
EVALUATION OF THE
WORKER CLASSIFICATION
PROTECTION UNIT
JANUARY 2024



OFFICE OF PROGRAM EVALUATION AND GOVERNMENT ACCOUNTABILITY
DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND GENERAL ASSEMBLY

Evaluation of the Worker Classification Protection Unit

**Department of Legislative Services
Office of Program Evaluation and Government Accountability
Annapolis, Maryland**

January 2024

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DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF PROGRAM EVALUATION AND
GOVERNMENT ACCOUNTABILITY
MARYLAND GENERAL ASSEMBLY

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January 23, 2024

Senator Clarence K. Lam, M.D., Senate Chair, Joint Audit and Evaluation Committee
Delegate Jared Solomon, House Chair, Joint Audit and Evaluation Committee
Members of the Joint Audit and Evaluation Committee

Dear Senator Lam, Delegate Chang, and Members:

At the request of the Joint Audit and Evaluation Committee, the Office of Program Evaluation and Government Accountability has conducted an evaluation of the Worker Classification Protection Unit (WCPU) of the Maryland Department of Labor. This evaluation was performed consistent with § 2-1234 of the State Government Article.

Chapter five includes several recommendations for improving the efficiency and effectiveness of WCPU. Their response is included as Appendix A.

We wish to express our appreciation for the cooperation and assistance provided by WCPU.

Respectfully submitted,

Michael Powell
Director

MP/mpd

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Contents

Letter of Transmittal	iii
Chapter 1. Introduction and Background	1
Objectives, Scope, and Methodology	1
Worker Misclassification	1
Chapter 2. Worker Classification Protection Unit Recordkeeping and Data Management	7
Investigations	7
Dispositions.....	9
Complaint Sources	9
Public Data.....	10
Chapter 3. Worker Classification Protection Unit Productivity	13
Chapter 4. Worker Misclassification in Other States.....	19
Virginia	19
Pennsylvania	19
Montana	20
Massachusetts	20
New York.....	20
Colorado.....	20
California	20
New Jersey	21
Chapter 5. Recommendations.....	23
Appendix A. Response from the Maryland Department of Labor	25

Chapter 1. Introduction and Background

The Joint Audit and Evaluation Committee requested, pursuant to § 2-1234 of the State Government Article, that the Office of Program Evaluation and Government Accountability (OPEGA) conduct a performance evaluation of the Worker Classification Protection Unit (WCPU) of the Division of Labor and Industry (DLI) of the Maryland Department of Labor (MDL).

Objectives, Scope, and Methodology

Our evaluation objective was to answer the following question:

How effectively does WCPU function to investigate and enforce the Workplace Fraud Act (Labor and Employment Title 3 – Employment Standards and Conditions Subtitle 9 – Workplace Fraud Article § 3-901-920)?

The scope of our work involved an examination of the process, from complaint to resolution, by which WCPU handles cases of worker misclassification in the construction and landscaping industries and how the amount of worker misclassification identified and penalized by WCPU may have changed over time. The review included materials, processes, and procedures through June 2023. We also sought to identify what, if any, barriers exist in WCPU's ability to prevent, investigate, and remediate worker misclassification in the construction and landscaping industries in Maryland. Included in this evaluation is an analysis of how WCPU compares to other investigation and enforcement units in similarly situated states.

OPEGA conducted a review of all available case documentation by compiling a database of digital logs, paper case files and all other available records provided by WCPU. The date range of examined materials was 2013 through June 2023.

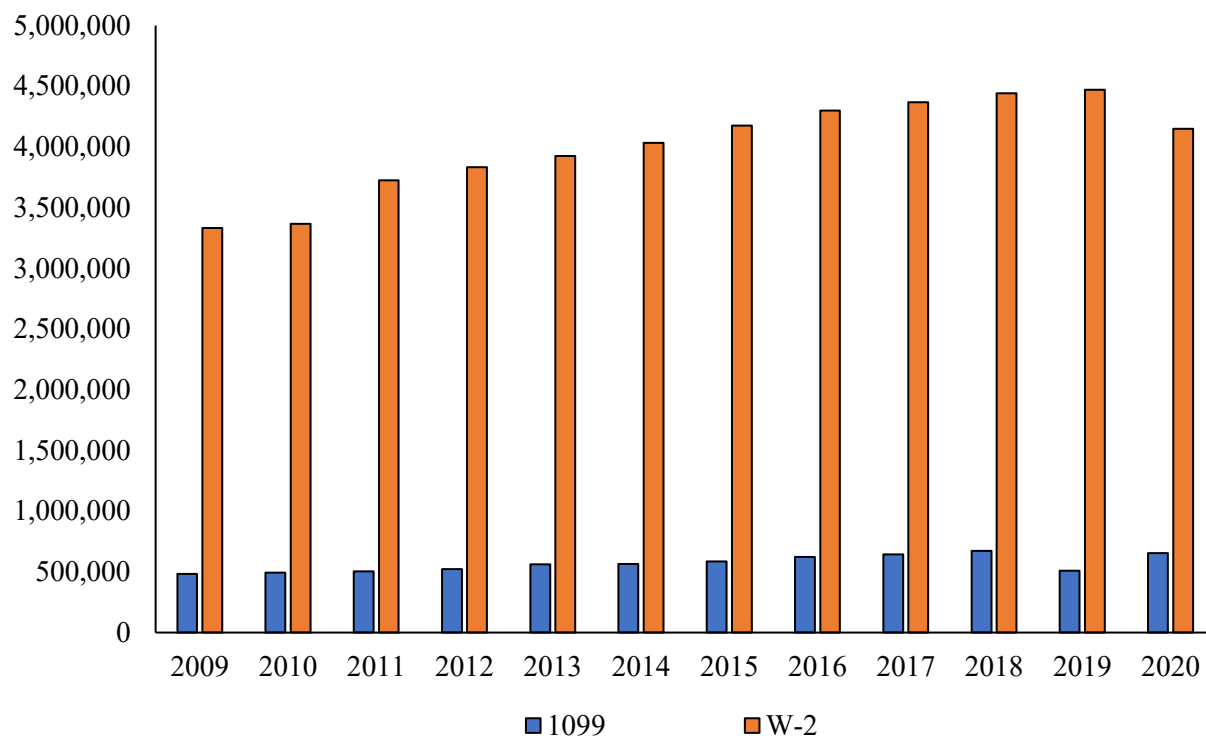
The issue of worker classification is not the exclusive purview of WCPU and requires active participation from the Division of Unemployment Insurance, the Workers' Compensation Commission and others. Our scope of work did not include an examination of these related units of State government, nor did it include a review of any implications of relevant federal law.

