

**Testimony of Sally Dworak-Fisher**  
National Employment Law Project

**S.B. 938 – Labor and Employment –Fraud Prevention  
and Labor Protections– SUPPORT**

**Hearing before the Senate Finance Committee  
of the Maryland General Assembly**

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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>

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

We write in **SUPPORT** of S.B. 938 and urge a **FAVORABLE** report.

## **Independent Contractor Misclassification is Hurting Marylanders**

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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, however, businesses call 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>

### **Misclassification Harms Maryland Workers.**

As the table on the following page illustrates, when businesses misclassify their workers, they deny them employee rights and protections, degrading work quality and worker power.

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<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>.

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	✓

The loss of these rights and protections is costly to workers. As the Joint Enforcement Task Force on Workplace Fraud recently highlighted, the costs to Maryland workers is staggering, and is causing significant economic harm to workers, many of whom are in low-paid jobs.<sup>3</sup> The chart below shows low and high estimates of annual monetary losses to workers denied overtime, differential pay, paid leave, health and retirement benefits from being classified as an independent contractor instead of as an employee.<sup>4</sup>

Occupation	Low Estimate	High Estimate
Heavy and Tractor Trailer Truck Drivers	\$13,075	\$21,177
Light Truck Delivery Drivers	\$11,401	\$18,440
Construction Workers	\$10,155	\$15,540
Customer Service Reps & Call Center Workers	\$7,994	\$11,047
Security Guards	\$7,816	\$10,800
Landscaping Workers	\$7,815	\$10,797
Home Health and Personal Care Aids	\$7,533	\$10,422
Manicurists & Pedicurists	\$7,258	\$10,370
Janitors and Cleaners	\$7,206	\$9,946
Housekeeping Cleaners	\$6,221	\$8,571
Retail Workers	\$6,111	\$8,300

<sup>3</sup> Joint Enforcement Task Force on Workplace Fraud: 2024 Annual Report, (Feb. 2024), <https://labor.maryland.gov/workplacefraudtaskforce/wpftfannrep2024.pdf> ("2024 JETF Report") (citing Adewale A. Maye, Daniel Perez, and Margaret Poydock, *Misclassifying Workers as Independent Contractors is Costly for Workers and States*, ECON. POL'Y INST (Jan. 22, 2025), available at <https://www.epi.org/publication/misclassifying-workers-2025-update/>).

<sup>4</sup> *Id.*

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

Misclassification puts honest businesses at a competitive disadvantage and creates a system of unfair competition. 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>5</sup>

And at a time when the state is struggling with a budget deficit, it is critical to ensure a level playing field with every business contributing its fair share. Yet misclassification is causing critical losses in Maryland. The state’s Joint Enforcement Task Force notes how Maryland’s social insurance programs and other public revenue contributions are suffering as a result of cheating businesses *in just one industry – construction*. Each year, Maryland loses:

1. \$9.1 million in Unemployment Insurance contributions;
2. \$58.7 million in Workers’ Compensation premiums;
3. \$79.1 million lost Social Security and Medicare contributions; and
4. \$19.3 million in lost State income revenue.<sup>6</sup>

The Economic Policy Institute’s recent analysis further reveals how the state loses critical contributions *for each worker* who is misclassified across ten other industries. For example, businesses that misclassify their janitors annually pocket unpaid contributions to social insurance and other employee benefits ranging from a low estimate of \$778 per misclassified janitor to a high estimate of \$1274 per misclassified janitor.<sup>7</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 high 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 and nail salons.<sup>8</sup> It is also a serious problem in call center work, security, trucking, and delivery.<sup>9</sup>

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<sup>5</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>5</sup> Françoise Carré, (In)Dependent Contractor, ECON. POL’Y INST. at 5 (Jun. 8, 2015), <https://files.epi.org/pdf/87595.pdf>.

<sup>6</sup> 2024 JETF Report, supra n. 3 at 9, 10 (citing Laura Valle-Gutierrez, *New Estimates: Misclassification in the Maryland Construction Industry*, THE CENTURY FOUNDATION, (Jan. 2025), <https://production-tcf.imgix.net/app/uploads/2025/01/27111033/Misclassification-in-the-MarylandConstruction-Industry.pdf>.

<sup>7</sup> Adewale A. Maye, Daniel Perez, and Margaret Poydock, *Misclassifying Workers as Independent Contractors is Costly for Workers and States*, , ECON. POL’Y INST. Appendix Table 3, Maryland (Jan. 22, 2025), [available at https://www.epi.org/publication/misclassifying-workers-2025-update/](https://www.epi.org/publication/misclassifying-workers-2025-update/).

<sup>8</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>9</sup> See *supra* n. 6, discussing analysis of eleven industries with high rates of misclassification.

Misclassification is also prevalent in many businesses that manage their work through a digital labor platform. Digital surveillance and automated decision-making tools enable businesses to exert hidden control even as they insist that their workers are independent contractors, i.e., in business for themselves.<sup>10</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>11</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. The practice appears to be spreading to white collar industries, as a new *Uber for Nurses* report suggests.<sup>12</sup> And the cases illustrate the urgent need for government intervention to safeguard core workplace rights across industries.<sup>13</sup>

## Misclassification Is a Racial Justice Issue.

Independent contractor misclassification by companies is also strikingly racialized, occurring disproportionately in occupations in which people of color, including Black, Latinx, and Asian workers, are overrepresented. As a group, workers of color—Black, Latinx, Asian/Pacific Islander, and Native American workers—are overrepresented in construction, delivery, home care, agricultural, personal care, ride-hail, and janitorial and building service occupations; they comprise approximately 41 percent of workers overall, but between 49 and 92 percent of workers in these occupations.<sup>14</sup> In digital labor platform work, Black and Latinx workers are overrepresented by 45 percent—more even than in more traditional misclassification-prone sectors.<sup>15</sup> Because independent contractor misclassification often comes with the wage and benefit penalties noted above, this corporate practice perpetuates growing racial income and wealth inequality and health

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<sup>10</sup> Aiha 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>11</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>12</sup> Katie J. Wells and Funda Ustek Spilda, *Uber for Nurses*, THE ROOSEVELT INST., (Dec. 2024), [https://rooseveltinstitute.org/wp-content/uploads/2024/12/RI\\_Uber-for-Nursing\\_Brief\\_202412.pdf](https://rooseveltinstitute.org/wp-content/uploads/2024/12/RI_Uber-for-Nursing_Brief_202412.pdf).

