

SENATE BILL 224

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By: **The President (By Request – Office of the Attorney General)**

Introduced and read first time: January 12, 2022

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Employment Standards and Conditions – Definition of**
3 **Employer**

4 FOR the purpose of adding a general definition of “employer” for purposes of certain
5 provisions of law relating to employment standards and conditions; and generally
6 relating to employment standards and conditions.

7 BY repealing and reenacting, with amendments,

8 Article – Labor and Employment

9 Section 3–101, 3–301, 3–401, 3–501, 3–702(a), 3–801(a), 3–802(a), and 3–901

10 Annotated Code of Maryland

11 (2016 Replacement Volume and 2021 Supplement)

12 Preamble

13 WHEREAS, The Maryland Wage Payment and Collection Law (MWPCL) is a
14 “statutory cause of action, the purpose of which is to provide a vehicle for employees to
15 collect, and an incentive for employers to pay, back wages,” *Cunningham v. Feinberg*, 441
16 Md. 310, 322–23 (Md. 2015); and

17 WHEREAS, A series of federal district court decisions have narrowed the definition
18 of “employer” under MWPCL to exclude joint employers, frustrating the intended purpose
19 of the law to “provide a meaningful remedy to the harm flowing from the refusal of
20 employers to pay wages lawfully due,” *Marshal v. Safeway, Inc.* 437 Md. 542, 559 (Md.
21 2014); and

22 WHEREAS, Enacting a general definition of “employer” reflects the legislature’s
23 intent for MWPCL to function as a complement to the Maryland Wage and Hour Law; now,
24 therefore,

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 That the Laws of Maryland read as follows:

2 **Article – Labor and Employment**

3 3–101.

4 (a) In this title the following words have the meanings indicated.

5 (b) “Commissioner” means the Commissioner of Labor and Industry.

6 (c) (1) “Employ” means to engage an individual to work.

7 (2) “Employ” includes:

8 (i) allowing an individual to work; and

9 (ii) instructing an individual to be present at a work site.

10 **(D) (1) “EMPLOYER” MEANS A PERSON ENGAGED IN A BUSINESS, AN**
11 **INDUSTRY, A PROFESSION, A TRADE, OR ANY OTHER ENTERPRISE IN THE STATE**
12 **THAT EMPLOYS AN INDIVIDUAL IN THE STATE.**

13 **(2) “EMPLOYER” INCLUDES A PERSON THAT ACTS DIRECTLY OR**
14 **INDIRECTLY IN THE INTEREST OF ANOTHER EMPLOYER WITH AN EMPLOYEE.**

15 3–301.

16 (a) In this subtitle the following words have the meanings indicated.

17 (b) [(1)] “Employer” [means:] **INCLUDES:**

18 [(i)] a person engaged in a business, industry, profession, trade, or
19 other enterprise in the State;

20 [(ii)] **(1)** the State and its units;

21 [(iii)] **(2)** a county and its units; and

22 [(iv)] **(3)** a municipal government in the State.

23 [(2) “Employer” includes a person who acts directly or indirectly in the
24 interest of another employer with an employee.]

25 (c) “Gender identity” has the meaning stated in § 20–101 of the State Government
26 Article.

1 (d) (1) “Wage” means all compensation for employment.

2 (2) “Wage” includes board, lodging, or other advantage provided to an
3 employee for the convenience of the employer.

4 3–401.

5 (a) In this subtitle the following words have the meanings indicated.

6 (b) [“Employer” includes a person who acts directly or indirectly in the interest of
7 another employer with an employee.

8 (c) “Federal Act” means the federal Fair Labor Standards Act of 1938.

9 [(d)] (C) “Wage” means all compensation that is due to an employee for
10 employment.

11 3–501.

12 (a) In this subtitle the following words have the meanings indicated.

13 (b) “Employer” includes [any person who employs an individual in the State or]
14 a successor of the person **THAT EMPLOYS AN INDIVIDUAL IN THE STATE.**

15 (c) (1) “Wage” means all compensation that is due to an employee for
16 employment.

17 (2) “Wage” includes:

18 (i) a bonus;

19 (ii) a commission;

20 (iii) a fringe benefit;

21 (iv) overtime wages; or

22 (v) any other remuneration promised for service.

23 3–702.

24 (a) In this section, “employer” [means:] **INCLUDES:**

25 (1) [a person engaged in a business, industry, profession, trade, or other
26 enterprise in the State;

- 1 (2)] the State;
- 2 [(3)] (2) a county; and
- 3 [(4)] (3) a municipal corporation in the State.

4 3–801.

5 (a) [(1)] In this section, “employer” [means a person engaged in a business,
6 industry, profession, trade, or other enterprise in the State.

7 (2) “Employer”] includes[:]

8 [(i)] a unit of State or local government that employs individuals who
9 are not subject to the provisions of Title 9, Subtitle 5 of the State Personnel and Pensions
10 Article[; and

11 (ii) a person who acts directly or indirectly in the interest of another
12 employer with an employee].

