

**MARYLAND**  
**Labor and Employment**  
**Title 3 – Employment Standards and Conditions**  
**Subtitle 9 – Workplace Fraud**

**Effective 2009**  
**S.B. 909 (91r0257)**

1       §3-901.

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

3       (b) "Construction services" includes the following services provided in connection  
4       with real property:

5              (1) building;

6              (2) reconstructing;

7              (3) improving;

8              (4) enlarging;

9              (5) painting;

10             (6) altering;

11             (7) maintaining; and

12             (8) repairing.

13       (c) "Employer" means any person that employs an individual in the State.

14       (d) "Exempt person" means an individual who:

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

17                  (i) a spouse of the exempt person;

18                  (ii) children of the exempt person; or

19                  (iii) parents of the exempt person;

20              (2) performs services free from direction and control over the means and  
21       manner of providing the services, subject only to the right of the person or entity for

1 whom services are provided to specify the desired result;

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

3 (4) operates a business that is considered inseparable from the individual for

4 purposes of taxes, profits, and liabilities:

5 (i) in which the individual:

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

7 2. has sole, unlimited, personal liability for all of the debts and

8 liabilities of the business, unless the business is organized as a single-owned

9 corporate entity, to which sole, unlimited personal liability does not apply; and

10 (ii) for which:

11 1. the individual does not pay taxes for the business separately

12 but reports business income and losses on the individual's personal tax return; and

13 2. if the business is organized as a corporate entity and the

14 individual otherwise qualifies as an exempt person under this subsection, the

15 individual files a separate federal informational tax return for the entity as required

16 by law;

17 (5) exercises complete control over the management and operations of the

18 business; and

19 (6) exercises the right and opportunity on a continuing basis to perform the

20 services of the business for multiple entities at the individual's sole choice and

21 discretion.

22 (e) "Knowingly" means having actual knowledge, deliberate ignorance, or reckless

23 disregard for the truth.

- 1       (f) "Landscaping services" includes the following services:
- 2           (1) garden maintenance and planting;
- 3           (2) lawn care including fertilizing, mowing, mulching, seeding, and spraying;
- 4           (3) seeding and mowing of highway strips;
- 5           (4) sod laying;
- 6           (5) turf installation, except artificial;
- 7           (6) ornamental bush planting, pruning, bracing, spraying, and removal; and
- 8           (7) ornamental tree planting, pruning, bracing, spraying, and removal.

- 9       (g) (1) "Place of business" means the office or headquarters of the employer.
- 10           (2) "Place of business" does not include a work site at which the employer
- 11       has been contracted to perform services.

- 12       (h) "Public body" means:
- 13           (1) the State;
- 14           (2) a unit of State government or an instrumentality of the State; or
- 15           (3) any political subdivision, agency, person, or entity that is a party to a
- 16       contract for which 50% or more of the money used is State money.

17

18       §3-902.

19       This subtitle applies only to the following industries:

- 20           (1) construction services; and
- 21           (2) landscaping services.

1       §3-903.

2       (a) An employer may not fail to properly classify an individual who performs work  
3       for remuneration paid by the employer.

4       (b) An employer has failed to properly classify an individual when an  
5       employer-employee relationship exists as determined under subsection (c) of this  
6       section but the employer has not classified the individual as an employee.

7       (c) (1) For purposes of enforcement of this subtitle only, work performed by an  
8       individual for remuneration paid by an employer shall be presumed to create an  
9       employer-employee relationship, unless:

10                   (i) the individual is an exempt person; or

11                   (ii) an employer demonstrates that:

12                   1. the individual who performs the work is free from control and  
13       direction over its performance both in fact and under the contract;

14                   2. the individual customarily is engaged in an independent  
15       business or occupation of the same nature as that involved in the work; and

16                   3. the work is:

17                   A. outside of the usual course of business of the person  
18       for whom the work is performed; or

19                   B. performed outside of any place of business of the  
20       person for whom the work is performed.