Worker Misclassification

In Maryland, the workforce can generally be broken up into two groups: employees and independent contractors. The basis for categorizing a worker as one or the other is rooted in the relationship between the worker and the business that is compensating that worker. For income tax purposes, this would be the difference between a person filing a W-2 (employee) and one filing a 1099 (independent contractor). **Exhibit 1.1** shows the number of W-2 and 1099 filers in

Maryland across all industries between 2009 and 2020. A person may have multiple jobs and, therefore, have multiple filings of one or both types, within a single year. The number of W-2 filings has fluctuated over time but has generally increased, with about 1 million more filings in 2020 than 2009. The number of 1099 filings also show increased trend, with about 170,000 more filings in 2020 compared to 2009. There were about six times more W-2 filings than 1099 filings in 2020.

Exhibit 1.1
All Industries
Number of 1099s and W-2s by Tax Year



Source: Maryland Department of Labor; Department of Legislative Services

A third group exists within the workforce, which is more difficult to calculate. This group is made up of individuals whose earnings are not recorded on a W-2 or 1099. Due to the lack of recordkeeping by the business in these instances and the lack of income tax filing by individuals in these situations, it is difficult to quantify this group.

Worker misclassification occurs when a worker who should legally be classified as an employee is misclassified, intentionally or not, as an independent contractor. Workers classified

as employees receive a range of legal protections. Employers are subject to wage and hour laws, and must pay unemployment insurance, Social Security, and other payroll taxes, in addition to workers' compensation premiums for their employees. If a worker is classified as an independent contractor, that worker does not have any of these protections or access to these benefits. In addition, the worker is not protected by antidiscrimination provisions nor workplace safety laws. The employers who properly classify workers may incur higher labor costs than those who are misclassifying workers.

In order to determine whether an individual is an employee or an independent contractor, Maryland uses the ABC test. **Exhibit 1.2** shows this widely used, three-pronged test.

Exhibit 1.2
ABC Test as Described by the Maryland Department of Labor

Under the ABC test, a worker is presumed to be an employee unless:	
A.	The individual is free from direction or control;
B.	The individual is customarily engaged in an independent business of the same nature as that involved in the work; and
C.	The work is outside the usual course of business of the person for whom it is performed or the work is performed outside any place of business of the person for whom it is performed.

Source: Maryland Department of Labor; Department of Legislative Services

WCPU, housed within MDL's DLI, enforces the Workplace Fraud Act of 2009 (WFA or the Act). The WFA created a presumption of an employer-employee relationship when an individual is paid for work performed for a business. A worker is considered an employee by default, and the employer must be able to prove this is not the case in situations where the worker is classified as an independent contractor. The WFA applies only to construction and landscaping businesses and makes employers in these industries who misclassify employees subject to monetary penalties for noncompliance. The commissioner of DLI and WCPU have discretion in enforcement decisions. **Exhibit 1.3** highlights key stages of WCPU's process to enforce the WFA, based on conversations with the leadership of WCPU at the time this evaluation began.

Exhibit 1.3 Key Steps in the WCPU Process

1. Complaint is received by the WCPU.	
	Complaints can come from referrals via other MDL units, inspector site visits, or complaints from individuals and organizations outside of MDL.
	Complaints from the construction and landscaping industries will be investigated. Complaints from other industries may be noted and may be referred outside of WCPU.
2. WCPU sends a Request for Investigation (RFI) to the business.	
	Business has 30 business days to respond to RFI.
	If the business does not respond WCPU may send out second and third RFIs.
	WCPU may fine a business for failure to respond after the initial RFI window has closed.
	WCPU may choose to close a case for failure to respond.
3. Investigation takes place.	
	If the statutory presumption of employee/employer relationship is overcome by proper documentation, there will be a finding of no violation.
	If the statutory presumption is not overcome, a finding of misclassification may result in a citation and a potential penalty.
4. Potential Investigation Outcomes.	
	No determination is made, case may be closed.
	No finding of misclassification, case may be closed.
	Finding of unknowing misclassification, citation and notice of potential penalty issued.
	Finding of knowing misclassification, citation and notice of penalty issued.
5. Post citation statuses.	
	Business comes into compliance with the statute before citation becomes a final order and penalty is waived.
	Business fails to come into compliance before the citation becomes a final order and pays the penalty due.
	Business fails to come into compliance before the citation becomes a final order and fails to pay the penalty due.

MDL: Maryland Department of Labor

WCPU: Worker Classification Protection Unit

Source: Maryland Department of Labor; Department of Legislative Services

WCPU has at times worked with other units within MDL including the Division of Unemployment Insurance and the Employment Standards Unit. Outside MDL, WCPU has worked with the Workers' Compensation Commission and the Maryland Office of the Comptroller. These entities have referred individuals to one another for services and assisted in providing information to WCPU during an investigation. A portal that facilitates efficient communications for referrals between these units had been used in the past but was inactive at the time of this evaluation.

The Joint Enforcement Task Force on Workplace Fraud (JETF) was established by executive order in 2009. The JETF was intended to facilitate the sharing of information about suspected worker misclassification among State agencies and divisions for more effective enforcement of worker misclassification laws including the WFA.

Chapter 2. Worker Classification Protection Unit Recordkeeping and Data Management

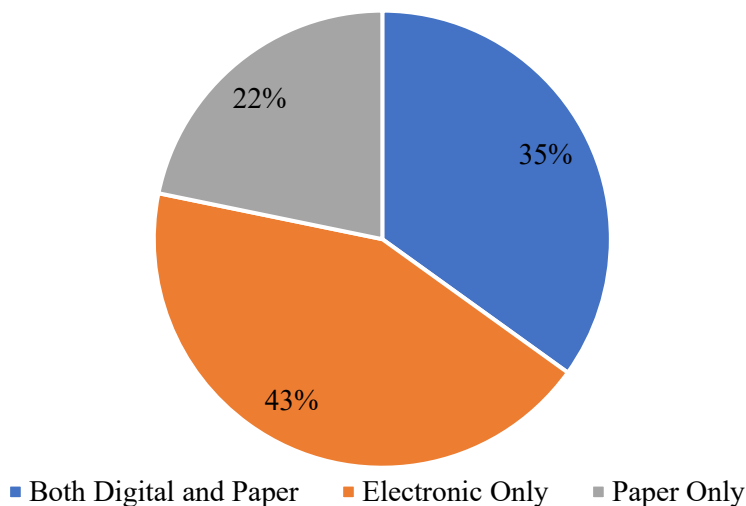
Investigations

Observation: Worker Classification Protection Unit (WCPU) did not use case management software other than basic Google software.

