

Senate Labor Committee

152nd General Assembly

Wednesday, April 24, 2024

Senate Hearing Room/Virtual Meeting

12:20 p.m. - 1:17 p.m.

Committee Members Present

Senator John Walsh, Vice-Chair

John.Walsh@delaware.gov

Senator Spiros Mantzavinos

Spiros.Mantzavinos@delaware.gov

Senator Bryant Richardson

Bryant.Richardson@delaware.gov

Committee Members Absent

Senator Bryan Townsend, Chair

Bryan.Townsend@delaware.gov

Senator Darius Brown

Darius.Brown@delaware.gov

Senator Nicole Poore

Nicole.Poore@delaware.gov

Senator Dave Lawson

Dave.Lawson@delaware.gov

Other Legislators Present

Senator Laura Sturgeon

Laura.Sturgeon@delaware.gov

Staff

Charline Ganthier-Cine, Senate

Charline.Ganthier-Cine@delaware.gov

James Berryhill, Senate

James.Berryhill@delaware.gov

Kiki Evinger, Senate

Kathryn.Evinger@delaware.gov

Justin Abreu, Senate

Justin.Abreu@delaware.gov

Attendees

All public registrants, both in-person and virtual, are listed in Appendix A.

Agenda

- I. SB 255
- II. SB 229

INTRODUCTION

Senator Walsh brought the meeting to order at 12:20 p.m. and shared that Senator Townsend could not attend the committee hearing. Senator Walsh explained the format of the hearing and provided Senate rules for hybrid committee meetings. He then thanked everyone for joining both virtually and in person.

Senator Walsh proceeded to conduct a roll call and established that a quorum was not present. Senator Townsend, Senator Brown, Senator Poore, and Senator Lawson were marked absent at the time of the roll call.

I. SB 255 (Walsh) AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO LABOR.

Synopsis: This Act does the following: (1) Provides that a prime general contractor is jointly and severally liable for a violation of the Wage Payment and Collection Act that is committed by a subcontractor, regardless of whether the subcontractor is in a direct contractual relationship with the prime general contractor. (2) Authorizes the Attorney General to bring an action to collect wages under the Wage Payment and Collection Act. (3) Provides that a prime general contractor is jointly or severally liable for a violation of the Delaware Contractor Registration Act by a subcontractor.

Senator Walsh introduced and explained the bill, sharing that it is an extension of the Delaware Contractor Registry Act that he sponsored in 2018. The original Contractor Registry Act provided a fair bidding environment for contractors who obeyed the law and protected the interests of workers and Delaware taxpayers. While Senator Walsh expressed that he feels the bill has helped, he also stated he feels it needs to go further. The Delaware Department of Labor has reported instances where workers on job sites are being misclassified and contractors are using subcontractors who are not registered on the Delaware Contractor Registry list to work on

job sites. SB 255 further mandates that construction workers can quickly collect unpaid wages and incentivizes accountability within the construction industry so that contractors may monitor their practices better. By holding the prime contractor of construction projects liable for all subcontractors, Delaware would work toward ensuring that exploited construction workers can collect unpaid wages. Senator Walsh shared that although he has consulted with the Department of Labor, they did not bring this bill to him. Rather, this bill was brought forth by organized Labor.

Senator Walsh invited questions from the committee.

Senator Richardson asked Senator Walsh why he felt this bill was necessary.

Senator Walsh expressed that the misclassification of workers is still occurring on construction sites, and this bill aims to address this issue in two ways. One method is through wage and payment clarification. Senator Walsh shared that general contractors should be responsible for monitoring job sites to ensure construction workers are paid as employees rather than freelancers. The second piece of the bill focuses on ensuring that prime contractors use subcontractors registered within the Delaware Contractor Registry.

Senator Richardson asked how the State would find out if there's been a violation on a construction site.

Senator Walsh established that the Department of Labor would be responsible for informing the state.

Senator Richardson asked if the Department of Labor would be checking the records of construction sites, and if Senator Walsh felt this was a big problem.

Senator Walsh answered that this was correct since the Department of Labor regularly does job site inspections and shared that unregistered subcontractors who are not paying their employees fair wages are a growing problem in the state.

Senator Walsh moved to public comment.

Robert Field, Drive Delaware Forward, expressed concern that this bill would inadvertently result in the suspension or denial of registration to contractors for subcontractors' violations.

Tyler Micik, Director of Public Policy and Government Relations, Delaware State Chamber of Commerce, expressed opposition to the bill.

Victoria Petrone, Attorney, Associated Builders and Contractors, expressed opposition to the bill because it would hold general contractors liable for the actions of a sub or third-tier contractor.

Kevin Fasic, Attorney, Offit Kurman, expressed opposition to the bill.

Ed Capodanno, Associated Builders and Contractors, expressed opposition to the bill because contractors should not be held liable for the violation of subcontractors whom they do not have a contract with. Ed also expressed concern that this bill could put a contractor out of business because of a violation.