21       (2) Work is outside of the usual course of business of the person for whom it  
22       is performed under paragraph (1) of this subsection if:

23                   (i) the individual performs the work off the employer's premises;

(ii) the individual performs work that is not integrated into the employer's operation; or

(iii) the work performed is unrelated to the employer's business.

(3) By contract, an employer may engage another business entity, which may have its own employees, to do the same type of work in which the employer engages, at the same location where the employer is working, without establishing an employer-employee relationship between the two contracting entities.

(d) The Commissioner shall adopt regulations to explain further and provide specific examples of the application of subsection (c) of this section.

§3-904.

(a) An employer may not knowingly fail to properly classify an individual who performs work for remuneration paid by the employer.

(b) An employer has knowingly failed to properly classify an individual when:

(1) an employer-employee relationship exists as determined under § 3-903(c) of this subtitle; and

(2) the employer has knowingly failed to properly classify the individual as an employee.

(c) The Commissioner shall consider, as strong evidence that the employer did not knowingly fail to properly classify an individual, whether:

(1) before a complaint was filed against the employer or the Commissioner began an investigation of the employer, the employer:

- (i) sought and obtained evidence that the individual:
    - 1. is an exempt person; or
    - 2. as an independent contractor:
      - A. withholds, reports, and remits payroll taxes on behalf of all individuals working for the independent contractor;
      - B. pays unemployment insurance taxes for all individuals the independent contractor; and
      - C. maintains workers' compensation insurance; and
  - (ii) provided to the exempt person or independent contractor a license as required by § 3-914 of this subtitle; or

the employer:

  - (i)
    - 1. classifies all workers who perform the same or substantially the same tasks for the employer as independent contractors; and
    - 2. reports the income of the workers to the Internal Revenue Service required by federal law; and
  - (ii) has received a determination from the Internal Revenue Service that the individual or a worker who performs the same or substantially the same task as the individual is an independent contractor.

Commissioner shall adopt regulations to provide guidance as to what constitutes evidence relevant to the determination of whether an employer failed to properly classify an employee.

1       §3-905.

2           (a) The Commissioner shall investigate as necessary to determine compliance with  
3           this subtitle and regulations adopted under this subtitle.

4           (b) (1) Any written or oral complaint or statement made by a person as part of  
5           an investigation under this section is confidential and may not be disclosed without  
6           the consent of the person until the investigation is concluded and a citation is  
7           issued.

8           (2) Any written or oral statement made by an individual alleged to be  
9           employed by the respondent as part of an investigation under this section is  
10          confidential and may not be disclosed without the consent of the individual

11          (c) The Commissioner may enter a place of business or work site to:

12           (1) observe work being performed;

13           (2) interview individuals on the work site, including those identified as  
14          employees and independent contractors; and

15           (3) review and copy records.

16          (d) The Commissioner may require each employer to:

17           (1) identify and produce all records relevant to the classification of each  
18          individual;

19           (2) attest to the truthfulness of each record that is copied in accordance  
20          with subsection (c)(3) of this section and to sign the copy; or

21           (3) at the option of the employer, submit a written statement about the  
22          classification of each employee on the form provided by the Commissioner, with  
23          any relevant records attached.

(e) An employer that fails to produce records or a written statement under subsection (d) of this section within 15 business days after the Commissioner's request shall be subject to a fine not exceeding \$500 per day for each day the records are not produced.

(f) (1) The Commissioner may issue a subpoena for testimony and the production of records.

(2) If a person fails to comply with a subpoena issued under this subsection, the commissioner may file a complaint in the circuit court for the county where the person resides, is employed, or has a place of business, requesting an order requiring compliance with the subpoena.

§ 3-906.

(a) If, after investigation, the Commissioner determines that an employer has violated this subtitle or a regulation adopted under this subtitle, the Commissioner shall promptly issue a citation to the employer.

(b) Each citation shall:

(1) describe in detail the nature of the alleged violation;

(2) cite the provision of this subtitle or any regulation that the employer is alleged to have violated; and

(3) state the civil penalty, if any, that the Commissioner proposes to assess.