There were no written policies or procedures that dictate how a complaint and subsequent investigation should be handled by the WCPU staff. Google Forms and Google Sheets were used to track certain investigation data. The Office of Program Evaluation and Government Accountability (OPEGA) reviewed all available paper and electronic files from 2014 through the first half of 2023. **Exhibit 2.1** shows the percentage of investigations that were found to have only a paper record, only an electronic record, or both a paper and electronic record.

Observation: Available case records were in paper files, electronic database, or both.

Exhibit 2.1
Documentation of Case File for MDL Investigations



MDL: Maryland Department of Labor

Source: Maryland Department of Labor; Department of Legislative Services

Prior to July 2016, WCPU maintained paper records. OPEGA was provided access to these paper files; however, it is unclear if they represent all historical investigations. The available paper

files were contained in three file cabinets at the Division of Labor and Industry (DLI). There was no inventory or list of contents, and it is likely that some files were available, and others were not.

Observation: Available electronic records did not have associated hard copies of supplemental written documents.

For those investigations with only an electronic record, there was no requirement to retain hard copies of supplemental documents. Noteworthy supplemental documentation may include written witness statements, correspondences with businesses, transcriptions from phone calls, and handwritten case notes. These types of documents may be required as evidence for a finding of misclassification, or justification for a finding of no misclassification. In instances where a business has been cited for misclassification, they may request a hearing, and the file is turned over to the Attorney General's Office.

Those available case files, with both electronic and paper records, still may not be complete and do not give a clear understanding of all investigations handled by WCPU historically. OPEGA looked at WCPU annual reports and reports by the Joint Enforcement Task Force on Workplace Fraud (JETF) for clarity on available case information. **Exhibit 2.2** shows the availability of WCPU data from 2010 through the first half of 2023. No year had a complete electronic and paper file record. The years from 2017 through 2023 each have some or most, but not all, paper files corresponding to the electronic log of investigations. There were no available WCPU annual reports or JETF reports from 2021 to the time of this evaluation.

Observation: None of the years reviewed for this evaluation had a complete record of both paper and electronic records.

Exhibit 2.2
WCPU Data Sources and Availability

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Paper Case File	✗	✗	✗	✗	✗	✗	✗	✓	✓	✓	✓	✓	✓	✓
Digital Log	✗	✗	✗	✗	✗	✗	✓	✓	✓	✓	✓	✓	✓	✓
Annual Report	✗	✗	✗	✓	✓	✓	✓	✓	✓	✓	✗	✗	✗	✗
Joint Enforcement Task Force Report	✓	✓	✓	✓	✓	✓	✗	✗	✓	✓	✓	✗	✗	✗
No data available	✗													
All data available	✓													
Some data available	✓													

WCPU: Worker Classification Protection Unit

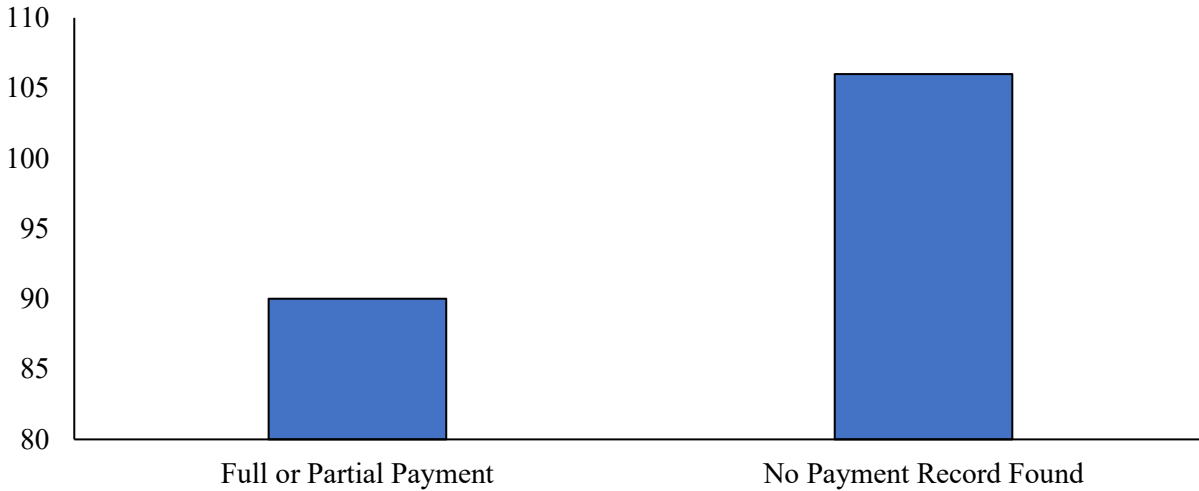
Source: Maryland Department of Labor; Department of Legislative Services

Dispositions

Observation: WCPU did not maintain accounting records related to payments made to the unit.

If a citation for misclassification is not cured by the business coming into compliance within the allowed timeframe, the citation becomes a final order, and the business will owe the penalty amount to WCPU. There were 196 cases, between 2014 and 2022, where citations for misclassification were issued and not cured by compliance and a penalty was owed to WCPU. WCPU did not maintain a spreadsheet or other accounting system to track payments owed on these penalties. Through a review of informal case notes and copies of checks found in the paper files, it was determined that only 40% of these penalties were paid in full or in part. **Exhibit 2.3** compares those investigations where full or partial payment was found to those that had no record.

