

SB0060-Fraud Prevention, Prevailing Wage, and Living Wage - Prohibitions, Penalties, and Enforcement

The legal remedies sought in this bill arise out of the collaboration of all state agencies who are members of the Governors' Joint Enforcement Task Force on Workplace Fraud and Misclassification (JETF). These state agencies have achieved many of their goals by signing MOUs with each other, allowing data on claims and investigations to be shared so that duplicative and costly investigations can be avoided. The JETF also created a portal which documents enforcement actions taken against businesses for workplace fraud and misclassification. All member agencies have access to that portal. I mention these achievements to highlight the fact that we've accomplished a lot without coming to the legislature for new statutory authority. However, the Department of Labor and Industry and the Office of the Attorney General cannot fulfill their missions without the ability to hold general contractors responsible for the fraud and misclassification committed by subcontractors on their work sites.

Holding general contractors responsible for misclassified employees on their work sites is not a novel legal concept in Maryland. Our state's workers compensation statute requires general contractors to pay all Orders of compensation for injured employees of subcontractors who did not carry insurance on their misclassified workers. The Maryland Workers' Compensation Commission routinely holds the general contractors liable; they are not surprised when it happens. This type of liability is known as statutory employment. The name derives from the fact that the general contractor is not the actual employer but the statute requires them act as though they were the employer. General contractors typically insure for this type of liability and this is how the system should work.

Misclassified employees should not only be protected when they're injured. They should also enjoy the rights of employees to be paid the minimum wage or the prevailing wage where appropriate. They should receive sick leave, unemployment insurance and health insurance benefits in the same manner as all employees who are not misclassified.

Subcontractors are often broke or near broke and our expert in shielding any assets they do have from judgment. Subcontractors bid for jobs without accounting for proper insurance and benefit payments on their employees. The general contractors, who are reviewing these bids and selecting these subcontractors, can easily see that workers are not adequately protected, so it is not unfair to hold those general contractors liable. They facilitated the misclassification at the outset.

DLI can implement the provisions of SB0060 without any fiscal impact. This bill adds money to the state treasury because the Office of the Comptroller will now be receiving withholding and income taxes from employees (currently they are not).

Additionally, the UEF (Uninsured Employers' Fund) can receive the civil penalties that are collected. This Committee is painfully aware of the desperate need to fund this agency so that it may continue to financially care for injured workers who were misclassified or paid "under the table."

Please issue a favorable report on SB0060.

Maureen Quinn served as a Workers' Compensation Commissioner for 20 years, then served as Chair of the Commission for the past 3 years and was a member of the Governor's Joint Enforcement Task Force on Workplace Fraud and Misclassification.