Joe Fitzgerald, New Castle County Chamber of Commerce, expressed opposition to the bill.

Kate Gillis, Home Builders Association, expressed opposition to the bill due to unforeseeable consequences of how it would apply to general contractors for subcontractors' violations.

Bryon Short, Executive Director, Delaware Contractors Association, expressed support for punishing bad actors who exploit workers on construction sites. However, Bryon opposed the bill because of the unforeseen consequences of how it would apply to general contractors for subcontractors' violations.

Mike Riemann, President, Homeowners Association, expressed opposition to the bill.

The committee moved to virtual public comment.

Roger Manno, Eastern Atlantic States Regional Council of Carpenters, thanked the committee for consideration of SB 255 and spoke in support of the bill. In 2018, Roger was the Majority Whip for the Maryland State Senate, which considered legislation like SB 255. Roger shared that this legislation is critical for Delaware because it has successfully resolved the misclassification of workers and wage theft issues for Maryland contractors.

Brian Feldman, Maryland State Senator, shared that he introduced the Maryland Senate Bill 53 which is very similar to SB 255. As such, Senator Feldman expressed his support for this bill based on the successes of his bill. Brian shared that the arguments heard from the opponents of the bill were also expressed in Maryland, but that none of those concerns have come to fruition.

Paul Prendergast, Analyst, Eastern Atlantic States Regional Council of Carpenters, shared that this bill would be a great step in protecting the interest of construction workers and expressed support for this bill.

Jeff DiSabatino, DiSabatino Construction Company, expressed opposition to the bill as it would hold his business accountable and potentially put his company out of business because of the business practices of another contractor.

Anthony Capelli expressed his support for the bill.

Andre Walcott, Member, Carpenters Local 255, shared that during his career, there were many times that he was not paid the correct wage that he was owed by the contractors on a job site. Andre expressed support for the bill and asked for it to be voted out of the Committee.

Senator Walsh expressed that general contractors control job sites and have the authority to monitor the practices of subcontractors. He also shared that during stakeholder meetings, he offered a compromise that was countered with a loophole. Senator Walsh shared that there is a Senate Amendment to the bill to remove lines 23 and 40.

SB 255 was reported out of Committee: 1 Favorable; 3 On its Merits; 0 Unfavorable.

II. SB 229 (Sturgeon) AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO AN EMPLOYEE'S RIGHT TO INSPECT PERSONNEL FILES.

Synopsis: This Act extends the right of employees to inspect their own personnel files to former employees. Under this Act, an employer must permit a former employee to inspect the employee's own personnel files that exist at the time of the request. This Act does not create or change any requirements regarding the length of time that an employer must retain personnel files of former employees. This Act also updates the specific information included in personnel files that an employee may inspect and makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Senator Sturgeon left the committee hearing at 12:46 p.m. prior to the consideration of SB 229, at the request of Senator Townsend for a meeting on an unrelated matter.

Senator Walsh introduced the bill and read its synopsis. Senator Walsh invited Debbie Gottschalk, Senior Legislative Attorney, Division of Research, to answer questions from the committee.

Senator Walsh invited questions from the members of the committee.

Senator Richardson asked why this legislation is necessary.

Debbie Gottschalk shared that this bill was requested by a law firm specializing in labor law, which shared that there are circumstances where employees may need to access their employment records after they have left a job, but at present, only current employees may access their personnel files.

Senator Richardson asked how much time former employees would have to access their files.

Debbie Gottschalk shared that there are no standard laws regarding how long records need to be kept. Rather, the timeframe for preserving records is up to the employer's discretion.

Senator Richardson asked for an example of a time when a past employee would need records from a previous employer.

Debbie Gottschalk answered that some positions may require service letters and employment information. Debbie also shared that employees may need a record of past requests for reasonable accommodations for a disability and whether it was granted when they are making that request of a new employer.

Senator Mantzavinos asked if a business that closed would still be required to maintain personnel records.

Debbie Gottschalk shared that if the business, and therefore the records, no longer exist then there is no obligation for a past employer to provide the records.

Senator Mantzavinos asked if a person would be allowed to remove files from their personnel records.

Debbie Gottschalk shared that this bill does not allow for the removal of documents from past personnel files.

Senator Mantzavinos asked if a person would be allowed to copy files from their personnel records.

Debbie Gottschalk answered that the bill does not require the ability to copy, but it also does not prevent a worker from copying their files. The bill allows former employees to visit their former place of employment to review their files, however, it also allows former employers to send relevant documents via email.

Senator Mantzavinos asked if there could be an issue with an employee requesting electronic or physical copies of their documents.

Debbie Gottschalk shared that the current law does not address this. Rather, it provides an employee with the opportunity to review their files, and this can be either physically or electronically.

Senator Mantzavinos asked if these regulations apply to the State as well.

Debbie Gottschalk confirmed that the State is responsible for retaining employee records.

Senator Richardson asked if this bill dictates what records an employer must keep.

