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HB5204

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CONNECTICUT
GENERAL ASSEMBLY
HOUSE

PROCEEDINGS
2010

VOL.53
PART 3
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THE CLERK:

On page 30, Calendar 71, substitute for House Bill Number 5204, AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE JOINT ENFORCEMENT COMMISSION ON EMPLOYEE MISCLASSIFICATION, favorable report of the Committee on Judiciary.

DEPUTY SPEAKER ORANGE:

Representative Kevin Ryan of the 139th, you have the floor, sir.

REP. RYAN (139th):

Thank you, Madam Speaker.

I move for acceptance of the joint committee's favorable report and passage of the bill.

DEPUTY SPEAKER ORANGE:

The question is acceptance of the joint committee's favorable report and passage of the bill. Will you remark?

REP. RYAN (139th):

Yes. Thank you, Madam Speaker.

In 2008, the General Assembly established a joint commission of five state agencies: the Attorney General, the Chief State's Attorney, the Labor Commissioner, the Revenue Services Commissioner and the Workers' Comp commissioner, to work

collaboratively on the problem of some businesses misclassifying employees as independent contractors.

The reason they did this is because misclassification costs employees important compensation and benefits while fraudulently failing to pay assessments for unemployment compensation and workers' compensation. Misclassification also gives companies an unfair advantage over other competitors who properly designate their employees and provide the legally required benefits.

In addition the legislation created an advisory group to the joint commission that consisted of representatives from both business and labor. The joint commission recently issued its first annual report, and it contained a recommendation for studying the current levels of penalties for misclassifying employees.

The commission and the advisory group agreed to recommend a bill that would increase the civil penalties for failing to obtain workers' compensation insurance, or knowingly misrepresenting one of or more employees as independent contractors. They increased the penalty from $300 per violation to $300 for each day the violation occurs, and that's what this bill

intends to do.

The per-day fine recommended in this bill will substantially increase the law's deterrence, and the bill also clarifies that the criminal penalty for knowingly violating the misclassification law includes defrauding the State of Connecticut.

I move adopt -- excuse me, Madam Speaker.

Madam Speaker, the Clerk has an amendment, LCO 3394. I would ask the Clerk to please call the amendment and I be granted leave of the Chamber to summarize.

DEPUTY SPEAKER ORANGE:

Will the Clerk please call LCO Number 3394, designated as House Amendment Schedule "A."

THE CLERK:

LCO Number 3394, House Amendment Schedule "A," offered by Representatives Ryan, Noujaim and Aman and Senator Prague.

DEPUTY SPEAKER ORANGE:

The Representative seeks leave of the Chamber to summarize. Is there objection? Is there objection? Seeing none, Representative Kevin Ryan, would you care to summarize?

REP. RYAN (139th):

Thank you, Madam Speaker. What this amendment does is, basically it corrects an error that was made in the original underlying bill.

When it comes to the $300-a-day penalty, the unintentioned result in the original bill was that a lot of different items had the penalty increased. Where this amendment clarifies that to ensure that it's only on the misclassification issue, and it also capitalizes some -- the Second Injury Fund title in this second section.

I move for adoption.

DEPUTY SPEAKER ORANGE:

The question is on adoption. The question is on adoption. All those in favor, please signify by saying, aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER ORANGE:

All those opposed, nay. The ayes have it. The amendment is adopted.

Will you care to remark on the bill as amended?

REP. RYAN (139th):

Thank you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Aman.

Hang on, Representative Ryan.

Representative Aman.

REP. AMAN (14th):

Yes, Madam Speaker.

The bill, as amended, I believe the Representative did give an accurate analysis of it. The $300-a-day penalty versus $300 total; workmen comp premiums can be so high that it was actually an advantage to the company that was misclassifying people to go ahead and misclassify them and pay the penalty versus paying the actual rates. So that it does cure that problem, hopefully.

The other thing that it does do is bring in the Second Injury Fund. For some reason the legislation in the past covered insurance companies, but did not cover the State of Connecticut if -- Second Injury Fund, if it was misrepresented.

I think this bill will assist our better corporations that are doing work in the state and paying their rates properly, versus those who are using a misclassification to reduce their costs substantially.

On construction projects the costs of workmens'

comp can be -- reach as high as 50 or 60 percent of payroll. So you can understand when it's that high a cost why a misclassification can make a big difference. If you misclassify someone that you're supposed to be paying a premium of 50 percent of what you're paying them, you misclassify them into a category that you're only paying one or two percent, the difference is very large.

So I urge my colleagues to vote for this bill as it is amended. Thank you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Thank you, Representative Aman.

Will you care to mark further on the bill as amended? Representative Miner of the 66th.

REP. MINER (66th):

Thank you, Madam Speaker.

If I might, a few questions to the proponent of the bill as amended.

DEPUTY SPEAKER ORANGE:

Please proceed, sir.

REP. MINER (66th):

Thank you, Madam Speaker.

Madam Speaker, the other day I think I was watching a press conference the Attorney General did

with a number of individuals from the industries, and I think it was focused around this bill.

And the subject matter was that they were concerned about fraud throughout the state of Connecticut. And I'm concerned about fraud also, but I want to be clear that in supporting this bill what effect I'm going to have on small business people in the state of Connecticut.

So if I might, through you, as I understand it under current law, if an independent contractor chooses to go to work on a job site of a contractor, contractor/subcontractor; that individual is not required as a sole proprietor to carry workers' compensation insurance currently in the state of Connecticut. Is that correct? Through you, Madam Speaker.

DEPUTY SPEAKER ORANGE:

Representative Ryan.

REP. RYAN (139th):

Through you, Madam Speaker, if he's a bona fide independent contractor he would not be, is my understanding.

DEPUTY SPEAKER ORANGE:

Representative Miner.

REP. MINER (66th):

Thank you, Madam Speaker.

And if, for instance, if I was a sub -- a home improvement contractor and I had my own business number, and I agreed to participate in a work effort on a job over the period of a month, would I be subject to misclassification? Through you.

DEPUTY SPEAKER ORANGE:

Representative Ryan.

REP. RYAN (139th):

Could I ask the good Representative to repeat the question? I'm not quite sure I understood it. I had a little trouble hearing him as well.

DEPUTY SPEAKER ORANGE:

Representative Miner, do you mind repeating the question, sir?

REP. MINER (66th):

Thank you, Madam Speaker.

Madam Speaker, as an individual employee of my business, as a sole proprietor, I am registered with the State of Connecticut. My question is if I agree to participate as part of an ongoing project somewhere, over the period of a week or a month, am I subject to the penalties of this bill by virtue of

participating with others in that job? Through you.

DEPUTY SPEAKER ORANGE:

Representative Ryan.

REP. RYAN (139th):

Through you, Madam Speaker, if he has a separate contract with a contractor and is working as an independent contractor, he would not be subject to the penalties of this bill. If he, I guess -- no. I think that's the end of the answer. Thank you.

DEPUTY SPEAKER ORANGE:

Representative Miner.

REP. MINER (66th):

Thank you, Madam Speaker.

So are there thresholds that define the relationship between, let's say, a contractor and a subcontractor that might make the subcontractor an employee? Through you.

DEPUTY SPEAKER ORANGE:

Representative Ryan.

REP. RYAN (139th):

Thank you, Madam Speaker.

There is, under the Department of Labor regulations, circumstances that would determine if a person is a subcontractor or an employee. If it's a

subcontractor, for example, he'd be allowed to come and go and determine his own work schedule. He isn't defined by the contractor and his -- the work he has to do, the way he has to do work, when he has to show up for work, things of that nature.

If he is, I think it's called the three-legged stool test, the ABC test that -- where an individual has to fulfill -- fulfills three of those requirements, he would be considered an employee and not a sub contractor.

DEPUTY SPEAKER ORANGE:

Representative Miner.

REP. MINER (66th):

Thank you, Madam Speaker.

So for instance, if I set my own work schedule and had to agree to do a certain function as part of this overall job, it doesn't sound as though, unless the contractor required me to do it at a certain time in a certain way, that I would be considered an employee. Is that correct? Through you.

DEPUTY SPEAKER ORANGE:

Representative Ryan.

REP. RYAN (139th):

I think the way you described it is accurate.

Yes.

DEPUTY SPEAKER ORANGE:

Representative Miner.

REP. MINER (66th):

Thank you, Madam Speaker.

Madam Speaker, a number of my constituents are sole proprietors. And I think, if people in the Chamber knew what a lot of people in their district, do they would find that a lot of them are sole proprietors. And while I understand the problem with underfunding workers' comp insurance, I also understand that people make personal decisions.

Just like people in the state of Connecticut, in some cases, choose to live without health care or life insurance, some people choose to work without workers' compensation insurance.

My fear is that in this bill we're going to establish a precedent where someone would be decidedly singled out as being an employee long after they had taken a job and left it. And the trail is going to be so expensive as you start to go backwards that I'm afraid some people in the state of Connecticut are no longer going to be able to be sole proprietors.

So I guess if we're trying to drive them back to

being employees, and as I understand that issue, in many cases employees needed more money, wanted more money, wanted flexibility, wanted to be their own boss and chose not to be a subject of employee status. And in some cases they became interested in being employees again when they got injured and went to the Workers' Comp Commission, and instead of the Workers' Comp Commission saying, you decided for two years to be an employer not an employee, you're not eligible.