13 3–802.

14 (a) (1) In this section the following words have the meanings indicated.

15 (2) “Bereavement leave” means leave an employee is allowed to use on the
16 death of a member of the employee’s immediate family.

17 (3) “Child” means:

18 (i) for the purposes of leave provided under subsection (d)(1)(i) of
19 this section, an adopted, biological, or foster child, a stepchild, or a legal ward who is:

20 1. under the age of 18 years; or

21 2. at least 18 years old and incapable of self-care due to a
22 mental or physical disability; or

23 (ii) for the purposes of bereavement leave under subsection (d)(1)(ii)
24 of this section, an adopted, biological, or foster child, a stepchild, or a legal ward.

25 (4) [(i)] “Employer” means a person that is engaged in a business,
26 industry, profession, trade, or other enterprise in the State.

27 (ii) “Employer” includes a person who acts directly or indirectly in
28 the interest of another employer with an employee.

1 (5) “Immediate family” means a child, spouse, or parent.

2 [(6) (5) (i) “Leave with pay” means paid time away from work that is
3 earned and available to an employee:

4 1. based on hours worked; or

5 2. as an annual grant of a fixed number of hours or days of
6 leave for performance of service.

7 (ii) “Leave with pay” includes sick leave, vacation time, paid time off,
8 and compensatory time.

9 (iii) “Leave with pay” does not include:

10 1. a benefit provided under an employee welfare benefit plan
11 subject to the federal Employee Retirement Income Security Act of 1974;

12 2. an insurance benefit, including benefits from an
13 employer’s self-insured plan;

14 3. workers’ compensation;

15 4. unemployment compensation;

16 5. a disability benefit; or

17 6. a similar benefit.

18 [(7) (6) “Parent” means an adoptive, biological, or foster parent, a
19 stepparent, a legal guardian, or a person standing in loco parentis.

20 3–901.

21 (a) In this subtitle the following words have the meanings indicated.

22 (b) “Construction services” includes the following services provided in connection
23 with real property:

24 (1) building;

25 (2) reconstructing;

26 (3) improving;

27 (4) enlarging;

- 1 (5) painting;
- 2 (6) altering;
- 3 (7) maintaining; and
- 4 (8) repairing.

5 [(c) “Employer” means any person that employs an individual in the State.]

6 [(d)] (C) “Exempt person” means an individual who:

7 (1) performs services in a personal capacity and employs no individuals
8 other than:

9 (i) a spouse of the exempt person;

10 (ii) children of the exempt person; or

11 (iii) parents of the exempt person;

12 (2) performs services free from direction and control over the means and
13 manner of providing the services, subject only to the right of the person or entity for whom
14 services are provided to specify the desired result;

15 (3) furnishes the tools and equipment necessary to provide the service;

16 (4) operates a business that is considered inseparable from the individual
17 for purposes of taxes, profits, and liabilities:

18 (i) in which the individual:

19 1. owns all of the assets and profits of the business; and

20 2. has sole, unlimited, personal liability for all of the debts
21 and liabilities of the business, unless the business is organized as a
22 single-owned corporate entity, to which sole, unlimited personal liability does not apply;
23 and

24 (ii) for which:

25 1. the individual does not pay taxes for the business
26 separately but reports business income and losses on the individual’s personal tax return;
27 and

28 2. if the business is organized as a corporate entity and the
29 individual otherwise qualifies as an exempt person under this subsection, the individual

1 files a separate federal informational tax return for the entity as required by law;

2 (5) exercises complete control over the management and operations of the
3 business; and

4 (6) exercises the right and opportunity on a continuing basis to perform the
5 services of the business for multiple entities at the individual's sole choice and discretion.

6 [(e)] (D) "Knowingly" means having actual knowledge, deliberate ignorance, or
7 reckless disregard for the truth.

8 [(f)] (E) "Landscaping services" includes the following services:

9 (1) garden maintenance and planting;

10 (2) lawn care including fertilizing, mowing, mulching, seeding, and
11 spraying;

12 (3) seeding and mowing of highway strips;

13 (4) sod laying;

14 (5) turf installation, except artificial;

15 (6) ornamental bush planting, pruning, bracing, spraying, and removal;
16 and

17 (7) ornamental tree planting, pruning, bracing, spraying, and removal.

18 [(g)] (F) (1) "Place of business" means the office or headquarters of the
19 employer.

20 (2) "Place of business" does not include a work site at which the employer
21 has been contracted to perform services.

22 [(h)] (G) "Public body" means:

23 (1) the State;

24 (2) a unit of State government or an instrumentality of the State; or

25 (3) any political subdivision, agency, person, or entity that is a party to a
26 contract for which 50% or more of the money used is State money.

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2022.