Debbie Gottschalk shared that the bill does not.

Senator Richardson asked if an employer could keep an empty file on record.

Debbie Gottschalk shared that this is true; however not likely to occur.

Senator Mantzavinos asked if employers could be held liable for not maintaining personnel records.

Debbie Gottschalk shared that there is no time limit to not create a de facto requirement that records be retained for a certain period. There is no expectation of or liability for employers if the records no longer exist. As the bill is written, if the records exist, they can be accessed, if they do not exist, they cannot be.

Senator Richardson asked whether a former employee would be denied access to their personnel records at a place of previous employment, without this bill.

Debbie Gottschalk confirmed that without this bill a former employee would not have access to their old files.

Senator Walsh asked about the bill's inclusion of a form that may be required for an employee seeking old personnel files.

Debbie Gottschalk clarified that this is a technical correction in the bill. Current law says that employers must make files available and may require the completion of a form to release files to a former employee. She also noted that technical corrections were made to align the language in this bill with current law and make sure that the requirements and process are consistent.

Senator Mantzavinos asked if the bill considered instances of litigation between an employee and a former employer.

Debbie Gottschalk answered that this bill does not add a notification requirement.

Anthony Delcollo, Drafting Attorney, Senate Minority Caucus, asked if this bill would require access to a job site premises for an employee who was terminated for misconduct.

Debbie Gottschalk answered that nothing would stop an employer from offering to electronically send the file rather than welcoming the past employee back to the old workplace. Debbie also shared that a court order prohibiting an employee from returning to a job's premises would override their access to personnel files. Employers have control over when and how the file review occurs.

Senator Walsh opened the floor for public comment.

Tyler Micik, Director of Public Policy and Government Relations, Delaware State Chamber of Commerce, shared that the Chamber of Commerce has several questions and concerns regarding the bill, and expressed concern that this bill may change the definition of personnel files to include employee health records, which is a violation of federal law.

Joe Fitzgerald, New Castle County Chamber of Commerce, shared that there may be legitimate security reasons that an employer may not want a certain employee on their grounds. Joe expressed that without guidelines in place to dictate when former employees would be permitted onto the premises, nothing stops employees from demanding to be present at a former place of employment to review their personnel files.

Debbie Gottschalk shared that medical records are underlined on line 24 to add a comma to the sentence, not a change.

Senator Walsh excused Debbie Gottschalk and thanked the Committee.

There was no virtual public comment.

SB 229 was not released from the Committee.

Senator Walsh entertained a motion to adjourn the meeting.

Senator Richardson made a motion to adjourn.

Senator Walsh seconded the motion.

The meeting was adjourned at 1:17 p.m.

Minutes prepared by Justin Abreu, Legislative Fellow, 5/6/2024.

Appendix A: Attendees

Virtual Attendees:

Roger Manno, Eastern Atlantic States Regional Council of Carpenters

Brian Feldman, Maryland State Senator

Paul Prendergast, Analyst, Eastern Atlantic States Regional Council of Carpenters

Jeff DiSabatino, DiSabatino Construction Company

Anthony Capelli

Andre Walcott, Member, Carpenters Local 255

Dr. Dina Carol Vendetti, President, Central Delaware Chamber of Commerce

In Person Attendees:

Robert Field, Drive Delaware Forward

Tyler Micik, Director of Public Policy and Government Relations, Delaware State Chamber of Commerce

Victoria Petrone, Attorney, Associated Builders and Contractors

Kevin Fasic, Attorney, Offit Kurman

Ed Capodanno, Associated Builders and Contractors

Joe Fitzgerald, New Castle County Chamber of Commerce

Kate Gillis, Home Builders Association

Bryon Short, Executive Director, Delaware Contractors Association

Mike Riemann, President, Homeowners Association

Debbie Gottschalk, Senior Legislative Attorney, Division of Research

Appendix B: Written Public Comment

Written Testimony was only received from Dr. Dina Carol Vendetti

Good Afternoon –

I had hoped to be able to give public comment online today, but for reasons that I don't understand, I was not called on.

In light of that, here are my comments on behalf of the Central Delaware Chamber of Commerce:

1. We are not convinced of the necessity of this bill.
2. We share the concerns of others who spoke today regarding health/medical information in employee records and also potential security issues especially regarding former employees who left under difficult circumstances.
3. We are concerned that there does not appear to be a provision for the supervision of someone who is examining personnel records which could create an opportunity for the information within the files to be altered. In general, this type of information is requested by one employer from another employer without involving the employee.
4. When other companies seek information regarding a former employee who is now applying for position in a new company, we are limited regarding what kind of information we are allowed to provide – allowing the examination of a personnel file may, in fact, create an avenue by which additional information can be obtained that is outside the limits.
5. Perhaps employees should be encouraged to keep copies of their own records for future use – with the provision that items in those records must be verified by their former employer.

We remain concerned about this piece of legislation.

Thank you for the opportunity to submit these comments.

Dina