

Testimony in support of the Fraud Prevention and Worker Protections – Prohibitions, Penalties, and Enforcement Act (HB 1096) before the Maryland House Economic Matters Committee

Chair Wilson, Vice Chair Crosby, and members of the Economic Matters committee: Thank you for allowing me to speak to you today in support of the Fraud Prevention and Worker Protections – Prohibitions, Penalties, and Enforcement Act (HB 1096).

My name is Adewale A. Maye. I am a policy and research analyst for the Program on Race, Ethnicity, and the Economy (PREE) with the Economic Policy Institute (EPI). EPI is a nonpartisan, nonprofit research organization in Washington, D.C., whose mission is to analyze the economy through the lens of the typical U.S. working family. EPI researches, develops, and advocates for public policies that help ensure the economy provides opportunity and fair rewards for all Americans, with a focus on policies to support low- and middle-income households.

I am testifying in support of the Fraud Prevention and Worker Protections – Prohibitions, Penalties, and Enforcement Act, which would prohibit a person from knowingly making or using a false record or statement resulting in underpayments of unemployment insurance contributions or payment of unemployment insurance benefits of more than a certain amount; altering the enforcement mechanisms of the Maryland Wage and Hour Law, the Maryland Wage Payment and Collection Law, workplace fraud laws, living wage laws, and prevailing wage laws.

This bill would also ensure that the Workplace Fraud Act, Lab. & Empl. 3-909 – a Maryland bill that protects both workers and businesses from worker misclassification – is expanded to all industries and not limited to the occupations of construction and landscaping as it currently stands. In my testimony, I will provide estimates of the individual worker costs of misclassification as an independent contractor for 11 occupations that are most prone to misclassification as well as the impact of worker misclassification on payments to social insurance funds (Social Security, Medicare, federal and state unemployment insurance, and Workers' Compensation).

What is misclassification, and how does it impact workers?

Misclassification is a costly issue of workplace fraud that occurs when an employer wrongly classifies an employee as an independent contractor. An analysis from the National Employment Law Project focusing on state-level reports on misclassification estimated that as many as 10–30% of employers misclassify their workers.ⁱ A worker that is misclassified as an independent contractor loses out on critical federal, state, and local labor protections that are often guaranteed for W-2 employees. Some of the labor protections and rights misclassified workers would be deprived of include:

- The eligibility to earn minimum wage or overtime pay.
- The eligibility to participate in unemployment insurance systems or to qualify for workers' compensation insurance.
- Workers misclassified as independent contractors also assume the full financial cost of Social Security and Medicare contributions, rather than split it evenly with their employer when classified as employees.

- They do not qualify for paid sick or family leave in places where those benefits are statutorily prescribed, and they do not receive employer-provided health insurance or retirement benefits.
- Misclassified workers would lose protection under the National Labor Relations Act, which ensures workers' rights to form unions and bargain collectively to improve their working conditions.

Missing out on these protections leaves workers vulnerable and greatly stifles their economic security. Some employers and employer organizations have attempted to argue that classification as an independent contractor is preferable for many workers, who will supposedly gain some choice or flexibility over their work schedules in exchange for sacrificing foundational labor rights and employer-provided benefits. However, the costs workers and businesses bear when misclassified prove otherwise.

Cost of Misclassification in the state of Maryland

Across several occupations, Maryland workers who are misclassified as independent contractors lose thousands of dollars annually in wages, compared with what they would have earned as employees. **Table 1** shows estimates of the cost of misclassification as an independent contractor for workers in 11 occupations researchers have identified as particularly vulnerable to illegal misclassification in 2024 dollars.ⁱⁱ Using the most conservative estimate, misclassifying workers as independent contractors shifts costs and risks to workers, effectively reducing their annual income from anywhere from \$6,111 to \$13,075 per worker, dependent on occupation. This would cover the low estimate of the distribution as seen in Table 1, which covers independent contractors that receive full compensation for health and retirement benefits. The high estimate of the distribution – an independent contractor that receives no compensation for health and retirement benefits – sees an even higher range of costs imposed on misclassified workers from \$8,300 to \$21,177.

Table 1: The cost of misclassification to workers in Maryland, low and high estimates, net difference relative to W-2 workers, 2024 dollars

Occupation	Low estimate	High estimate
Construction workers	\$10,155	\$15,540
Customer Service reps/Call center workers	\$7,994	\$11,047
Heavy and Tractor-Trailer Truck Drivers	\$13,075	\$21,177
Home health and personal care aides	\$7,533	\$10,422
Janitors and Cleaners	\$7,206	\$9,946
Landscaping Workers	\$7,815	\$10,797
Light truck delivery drivers	\$11,401	\$18,440
Housekeeping cleaners	\$6,221	\$8,571
Manicurists and pedicurists	\$7,258	\$10,370
Retail Sales Workers	\$6,111	\$8,300

Security guards	\$7,816	\$10,800
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Notes: Estimates represent the difference between a value job to a W-2 employee compared to an independent contractor under two models. The low estimates refer to the difference when an independent contractor receives full compensation for health and retirement benefits. The high estimate is calculated as the difference when the independent contractor receives no compensation for health and retirement benefits.