So I suspect that part of the reason we find ourselves here is because people have done misclassification, but there's also probably a percentage of people that have tried to collect unemployment -- I mean, workers' compensation insurance, have been successful, because they couldn't pay a mortgage, couldn't keep up their house costs and so on.

So I'm -- I am going to support the bill. I do understand the problem, but I do hope that by supporting the bill and having this become law, the adverse effect isn't that we take a lot of people out of the business community of sole proprietors and turn them back into these larger workforces, that I'm not so sure individual employees, individual employers

want to be. Thank you.

DEPUTY SPEAKER ORANGE:

Thank you, sir.

Will you care to mark further on the bill as amended? Will you care to remark further on the bill as amended? If not, staff and guests to the well of the House. Members take your seats. The machine will be open.

THE CLERK:

The House of Representatives is voting by roll call. Members to the chamber. The House is voting by roll call. Members to the chamber, please.

DEPUTY SPEAKER ORANGE:

Have all members voted? Have all members voted? Please check the board to determine if your vote has been properly cast. If so, the machine will be locked and the Clerk will take a tally. And will the Clerk please announce the tally.

THE CLERK:

House Bill 5204 as amended by House "A."

Total Number voting	147
Necessary for adoption	74
Those voting Yea	147
Those voting Nay	0

Those absent and not voting 4

DEPUTY SPEAKER ORANGE:

Thank you, Mr. Clerk, and the bill passes.

Will the Clerk please call Calendar Number 58.

THE CLERK:

Also on page 30, Calendar 58, substitute for House Bill Number 5249, AN ACT CONCERNING THE CONFIDENTIALITY OF CERTAIN DOCUMENTS AND RECORDS IN PSYCHIATRIC SECURITY REVIEW BOARD PROCEEDINGS, favorable report of the committee on Government Administration and Elections.

DEPUTY SPEAKER ORANGE:

Representative Michael Lawlor, you have the floor, sir.

REP. LAWLOR (99th):

Thank you, Madam Speaker. Good evening.

DEPUTY SPEAKER ORANGE:

Good evening to you, too, sir.

REP. LAWLOR (99th):

Madam Speaker, I move acceptance of the joint committee's favorable report and passage of the bill.

DEPUTY SPEAKER ORANGE:

The question is acceptance of the joint committee's favorable report and passage of the bill.

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sure that that didn't occur whereas this provision of being able to modify within the MERA and it's just been a distinction of concern for a number of years.

SENATOR PRAGUE: And then you have to back pay.

STEVEN R. WERBNER: You not only have to back pay, you can't institute any of the changes as this process goes on multiple years. It's not unfrequent to have contracts go two years beyond their expiration date before they're resolved. You have the back pay. You have the fact that all the changes weren't able to be implemented for that two-year period of time. So there are a number -- you have people who have left during that period of time. There are a number of logistic things that happened that are a major concern.

SENATOR PRAGUE: Thank you.

REP. RYAN: Do we have any other questions for Mr. Werbner?

Thank you again. Thank you very much for coming in.

And that completes our public officials for this afternoon. So we'll go to the public sign-up sheet, and the first person to speak there would be Nate Brown followed by Patrice Peterson.

HB 5204

NATHAN BROWN: Hello, again. Good afternoon, Senator Prague and Representative Ryan and distinguished members of the Labor and Public Employees Committee.

My name is Nate Brown, and I am here today testifying on behalf of the Operating Engineers Local 478, an organization representing over 4,000 construction workers with over 300 signatory contractors.

I come before you today to testify in support

of House Bill 5204, and respectfully request your approval of this bill. Misclassification of employees has become a serious issue in Connecticut's construction industry. While there are many professional and law-abiding contractors in the State of Connecticut, the severe recession has resulted in some contractors looking forward -- for ways to save money. Unfortunately, sometimes they arrive at those savings by failing to pay taxes, workers' compensation insurance, Social Security and other employment costs.

Additionally, some contractors are misclassifying their employees on prevailing wage projects by falsifying certified payrolls. The contractor may report an employee as a laborer when that employee was actually running a piece of construction equipment that commands higher rate of pay. One of the primary reasons for the significant increase and misclassification over the past 24 months is the economic downturn in residential construction in the private sector building market has forced many contractors who typically perform in those types of work into the public building infrastructure construction sector of the industry.

Most of these companies typically pay their employees in the range of 15 to 20 dollars an hour with little or no benefits. Sadly, with more workers than employment opportunities, workers' feel as though they have no choice but to take what they can get. No worker wants to get -- go to their boss and complain when the industry is so depressed and there are five other people lined up to take their job.

There is a perception among some contractors that the current penalty for misclassification, if they get caught, are just one of those costs of doing business. Employment classification need to be forced by the state of Connecticut, and the penalties for violating the law need to be significant in order to have a deterrent

effect.

While there are many upstanding contractors in the state of Connecticut, there are some bad actors who need to realize that there are severe consequences when you violate the law and take advantage of the hard-working construction workers of Connecticut.

I'd be happy to answer any questions if you have any.

REP. RYAN: Thank you. Thank you for your testimony regarding this bill. And I agree with you that is an issue that we're kind of coming to terms with it.

Do you have any questions for Mr. Brown?

Representative Olson.

REP. OLSON: Good afternoon.

NATHAN BROWN: Good afternoon.

REP. OLSON: And thank you for your testimony. You know, I wanted to raise one issue too that you kind of touched on it in your last -- your last statement about bad actors in the state of Connecticut. In fact, I would take that even to a step further. What we're seeing is the employers who are doing what they're supposed to be doing and following the rules are the ones being penalized because there are these other actors out there who are not --

NATHAN BROWN: Exactly.

REP. OLSON: -- following the rules. They're getting away with it.

NATHAN BROWN: Absolutely.

REP. OLSON: And I think that's a horrible message for our businesses, but also for our economy. So I think this bill, the time is now.

Moreover it's leading into a tremendous pressure on our workers, as you've indicated.

And, you know, this is being addressed at the federal level as well, and I think it's -- it's so important for us to be talking about this this year and having that opportunity to do something about a really -- a very significant and growing problem as you've indicated. It's not just in construction. It's pretty much in every single area of work whether it be delivery of different items to people's homes, whether it be mail delivery, all sorts of other things.

So I thank you for coming up to testify on this important issue.

NATHAN BROWN: Thank you.

REP. OLSON: Thanks.

REP. RYAN: Any other questions or comments?

Thank you, Mr. Brown. Appreciate you coming in to --

NATHAN BROWN: Thank you.

SENATOR PRAGUE: (Inaudible) replacing Moakley?

NATHAN BROWN: It seems that way. He's -- I haven't seen him, so he's -- he's still on his adventures in Vermont. I'm supposed to see him next week, but he has officially retired this past fall, and I've been up here kind of filling in for him in the meantime until we get an exact idea of what he's going to be doing.

SENATOR PRAGUE: Give him our best.

NATHAN BROWN: I will do that. I will see him next week. Maybe we'll drag him up here for old time's sake.

SENATOR PRAGUE: Good.

REP. RYAN: Thank you.

REP. NOUJAIM: Senator --

REP. RYAN: Thank you. Mr. Peterson -- oh, you had a question?

REP. NOUJAIM: To the Senator, does this question have to do something with the bill, Senator?

REP. RYAN: Okay. Next we have Patrice Peterson. She'll be followed by Lori Pelletier.

Good afternoon, Patrice.

LORI PELLETIER: (Inaudible.)

REP. RYAN: Do we have any questions for Ms. Pelletier?

Ms. Lambert.

REP. LAMBERT: Thank you, Mr. Chairman.

And -- and thank you for speaking out for the paraprofessionals because, you know, not only do they get a lower scale of pay, but those that are working their way and not quite, quite full time, they do not get insurance. If there's a sick day, forget it. I mean, they -- they have to go to work, but not only that but during the time when everyone else gets a vacation during Christmas, they don't get it.

So the fact of it is is I'm glad you're speaking in favor of that because family leave should be included for everybody.

Thank you for your testimony.

REP. RYAN: Anyone else?

Thank you.

Jackeline Aviles -- Ariles and she'll be

REP. RYAN: Thank you. Thank you for your answers.

Do you have any other questions?

She couldn't wait to leave.

We have Glenn Marshall, she'll be -- he'll be followed by Patrice Peterson.

GLENN MARSHALL: Cochairs Ryan and Prague, my name is Glenn Marshall, and I'm here today to testify in favor of proposed amendment to House Bill 5204, AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE JOINT ENFORCEMENT COMMISSION ON EMPLOYEE MISCLASSIFICATION.

What a difference a year makes. Last year at this time, the Governor proposed abolishing the Joint Enforcement Commission on Employee Misclassification along with many other task forces and commissions as a cost-cutting measure. Attached to my testimony is the first annual report of the Joint Enforcement on Worker Misclassification which you all received last month.

I want to highlight a few of the accomplishments on pages 12 and 13 of the report specifically. The Stop Work Unit at the Department of Labor has issued more than 300 stop work orders for the misclassification of workers. The unit has collected approximately $90,000 in civil penalties and issued two arrest warrants. More than 1200 workers are now properly classified.

The Labor Department's unemployment field audit unit completed 2020 compliance audits of employes and reclassified 6,700 workers from independent contractor to employee between October 1, 2008 and September 30, 2009.

