclassification and the harms it poses to workers, to businesses that comply with the law, and to critical social insurance programs.<sup>1</sup>

We write in **SUPPORT** of H.B. 632 as a common-sense expansion of Maryland's Workplace Fraud Act, which aims to end the misclassification of employees as independent contractors.

**Misclassification of employees as independent contractors harms workers, law-abiding businesses, and the state's social insurance programs.**

## **Independent Contractor Misclassification Imposes Huge Costs**

---

Independent contractors are people who are in business for themselves. They have the power to make key business decisions — to determine the price they charge, to market their business to customers, and to make investment decisions. Too frequently in today's economy, however, businesses are calling their employees independent contractors. Why? Because it is cheaper: businesses can save up to thirty percent of payroll and other taxes by misclassifying their employees as contractors.<sup>2</sup>

---

<sup>1</sup> See NAT'L EMP. L. PROJECT, *End Independent Contractor Misclassification*, <https://www.nelp.org/explore-the-issues/contracted-workers/misclassified-workers/>. See also Catherine Ruckelshaus, *Independent Contractor v. Employee: Why Misclassification Matters and What we can do to Stop It*, NAT'L EMP. L. PROJECT (May 2016), <https://s27147.pcdn.co/wp-content/uploads/Policy-Brief-Independent-Contractor-vs-Employee.pdf>.

<sup>2</sup> See NAT'L EMP. L. PROJECT, *Independent Contractor Misclassification Imposes Huge Costs*, (Oct. 2020), <https://www.nelp.org/app/uploads/2017/12/Independent-Contractor-Misclassification-Imposes-Huge-Costs-Workers-Federal-State-Treasuries-Update-October-2020.pdf>.

## Misclassification Harms Workers.

As the table below illustrates, when businesses misclassify their workers, they strip them of a suite of employee rights and protections, degrading work quality and worker power.

Independent Contractor		Employee
✗	Right to organize and bargain collectively	✓
✗	Right to a minimum wage and overtime pay	✓
✗	Right to paid sick leave	✓
✗	Employer contributions to paid family and medical leave	✓
✗	Employer-funded workers' compensation	✓
✗	Employer contributions to Social Security, retirement	✓
✗	Right to a safe and healthy workplace	✓
✗	Protections against discrimination and harassment	✓

An analysis by the U.S. Department of the Treasury's confirms that "workers who earn their living outside the formal employee-employer relationship earn less, are less likely to have health insurance coverage, or to participate in or contribute to a retirement account."<sup>3</sup> Their earnings are startlingly low, with more than 40% of digital labor platform workers and others who rely primarily on self-employment earning less than \$20,000 per year.<sup>4</sup> Indeed, the average Uber driver's wage is just \$9.21 per hour after deducting fees and expenses, putting them in the lowest ten percent of wage earners, and earning lower than the minimum wage in three large cities.<sup>5</sup> According to an analysis by the Economic Policy Institute (EPI), a **"typical truck driver, as an independent contractor, would lose as much as \$21,532 per year in income and job benefits compared with what they would have earned as an employee."**<sup>6</sup>

<sup>3</sup> Emilie Jackson, et al., *The Rise of Alternative Work Arrangements: Evidence and Implications for Tax Filing and Benefit Coverage*, OFFICE OF TAX ANALYSIS WORKING PAPER 114 at 22 (Jan. 2017), <https://home.treasury.gov/system/files/131/WP-114.pdf>.

<sup>4</sup> *Id.* at 34, Table 6.

<sup>5</sup> Lawrence Mishel, *Uber and the Labor Market: Uber Drivers' Compensation, Wages, and the Scale of Uber and the Gig Economy*, ECON. POL'Y INST. at 13 (May 15, 2019), <https://files.epi.org/pdf/145552.pdf>.

<sup>6</sup> Adewale A. Maye, Daniel Perez, and Margaret Poydock, *Misclassifying Workers as Independent Contractors is Costly for Workers and States*, (Jan. 22, 2025), available at <https://www.epi.org/publication/misclassifying-workers-2025-update/>.

## **Misclassification Hurts Law-Abiding Businesses and Maryland Coffers.**

As the United States Treasury Inspector General found, misclassification “plac[es] honest employers and businesses at a competitive disadvantage.”<sup>7</sup> Businesses that misclassify their employees pocket employer payroll costs they would otherwise incur and pressure their competition to shed labor costs, creating a “race to the bottom” where firms try to remain competitive by following suit.<sup>8</sup> A 2010 study estimated that misclassifying employers shift \$831.4 million in unemployment insurance taxes and \$2.54 billion in workers’ compensation premiums to law-abiding businesses annually.<sup>9</sup> Over time, fewer honest businesses can compete.<sup>10</sup> It is time to level the playing field by expanding the Workplace Fraud Act to all industries and limit such unfair competition.