Exhibit 2.3
Misclassification Citation Payment Status
2014-2022



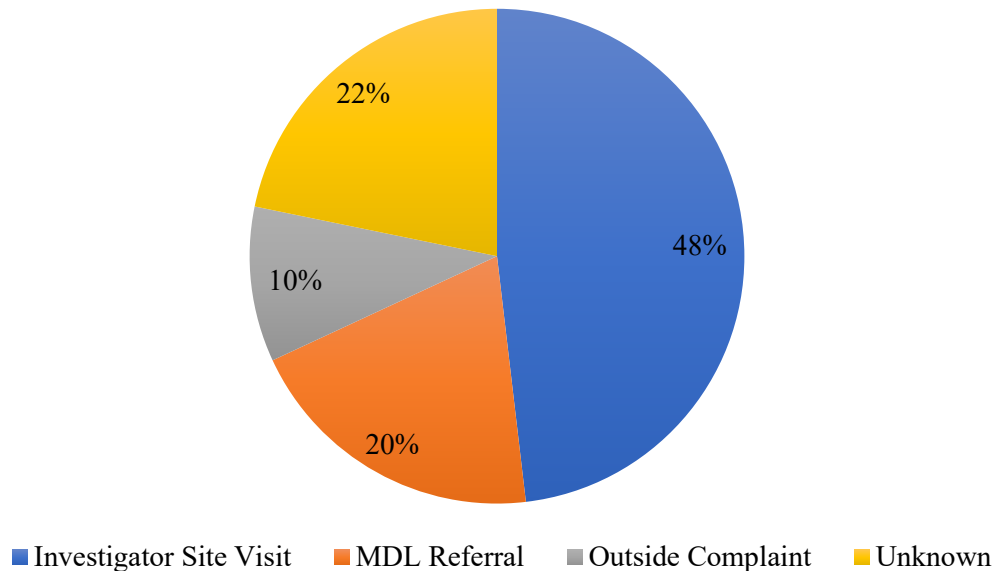
Source: Maryland Department of Labor; Department of Legislative Services

Complaint Sources

Observation: WCPU did not accurately track where complaints originate.

Additional evidence of the lack of accurate recordkeeping was seen in missing data showing what the source of an investigation was. Since 2013, 22% of the investigations conducted by WCPU did not have data showing from where the complaint originated. **Exhibit 2.4** shows the sources of complaints received.

Exhibit 2.4
Percent of Total Complaints Received



MDL: Maryland Department of Labor

Source: Maryland Department of Labor; Department of Legislative Services

Public Data

OPEGA compared the data provided by WCPU to the information published in Maryland Department of Labor (MDL) annual reports and found discrepancies between the reported number of investigations, citations issued, and the number of fines from failure to respond across various years.

Observation: Numbers in MDL annual reports could not be validated by a review of their records.

A WCPU investigation is when an investigator initiates contact with the employer suspected of violating the Workplace Fraud Act (WFA) and begins requesting records applicable to the suspect employer and communicating with other State agencies who can assist with these searches. Based on available WCPU records, OPEGA determined that between 2014 and 2019 there were on average 239 investigations per year. **Exhibit 2.5** compares the number of investigations OPEGA found when reviewing WCPU paper and electronic records to those

reported in the MDL annual report. From 2014 to 2019, these numbers never matched, and ranged from a difference of 31 investigations in 2017 to 1,265 in 2019.

Exhibit 2.5

	<u>Investigations Found by OPEGA</u>	<u>Investigations as Reported by MDL Annual Report</u>
2014	269	928
2015	44	518
2016	202	307
2017	422	453
2018	257	518
2019	186	1,451

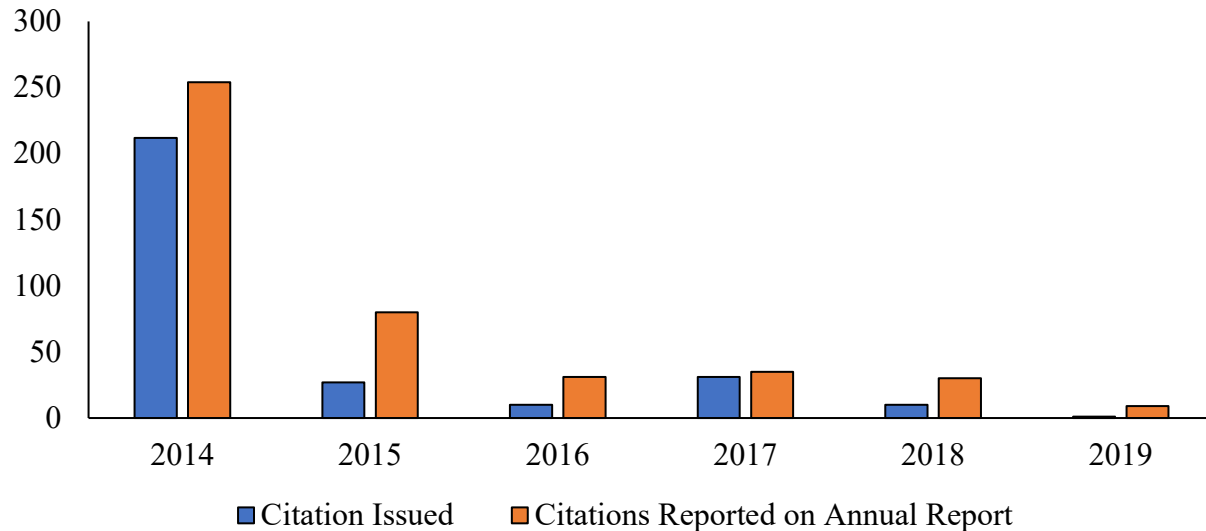
MDL: Maryland Department of Labor

OPEGA: Office of Program Evaluation and Government Accountability

Source: Maryland Department of Labor; Department of Legislative Services

At the culmination of investigations where a violation of the WFA has been found, a citation for misclassification was issued by WCPU. A citation includes a potential penalty. The WFA requires that the business owner request a hearing on the citation within 15 days or the citation and the included civil penalties become a final order of the commissioner. Should the business owner decline their option to request a hearing they have an additional 45 days to demonstrate compliance with the statute or to provide payment in full. This compliance waiver does not apply to a knowing violation of the WFA. **Exhibit 2.6** compares the number of citations for misclassification from WCPU paper and electronic records to those reported in the MDL annual report. From 2014 to 2019, these numbers never matched and ranged from a high difference of 53 citations in 2015 to a low of 4 citations in 2017.