This effort recovered more than 53 million in wages and additional unemployment tax of $750,000. These wages would also have to be reported for state income tax -- excuse me --

purposes. From July 1, 2008 to June 30, 2009, the Department of Revenue Services Beta Unit, conducted 61 audits related to worker misclassification and assessed $1,222,869 in additional tax. For the current fiscal year, to date, there have been 39 worker misclassification audits completed resulting in additional tax of $780,219.

Thanks to the Joint Enforcement Commission, state agencies are working together on this issue like never before. For the first time ever, state agencies conducted joint sweeps on Connecticut construction job sites. In addition, their coordinated efforts have resulted in the proposed amendment before you today.

One report alone won't solve the problem, but it's a great start. Unfortunately, as the construction continues to suffer from unemployment over 20 percent, the incentive to cheat is on the rise. Connecticut is not alone in its effort to address this problem. More than 25 states are strengthening their enforcement effort thanks to the recommendations from the National Council of Insurance Legislators.

The federal government is also cracking down on the problem. President Obama's 2010 budget assumes that the federal crackdown will yield at least 7 billion over ten years, according to a recent story in The New York Times.

Again, I want to thank the cochairs of the Labor Committee, the members of this Committee and the Legislature who fought to make sure that the Joint Enforcement Commission on worker misclassification survived. This Commission proved to be a good return on investment. As a member of the advisory board of the Joint Enforcement Commission, I also want to thank the Representatives of the various state agencies who worked so diligently to address this chronic problem that plagues the

construction industry.

We've stepped up enforcement and compliance. This commission will prove to be an even greater return on investment in the future.

Thank you.

REP. RYAN: Mr. Marshall, good afternoon.

GLENN MARSHALL: Good afternoon.

REP. RYAN: You refer to a proposed amendment. I'm seeing attached language to your testimony, so you're suggesting that we replace the language in the -- that's currently in the bill with this language?

GLENN MARSHALL: Yes. And we had a meeting of the various departments the other day, and this language here came from the AG's office, and this looks like the consensus language from the committee.

REP. RYAN: When you say "the committee", could you define "the committee" for us, please?

GLENN MARSHALL: Well, it's the Attorney General's Office, Chief State's Attorney, Department of Revenue Services, Workers' Comp, Unemployment, and I think the Attorney General's testimony will -- will have more on that, too.

REP. RYAN: Okay. He's not here, but he did submit testimony that (inaudible).

All right. So obviously this is the first we're hearing of this. So I'm a little surprised.

GLENN MARSHALL: Okay.

REP. RYAN: Representative -- no, what are you? Senator Prague has a question.

SENATOR PRAGUE: Thank you, Mr. Chairman.

I want to ask you a question about illegal immigrants being hired to do work instead of regular skilled construction workers. Have you witnessed a problem with that?

GLENN MARSHALL: Well, we referred to them as undocumented workers, but, yes, there is. In recent years, it started out primarily in migrant farm workers and landscaping, but probably in the last ten years, five to ten years, there's been a large increase in the exploitation of undocumented workers on job sites.

SENATOR PRAGUE: Do you have a solution to that? I mean, people here, construction workers, who are standing in line waiting for jobs, do you have any kind of a solution to this?

GLENN MARSHALL: Well, I don't think there's any one solution. It's going to take a lot of various tactics, and I think this is one of them, better enforcement. Because in a lot of cases, you know, these -- these people are just trying to earn a living, too, but it's part of the underground economy, and it's some of the unscrupulous employers that are exploiting them that we really need to start cracking down on I believe.

SENATOR PRAGUE: And so you think that the unclassified workers issue and the economy feeling this will help that situation on the misclassified?

GLENN MARSHALL: Yeah, you know, like I said, for me anyway, because we've been talking about this for years, this misclassification board it's kind of like Nirvana from my perspective, because in the past we would always get -- everybody would get territorial in the different agencies and oh, that's not us, that's this department. And it's bringing everybody together. And I think it's a learning experience for everyone involved to

see the magnitude of what's going on out there in the underground economy.

And in this day and age with all these shortfalls that everybody knows we have, in all of the various states, this is revenue that's out there. It's just by getting people to comply with the law will help to -- to, you know, generate, as you heard, up to billions of dollars, not only throughout the country, but within the state of Connecticut.

And I think it just takes everybody working together. And, you know, I think, hopefully every year as we meet more and more we'll be able to come up with better and better legislation to help deal with this problem.

SENATOR PRAGUE: Okay. Thank you.

GLENN MARSHALL: And just one -- one last thing. Carpenters are lucky if we work four months out of the year, and when they don't work, they don't get paid.

Thank you.

REP. RYAN: Wait a second, Mr. Marshall. Don't --

GLENN MARSHALL: Oh, I'm sorry.

REP. RYAN: We have other people here.

Representative Olson.

REP. OLSON: Thank you, Mr. Chairman.

Good afternoon. What -- this is a start. You know, I'm looking at these civil penalty -- the penalties of $300, and I think these penalties are gated, clearly. And, in fact, perhaps sometimes we'd be better to pay the penalty than to have to deal with the -- the alternative.

What's the next step? Was there discussion in

the -- the group? Were there alternatives suggested? I understand that this is a compromise. But is there anything else that we should be addressing at this point with this bill that we have before us?

GLENN MARSHALL: Well, we are still, you know, meeting and going over things. It's interesting you bring up that point. I tend to agree that maybe that amount might be low.

Part of the problem, the way the law currently exists, by the time, you know, Department of Labor is understaffed to begin with, and it takes a tip of some kind for them to even find out and to do an investigation. So a lot of the contractors, as you just put it, aptly, they just figure in as part of a cost of doing business, that well, maybe we'll get caught, and if we do, it's minimal.

And so this legislation here would make it retroactive because they might come to the job site; the job might be three-quarters of the way through, and currently that penalty would just be from that day going forward. This here would help where they do an audit -- there's all kinds of records that are usually kept on most job sites either through the general contractor -- that they'd be able to go retro back with the penalty. And each day would be a separate offense, so in the aggregate it would be, you know, more money than just what you see $300. And that 300 would be per individual that's misclassified.

Also, the second part of it, further down, the Class D felony that was implemented in 1993, the frustration level that we had for many years is -- you know, and I'm not knocking the Chief State's Attorneys' office because they have a lot of other issues to on and they certainly are embracing this concept now -- but we used to hear that, well, we don't have subpoena power and, you know, the cases aren't sexy enough. And we have other things to deal

with. And insurance companies relying on them to come forward and turn in their clients, just doesn't happen. And with this change in that second part, that if the state is being defrauded, then they can go after them because it puts a burden on the Second Injury Fund. And the Second Injury Fund ends up picking up the tab, so this added element, I think, would be really good in conjunction with the first part.

REP. OLSON: Great. And I appreciate that recognition about the Second Injury Fund because you're absolutely right, when there's no, for instance, workers' compensation coverage for a particular employee, we the state, we the taxpayers are paying for that.

GLENN MARSHALL: Absolutely.

REP. OLSON: And once again it goes back to the businesses that are playing by the rules and doing what they're supposed to be doing are being penalized, and that's completely unfair. That is not how our law should act and then to turn around and make all of us pay for that rather than be the people that are -- that should be paying for that.

So this is really a tremendously important issue. And I think -- I'm -- I'm pleased that you went through and explained to us the two separate portions, because I have a better appreciation now that this is making forward progress, you know, with the -- with the two separate penalty sections. But I think there's more that we can do.

So I look forward to -- and if you have any more suggestions, please, you know, now would be great or, you know, in the future there's -- I think, there's more that we can do. It sounds like -- it looks like you have another suggestion.

GLENN MARSHALL: No. No. I just wanted to add that

generally -- and you hit it on the head -- I mean, if an employer goes in and he decides this is the way he's going to do business, he's not only cheating the state out of taxes, you know, the lost revenue, the workers' comp system, unemployment, but generally speaking they're paying people off the books, and then you've got the whole health care issue, the uncompensated care, and then if those individuals get hurt, they show up on the doorstep at the hospital. So it puts a burden on the entire -- you know, all of society. And we need to do something and we would appreciate your support on this and input.

REP. OLSON: Great. Thank you very much --

GLENN MARSHALL: Thank you.

REP. OLSON: -- for your testimony.

REP. RYAN: Thank you.

Representative Noujaim.

REP. NOUJAIM: Thank you, Mr. Chairman.

Good afternoon. You used the word "exploitation". Would you be kind enough to describe for me and define who is exploiting whom and how do you see it is happening?

GLENN MARSHALL: Well, generally, with the underground economy, we'll see situations where companies will blatantly, across the board, they won't have any employees. I remember one at the old Raymark site where there was over 100,000 million in federal dollars used to remediate the property. At that time, this company out of New Jersey, P&B Partitions, had 65 undocumented workers all doing the carpentry work on this project. Not one of them was classified as an employee. And that's how they get around paying workers' comp, taxes, so on and so forth.

What tends to happen is these individuals you know, they know that they're here illegally and unscrupulous employers will start them out paying them a very low wage to begin with off the books. And then sometimes we've even seen where maybe things don't go well on the job, and the employers will actually end up not paying the workers even the little amount that they have promised them. And their response is well, you know, hey, who you going to complain to? You know, we'll have you deported.

And that actually happened down in Stamford on a project, and Connecticut Legal Services ended up on the behalf of these undocumented workers fought to get them back pay. And it -- it's pretty rampant. I mean, it was so bad on that particular job site on East Main Street in Stamford that on the corner across the street where they kind of had -- the city had set up for people to basically hang out looking to get picked up for jobs, all of those undocumented workers didn't want to work right across the street because the pay was too low. They were offering them like eight, nine dollars an hour at the time.