(c) Within a reasonable time after issuance of a citation, the Commissioner shall send by certified mail to the employer:

(1) a copy of the citation; and

(2) notice of the opportunity to request a hearing.

(d) Within 15 days after an employer receives a notice under subsection (c) of this section, the employer may submit a written request for a hearing on the citation and proposed penalty.

(e) If a hearing is not requested within 15 days, the citation, including any penalties, shall become a final order of the Commissioner.

(f) If the employer requests a hearing, the Commissioner shall delegate to the Office of Administrative Hearings the authority to hold a hearing and issue findings of fact, conclusions of law, and an order, and assess a penalty under § 3-909 of this subtitle in accordance with Title 10, Subtitle 2 of the State Government Article.

(g) Within 15 days after a request, in accordance with Title 10, Subtitle 6 of the State Government Article and the applicable regulations of the Department and the Office of Administrative Hearings, the Commissioner shall provide copies of all relevant evidence, including a list of potential witnesses, on which the Commissioner intends to rely at any administrative hearing under this subtitle.

(h) The Commissioner has the burden of proof to show that an employer has knowingly failed to properly classify an individual as an employee.

(i) A decision of an administrative law judge issued in accordance with Title 10, Subtitle 2 of the State Government Article shall become a final order of the Commissioner.

(j) Any party aggrieved by a final order of the Commissioner under subsection (i) of this section may seek judicial review and appeal under §§ 10-222 and 10-223 of the State Government Article.

1       §3-907.

2           (a) If, after investigation, the Commissioner determines that an employer failed to  
3           properly classify an individual as an employee in violation of § 3-903 of this subtitle,  
4           or knowingly failed to properly classify as an employee an employee in violation  
5           of § 3-904 of this subtitle, and issues a citation, the Commissioner shall notify the  
6           Comptroller, the Office of Unemployment Insurance, the Insurance Administration,  
7           and the Workers' Compensation Commission to enable these agencies to assure  
8           an employer's compliance with their laws, utilizing their own definitions, standards,  
9           and procedures.

10          (b) (1) An employer found in violation of § 3-903 of this subtitle by a final order  
11           of a court or an administrative unit shall be required, within 45 days after the final  
12           order:

13                   (i) to pay restitution to any individual not properly classified; and  
14                   (ii) to otherwise come into compliance with all applicable labor laws,  
15           including those related to income tax withholding, unemployment insurance, wage  
16           laws, and workers' compensation.

17           (2) The requirement for compliance with applicable labor laws under  
18           subsection (b)(1)(ii) of this section may include requiring the employer to enter into  
19           an agreement, within 45 days after the final order, with a governmental unit for  
20           payment of any amounts owed by the employer to the unit.

21           (3) The requirement for compliance with applicable labor laws under  
22           paragraph (b)(1)(ii) of this section:

23                   (i) may not require payments for more than a 12-month period; and

(ii) may not require payments due for a period before the 12-month period before the citation was issued.

(c) An employer found in violation of § 3-904 of this subtitle by a final order of a court or an administrative unit shall be required, within 45 days after the final order:

- (1) to pay restitution to any individual not properly classified; and
- (2) to otherwise come into compliance with all applicable labor laws, including those related to income tax withholding, unemployment insurance, wage laws, and workers' compensation.

3-908.

(a) An employer in violation of § 3-903 of this subtitle who comes into timely compliance with all applicable labor laws as required by § 3-907(b) of this subtitle may not be assessed a civil penalty.

(b) (1) An employer in violation of § 3-903 of this subtitle who fails to come into timely compliance with all applicable labor laws as required by § 3-907(b) of this subtitle shall be assessed a civil penalty of up to \$1,000 for each employee for whom the employer is not in compliance.

(2) In determining the amount of the penalty, the Commissioner shall consider the factors set forth in § 3-909(b) of this subtitle.

(c) (1) An employer may be assessed civil penalties under this section by only one final order of a court or administrative unit for the same actions constituting noncompliance with applicable labor laws as required by § 3-907(b) and (c) of this subtitle.