Exhibit 2.6
OPEGA Data vs. Annual Report:
Misclassification Citations



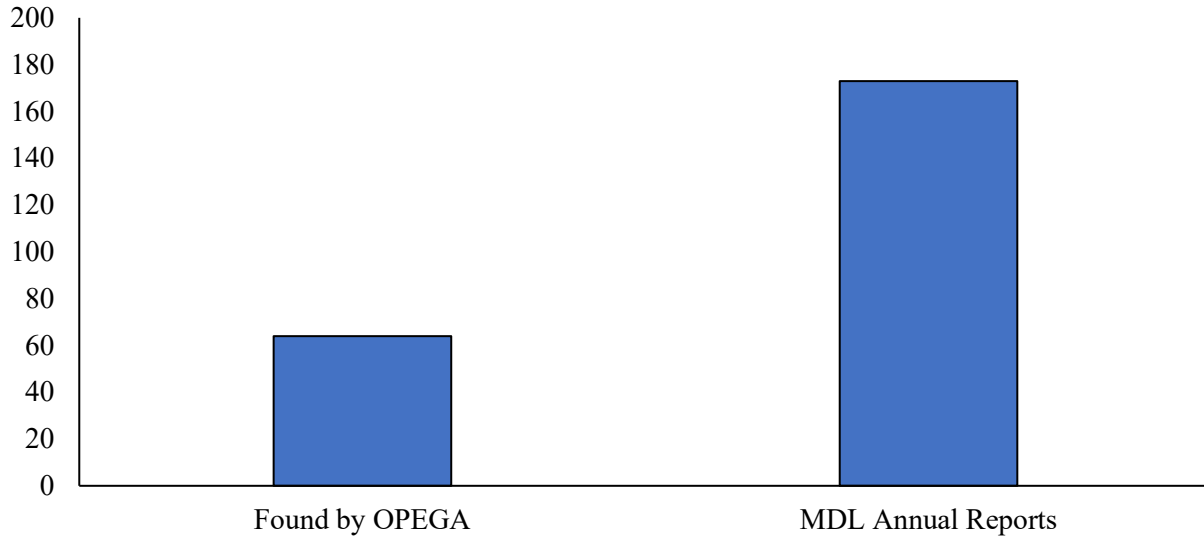
OPEGA: Office of Program Evaluation and Government Accountability

Source: Maryland Department of Labor; Department of Legislative Services

When a business did not send a response to a Request for Information within 30 days, WCPU may have sent a “Failure to Respond” letter to the business. These letters include a \$50 to \$100 fine in most instances, and caution that continued failure to respond may result in fines of up to \$500 per day. In instances where the employer continued failing to respond through second and third letters, fines ballooned to above \$25,000 in several instances.

Exhibit 2.7 compares the number of Failure to Respond fines found when reviewing WCPU paper and electronic records to those reported in the MDL annual report. Only data from 2014 and 2015 was available for comparison because this data was not reported in other years. In 2014 the difference was 66 citations and in 2015 it was 43 citations.

Exhibit 2.7
Failure to Respond Fines
2014 and 2015



MDL: Maryland Department of Labor

OPEGA: Office of Program Evaluation and Government Accountability

Source: Maryland Department of Labor; Department of Legislative Services

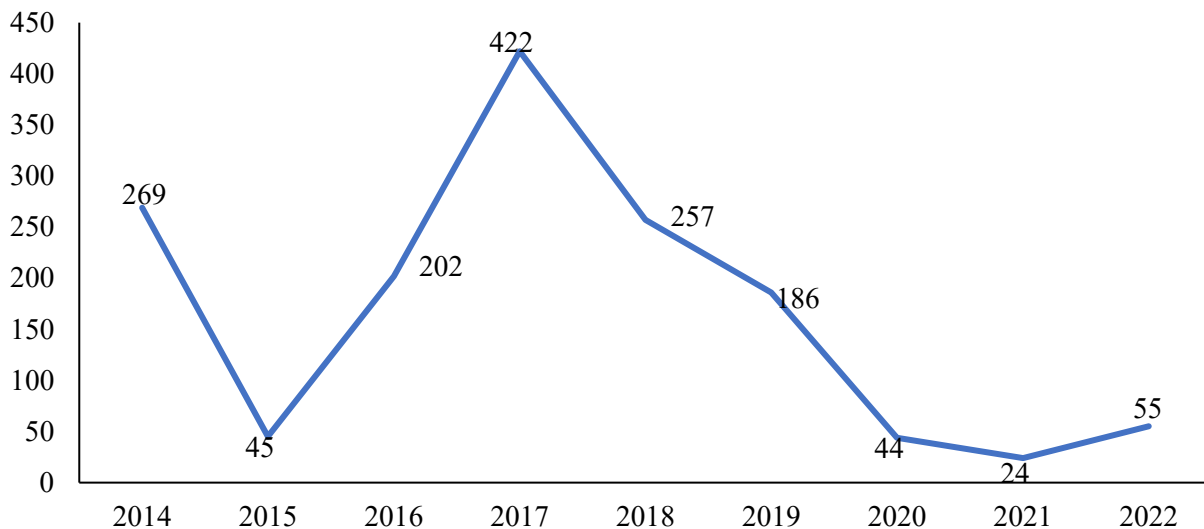
Due to the lack of documentation over the years, OPEGA could not determine the cause of these discrepancies. Some may be due to a shift in the type of information reported by various annual reports.

Chapter 3. Worker Classification Protection Unit Productivity

Observation: Worker Classification Protection Unit (WCPU) averaged about 41 investigations per year over the past four years, down from a peak number of 432 in 2017.

The Office of Program Evaluation and Government Accountability (OPEGA) used paper and electronic data made available by WCPU to look at the number of investigations and citations issued by the unit from 2014 to halfway through 2023. Chapter 2 of this evaluation discusses how this information may differ from similar information in previous Maryland Department of Labor (MDL) annual reports. **Exhibit 3.1** shows the annual number of investigations conducted over time. Prior to 2020, investigations in consecutive years dropped by as much as 224 investigations (2014 to 2015) or rose by as much as 221 investigations (2016 to 2017). From 2020 to 2022, the number of investigations leveled out and averaged about 41 annually.