So even, even some of the undocumented workers wouldn't work for those low wages. And then the contractor basically, excused the expression, but screwed them out of the money that -- the meager wages that he had promised them in the first place.

REP. NOUJAIM: Well, thank you. I really appreciate that. I really appreciate the explanation.

And I'm not a labor attorney. Actually, I'm not an attorney at all, but with the indulgence of the Chair, perhaps if someone can help us. Like, I read in the newspaper sometimes, and I need clarification for it, I read in the newspaper that it is not legal in this -- in this state to hire illegal aliens, so, and they -- they are caught. They get caught and they get deported. So why and how employers hire

them to work and how can they get away with it, if they are not supposed to be working in the first place?

GLENN MARSHALL: Well, I'll answer the two points you made. The first one is greed. The second they -- they get away with it because, for the most part, there aren't enough people to go around and do the enforcement, and it's a roll of the dice. It's playing the odds. You know, maybe I'll get caught. And as Representative Olson said, you know, at the time $300 oh, I'll get a slap on the back of the wrist and then I'll pick up and do the same thing over again on another job.

REP. NOUJAIM: And presuming then, those employers who are hiring them, I am also presuming that those workers are not paying taxes and they are getting paid under the table. So the employers are not paying payroll taxes; they are not paying unemployment taxes; they're not paying anything --

GLENN MARSHALL: That's correct.

REP. NOUJAIM: -- in taxes, and -- and the state and the federal government, quite honestly, is also losing on -- on federal income tax. Am I correct on this?

GLENN MARSHALL: Absolutely. We have a study, an updated study from Professor Halpert from UConn who's a conservative economist, and we could make that available to you. Back in 1993, at the time, he said that the state was losing out, at that point, about 500 million a year due to this underground economy for all the lost revenue to -- through taxes, workers' comp and unemployment.

He has concluded that today, it's -- it's over a billion. You know, it's -- it's a lot of money. And when we're all looking for revenue streams, this is one that just through some better laws and some enforcement, I think would

go a long way in changing the perception on the street that we could cheat and get away with it.

REP. NOUJAIM: But, so, if -- if those employers are hiring them and they're not supposed to be working in the first place, they're not supposed to be employed because they are not here legally in this country. Would you agree? So if those employers are hiring them, aren't we taking away jobs from people who pay taxes and -- and work in the state legally?

GLENN MARSHALL: Absolutely. And, you know, in the tough times, we have over 800 carpenters, union carpenters out of work right now that have been out of work, some of them, for over a year and a half. And, you know, if we have a level playing field with all law-abiding contractors, whether you're union or nonunion, everybody could survive and compete with one another. But when you have this added tier of employers that are going out of their way to work off the books, nobody could compete with that.

For a construction carpenter on a commercial job, the workers' comp is roughly about eight, nine dollars an hour just for that. So if somebody is paying somebody off the books, $10 an hour, you figure it out. And that's why, you know, our contractors call us up and they say, hey, this guy beat me out. I don't know how he's doing it by -- you know, on a -- on a million dollar job, he beats him out by 30, 40 percent.

REP. NOUJAIM: So what is your solution then, because obviously if employers cannot hire them because they're not supposed to work in the first place, and they working here illegally, what -- what do we do with them?

GLENN MARSHALL: Well, I don't want to put as much of the focus on -- about the undocumented workers because I believe that is somewhat above us. That's more of a national problem.

But I think what we need to do --

REP. NOUJAIM: But it is also a state problem as well.

GLENN MARSHALL: Yeah, absolutely. But what we need to do, I think, through various means, and some of it is legislatively, is try to crack down on those employers. And I believe they're in the minority, but in these tough times if you're losing jobs left and right and you can't get any bids, you're going to do one of two things. You're either going to, you know, go out of business or you're going to, out of survival mode, do what the other guy is doing. And that could really spiral down and ruin this whole industry.

And also, you know, a lot of these people do work for -- for the state of Connecticut and the various municipalities, so it is a big problem, and we need to stay on top of it.

REP. NOUJAIM: So your solution is -- is not to hire illegal aliens, by any contractor?

GLENN MARSHALL: I think my solution and why I'm here today is that we need to maybe, you know, take the recommendations of this board -- it's a start -- and hopefully be able to do more enforcement out there to ensure that people aren't working off the books and cheating the state out of all these revenue streams.

REP. RYAN: Representative, thank you.

Okay. Thank you.

Representative Lambert.

REP. LAMBERT: Thank you, Mr. Chairman.

This is not only an economic, ethical and a moral issue, but it's also a safety issue. Some of those people that they're bringing off the street, we heard testimony last week by the

IBEW, that they want to have extra training and make sure that everybody is up-to-date on all the new codes and regulation. So at what point is there a conscience when you bring somebody in that they're not going to hurt their fellow workers or anyone else? If they say they're an independent contractor, do they have to show any documentation at all that they're qualified?

GLENN MARSHALL: No, they don't. And unfortunately, you hit on one thing. If somebody is cheating the taxes and everything, they're also cutting corners out of greed on safety and also the quality of the job. We had one in Stamford some years back, Avalon was building some high-end condos and some undocumented workers, a wall fell on them when they were constructing it, and the other guys were so afraid that they'd get fired, they wouldn't even stop working to help lift the wall off of those workers. And they -- unfortunately some of these contractors view these individuals just as -- not even human. You know, well, if something happens to one of them, he can't file a claim. We'll get rid of him and we'll get the next guy on the street corner. And -- and it's terrible what's going on out there. And it's getting worse in this downturned economy.

REP. LAMBERT: But along with the safety it's the safety of the projects that they do. And you mentioned the municipalities. I mean, you know, these are taxpayers' dollars also. So now you have poor workmanship and you have to redo things. And I'd hate to think of some of these people working on schools and things. So I mean, you know, I'm -- I'm totally in agreement with the way things are going, but I just wanted to bring that extra element in that there is also a safety factor in here for fellow workers and for people that are also in those buildings and things that happen. And I do remember that Avalon. That's why I wanted to say it's very important that also safety is mentioned.

GLENN MARSHALL: Thank you. You're absolutely right.

REP. RYAN: Okay. Hoping that we're staying on this bill that's in front of us. Representative Olson.

REP. OLSON: In fact this is. Simply, thank you, Mr. Chairman, a redirect of the questions I asked you previously.

I just wanted the record to be real clear. Would you not agree that the issue of undocumented workers is just a sliver of this issue that we're talking about?

GLENN MARSHALL: Correct.

REP. OLSON: And, in fact, the real issue -- that's one part of it, but the real issue is we're talking about simply workers in the state of Connecticut. It has nothing to do with being undocumented. We're just talking about individuals that they're -- that an employer is inappropriately classifying as an independent contractor.

GLENN MARSHALL: Yeah, that is correct. I mean, sometimes it might even be an agreement between the individual and the employer like maybe the guy is trying to skirt paying child support or something. He wants to work off the books. But more often than not, we see that it's the mandate from the employer.

REP. OLSON: Right.

GLENN MARSHALL: Because he knows he goes in, this is his model of doing business. And in these tough times where people just want to make money to feed their families or whatever, you know, they -- they sacrifice and they'll do almost anything, and that's where this exploitation really gets personified in this tough economy.

REP. OLSON: Sure. They're under a significant pressure and certainly you can appreciate the -- the pressure and the fear that they're under as well.

And then moreover, there is -- there are classifications that are appropriate to be an independent contractor, are there not?

GLENN MARSHALL: Absolutely.

REP. OLSON: And, in fact, there are statutes, federal statutes that pretty much go through -- I think they're called the ABC statutes --

GLENN MARSHALL: The ABC test, right.

REP. OLSON: -- that literally a very easy test that you can follow to determine whether or not this person is appropriately classified as an independent contractor. Is that correct?

GLENN MARSHALL: That is absolutely correct.

REP. OLSON: So, in fact, we have mechanisms to address this sort of situation. We're talking about the actors that are completely operating outside of that system.

GLENN MARSHALL: Yeah, we -- we have one contractor who acts like a construction manager. He doesn't employ people, but the subs that he's hired out of the Stamford area, it's been documented in the Hartford Business Journal and various newspapers, he's the biggest offender in the state, and keep in mind, this stop work order has only been in place for, you know, this October it'll be three years. Twenty-nine times on his various jobs, he has been shut down for his subs misclassifying workers. And he continues to do business.

REP. OLSON: Uh-huh.

GLENN MARSHALL: And that's -- that's where we

really need. Now somebody like that, there's no mistake. He knows, and he's doing this purposely.

REP. OLSON: Great. Thank you very much.

GLENN MARSHALL: Thank you.

REP. OLSON: I just wanted the record to be real clear that we weren't going -- you know, we weren't taking just a sliver of the population but really addressing the issue that we have in here. Thank you very much.

GLENN MARSHALL: Thank you.

REP. RYAN: Senator Prague, then Senator Gomes.

SENATOR PRAGUE: (Inaudible) thought about the decertification of contractors. This contractor who was fined 29 times, I mean, why isn't a contractor like that decertified?

GLENN MARSHALL: Well, I -- I -- at this point in time, to my knowledge, he hasn't looked to bid on any public work. These are either high-end residential homes down in lower Fairfield County or commercial projects that are privately owned. And, you know, we do need some teeth in the law because there are even situations -- and by the way, this individual, they had some big OSHA fines on their project. Two electrical problems and a fire broke out when the Department of Labor was in there investigating as to the status of the employees.