(2) Notwithstanding paragraph (1) of this subsection, an employer may be ordered to make restitution, pay any interest due, and otherwise comply with all applicable laws and regulations by multiple final orders of a court and all relevant administrative units, including the Comptroller, the Office of Unemployment Insurance, the Insurance Administration, and the Workers' Compensation Commission.

(d) Any penalty issued under this section against an employer shall be in effect against any successor corporation or business entity that:

(1) has one or more of the same principals or officers as the employer against whom the penalty was assessed; and

(2) is engaged in the same or equivalent trade or activity.

§ 3-909.

(a) An employer found to have knowingly failed to properly classify an individual in violation of § 3-904 of this subtitle shall be assessed a civil penalty of up to \$5,000 for each employee who was not properly classified.

(b) In determining the amount of the penalty, the Commissioner or the administrative law judge shall consider:

(1) the gravity of the violation;

(2) the size of the employer's business;

(3) the employer's good faith;

(4) the employer's history of violations under this subtitle; and

(5) whether the employer:

(i) has been found, by a court or an administrative unit, to have deprived the employee of any rights to which the employee would have been entitled under a State protective labor law, including but not limited to:

1. any provision of this article;
  2. the State prevailing wage law, under §§17-221 and 17-222  
ce and Procurement Article; or
  3. the living wage law, under § 18-108 of the State Finance and  
le; and

(ii) has made restitution and come into compliance with all such State protective labor laws with respect to the employee.

(c) If the court or an administrative unit determines that an individual or class of individuals is entitled to restitution as a result of the employer's violation of § 3-904 of this subtitle, the court or administrative unit:

(1) shall award each individual any restitution to which the individual may be entitled; and

(2) may award each individual an additional amount up to three times the amount of such restitution

(d) An employer in violation of § 3-904 of this subtitle may be assessed double the administrative penalties set forth in subsection (a) of this section if the employer has been found previously to have violated this subtitle by a final order of a court or an administrative unit.

(e) An employer who has been found by a final order of a court or an administrative unit to have violated § 3-904 of this subtitle three or more times may

1 be assessed an administrative penalty of up to \$20,000 for each employee.

2 (f) (1) An employer may be assessed civil penalties under this section or §  
3 8-201.1 or § 9-402.1 of this article by only one final order of a court or administrative  
4 unit for the same actions constituting a violation of this subtitle.

5 (2) Notwithstanding paragraph (1) of this subsection, an employer may be  
6 ordered to make restitution, pay any interest due, and otherwise comply with all  
7 applicable laws and regulations by orders of a court and all relevant administrative  
8 units, including the Comptroller, the Office of Unemployment Insurance, the  
9 Insurance Administration, and the Workers' Compensation Commission.

10 (g) Any penalty issued under this section against an employer shall be in effect  
11 against any successor corporation or business entity that:

12 (1) has one or more of the same principals or officers as the employer  
13 against whom the penalty was assessed, unless the principal or officer did not or  
14 with the exercise of reasonable diligence could not know of the violation for which  
15 the penalty was imposed; and

16 (2) is engaged in the same or equivalent trade or activity.

17  
18 §3-910.

19 As authorized by State and federal law, units within the Department of Labor,  
20 Licensing, and Regulation and the Department of Budget and Management, the  
21 Secretary of State, the Comptroller, the Maryland Insurance Administration, and  
22 other State agencies shall cooperate and share information concerning any  
23 suspected failure to properly classify an individual as an employee.

1       §3-911.

2       (a)   (1) Except as provided in paragraph (2) of this subsection, an individual who  
3       has not been properly classified as an employee may bring a civil action for  
4       economic damages against the employer for any violation of this subtitle.

5                  (2) An individual may not bring a civil action under this section if a final order  
6       of an administrative unit or of a court has been issued under § 3-906 of this subtitle.

7       (b) An action filed under this section shall be filed within 3 years after the date the  
8       cause of action accrues.

