Senate Bill 938

Date: March 5, 2025
Committee: Senate Finance
Position: Unfavorable

Founded in 1968, the Maryland Chamber of Commerce (Maryland Chamber) is a statewide coalition of more than 7,000 members and federated partners working to develop and promote strong public policy that ensures sustained economic growth and opportunity for all Marylanders.

Senate Bill 938 (SB 938) alters the ABC test under the Workplace Fraud Act (WFA), establishes joint liability for any businesses that outsource a project, creates excessive penalties for inadvertent mistakes, and applies these changes to every industry in Maryland. As a result, SB 938 will negatively impact every Maryland industry, disproportionately impact small businesses, and negatively disrupt Maryland's economy for businesses and workers.

Disruptive Definition of Employee

SB 938 would further restrict the ABC test and establish that an individual is an independent contractor only when the employer has no control over the work being completed beyond a "desired result" (Pg. 15, Line 16). As a result, businesses could provide *zero* input to an independent contractor without the individual being classified as an employee. SB 938's change to and application of the WFA employee test across every industry in the state would decimate industries that legally and consistently utilize independent contractors and create volatile ripple effects in Maryland's economy.

Many individuals lawfully work as independent contractors for multiple employers, which provides those individuals with control and decision-making authority over their time and work. By redefining those individuals as employees, SB 938 would require thousands of businesses to absorb untenable financial costs and liability.

Enacting SB 938 would force businesses to demonstrate that an individual is an independent contract and make it nearly impossible to classify anyone as an independent contractor. As a result of the new ABC test, the broadening of joint liability, and the excessive penalties in the bill, businesses will be forced to overhaul operations and limit subcontracting that would subsequently result in dire consequences for small businesses and job losses for workers.

Untenable Joint Liability

SB 938 redefines "general contractor" to include any business in the State that outsources a project and then seeks to hold those businesses financially accountable if a subcontractor misclassifies an employee.

When coupled with the bill's broad definition of terms "employee" and worker," this change will create massive disruptions across industries by exposing businesses to untenable financial liability for actions over which the businesses do not have control.

SB 938 joint liability provisions are so broad that businesses would be financially liable under any project that is outsourced to another company. In fact, businesses that are defined as "general contractors" would need to hire whole teams to constantly monitor the human resources and payment mechanisms of subcontractors. That increased cost and liability would result in fewer projects being outsourced to small businesses and subsequently increase the price of goods and services for consumers.

Punishing Good Faith Actors

After a final order is issued, the Maryland Department of Labor currently provides businesses who made a non-knowing violation 45 days to achieve compliance. This important cure period allows good faith actors to rectify honest mistakes and ensures that all parties are made whole without fear of excessive and unnecessary reprisal.

SB 938 seeks to abolish that good faith standard by excessively punishing good faith actors who reasonably believed wages were correctly paid. While the bill does provide a mitigation requirement for actions brought by employees (Pg. 6, Line 28), the bill intentionally excludes that good faith mitigation standard from actions brought by the Attorney General. Instead, the bill provides the Attorney General with excessive punishment authority for good faith actors that includes economic damages, liquidated damages, civil penalties, and attorney fees (Pg. 7, Lines 7-24). Additionally, the bill seeks to establish minimum financial penalties for honest mistakes (Pg. 19, Line 18).

Penalty Increases

During the 2024 legislative session, the Maryland General Assembly enacted House Bill 465, which increased the penalty for an employer knowingly misclassifying an employee to $10,000 per violation. With that law in effect for just 5 months, SB 938 now seeks to increase the same penalty for a knowing violation to not less than $10,000 and up to $25,000 per violation. Additionally, SB 938 seeks to establish that an *un-knowing* violation must be penalized by not less than $5,000 and up to $10,000 per violation. The Maryland Chamber is concerned with another increase to the same penalty provision, and we are unsure of the need to raise financial penalties and set minimum penalties in the same statute that was amended just 5 months ago.

Conclusion

SB 938's changes to and expansion of the ABC test, creation of joint liability for any business that outsources a project, and excessive penalties will cause disruption across Maryland's industries, disproportionate impact small businesses, and damage Maryland's economy. For these reasons, the Maryland Chamber respectfully requests an **unfavorable report on SB 938**.