



Senate Bill 0938

Fraud Prevention and Worker Protections – Prohibitions, Penalties, and Enforcement

In the Finance Committee

Hearing on March 5, 2025

Position: FAVORABLE

Maryland Legal Aid submits its written and oral testimony on SB 0938 at the request of the Office of the Attorney General.

Maryland Legal Aid (MLA) asks that the Committee report favorably and pass SB 0938, which will strengthen protections for Maryland's workforce. MLA is a non-profit law firm that provides free legal services to the State's low-income and vulnerable residents. Our twelve offices serve residents in each of Maryland's 24 jurisdictions and handle a range of civil legal matters.

All people deserve fair pay and a safe place to work. Low-income workers are especially vulnerable to workplace fraud, wage theft, and poor working conditions. SB 0938 recommends expansive new safeguards to ensure workplace fairness and safety. The bill expands the protections of the worker misclassification statute, clarifies what it means to be an employee, and creates new penalties and enforcement mechanisms.

SB 0938 creates a rebuttable presumption of employee status for all workers in Maryland.

Status as an employee, rather than as an independent contractor, grants workers significant wage protections, as well as other benefits. Businesses misclassify workers as independent contractors because misclassification is financially beneficial; the employer can avoid paying into various state systems, can deny leave, and can pay less in taxes. Currently, Maryland law protects construction and landscape workers by presuming workers in those industries to be employees, rather than independent contractors. SB 0938 would afford this presumption to all workers.

Many MLA clients work in the gig economy, for rideshare or food delivery services, for example. These industries are notorious for hiring workers as independent contractors with promises of flexible schedules and autonomy. In reality, many gig economy jobs are highly controlled by the employer. These employers closely monitor workers, and have strict requirements around routes, timeliness, and acceptance rates.

When MLA clients are misclassified, they miss out on pay protections, and for low-income workers each penny counts. Independent contractors are not guaranteed minimum wage or overtime pay. Independent contractors also miss out on other workplace protections that are afforded to employees. Independent contractors are not guaranteed any paid time off if they are sick or if they need to care for family members. Employees are allowed to unionize, which gives them the power and protection to bargain for flexible hours and benefits like extended parental leave.

SB 0938 strengthens Maryland's social safety net.

Classifying more workers as employees also contributes to Maryland's fiscal stability. In addition to harming low-income workers, employee misclassification harms Maryland's economy, because businesses without on-paper employees generate lower tax revenues. It also bankrupts the state's social safety net, because employers are not required to contribute to unemployment insurance, disability insurance, or worker's compensation.

SB 0938 creates a civil penalty for employers who knowingly underpay the Unemployment Insurance Fund. Doing so incentivizes employers and makes sure benefits are available for people who lose their jobs through no fault of their own. Unemployment insurance is a vital protection for low-income Marylanders.

SB 0938 creates penalties and enforcement mechanisms that directly benefit workers.

The bill streamlines the investigation process for wage law violations. This is critical because while workers wait for justice, they are also waiting for the pay and benefits they were denied. If they eventually get paid but have already lost their home or had their car repossessed, the laws do not provide adequate protections. Importantly, the bill also defines economic damages not just as unpaid wages, but also as lost benefits and reimbursements. Benefits and reimbursements can be hard to quantify, but are an important part of an employee's remuneration, so it's crucial they are included in any calculation of damages.

SB 0938 also requires employers to pay restitution directly to impacted workers, if the employer failed to pay prevailing wage rates. The law currently requires payment into the State's General Fund. This may penalize the employer and offer an incentive not to violate wage law in the future, but it doesn't do much for the affected worker. It is only fair that the worker be paid what they were owed, and that any damages assessed also go to the worker. Similarly, the bill's proposal to allow a judge to award counsel fees is only appropriate. The inability to obtain fees disincentivizes low-income people from retaining counsel to pursue these cases.

Current law allows an employer to waive their duty to treat a worker as an employee by entering into a private agreement. SB 0938 would prohibit this practice, which is clearly ripe for abuse. There is a power dynamic between any worker and employer, and that only increases for low-income people who do not have a financial back up plan if they lose their job for refusing to sign something such as a worker classification agreement.

SB 0938's creation of a Worker Protection Unit and other enforcement modalities creates a real, accessible pathway for Marylanders to assert their rights.

MLA enthusiastically endorses the OAG's creation of a Worker Protection Unit. MLA will expand its own work in this area by creating a workers' rights unit in 2025. There is a pressing need for advocates to enforce the rule of law in this arena, as evidenced by the many requests MLA receives for advice and representation on wage claims, unemployment insurance, and workplace safety conditions.

MLA urges passage of SB 0938, to provide fair wages and workplace protections for all Marylanders.

If you would like additional information on this bill or the underlying issues it addresses, please contact Meaghan McDermott, Advocacy Director for Community Lawyering and Development, at mmcdermott@mdlab.org or 410-951-7635.