Exhibit 3.1
Total Investigations

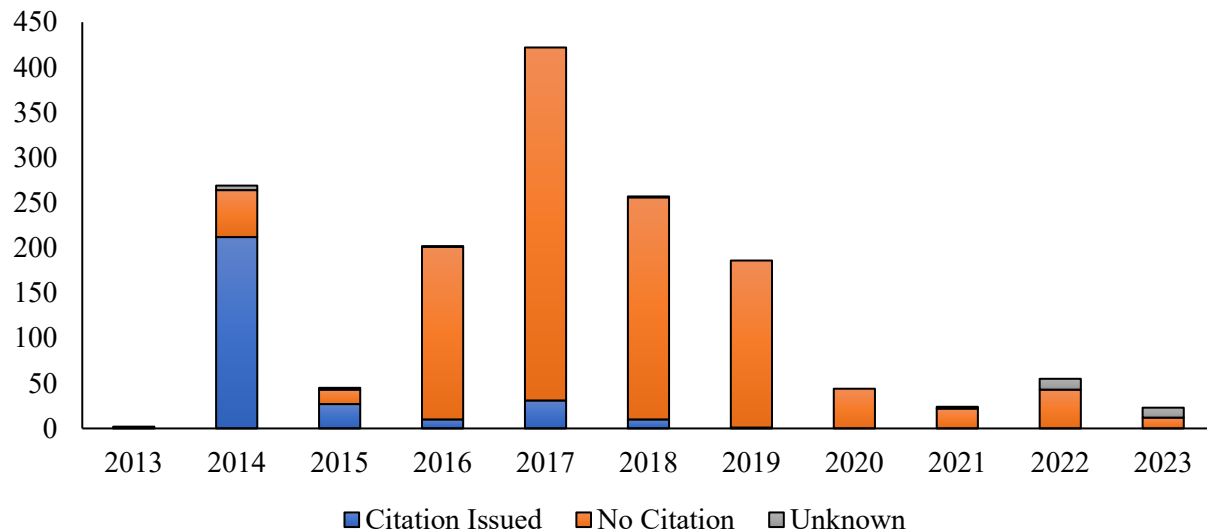


Source: Maryland Department of Labor; Department of Legislative Services

Observation: WCPU issued no citations for misclassification between 2020 and 2022.

Not all investigations concluded with WCPU issuing a citation for misclassification. **Exhibit 3.2** shows an annual breakdown of which investigations ended with a citation, which did not, and those where it is unknown due to data issues.

Exhibit 3.2
Misclassification Citations Per Year



Source: Maryland Department of Labor; Department of Legislative Services

WCPU issued the most citations in 2014, with 212 citations. The next highest number of citations issued in a year was 31 in 2017. From 2020 through 2022, OPEGA could not find a record that WCPU issued any citations.

Observation: The percentage of investigations that resulted in a citation was at a high of 79% in 2014. From 2016 to 2022, no year has been above 10%.

The percentage of investigations that resulted in a citation was highest in 2014 at 79% (212 citations out of 269 investigations). In 2015 there were far fewer investigations (45), but the majority still ended with WCPU issuing a citation. No other year reviewed had more than 10% of investigations result in a citation. **Exhibit 3.3** shows a table of each year and the percentage of investigations that resulted in citations.

Exhibit 3.3

<u>Year</u>	<u>Citation Issued</u>	<u>% Citation Issued</u>	<u>No Citation</u>	<u>% No Citation</u>	<u>Unknown</u>	<u>% Unknown</u>	<u>Total Investigations</u>
2014	212	79%	52	19%	5	2%	269
2015	27	60%	16	36%	2	4%	45
2016	10	5%	191	95%	1	0%	202
2017	31	7%	391	93%		0%	422
2018	10	4%	246	96%	1	0%	257
2019	1	1%	185	99%		0%	186
2020		0%	44	100%		0%	44
2021		0%	22	92%	2	8%	24
2022		0%	43	78%	12	22%	55
2023		0%	12	52%	11	48%	23
Total	291		1,202		34		1,527

Source: Maryland Department of Labor; Department of Legislative Services

Observation: The majority of investigations opened by WCPU were generated by investigator site visits between 2016 and 2019.

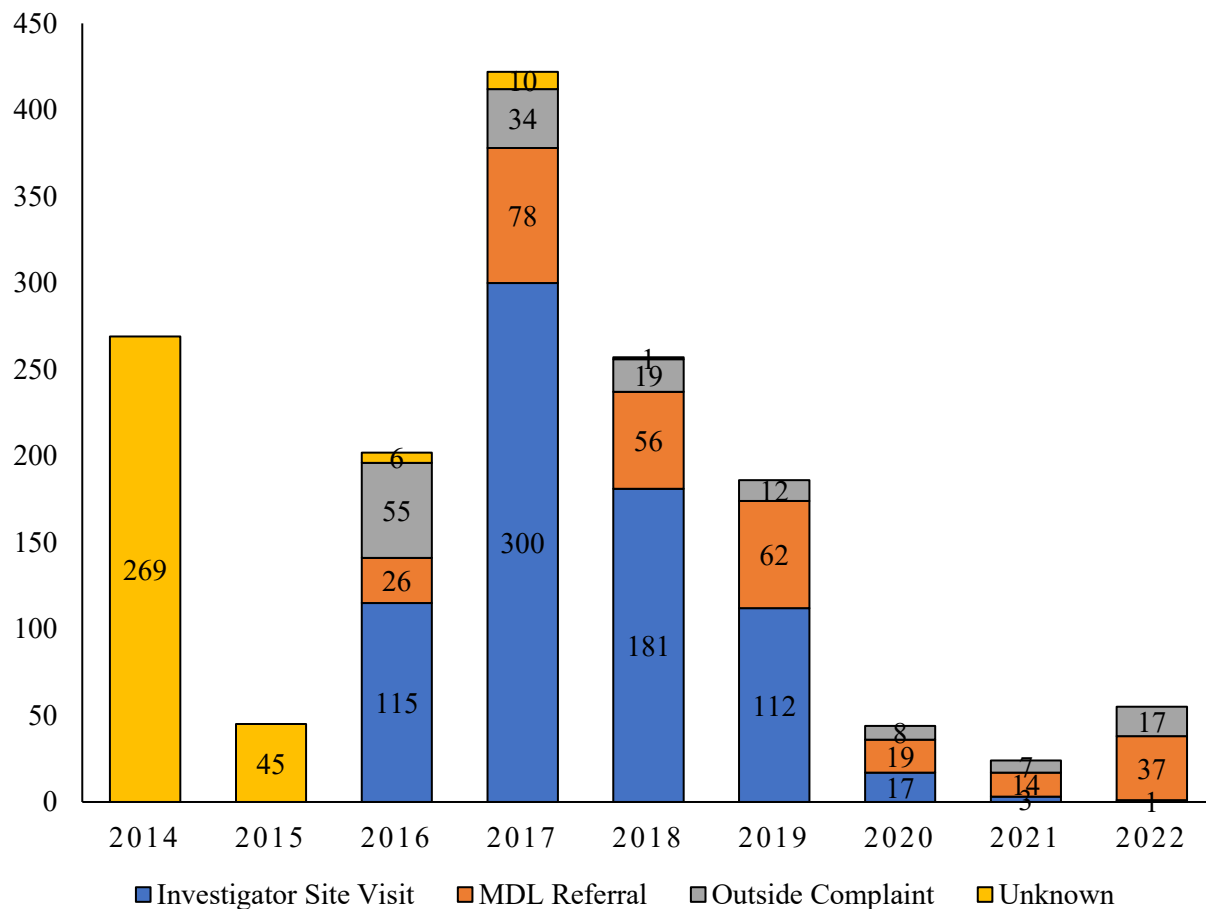
An initial investigation could be generated in at least three ways:

- **Outside complaint:** These leads come via email or phone call, from individuals, trade unions, and other organizations working with individuals who may have been impacted by worker misclassification like a legal aid organization. OPEGA found investigations from each of these complaint sources. Complaints coming from the Office of the Comptroller would be included in this category for the purposes of this evaluation.
- **MDL referral:** An MDL referral refers to a contact from another MDL unit that has identified a potential case of worker misclassification. These complaints may come from Unemployment Insurance when an individual attempts to make a claim but is ineligible due to a potential misclassification. These complaints may come from the Prevailing Wage Unit or any other unit of MDL that may encounter this type of concern. WCPU reported that the portal they used for sharing information within MDL was no longer used by other participants in the task force. When asked to login, they were unable to login.
- **WCPU investigator site visit:** The State is divided roughly into thirds to determine investigator territory. In interviews with the active WCPU investigator, they estimated that 80% of their time is spent in the field making planned visits to construction sites or stopping at sites they see in their movements around their region. These visits allow investigators to make contact with individuals working on these sites and provide information about their rights under the Workplace Fraud Act. The planned visit locations are generated by

searches in the building permit databases maintained by jurisdictions. During this evaluation the new leadership of the Division of Labor and Industry (DLI) ceased conducting site visits, believing them to be unproductive.

Exhibit 3.4 shows the number of investigations generated by each source between 2014 and 2022. Due to data reliability issues, a fourth category of “unknown” was included. Prior to 2016, before WCPU maintained an electronic case record, the source of the investigation was not kept. From 2016 to 2019, WCPU investigator site visits generated the majority of investigations. From 2020 through 2022, the number of investigations was never higher than 55, and an MDL referral initiated the majority of those.

Exhibit 3.4
Sources of Investigations



MDL: Maryland Department of Labor

Source: Maryland Department of Labor; Department of Legislative Services

Observation: In 2023 WCPU only had one investigator to cover the entire State, and they did not speak Spanish.

As of June 2023, when OPEGA began this evaluation WCPU had a half-time program administrator, an investigator, and a half-time administrative employee. During the evaluation, the program administrator resigned abruptly. All employees self-reported that they did not speak Spanish and stated that it is frequently spoken on job sites that they visit.

DLI was able to provide historical organizational charts that suggest that as recently as 2015, WCPU had 9 full-time positions, which was reduced to 7.5 by 2017, and to 4 by 2023.

Chapter 4. Worker Misclassification in Other States

Not every state has a unit specifically dedicated to worker misclassification. Of the states that do, some allow their attorney general's office to handle misclassification claims, while others, like Maryland, have a unit within the Executive Branch, usually under the state's version of the Department of Labor. Even when positioned within the Executive Branch, the unit often must work closely with the state attorney general office to bring action against employers who violate worker classification laws.

States may vary on the test they use to decide whether a worker is an employee or an independent contractor. Most states, like Maryland, use some variation of the ABC test (see Chapter 1, Exhibit 1.2). To reiterate here, the ABC test presumes a worker to be an employee unless the facts and circumstances show evidence to the contrary. The evidence required should go toward (A) a lack of control by the employer; (B) the business of the worker being unusual to that of the employee; and (C) whether an independent contractor customarily does the work being done.

With respect to enforcement, most states utilize civil penalties such as fines or citations. Additional consequences may include paying compensation to misclassified workers, criminal liability, and referral to the federal Department of Labor.

The following are some notable differences in how other states handle worker misclassification when compared to Maryland.

Virginia

Virginia conducts periodic audits of businesses that have issued 1099 forms to workers in search of worker misclassification. Virginia's Office of the Attorney General houses a Worker Protection Unit that focuses on educating Virginians about their rights as workers, in addition to investigating, stopping, and prosecuting cases of worker misclassification and wage theft.

Pennsylvania

Individuals who believe they have been misclassified as an independent contractor in Pennsylvania and wish to file a complaint may contact the Fair Labor Section at the Office of the Attorney General, file a complaint with the Department of Labor and Industry under the Construction Workplace Misclassification Act or the Wage Payment and Collection Law.

Montana

Montana requires that individuals operating as independent contractors within the state receive certification to do so from the Department of Labor and Industry. This application includes notice of waiver of protection and benefits eligibility. There may be situations where the Independent Contractor Exemption Certificate (ICEC) is obtained, but there is an employer/employee relationship rendering the ICEC inapplicable.

Massachusetts

In Massachusetts, a Joint Enforcement Task Force on the Underground Economy and Employee Misclassification was replaced by a permanent Council on the Underground Economy which includes 17 participating state agencies. The mission of the council is to ensure business compliance with state labor, licensing, and tax laws. Individuals believing a business committing any of the following acts of fraud are to report that to the council: paying workers “under the table” in case or declaring employees “independent contractors” to avoid taxes, workers’ compensation, or unemployment insurance; and operating without permits or licenses.