9       (c) If the court determines that an individual or class of individuals is entitled to  
10      judgment in an action against an employer filed in accordance with this section,  
11      the court may award each individual:

12                  (1) any damages to which the individual may be entitled under subsection  
13      (a) of this section;

14                  (2) an additional amount up to three times the amount of any such  
15      damages, if the employer knowingly failed to properly classify the individual;

16                  (3) reasonable counsel fees and other costs of the action; and

17                  (4) any other appropriate relief.

18

19       §3-912.

20       (a) An employer may not discriminate in any manner or take adverse action  
21      against an individual because the individual:

22                  (1) files a complaint with the employer or the Commissioner alleging that the  
23      employer violated any provision of this subtitle or any regulation adopted under this

1 subtitle;

2 (2) brings an action under this subtitle or a proceeding involving a violation  
3 of this subtitle; or

4 (3) testifies in an action authorized under this subtitle or a proceeding  
5 involving a violation of this subtitle.

6 (b) (1) An individual who believes that an employer has discriminated in any  
7 manner or taken adverse action against the individual in violation of subsection (a)  
8 of this section may submit to the Commissioner a written complaint that alleges the  
9 discrimination and that includes the signature of the individual.

10 (2) An individual shall file a complaint under this subsection within 180 days  
11 after the alleged discrimination occurs.

12  
13 (c) (1) On receipt of a complaint under subsection (c) of this section, the  
14 Commissioner may investigate.

15 (2) The Commissioner shall provide the employer with an opportunity to  
16 respond to the allegations in the complaint.

17 (3) If, after investigation and consideration of any response from the  
18 employer, the Commissioner determines that an employer or other person has  
19 violated subsection (a) of this section, the Commissioner shall file a complaint to  
20 enjoin the violation, to reinstate the employee to the former position with back pay,  
21 and to award any other appropriate damages or other relief in the circuit court for:

22 (i) the county in which the alleged violation occurred;

23 (ii) the county in which the employer has its principal office; or

(iii) Baltimore City.

(4) Within 120 days after the Commissioner receives a complaint, the

Commissioner shall notify the employee of the determination under this subsection.

4

§3-913.

(a) Where, after investigation, the Commissioner issues a citation for a violation of this subtitle or regulations adopted under this subtitle by an employer engaged in work on a contract with a public body, the Commissioner shall promptly notify the public body.

(b) (1) On notification, the public body shall withhold from payment due the employer an amount that is sufficient to:

(i) pay restitution to each employee for the full amount of wages due;

gnd

- (ii) pay any benefits, taxes, or other contributions that are required by law to be paid on behalf of the employee.

(2) The public body shall release:

(i) on issuance of a favorable final order of a court or an administrative unit, the full amount of the withheld funds; and

(ii) on an adverse final order of a court or an administrative unit, the balance of the withheld funds after all obligations are satisfied under paragraph (1) of this subsection.

§3-914.

1           (a) An employer shall keep, for at least 3 years, in or about its place of business,  
2 records of the employer containing the following information:

3               (1) the name, address, occupation,?and classification of each employee  
4 or independent contractor;

5               (2) the rate of pay of each employee or method of payment for the  
6 independent contractor;

7               (3) the amount that is paid each pay period to each employee or, if  
8 applicable, independent contractor;

9               (4) the hours that each employee or independent contractor works each  
10 day and each workweek;

11               (5) for all individuals who are not classified as employees, evidence that  
12 each individual is an exempt person or an independent contractor or its employee;  
13 and

14               (6) other information that the Commissioner requires, by regulation, as  
15 necessary to enforce this subtitle.

16           (b) An employer shall provide each individual classified as an independent  
17 contractor or exempt person with written notice of the classification of the  
18 individual at the time the individual is hired.

19           (c) The written notice shall:

20               (1) include an explanation of the implications of the individual's  
21 classification as an independent contractor or exempt person rather than as an  
22 employee; and

23               (2) be provided in English and Spanish.

1       (d) The Commissioner shall adopt regulations establishing the specific  
2 requirements for the contents and form of the notice.