So somebody like this, we need to really take a look at and, you know, hopefully this commission now will -- will act together. If you get somebody who's that blatantly breaking the law, then maybe it's something that the Chief State's Attorneys' office can look into in conjunction with the various agencies and maybe going after criminally.

And, you know, and I think there's no easy answer, but I think with your help, we could start to try to clean up this problem that exists out there before it becomes so rampant that it overtakes the industry.

SENATOR PRAGUE: Well, we'd be glad to work with you and clean this up. Thank you.

SENATOR GOMES: Afternoon, Glenn.

I hear you speak about these times of downturn and these rough times that we're having now. And you speak about undocumented workers, for years undocumented workers have been taken advantage of, and it seems like the crafts have not -- have not -- have now the idea that they can use them in certain areas. And that's where the declassification thing came in because prior to them working in other industries, they didn't have the classification. So now they sought fit to declassify people in order to use them.

And like Senator Lambert was saying, this has got to be a huge safety factor because you can't take a laborer that you hired to haul a piece of wood around or hand carrying bricks and stuff to go operate some equipment, saws, and so on and so forth, and it becomes a hazard.

But the process that you're talking about has been -- I won't say just recently, but it's become -- it's become more of a problem now than it was before because they didn't hire them that much because of the fact that they could hire them somewhere else, but now in the downturn, they -- they hire anybody. I -- I really understand what you're talking about because even when I was working within the shop, we had classifications within the union --

GLENN MARSHALL: Uh-huh.

SENATOR GOMES: -- we told people, you stay on your job. You work your job because that's what you're getting paid for, because once you even start messing with the classifications in the shop within the union, the employer starts getting -- we were murdered then too. You'll have the sweeper operating some machine or something. So I understand what you're talking about. I'm fully cognizant, and hopefully that we can do something about this.

GLENN MARSHALL: Well, I appreciate it.

REP. RYAN: Thank you. Thank you, Mr. Marshall. We appreciate your testimony.

GLENN MARSHALL: Thank you all.

REP. RYAN: Next is Patrice Peterson. And she'll be followed by Brian Anderson.

PATRICE PETERSON: Good afternoon, Senator Prague, Representative Ryan and members of the Labor Committee. My name is Patrice Peterson. And I'm the secretary/treasurer of SEA -- CSEA/SCIEU Local 2001. I'm here today to speak on behalf of Raised Bill 300, AN ACT CONCERNING FAMILY AND MEDICAL LEAVE BENEFITS FOR CERTAIN MUNICIPAL EMPLOYEES.

Our union CSEA/SCIEU Local 2001, represents 2600 paraprofessionals in 35 locations in regional school districts as well as the (inaudible) across Connecticut. I'm also a special education teacher with the Connecticut Department of Developmental Services.

I'd like to speak about our members who work as paraeducators. This is a term that is now used for instructional aids, tutors, in a wide variety of other noncertified technicians and educational personnel in public schools. Their responsibilities cover a wide range of job duties including one-on-one support for special needs children and support for teachers in the classroom. They work in areas that are

Any other questions?

Thank you, Mr. Lawler. I appreciate you coming in again today.

WILLIAM LAWLER: Thank you.

REP. RYAN: Again, Patrice -- no, we did Patrice.

Susan Nelson.

Jeanette Smith. Okay.

Okay. Well, we are at the end.

I've -- I understand that someone else would like to speak. So, Mr. Champlin.

CAMERON CHAMPLIN: Chairman Ryan, Chairman Prague, members of the Committee, my name is Cameron Champlin. I represent Plumber's and Steamfitters Local 777.

Thank you for the opportunity to testify before you today. I want to testify in favor of S.B. 52 -- I mean, House Bill 5204. And I just want to concur with the previous speaker, Glenn Marshall, with all the points he made. There was a -- a few things that people were asking on what we could do to help rectify this situation. And one of the things is to definitely up the fines, because $300 is not a lot of money for a general contractor to say, I'm going take a chance, and if I don't get caught great. If I do get caught, it's not a big deal.

The other thing is, these contractors have to be licensed. They have to pay a fee, which isn't much. They don't have to fill out -- I think they have to fill out a form, but they're not tested. But they have to hold that license in order to do business in the state of Connecticut. I think one of the things you could look at was, if they get caught doing

something like this, once, twice, three times, whatever, take their license away. That puts them out of business.

The only way this is going to stop is when it hits their pocketbook. They don't understand anything else. And I know, some people are going to say, well, you're going to put them out of business. What they do to these workers, the way they treat them, is unconscionable. I just thought that might be something you might want to think about.

Thank you very much.

REP. RYAN: Thank you.

Representative Lambert.

REP. LAMBERT: Thank you, Mr. Chairman.

Thank you for coming.

The other day when we were talking about the three out of four days, and of course that was over $500,000, but your -- your suggestion is -- is -- would be that they would lose their license to operate after so many violations? Not a fine but lose their license?

CAMERON CHAMPLIN: Right. They're going to be fined anytime they do it.

REP. LAMBERT: From the -- from the law.

CAMERON CHAMPLIN: If they're perpetual, like I think it was 29 times Glenn testified to that one of the contractors, that's ridiculous. I mean, if I've done something over and over again 29 times, there should be some -- something that we do besides just say keep paying money.

REP. LAMBERT: I agree with you, and I thank you for that testimony.

CAMERON CHAMPLIN: Thank you.

REP. RYAN: Okay. Thank you, Mr. Champlin.

Okay. I think -- I'm just going to ignore it. Ms. Nelson if you'd like to testify.

SUSAN NELSON: Good afternoon. My name is Susan Nelson, and I am counsel with CSEA/SEIU Local 2001 which is a union that represents 2600 paraeducators in 35 local and regional public districts -- excuse me -- as well as Regional Education Service Centers across Connecticut. I am here today to speak in support of Raised Bill Senate -- Senate Bill 300, AN ACT CONCERNING FAMILY AND MEDICAL LEAVE BENEFITS FOR CERTAIN MUNICIPAL EMPLOYEES.

I have worked closely with paraprofessionals, negotiated multiple collective bargaining agreements on their behalf with boards of ed for the last year and a half. Paras, as they are known, have been profoundly impacted by the recession because of historically low hourly wages, in what was once considered a mom job, and the limited opportunities presented by the 180-day calendar. The cost of medical insurance is going up. Paras have been forced to pay a higher and higher percentages of their income for health care. Some are paying as much as 25 to 30 percent.

During negotiations for paras in Enfield Public Schools last year, I learned that one of our members had been denied family leave to care for her elderly mother because she is not covered by the law.

It turns out that most school paras are excluded from FMLA because they work just a few hours shy of the minimum hours necessary to qualify for coverage. This means that full-time school employees can be denied the right to return to their jobs after taking leave to care for family or to undergo medical treatment.

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TESTIMONY OF GLENN MARSHALL
PRESIDENT
CARPENTERS LOCAL 210
BEFORE THE LABOR COMMITTEE
March 4, 2010

Cochairs Ryan and Prague. My name is Glenn Marshall, and I am here today to testify in favor of the proposed amendment to **House Bill 5204, An Act Implementing the Recommendations of the Joint Enforcement Commission on Employee Misclassification.**

What a difference a year makes.

Last year, at this time, the Governor proposed abolishing the Joint Enforcement Commission on Employee Misclassification—along with many other task forces and commissions—as a cost cutting measure.

Attached to my testimony is the first **annual report of the Joint Enforcement Commission on Worker Misclassification** which you received last month. I want to highlight a few of the accomplishments on pages 12-13 of the report. Specifically:

- **The Stop-Work Unit at the Department of Labor** has issued more than 300 stop-work orders for the misclassification of workers... The unit has collected approximately $90,000 in civil penalties and issued two arrest warrants. More than 1,200 workers are now properly classified.
- **The Labor Department's Unemployment Field Audit Unit** completed 2,020 compliance audits of employers and reclassified 6,700 workers from independent contractor to employee between Oct. 1, 2008 and Sept. 30, 2009. This effort recovered more than $53 million in wages and additional unemployment tax of $750,000. These wages would also have to be reported for state income tax purposes.
- From July 1, 2008 to June 30, 2009 **the Department of Revenue Services** BETA unit conducted 61 audits related to worker misclassification and assessed $1,222,869.02 in additional tax. For the current fiscal year to date there have been 39 worker misclassification audits completed, resulting in additional tax of $780,219.96.

Thanks to the Joint Enforcement Commission, state agencies are working together on this issue like never before. For the first time ever, state agencies conducted joint sweeps on Connecticut construction jobsites. In addition, their coordinated efforts have resulted in the proposed amendment before you today.

One report alone won't solve the problem, but it's a great start.

Unfortunately, as the construction economy continues to suffer from unemployment over twenty percent, the incentive to cheat is tremendous.

Connecticut is not alone in its effort to address this problem. More than 25 states are strengthening their enforcement efforts thanks to recommendations from the National Council of Insurance Legislators.

The federal government is also cracking down on the problem. President Obama's 2010 budget assumes that the federal crackdown will yield at least $7 billion over 10 years, according to a recent story in The New York Times.

Again, I want to thank the cochairs of the Labor Committee, the members of this committee and the legislature who fought to make sure that the Joint Enforcement Commission on Worker Misclassification survived. This commission proved to be a good return on investment.