Misclassification also harms state funds: when businesses cheat and do not contribute to social insurance programs or make required tax contributions, revenues suffer. In just one example, Pennsylvania’s Joint Task Force estimated that the state lost up to \$124.5 million in general revenues due to misclassification, with nearly 400,000 misclassified employees deprived of workplace protections in that state alone.<sup>11</sup>

## **Misclassification Is NOT Limited to Landscaping and Construction.**

Maryland took an important step in passing the Workplace Fraud Act in 2009, but it is time to expand it. The problem is not a problem unique to landscaping or construction work and may be spreading. The USDOL has recognized that misclassification is a problem in agriculture, retail, food service, hotel, construction, janitorial, and beauty

---

<sup>7</sup> Treasury Inspector General for Tax Administration, Additional Actions Are Needed to Make the Worker Misclassification Initiative with the Department of Labor a Success at 1 (2018-IC-R002: Feb. 20, 2018), <https://www.tigta.gov/sites/default/files/reports/2022-02/2018IER002fr.pdf>.

<sup>8</sup> See David Weil, THE FISSURED WORKPLACE: WHY WORK BECAME SO BAD FOR SO MANY AND WHAT CAN BE DONE TO IMPROVE IT 139-41 (2017); see also <sup>8</sup> Françoise Carré, (In)Dependent Contractor, ECON. POL’Y INST. at 5 (Jun. 8, 2015), <https://files.epi.org/pdf/87595.pdf>.

<sup>9</sup> See Douglas McCarron, Worker Misclassification in the Construction Industry, 57 BNA Construction Labor Report 114 (April 7, 2011). See also Michael P. Kelsay, Cost Shifting of Unemployment Insurance Premiums and Workers’ Compensation Premiums, Dep’t of Econ., Univ. of Mo., Kan. City 5-6 (Sept. 12, 2010).

<sup>10</sup> See Weil, *supra* n. 24.

<sup>11</sup> Joint Task Force on Misclassification of Employees Annual Report, PENNSYLVANIA DEP’T. OF LABOR & INDUS. (Mar. 1, 2022), <https://www.dli.pa.gov/Individuals/Labor-Management-Relations/Ilc/Documents/Act%2085%20Annual%20Report%202022.pdf>.

and nail salons.<sup>12</sup> It is also a serious problem in call center work, security, trucking, and delivery.<sup>13</sup>

Moreover, misclassification is a risk in businesses that manage their work through a digital labor platform. Digital surveillance and automated decision-making tools enable businesses to exert hidden control over their workforce even as they insist that their workers are independent contractors, i.e., in business for themselves.<sup>14</sup> Indeed, app-based hospitality staffing companies like Qwick, which operates in Maryland, have been sued for misclassification and forced to pay penalties and reclassify their workers as employees in other jurisdictions.<sup>15</sup> The Qwick case and others like it demonstrate the spread of the exploitative gig business model far beyond Uber drivers and DoorDash food deliverers, to encompass a growing number of jobs that have long been performed by employees with legal protections. And the cases illustrate the urgent need for government intervention to safeguard core workplace rights.<sup>16</sup>

### **Expanding the Workplace Fraud Act to Apply to All Industries is Good Policy.**

Ensuring that every business operating in Maryland abides by the law, and that Maryland workers are not denied the employment rights and protections to which they should be entitled, is good policy. There is no reason to limit the Workplace Fraud Act to only two industries in the state.<sup>17</sup> Workers, businesses, and Maryland communities will all benefit from policies geared at eliminating independent contractor misclassification in every occupation.

---

<sup>12</sup> U.S. Dep't. of Labor, Wage and Hour Div., Low-wage/High Violation Industries, available at <https://www.dol.gov/agencies/whd/data/charts/low-wage-high-violation-industries>, last accessed Feb. 10, 2025.

<sup>13</sup> See supra n. 6, discussing analysis of eleven industries with high rates of misclassification.

<sup>14</sup> Aihua Nguyen, *The Constant Boss: Work Under Constant Surveillance*, DATA & SOC'Y at 10 (May 19, 2021), [https://datasociety.net/wp-content/uploads/2021/05/The\\_Constant\\_Boss.pdf](https://datasociety.net/wp-content/uploads/2021/05/The_Constant_Boss.pdf) ("Data-centric systems have allowed employers to exert control over workers while claiming workers enjoy greater autonomy."). See also Kathryn Zickuhr, *Workplace Surveillance is Becoming the New Normal for U.S. Workers*, WASH. CTR. FOR EQUITABLE GROWTH (AUG. 18, 2021), available at <https://equitablegrowth.org/research-paper/workplace-surveillance-is-becoming-the-new-normal-for-u-s-workers/>.

<sup>15</sup> *Chiu secures \$2.1 million deal requiring gig economy company to reclassify workers as employees*, <https://www.sfcityattorney.org/2024/02/22/chiu-secures-2-1-million-deal-requiring-gig-economy-company-to-reclassify-workers-as-employees/>.

<sup>16</sup> Terri Gerstein, *More People Are Being Classified as Gig Workers. And That's Bad for Everyone*, THE N.Y. TIMES (Jan. 28, 2024), available at <https://www.nytimes.com/2024/01/28/opinion/rights-workers-economy-gig.html>.

<sup>17</sup> This is especially true given that Maryland's unemployment insurance law, which most businesses must abide by, already establishes a definition of independent contractor similar to that used in the Workplace Fraud Act. See Md. Code Ann., Lab. & Empl. § 8-205 (defining independent contractor).