New York

New York has a Joint Enforcement Task Force with staff from the Department of Labor, the Attorney General’s Office, the Department of Taxation and Finance, the Workers’ Compensation Board, The Workers’ Compensation Fraud Inspector General, and the New York City Comptroller’s Office. One of the goals of the task force is to address the misclassification of workers. This task force is housed at the Department of Labor, and in addition to receiving and investigating complaints of potential worker misclassification, it conducts proactive investigations, pursues criminal prosecutions, and shares data among state agencies.

Colorado

In Colorado, complaints about potential worker misclassification are made to the Colorado Department of Labor and Employment. An investigation may then be conducted and knowing violations may carry additional fines. All employers may request an advisory opinion on how they should classify their workers for \$100 from the department.

California

Complaints of misclassification in California are reported to the Department of Industrial Relations in the form of a wage claim, a report of labor law violation, or a lawsuit against the business. Individuals who believe they have been misclassified may apply for benefits through the

Employment Development Department which will determine eligibility. The determination of misclassification may be made by the Labor Commissioner's Office, the Employment Development Department, or another part of Labor and Workforce Development Agency.

New Jersey

In New Jersey, individuals may report potential worker misclassification to the Wage and Hour Division and Contract Compliance at the New Jersey Department of Labor and Workforce Development. In New Jersey, the Commissioner of the Department of Labor and Workforce Development may seek injunctive relief to prevent ongoing violations of certain state labor laws including employee misclassification. The commissioner may also issue stop work orders on all a business' work sites if found to have violated a state wage, benefit, or tax law. The Division of Employer Accounts at the Department of Labor and Workforce Development may also conduct field work for audits on certain businesses operating in the state.

Chapter 5. Recommendations

The Worker Classification Protection Unit (WCPU) should use an information system that supports their business processes and allows them to report information accurately.

The Joint Enforcement Task Force on Workplace Fraud (JETF) should reopen the information-sharing portal that allows task force members to refer cases.

JETF should reconvene and should produce annual reports as required by law.

WCPU should determine the number of staff necessary to investigating every report of worker misclassification.

WCPU should hire staff fluent in the languages spoken by employers and workers they investigate.

Appendix A. Response from the Maryland Department of Labor

January 22, 2024

Mr. Michael Powell, Director
Office of Program Evaluation and Government Accountability
Department of Legislative Services
90 State Circle
Annapolis, Maryland 21401

Re: Program Evaluation of Worker Classification Protection Unit

Dear Mr. Powell:

The Division of Labor and Industry (“DLI”) of the Maryland Department of Labor (“MDOL”) has reviewed the evaluation of the Worker Classification Protection Unit (“WCPU”) conducted by the Office of Program Evaluation and Government Accountability (“OPEGA”).

Notably, this evaluation was initiated in June 2023, just a month after Secretary Wu appointed a new Commissioner of Labor & Industry. DLI welcomed the review of the performance of this unit and appreciates the dedication with which OPEGA approached the difficult task of understanding, often in the absence of documentation, the activities undertaken by this unit.

DLI agrees with each of the recommendations contained in the report. We are particularly pleased to notify OPEGA that, on January 9, Governor Moore signed Executive Order 01.01.2024.04, re-establishing an expanded cross-agency Task Force to address workplace fraud. Designees of MDOL and DLI have already been in touch with the designees of the Comptroller’s Office and the Office of the Attorney General and we expect to promptly begin planning an initial meeting and developing a work plan for information-sharing and enforcement.

In addition, even as OPEGA was conducting its review, our Division took a number of significant steps to re-invigorate the work of this unit, including the following:

- We have replaced the leadership of the unit, both at the supervisory and management levels.

- Our Assistant Attorneys General have developed and conducted training for staff members of the unit to increase their ability to identify and collect relevant information and analyze that information appropriately when making merit recommendations on cases.
- Unit staff are investigating the backlog of cases (consisting primarily of referrals from other DLI labor standards units) and beginning to develop investigative protocols that will increase the effectiveness and efficiency of our investigations.
- The acting manager of wage programs, Tralene Putman, has transferred an experienced investigator who is fluent in Spanish to the unit on a full-time basis, and our Division is actively seeking to recruit bilingual investigators.
- DLI has reached out to the Department of Information Technology (DoIT) to initiate discussions regarding creating a tool to assist with managing cases from complaint/referral through resolution.
- DLI is working with MDOL's Office of Administration and the Department of General Services to identify appropriate office space in Montgomery or Prince George's Counties so that the Division has a presence closer to this population center, in which many of the groups – immigrants, persons of color, lower-wage workers – most affected by this practice are concentrated.

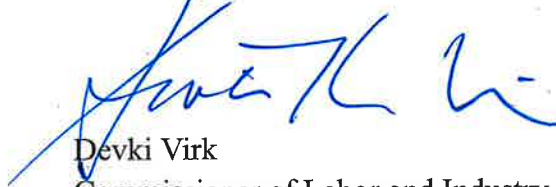
These tangible steps are already beginning to strengthen investigative efforts and move the unit's work in a positive direction. DLI is particularly proud to report that beginning in November, the unit began to issue citations – the first in years – for substantive violations of the Workplace Fraud Act.

The momentum that has begun will only grow. The Moore-Miller Administration is steadfastly committed to addressing workplace fraud. Indeed, the Administration's FY 2025 budget includes a specific request to add five new workplace fraud investigators. If approved, these positions would return permanent staffing levels to the period prior to 2015. DLI expects that if the General Assembly approves these specially funded positions, they will focus on supporting the work of the newly-established Joint Enforcement Task Force and deepening enforcement under the existing workplace fraud law.

DLI looks forward to continuing to strengthen the unit and to working with colleagues on the Joint Enforcement Task Force to tackle the complex problem of worker misclassification on multiple fronts and ensure full protection for employees, a level playing field for businesses, and remittance of appropriate tax payments to the State.

Thank you for the opportunity to respond to the recommendations contained in the OPEGA report.

Sincerely,



Devki Virk
Commissioner of Labor and Industry

Cc:

Via Email

Portia Wu, Secretary, Maryland Department of Labor

Jason Perkins-Cohen, Deputy Secretary, Maryland Department of Labor