Source: EPI analysis of data from the Bureau of Labor Statistics' Employer Cost for Employee Compensation (ECEC) 2024Q2 Occupational Employment and Wage Statistics (OEWS) Research Estimates by State and Industry May 2023 data.

These costs account for an 18.3% to 21.3% net percentage difference relative to W-2 employees as a low estimate and 24.9% to 34.4% difference as a high estimate. Notably, light truck drivers have the highest net percentage differences relative to W-2 employees. These disparities in wages as an independent contractor relative to a W-2 employee are significant and deal a huge blow to Maryland working families working within these occupations and beyond.

Cost of Misclassification on Social Insurance Funds in the state of Maryland

Outside of individual costs to misclassified workers, misclassification deprives state social insurance funds of crucial dollars needed to maintain safety net programs, such as unemployment insurance and Workers’ Compensation. In Maryland, the low estimate costs to social insurance programs range from \$365 to \$1,258 annually per worker, dependent on occupation. On the high end, between \$927 and \$2,340 annually per worker across several occupations. **Table 2** offers a detailed breakdown of these costs in different industries.

Table 2: The cost of misclassification to social insurance funds in Maryland, low and high estimates, net difference relative to W-2 workers, 2024 dollars

Occupation	Low estimate	High estimate
Construction workers	\$1,258	\$2,230
Customer Service reps/Call center workers	\$867	\$1,419
Heavy and Tractor-Trailer Truck Drivers	\$877	\$2,340
Home health and personal care aides	\$719	\$1,241
Janitors and Cleaners	\$778	\$1,274
Landscaping Workers	\$847	\$1,386
Light truck delivery drivers	\$762	\$2,033
Housekeeping cleaners	\$667	\$1,092
Manicurists and pedicurists	\$365	\$927
Retail Sales Workers	\$650	\$1,045
Security guards	\$847	\$1,386

Notes: Estimates represent the difference in contributions to social insurance funds—Social Security, Medicare, federal and state Unemployment Insurance, and Workers' Compensation—between a W-2

employee and an independent contractor under two models. The low estimate reflects the difference when the independent contractor receives full compensation for health and retirement benefits. The high estimate reflects the difference when the independent contractor receives no compensation for health and retirement benefits.

Source: EPI analysis of data from the Bureau of Labor Statistics' Employer Cost for Employee Compensation (ECEC) 2024Q2 Occupational Employment and Wage Statistics (OEWS) Research Estimates by State and Industry May 2023 data.

What passing Fraud Prevention and Worker Protections – Prohibitions, Penalties, and Enforcement Act would mean for workers

This bill presents an opportunity to protect Maryland workers from the cost of misclassification and hold businesses accountable who willingly misclassify their workers. Misclassification is pervasive in several occupations, not limited to construction and landscaping. Some occupations, like Heavy, Tractor-Trailer, and Light truck drivers, face notably high costs to misclassification.

Passing the Fraud Prevention and Worker Protections – Prohibitions, Penalties, and Enforcement Act would ensure that workers in all occupations can be protected from misclassification and workplace fraud. Workers deserve the labor rights and protections that by law they are guaranteed, and Maryland has the opportunity to ensure that.

Thank you for taking the time to review the research supporting the Maryland Fraud Prevention and Worker Protections – Prohibitions, Penalties, and Enforcement Act. I respectfully urge you to seize the opportunity to pass this important legislation.

ⁱ National Employment Law Project, *Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries*, October 2020.

ⁱⁱ For discussions of occupations where workers are particularly vulnerable to misclassification as independent contractors, see Annette Bernhardt, Sarah Thomason, Chris Campos, Allen Prohofsky, Aparna Ramesh, and Jesse Rothstein, *Independent Contracting in California: An Analysis of Trends and Characteristics Using Tax Data*, UC Berkeley Labor Center and California Policy Lab, March 2022; Françoise Carré, *(In)dependent Contractor Misclassification*, Economic Policy Institute, June 2015; National Employment Law Project, *Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries*, October 2020; and Lisa Xu and Mark Erlich, *Economic Consequences of Misclassification in the State of Washington*, Harvard Labor and Worklife Program, December 2019.