<sup>13</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>14</sup> NELP analysis of March 2024 Current Population Survey Annual Social and Economic Supplement microdata. For underlying data, see *CPS Annual Social and Economic Supplement*, U.S. Census Bureau, <https://data.census.gov/app/mdat/CPSASEC2024/vars>.

<sup>15</sup> See U.S. Bureau of Lab. Statistics, *Electronically Mediated Work*, *supra* n. 6 (noting over-representation of Black and Latinx workers).

disparities in the U.S. The practice reinforces occupational segregation along lines of race and gender, and it fosters a second-tier workforce of predominantly workers of color in precarious jobs stripped of bedrock employment protections.<sup>16</sup> Combatting corporations' illegitimate use of "independent contractors" by strengthening the Workplace Fraud Act is racial justice issue.

## **S.B. 938 Improves the Workplace Fraud Act.**

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Maryland's renewed commitment to combatting independent contractor misclassification, via the re-establishment of the Joint Enforcement Taskforce on Workplace Fraud, is a step in the right direction, but S.B. 938 provides critical updates to the law to better foster a culture of compliance.

The expansion of the law to all industries is an important improvement. As noted above, no industry or occupation is immune from the problem. Moreover, the three-part analysis used to determine independent contractor status in the Workplace Fraud Act is well established in Maryland. Under the state's unemployment insurance law, unless otherwise exempt, workers are presumed to be employees unless the business satisfies the Secretary that all three prongs of the test are met.<sup>17</sup>

Likewise, using the state's power to license and to contract for public works in a way that ensures that Maryland does not support cheating businesses reflects not only common sense, but good government. Maryland should use its licensing power to ensure that the state is not authorizing licenses to scofflaw businesses, and it should debar cheating businesses from lucrative public works projects. Notably, these tools have been adopted by other states, which still have thriving businesses.<sup>18</sup>

## **AG Worker Protection Units Complement Departments of Labor to Protect Workers, Honest Businesses, and State Resources.**

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NELP also supports the creation of a Worker Protection Unit within Maryland's Office of the Attorney General. The Maryland Department of Labor has worked hard to rebuild and conduct investigations of the Workplace Fraud Act, identifying nearly 200 misclassified workers in 2024. But

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<sup>16</sup> See, e.g., Veena Dubal, *The New Racial Wage Code*, 15 HARV. L. & POL. REV. 511 (2022) (arguing that gig-worker carve outs are made possible by and reproduce racial subjugation).

<sup>17</sup> Md. Code Ann., Lab. & Empl. § 8-205. See also COMAR 09-32-01-18 ("A person performing services is presumed to be an employee" unless employing unit satisfies all three prongs).

<sup>18</sup> See, e.g., New Jersey's Workplace Accountability in Labor List ("WALL"), N.J.S.A. 34:1A-1.16, prohibiting public contracting by businesses with named on a public list as having outstanding liabilities for violations of wage, benefit and tax laws. The WALL is "a powerful enforcement tool that enables the department to publicly name companies that shortchange their workers and skip required contributions to programs such as unemployment insurance and workers' compensation" and was "established through bipartisan action (S-4226) in 2020 as part of an effort to combat worker misclassification and exploitation." Jay Edwards, *Northwest New Jersey business among 10 businesses added to the Workplace Accountability in Labor List for outstanding wage, benefit and tax law violations*, (July 12, 2024), available at <https://wrnradio.com/northwest-new-jersey-business-among-10-businesses-added-to-the-workplace-accountability-in-labor-list-for-outstanding-wage-benefit-and-tax-law-violations/>.

as numerous other states have recognized, state attorneys general offices can meaningfully complement the work of labor departments. In general, state departments of labor are structured to handle a higher volume of cases, working with a staff of investigators. Meanwhile, attorneys general offices tend to focus more on pattern or practice cases and generally bring cases that can have a broader effect. The two agencies can work hand-in-glove to enhance compliance and meaningfully protect workers, honest businesses, and state resources.

Several reports highlight the impacts that dedicated worker protection unit within a state attorney general's office can have.<sup>19</sup>

## **S.B. 938 is Good Policy.**

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For all of the foregoing reasons, NELP supports S.B. 938 and urges a favorable report.

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<sup>19</sup> See, e.g., Terri Gerstein, *How district attorneys and state attorneys general are fighting workplace abuses*, ECON. POL'Y INST. AND HARVARD LAB. AND WORKLIFE PROG., (May 17, 2021), <https://www.epi.org/publication/fighting-workplace-abuses-criminal-prosecutions-of-wage-theft-and-other-employer-crimes-against-workers/>. See also Terri Gerstein, *The People's Lawyers Take On Scofflaw Employers: Social Justice Oriented State AGs Stand Up for Workers*, American Constitution Society blog, (August 29, 2024), <https://www.acslaw.org/expertforum/the-peoples-lawyers-take-on-scofflaw-employers-social-justice-oriented-state-ags-stand-up-for-workers/>.