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February 10, 2022

TO: The Honorable Delores G. Kelley  
Chair, Finance Committee

FROM: Brian E. Frosh  
Attorney General

RE: SB0224 – Labor and Employment – Employment Standards and Conditions –  
Definition of Employer – **Support with Sponsor Amendments**

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The Office of Attorney General urges this Committee to adopt the sponsor amendments and favorably report SB 224. If passed, our priority bill will take effect on October 1, 2022.

Wage theft is a widespread problem in Maryland, due in part to the increased use of outsourcing in the workplace. Companies that at one time would have hired employees directly instead insert an intermediary between themselves and their workers. Often these intermediaries—staffing agencies, contractors, and subcontractors—are undercapitalized. As a result, workers in highly outsourced sectors characterized by extensive contracting are particularly vulnerable to wage theft, with large numbers not getting paid overtime, minimum wage, or back wages owed at termination.

As noted in the preamble to the introduced bill, several “federal district court decisions have narrowed the definition of ‘employer’ under [the Maryland Wage Payment and Collection Law] to exclude joint employers, frustrating the intended purpose of the law to ‘provide a meaningful remedy to the harm flowing from the refusal of employers to pay wages lawfully due[.]’” This bill, as introduced, would add a standard definition of “employer” to Labor & Employment § 3-101 to ensure that the employment statutes of Title 3 are applied equally and predictably.

Currently, Title 3 contains several slightly different definitions of “employer.” The Maryland Wage and Hour Law (“MWHL”), along with other Title 3 statutes, defines “employer” to “include[] a person who acts directly or indirectly in the interest of another employer with an employee.” Md. Code Ann., Lab. & Empl. § 3-401(b). The Maryland Wage Payment and Collection Law (“MWPCCL”) currently defines “employer” to “include[] any person who

employs an individual in the State or a successor of the person.” Md. Code Ann., Lab. & Empl. § 3-501(b).

The Maryland Court of Special Appeals has held that, despite the differences in the definition of “employer” between the two statutes, the same test should be applied to determine whether an employee has more than one employer under the MWPCL and MWHL. *See Campusano v. Lusitano Const. LLC*, 208 Md. App. 29, \*36 (2012). Certain federal district courts have followed *Campusano* and applied the economic realities test to the MWPCL as well.<sup>1</sup> The economic realities test for joint employment has been applied to Fair Labor Standards Act claims for decades; it is well-known to judges and employers alike. Other federal district courts have declined to follow *Campusano*,<sup>2</sup> instead limiting liability under the MWPCL to only those employers directly “involved in the payment of wages.”<sup>3</sup> The amended definition of employer in the bill would ensure the consistent application of the MWPCL by all courts, state and federal.

If the sponsor amendments appended to this testimony are adopted, the amended version of the bill would change the definition of employer in the MWPCL to harmonize it with that in the MWHL, instead of adding a general definition to Subtitle 1 of Title 3. The amendments simplify the bill while addressing the problem of inconsistent application of the MWPCL.

For the foregoing reasons, I urge adoption of the sponsor amendments and a favorable report of Senate Bill 224, as amended.

Encl. Appendix of Sponsor Amendments

cc: Committee Members

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<sup>1</sup> *See Rivera v. Mo’s Fisherman Exchange, Inc.*, No. ELH-15-1427, 2018 WL 2020423 (D. Md. May 1, 2018).

<sup>2</sup> *See, e.g., Deras v. Verizon Maryland, Inc.*, No. DKC-09-0791, 2010 WL 3038812 (D. Md. July 30, 2010); *Jennings v. Rapid Response Delivery, Inc.*, No. WDQ-11-0092, 2011 WL 2470483, at \*5 (D. Md. June 16, 2011); *Odjaghian v. EngagePoint, Inc.*, No. JKB-18-0151, 2018 U.S. Dist. LEXIS 112367 (D. Md. July 6, 2018).

<sup>3</sup> *Pridgen v. Appen Butler Hill, Inc.*, No. JKB-18-61, 2019 U.S. Dist. LEXIS 35283, at \*13 (D. Md. Mar. 4, 2019).

**SENATE BILL  
224**

K3

2lr1526  
CF HB 299

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By: **The President (By Request – Office of the Attorney General)**  
Introduced and read first time:  
January 19, 2022 Assigned to:

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Economic Matters

A  
BILL  
ENTI  
TLED

1 AN ACT concerning

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

4 **Employer**

5 FOR the purpose of changing the definition of “employer” in the Maryland Wage  
6 Payment Collection Law.

7 BY repealing and reenacting, with amendments,  
8 Article – Labor and Employment  
9 Section 3–501  
10 Annotated Code of Maryland  
11 (2016 Replacement Volume and 2021 Supplement)

12 Preamble

13 WHEREAS, The Maryland Wage Payment and Collection Law (MWPCCL) is a  
14 “statutory cause of action, the purpose of which is to provide a vehicle for  
15 employees to  
16 collect, and an incentive for employers to pay, back wages,” *Cunningham v. Feinberg*,  
17 441 Md. 310, 322–23 (Md. 2015); and

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

21 2014); now, therefore,

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

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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 3-501.

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

5 (b) "Employer" includes:

6 (1) any person who employs an individual in the State or a  
successor of 7 the person; or

(2) A PERSON WHO ACTS DIRECTLY OR INDIRECTLY IN THE 8  
INTEREST OF ANOTHER EMPLOYER WITH AN EMPLOYEE.

9 (c) (1) "Wage" means all compensation that is due to an employee for  
10 employment.

11 (2) "Wage" includes:

12 (i) a bonus;

13 (ii) a commission;

14 (iii) a fringe benefit;

15 (iv) overtime wages; or

16 (v) any other remuneration promised for service.

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