3

4       §3-915.

5       (a) A person may not knowingly incorporate or form, or assist in the incorporation  
6 or formation of, a corporation, partnership, limited liability corporation, or other  
7 entity, or pay or collect a fee for use of a foreign or domestic corporation,  
8 partnership, limited liability corporation, or other entity for the purpose of facilitating,  
9 or evading detection of, a violation of this subtitle.

10      (b) A person may not knowingly conspire with, aid and abet, assist, advise, or  
11 facilitate an employer with the intent of violating this subtitle.

12      (c) (1) Except as provided in paragraph (2) of this subsection, a person that  
13 violates this section shall be subject to a civil penalty not exceeding \$20,000.

14           (2) A person that violates this section may not be subject to a civil penalty  
15 under this section if the person:

16               (i) holds a professional license as a lawyer or a certified public  
17 accountant; and

18               (ii) was performing an activity in the ordinary course of that person's  
19 license when the violation occurred.

20           (3) If the person is exempt from sanction under paragraph (2) of this  
21 subsection, the Commissioner shall promptly refer the person for investigation and  
22 possible sanction to the unit of State government that has regulatory jurisdiction  
23 over the business activities of that person.

1                     (d) The procedures governing investigations, citations, and administrative and  
2                     judicial review of an alleged violation under this section shall be the same as those  
3                     set forth in §§ 3-905 and 3-906 of this subtitle.

4                     (e) A person may be assessed civil penalties under this section by only one final  
5                     order of a court or administrative unit for the same actions constituting the violation.

6

7                     §3-916.

8                     (a) A person may not:

9                         (1) make or cause to be made a groundless or malicious complaint to the  
10                     Commissioner or an authorized representative of the Commissioner;

11                         (2) in bad faith, bring an action under this subtitle or a proceeding related  
12                     to the subject of this subtitle; or

13                         (3) in bad faith, testify in an action under this subtitle or a proceeding  
14                     related to the subject of this subtitle.

15                     (b) The Commissioner shall investigate any allegations that a person has violated  
16                     any provision of this section.

17                         (c) (1) If the Commissioner determines that a person has violated any provision  
18                     of this section, that person may be subject to an administrative penalty of up to  
19                     \$1,000, assessed by the Commissioner.

20                         (2) A sanction under paragraph (1) of this subsection shall be subject to the  
21                     notice and hearing requirements of § 3-906 of this subtitle.

22                         (3) If the person found in violation of this section is a person alleged to be  
23                     employed by the respondent, the Commissioner shall disclose the identity of the

1 complainant.

2 (d) Any person who must defend an action taken as a result of a groundless or  
3 malicious complaint may be entitled to recover attorneys' fees.

4

5 §3-917. The Commissioner shall adopt regulations to carry out this subtitle.

6

7 §3-918. Each civil penalty under this subtitle shall be paid into the General Fund of  
8 the State.

9

10 §3-919.

11 (a) The proposed budget of the Division of Labor and Industry shall include an  
12 appropriation from the Workers' Compensation Commission to cover the cost of  
13 administering this subtitle.

14 (b) The Workers' Compensation Commission shall pay the cost of administering this  
15 subtitle from money that the Commission receives under § 9-316 of this article.

16

17 §3-920.

18 (a) The Commissioner shall prepare an annual report for the Secretary on the  
19 administration and enforcement of this subtitle, that shall include:

20 (1) the number and nature of complaints received;

21 (2) the number of investigations conducted;

22 (3) the number of citations issued;

23 (4) the number of informal resolutions of the citations;

(5) the number of final administrative orders, with a description, that shall include:

(i) whether the alleged violation was found; and

(ii) whether the order affirmed or overturned a proposed decision of  
f Administrative Hearings;

the Office of Administrative Hearings;

(6) the number of orders of the Commissioner reviewed by the Secretary

and whether they were affirmed or overturned; and

(7) the number of requests for judicial review of administrative orders and

whether the orders were affirmed or overturned.

(b) The Commissioner's report shall be a public record.