As a member of the Advisory Board of the Joint Enforcment Commission, I also want to thank the representatives of the various state agencies who have worked so diligently to address this chronic problem that plagues the construction industry.

With stepped-up enforcement and compliance, this Commission will prove to be an even better return on investment in the future.

Thank you.

2010 GENERAL ASSEMBLY SESSION
JOINT ENFORCEMENT COMMISSION ON WORKER MISCLASSIFICATION
(proposed legislation March 3, 2010)

SUMMARY: Proposed amendment to House Bill 5204, An Act Implementing the Recommendations of the Joint Enforcement Commission on Employee Misclassification. This amendment assesses the current civil penalty of $300 for each day that an employer fails to obtain worker's compensation insurance or knowingly misrepresents one or more employees as independent contractors. Under current law, the funds are credited to the Labor Department for use in the enforcement of employment regulation, wages, and the workers compensation statute.

The amendment also expands the workers compensation criminal penalty to include intent to defraud the state of Connecticut when knowingly misclassifying workers and adds a violation of a subsection that contains an alternative approach for paying workers compensation assessments.

TEXT:

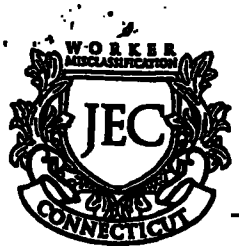
Sec. 1. Section 31-69a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*): (a) In addition to the penalties provided in this chapter and chapter 568, any employer, officer, agent or other person who violates any provision of this chapter, or chapter 557 or subsection (g) of section 31-288, shall be liable to the Labor Department for a civil penalty of three hundred dollars for each violation of said chapters and for each violation of subsection (g) of section 31-288 and each day of such violation of section 31-288g shall constitute a separate offense, except that any person who violates (1) a stop work order issued pursuant to subsection (c) of section 31-76a, shall be liable to the Labor Department for a civil penalty of one thousand dollars and each day of such violation shall constitute a separate offense, and (2) any provision of section 31-12, 31-13 or 31-14, subsection (a) of section 31-15 or section 31-18, 31-23 or 31-24 shall be liable to the Labor Department for a civil penalty of six hundred dollars for each violation of said sections.

(b) The Attorney General, upon complaint of the Labor Commissioner, shall institute civil actions to recover the penalties provided for under subsection (a) of this section. Any amount recovered shall be deposited in the General Fund and credited to a separate nonlapsing appropriation to the Labor Department, for

other current expenses, and may be used by the Labor Department to enforce the provisions of chapter 557, this chapter and subsection (g) of section 31-288 and to implement the provisions of section 31-4.

Sec. 2. Subsection (g) of section 31-288 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

(g) Any employer who (1) has failed to meet the requirements of subsection (b) or subsection (c) of section 31-284, [or] (2) with the intent to injure, defraud or deceive any insurance company insuring the liability of such employer under this chapter (A) knowingly misrepresents one or more employees as independent contractors, or (B) knowingly provides false, incomplete or misleading information to such company concerning the number of employees, for the purpose of paying a lower premium on a policy obtained from such company, or (3) with the intent to injure, defraud or deceive the Workers' Compensation Commission or the State Treasurer, (A) knowingly misrepresents one or more employees as independent contractors, or (B) knowingly provides false, incomplete or misleading information to the Workers' Compensation Commission or the State Treasurer concerning the number of employees, shall be guilty of a class D felony and shall be subject to a stop work order issued by the Labor Commissioner in accordance with section 31-76a.



Joint Enforcement Commission on Worker Misclassification

February 1, 2010

Commission Members

Department of Labor
Department of Revenue Services
Workers' Compensation Commission
Office of the Attorney General
Office of the Chief State's Attorney

Advisory Board Members

Benedict Cozzi
David DiScala
Charles LeConche
Glenn Marshall
Michael Riley
Donald Shubert

The Honorable M. Jodi Rell, Governor
The Honorable Edith Prague, Co-Chair
The Honorable Kevin Ryan, Co-Chair
Legislative Labor and Public Employees Committee
State Capitol
Hartford, CT 06106

Dear Governor Rell, Senator Prague and Representative Ryan:

Pursuant to Conn. Gen. Stat. section 31-57h and on behalf of the Joint Enforcement Commission on Employee Misclassification and the Employee Misclassification Advisory Board, we are submitting the attached first annual report of the Commission.

As the report indicates, employee misclassification is a serious, statewide problem. The Joint Commission, a cooperative effort among state agencies, labor and management, is developing methods and strategies to effectively and efficiently combat employee misclassification. We look forward to working with you in this effort.

If you have any questions, please contact us.

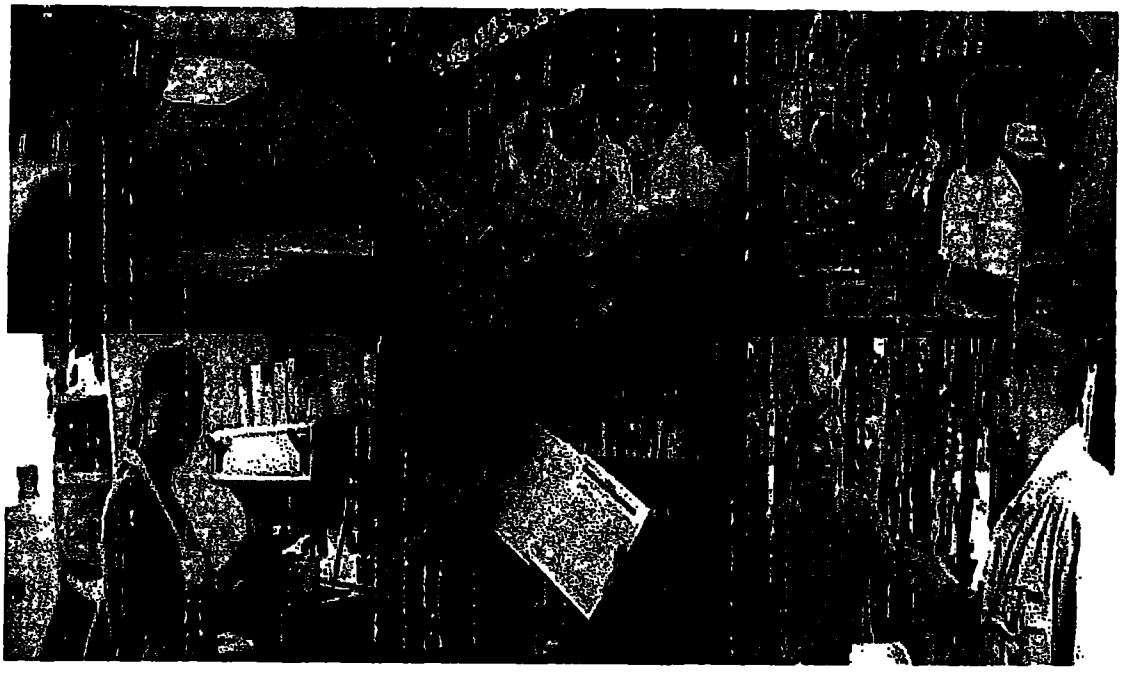
Very truly yours,

Richard Blumenthal
Attorney General
Co-Chair, Joint Enforcement Commission

Linda L. Agnew
Acting Commissioner
Co-Chair, Joint Enforcement Commission

State of Connecticut

Joint Enforcement Commission on Employee Misclassification



Annual Report February 2010

Prepared for the Honorable M. Jodi Rell, Governor and the Labor and Public Employees Committee of the General Assembly

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Overview of Issue

What is Employee/Worker Misclassification?

Employee/worker misclassification occurs when an employer classifies a worker as an independent contractor rather than an employee.

Why Does this Matter?

While employee/worker misclassification may sound like a mere paperwork issue, the act of misclassifying an employee is a serious and significant problem, affecting workers, businesses, and taxpayers.

Employee/worker misclassification affects:

- **Workers:** because often they do not receive minimum wages, are not covered under any company health insurance program, and will not receive workers' compensation coverage if injured on the job or unemployment benefits when laid off.

- **Other businesses:** because companies that misclassify their employees have lower costs and compete unfairly with other companies that are complying with the law. Companies that misclassify their employees pay lower wages, do not have to pay for workers compensation insurance, do not pay employment taxes such as social security taxes, and do not withhold state and federal income taxes. As a result, misclassifying workers creates an unfair, uneven playing field, taking business away from companies that abide by the law.

- **Taxpayers:** because companies that misclassify their employees do not pay their fair share of income taxes, unemployment compensation taxes, and other fees associated with such employees. Misclassifying workers means that our law-abiding taxpayers bear more of the tax burden.

The Current Situation

Employee misclassification is a national problem that can be most effectively and efficiently attacked through a coordinated effort of state agencies. Data reported by the Government Accountability Office in 2006 shows that nationally, the underpayment of social security taxes, unemployment taxes and income taxes totaled an estimated $2.72 billion. In its August 2009 report on employee misclassification, the federal GAO recommended coordinated action among federal agencies including the United States Department of Labor, the Occupational Safety and Health Administration and the Internal Revenue Service. The report also urged the development of a joint interagency effort with other federal and state agencies.

Various states, including Illinois, Iowa, Minnesota, New York, Washington and all of New England, have established joint task forces of state agencies to target and rectify the misclassification of employees.

