



Joint Enforcement Task Force December Meeting

December 5, 2024

10am-12pm

100 S. Charles St.

Baltimore, MD

Task Force Findings and Potential Policy Solutions



Prevalence of Misclassification in Maryland

- JETF heard from workers, small businesses, Minority Business Enterprises (MBEs), and Women Business Enterprises (WBEs) about the harmful impacts of workplace fraud
- An analysis of the construction industry by The Century Foundation estimates 15,937 to 30,908 construction workers (midpoint - 23,423) are misclassified in Maryland
- ~10.9% of construction workers are misclassified

Public Revenue Loss

The same analysis also [found](#):

- Costs to taxpayers when construction workers are misclassified - Unpaid Unemployment Insurance Contributions, Lost Social Security and Medicare Contributions, & Lost State and Federal Income Tax: \$128.1M annually
- Costs evaded by employers who misclassify construction workers - Unpaid Overtime, FICA, and Workers' Compensation Premiums: \$154.5M annually

Impact on Workers

- Another analysis by the Economic Policy Institute estimates that nationally, misclassification costs:
 - Truck Drivers -
 - Btwn \$11,076 to \$18,053 per year
 - Construction Workers -
 - Btwn \$10,177 to \$16,729 per year
 - Home Health Care Workers -
 - Btwn \$6,189 to \$9,529 per year
 - Manicurists & Pedicurists -
 - Btwn \$4,558 to \$6,471 per year

Policy Challenges and Proposed Policy Solutions to Combat Workplace Fraud

Coordinated Enforcement

Challenge:

How can agencies better coordinate on enforcement and build off one another's investigations, audits and findings?

Proposed Solutions:

In progress:

- MOU on data sharing between JETF agencies
- Shared portal on active investigations
- Workplace Fraud Act citation contains information about employer responsibilities to other agencies/divisions

Increase collaboration among agencies to share information about investigations and bad actors.

Develop internal presumptions on what contributions/back tax liabilities are owed, with appropriate language reserving rights of other agencies if further audits are conducted. etc.

Worker Cooperation in Investigations

Challenges:

Workers are often reluctant to come forward with complaints or cooperate w/ investigations - financial benefits to being misclassified, fear of retaliation, job loss, etc.

Exploitation of immigration status and the fear of deportation leads many workers to accept misclassification.

Proposed Solutions:

Incentives for workers to cooperate with workplace fraud investigations - allow payment of certain penalties to workers

Others?

General Contractor Responsibility for Workplace Fraud

Challenge:

General contractors bid for public contracts and set the terms of the contract with subcontractors on their worksites. However, if Workplace Fraud Act violations are found, only subcontractors are likely to be cited for violations since they hire the workers - despite the general contractor's authority over the contract and job site.

Proposed Solution:

Prime/general contractor liability - hold general contractors responsible for Workplace Fraud Act violations on their worksites

Consequences for Noncompliance

Challenge:

Lack of business consequences for violations of the Workplace Fraud Act (WFA).

Proposed Solutions:

Establish that WFA violation(s) can serve as grounds for debarment

Licensing – Establish that WFA violation(s) can serve as grounds for revocation or nonrenewal of occupational and professional licenses

Creating a Market that Favors Responsible Best Practices

Challenge:

Prevalence of misclassification erodes contracting standards, drives the market down, and makes it financially difficult for responsible businesses following best practices to compete.

Proposed Solution:

Create incentives to comply with best practices – establish a “preferred status” (similar to the small business preference) for businesses bidding for public contracts that adopt best practices and agree to be held accountable for workplace violations.

Employment Status Test

Challenge:

There is not one uniform test to determine if a worker is an employee or bona fide independent contractor that can be utilized by all agencies/divisions. This leads to multiple investigations and expenditures of resources and reduces efficiency. It also creates confusion for employers and workers.

Proposed Solution:

Adopt a uniform test or find ways to streamline fact-finding process regarding employment status.

Question: Do existing IRS and Unemployment Insurance frameworks permit full uniformity?

Limitations of the Workplace Fraud Act

Challenge:

The Workplace Fraud Act is limited in its scope and only covers construction and landscaping jobs.

Proposed Solution:

Expand the Workplace Fraud Act to other industries with known high rates of workplace fraud (home health care, janitorial, security, temporary placement agencies, nail salons, transportation, etc.) or extend it to all industries.

Education and Outreach

Challenge:

There is limited knowledge among workers, small businesses, MBEs, and WBEs about the Workplace Fraud Act, worker misclassification, and its consequences for workers, employers, and society.

Proposed Solutions:

Share resources with businesses when they come into contact with a State agency (i.e., State Department of Assessments and Taxation, Unemployment Insurance, Workers' Compensation, Comptroller) about workplace fraud and their responsibilities as an employer.

Conduct outreach to small businesses, MBEs, and WBES.

Partner with unions and workers centers to conduct worker "know your rights" trainings.

Develop shared materials for small businesses and workers to include on JETF website and members respective websites.

Next Steps

- Other policy challenges/policy solutions?
- Email workplace.fraud@maryland.gov with questions/feedback
- 2024 annual report coming soon