The Connecticut General Assembly passed and the Governor signed on June 12, 2008 Public Act 08-156 that established the Joint Enforcement Commission on Employee Misclassification. The Commission, or JEC, consists of representatives from the Connecticut Department of Labor, the Department of Revenue Services, the Workers' Compensation Commission, the Office of the Attorney General and the Office of the Chief State's Attorney.

The JEC's charge is to "review the problem of employee misclassification by employers for the purposes of avoiding their obligations under state and federal labor, employment and tax laws. The Commission shall coordinate the civil prosecution of violations of state and federal laws as a result of employee misclassification and shall report any suspected violation of state criminal statutes to the Chief State's Attorney or the State's Attorney serving the district in which the violation is alleged to have occurred."

The members of the Commission are: co-chairs, Attorney General Richard Blumenthal and Acting Labor Commissioner Linda Agnew[1]; Revenue Services Commissioner Richard Nicholson; Workers' Compensation Commission Chair John Mastropietro; and Chief State's Attorney Kevin Kane.

In addition, Public Act 08-156 created an Employee Misclassification Advisory Board consisting of six members appointed by the Governor and legislative leaders. The members represent management and labor interests. The advisory board is charged with providing advice to the Commission on the matter of employee misclassification. The members of the Advisory Board are: Michael Riley, Motor Transport Association of Connecticut; Benedict Cozzi, International Union of Operating Engineers; Donald Shubert, Connecticut Construction Industry Association; Charles LeConche, Connecticut Laborers' District Council; Glenn Marshall, Carpenters Union Local 210; and David DiScala, A.V. Tuchy Builders.

Activities of the Joint Enforcement Commission

Meeting Overview; Subgroup Development

The first meeting of the Joint Enforcement Commission was held January 16, 2009 in which members of the Commission and the Advisory Board discussed respective viewpoints on the problem of worker misclassification. The group decided to form subgroups, as necessary, to address the issue of cooperation and collaboration among agencies and to determine best ways to educate the public about the pervasiveness of worker misclassification.

The second meeting of the Joint Enforcement Commission was held November 13, 2009 at the Labor Department. A presentation was made as to activities of various agencies since January and the group decided to focus intensively on increasing enforcement efforts.

[1] *Member as of February 1, 2010 due to the passing of Commissioner Patricia Mayfield*

A third meeting of the Joint Enforcement Commission was held January 21, 2010 at the Department of Revenue Services. The recommendations of the subgroup were presented, approved by the entire group, and next steps were discussed. This subgroup, which met three times following the second full meeting of the Joint Enforcement Commission, explored data sharing, enforcement strategies, developing standardized complaint forms and creating a general website. These issues are discussed in greater detail later in this report.

Review of State Studies, Successful Practices

To best gauge the activity and pervasiveness of the problem, the JEC examined reports commissioned by various states that provide data and information on the problem in their respective jurisdictions. The studies identified the negative impact of workers not getting the benefits and protections they are legally entitled to, the cost to businesses when they must compete against unscrupulous companies, and the issue of governmental entities losing legitimate revenue.

In addition to the federal Government Accountability Office report discussed earlier in this report, the states of New York and Massachusetts have extensive experience in addressing the issue of worker misclassification and have issued annual reports regarding their activity.

The common theme of these reports is the emphasis on collaboration and cooperation of agencies, the public and interest groups and the JEC in Connecticut has modeled its activities around these reports.

The issue of worker misclassification was the focus of an October 2, 2009 summit hosted by the Massachusetts Department of Labor and the New York Department of Labor on in Holyoke, MA. Officials from state agencies and the federal government met to discuss strategies to deal with the problem on a regional basis. The Connecticut JEC will continue to monitor strategies other states are using and will join in any efforts to respond to the misclassification crisis in the country.

Overview of Current Legislation and Enforcement Authority of JEC Members

CT Department of Labor, Wage and Workplace Standards Division

The Department of Labor's Wage and Workplace Standards Division enforces all wage and hour laws under Title 31, Chapter 558 of the State Statutes. One of the ways it enforces proper worker classification is under 31-76a as amended by P.A. 07-89. This authorizes the Labor Department to stop the work of any company that misclassifies workers as independent contractors or under reports payroll as fraud to avoid workers' compensation coverage and/or premium. The Division has created a Stop Work Unit from current resources to enforce this new law. The Stop Work Unit receives leads from various sources and conducts site inspections. Using laptops, the unit can check on workers' compensation coverage and payroll information from a specific worksite, and immediately shut down the company if it is not in compliance. Unemployment records to

show payroll, as well as whether a company is properly registered, can also be verified. Business records can be requested to be sent to the Labor Department.

Sec. 31-76a. Investigations on complaint of nonpayment of wages and certain misrepresentations re employees. Issuance of stop work order.

(a) On receipt of a complaint for nonpayment of wages or a violation of the provisions of subsection (g) of section 31-288, the Labor Commissioner, the director of minimum wage and wage enforcement agents of the Labor Department shall have power to enter, during usual business hours, the place of business or employment of any employer to determine compliance with the wage payment laws or subsection (g) of section 31-288, and for such purpose may examine payroll and other records and interview employees, call hearings, administer oaths, take testimony under oath and take depositions in the manner provided by sections 52-148a to 52-148e, inclusive.

(b) The commissioner or the director, for such purpose, may issue subpoenas for the attendance of witnesses and the production of books and records. Any employer or any officer or agent of any employer, corporation, firm or partnership who wilfully fails to furnish time and wage records as required by law to the commissioner, the director of minimum wage or any wage enforcement agent upon request, or who refuses to admit the commissioner, the director or such agent to the place of employment of such employer, corporation, firm or partnership, or who hinders or delays the commissioner, the director or such agent in the performance of the commissioner's, the director's or such agent's duties in the enforcement of this section shall be fined not less than $100 nor more than $250. Each day of such failure to furnish the time and wage records to the commissioner, the director or such agent shall constitute a separate offense, and each day of refusal to admit, of hindering or of delaying the commissioner, the director or such agent shall constitute a separate offense.

(c) (1) If the commissioner determines, after an investigation pursuant to subsection (a) of this section, that an employer is in violation of subsection (g) of section 31-288, the commissioner shall issue, not later than 72 hours after making such determination, a stop work order against the employer requiring the cessation of all business operations of such employer. Such stop work order shall be issued only against the employer found to be in violation of subsection (g) of section 31-288 and only as to the specific place of business or employment for which the violation exists. Such order shall be effective when served upon the employer or at the place of business or employment. A stop work order may be served at a place of business or employment by posting a copy of the stop work order in a conspicuous location at the place of business or employment. Such order shall remain in effect until the commissioner issues an order releasing the stop work order upon a finding by the commissioner that the employer has come into compliance with the requirements of subsection (b) of section 31-284, or after a hearing held pursuant to subdivision (2) of this subsection.

(2) Any employer against which a stop work order is issued pursuant to subdivision (1) of this subsection may request a hearing before the commissioner. Such request shall be made in writing to the commissioner not more than ten days after the issuance of such order. Such hearing shall be conducted in accordance with the provisions of chapter 54.

(3) Stop work orders and any penalties imposed under section 31-288 or 31-69a against a corporation, partnership or sole proprietorship for a violation of subsection (g) of section 31-288 shall be effective against any successor entity that has one or more of the same principals or officers as the corporation, partnership or sole proprietorship against which the stop work order was issued and are engaged in the same or equivalent trade or activity.

(4) The commissioner shall adopt regulations, in accordance with the provisions of chapter 54, necessary to carry out this subsection.

Additional penalties are outlined in accordance with statute 31-69a .

Sec. 31-69a. Additional penalty.

(a) In addition to the penalties provided in this chapter and chapter 568, any employer, officer, agent or other person who violates any provision of this chapter, or chapter 557 or subsection (g) of section 31-288, shall be liable to the Labor Department for a civil penalty of $300 for each violation of said chapters and for each violation of subsection (g) of section 31-288, except that any person who violates (1) a stop work order issued pursuant to subsection (c) of section 31-76a, shall be liable to the Labor Department for a civil penalty of $1,000 and each day of such violation shall constitute a separate offense, and (2) any provision of section 31-12, 31-13 or 31-14, subsection (a) of section 31-15 or section 31-18, 31-23 or 31-24 shall be liable to the Labor Department for a civil penalty of $600 for each violation of said sections.

(b) The Attorney General, upon complaint of the Labor Commissioner, shall institute civil actions to recover the penalties provided for under subsection (a) of this section. Any amount recovered shall be deposited in the General Fund and credited to a separate non-lapsing appropriation to the Labor Department, for other current expenses, and may be used by the Labor Department to enforce the provisions of chapter 557, this chapter and subsection (g) of section 31-288 and to implement the provisions of section 31-4.

CT Department of Labor, Unemployment Insurance Tax Division

The Department of Labor's Unemployment Insurance Tax Division enforces Connecticut's unemployment compensation laws under Title 31, Chapter 567 of the Connecticut General Statutes. It has approximately 100 staff in 13 locations throughout the state. The Division's primary mission is to provide the funding needed to pay benefits to those individuals who

become unemployed through no fault of their own and to ensure that all workers who should be covered under the unemployment compensation program are in fact properly classified as employees. This mission is aided by the enforcement efforts of Labor Department Field Audit staff that conduct investigations based on individual unemployment claims and audits to ensure compliance, including proper worker classification.

The Division makes determinations regarding a worker's employment status in accordance with Connecticut General Statutes Section 31-222(a)(1)(B)(ii), commonly referred to as the "ABC Test." The test states in pertinent part that an individual shall be deemed an employee... "unless and until it is shown to the satisfaction of the administrator that (I) such individual has been and will continue to be free from control and direction in connection with the performance of such service, both under his contract for the performance of service and in fact; and (II) such service is performed either outside the usual course of the business for which the service is performed or is performed outside of all the places of business of the enterprise for which the service is performed; and (III) such individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed."

The Division has the right to inspect the records of any employer. Connecticut General Statutes Section 31-254 provides, in pertinent part... *"records shall be open to, and available for, inspection and copying by the administrator or his authorized representatives at any reasonable time and as often as may be necessary. The administrator may require from any employer, whether or not otherwise subject to this chapter, any sworn or unsworn reports with respect to persons employed by him which are necessary for the effective administration of this chapter. In addition, Connecticut General Statutes Section 31-271 provides subpoena authority in the event records are not made available upon request...For the purpose of determining whether an employer is subject to this chapter or whether the reports filed by him are correct or sufficient or for the purpose of determining the amount of contributions due as provided in section 31-270 or for the purpose of determining whether the employer is able to pay outstanding contributions, interest or penalties due under this chapter, the administrator or the executive director may subpoena any person to appear before him or his agent at such place as may be designated in such subpoena to examine such person under oath and he may compel the attendance before him or his agent of any such person and the production of books and papers by subpoena."*

The Tax Division conducts investigations based on a variety of audit sources. This includes a random compliance audit program, whereby a certain percentage of the state's registered employers are selected for audit each year. In addition, investigations are conducted when individuals file claims for unemployment compensation benefits and discrepancies are noted in their reported earnings amounts, or their earnings are not reported at all. Audits also are conducted based on referrals from other divisions within the Labor Department, other state and/or federal agencies, and complaints received from a variety of sources. Additionally, per a requirement of the United States Department of Labor, the Division also has a team that audits large employers conducting business in Connecticut.

CT Department of Revenue Services

The Department of Revenue Services enforces Connecticut's income tax withholding laws under Title 12, Chapter 229 of the Connecticut General Statutes. Specifically Sections 12-705 through 12-707 and the regulations adopted there under.

In August of 2005 the Audit Division launched a strategic plan to implement a withholding tax audit program as a means to address the tax gap with respect to employment taxes. The tax gap is defined as the difference between the tax that taxpayers owe and what is actually paid in a timely manner.

The Business and Employment Tax Audit unit (BETA) was created to implement this program. Currently, the BETA unit is staffed with 16 Revenue Examiners to address Connecticut income tax withholding issues such as worker misclassification, underreporting or failure to report tax withheld, nonresident employers who fail to withhold Connecticut income tax from workers who perform services within Connecticut, and payments for services that are made in cash.

Worker misclassification has been an issue of great concern for the Department of Revenue Services. Significant underreporting of Connecticut income tax results when workers are not properly classified. The Department of Revenue Services determines a workers status by the application of the common law standard.

This standard, which utilizes a series of factors, essentially asks whether the employer has the right to direct and control the worker. It is imperative that the status of a worker be determined properly to ensure that workers as well as businesses can meet all of their tax responsibilities timely and accurately.

Workers' Compensation Commission & Second Injury

The Workers' Compensation Commission's involvement in matters pertaining to the misclassification of employees is more limited than that of the other members of the JEC. Most often the Workers' Compensation Commission's awareness of the misclassification of an employee occurs late in the work relationship, and unfortunately after there is a claim that a worker has sustained an injury arising out of and in the course of employment. Further, even when an instance of misclassification is alleged the Commissioner does not have the authority to determine if other workers at a work site must be covered by a Workers' Compensation insurance policy. The Commission's role is more in the nature of providing referrals for investigations as described below, and serving as the arbiter for an employer's failure to carry Workers' Compensation insurance.

While the resulting harm from the misclassification of employees resounds at a number of economic levels, the Workers' Compensation Commission primary concern is the injured worker. Fortunately, for the misclassified worker who is otherwise entitled to Workers' Compensation benefits, Connecticut's legislature long ago provided a mechanism for assuring that such individuals would receive the remedy to which they are entitled. The Second Injury

Fund, created by the legislature, is used when an employer cannot or will not pay benefits, and provides injured workers with medical care and other benefits to which they may be entitled.

The Workers' Compensation Act provides that each employer must comply with the insurance and self insurance requirements of the Act. Pursuant to Section 31-288(c) any employer that fails to comply with the compulsory insurance requirements of the Act is subject to a civil fine of "not less than $500 per employee or $5,000, whichever is less and not more than $50,000 against the employer." Arguably, an entity that does not properly classify its workers as employees is not in compliance.

Sec. 31-288 provides in pertinent part:

> *(c) Whenever an investigator in the investigations unit of the office of the State Treasurer, whether initiating an investigation at the request of the custodian of the Second Injury Fund, the Workers' Compensation Commission, or a commissioner, finds that an employer is not in compliance with the insurance and self-insurance requirements of subsection (b) of section 31-284, such investigator shall issue a citation to such employer requiring him to obtain insurance and fulfill the requirements of said section and notifying him of the requirement of a hearing before the commissioner and the penalties required under this subsection. The investigator shall also file an affidavit advising the commissioner of the citation and requesting a hearing on such violation. The commissioner shall conduct a hearing, after sufficient notice to the employer and within thirty days of the citation, wherein the employer shall be required to present sufficient evidence of his compliance with said requirements. Whenever the commissioner finds that the employer is not in compliance with said requirements he shall assess a civil penalty of not less than $500 per employee or $5,000, whichever is less and not more than $50,000 against the employer.*

The process for levying a fine for non-compliance is accomplished through a series of steps outlined in Section 31-288(c). Whenever the Workers' Compensation Commission receives a complaint, it is forwarded to the Assistant Deputy Treasurer. The Assistant Deputy Treasurer forwards the complaint to the Second Injury Fund Investigative Unit. A Second Injury Fund Special Investigator then inquires as to whether an employer has an active Workers' Compensation insurance policy or is self insured. If the Second Injury Fund Special Investigator determines that there is probable cause to believe that an employer has not complied with the Act's requirements, a citation is issued and a hearing requested before a Workers' Compensation Commissioner.

A hearing is then held before a Workers' Compensation Commissioner and the Commissioner determines the amount of the fine to be levied against the non-compliant employer if the employer has been unable to demonstrate that he in fact was in compliance. As noted in Section 31-288(c), a commissioner may assess a civil penalty *of "not less than $500 per employee or $5,000, whichever is less and not more than $50,000 against the employer."*

The amount of the penalty assessed against a non-compliant employer is dependent upon a number of factors. In determining the amount of such a fine, a commissioner will consider the following:

- Number of employees.
- What is the present premium rate?
- What is the nature of the employer's business?
- Are employees exposed to hazardous materials, unsafe conditions or at some greater risk for a workplace injury?
- How long has the employer been in business?
- What would the premium rate have been in the past or for the period in which the employer was without insurance?
- How long was the employer without insurance coverage?
- What were the circumstances surrounding the employer's failure to carry insurance?
- Was this a failure to renew and if so what were the circumstances surrounding the failure to renew?
- Has there been a change in ownership or the business enterprise which may have affected the need to carry insurance?

Assuming that a commissioner concludes that the employer has not complied with the Act's insurance/self insurance requirements, the commissioner will then assess an appropriate civil penalty in accordance with the amounts permitted by statute.

Additionally, Section 31-288(d) provides that in the event the employer fails to comply with the Act's insurance/self-insurance requirements following a commissioner's determination of non-compliance the commissioner may assess an additional penalty of $100 per day not to exceed $50,000.

Section 31-288(f) and 31-288(g) also provide for employers who misclassify employees as independent contractors to be subject to criminal prosecution and guilty of a Class D felony.

Sec. 31-288(d):

In addition to the penalties assessed pursuant to subsection (c) of this section, the commissioner shall assess an additional penalty of $100 for each day after the finding of noncompliance that the employer fails to comply with the insurance and self-insurance requirements of subsection (b) of section 31-284. Any penalties assessed under the provisions of this subsection shall not exceed $50,000 in the aggregate.

Office of the Attorney General

Connecticut General Statutes Section 3-125 provides in relevant part that the "Attorney General shall have general supervision over all legal matters in which the state is an interested party, except those legal matters over which prosecuting officers have direction." In addition, Section

3-125 provides that the Attorney General "shall appear for... all heads of departments and... Commissioners... in all suits and other civil proceedings... in which the state is a party or is interested..." Therefore, the Attorney General represents the Commissioner of Labor in all civil legal matters involving the Department of Labor.

Chapter 558 of Title 31 of the Connecticut General Statutes provides the Commissioner of Labor with the authority to bring a civil action to collect wages. Specifically, Connecticut General Statutes Section 31-68(a) provides in relevant part that:

The commissioner may collect the full amount of unpaid minimum fair wages or unpaid overtime wages to which an employee is entitled under said sections or order, as well as interest calculated in accordance with the provisions of section 31-265 from the date the wages should have been received, had they been paid in a timely manner. In addition, the commissioner may bring any legal action necessary to recover twice the full amount of the unpaid minimum fair wages or unpaid overtime wages to which the employee is entitled under said sections or under an order, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court.

Furthermore, Connecticut General Statutes Section 31-72 provides that:

When any employer fails to pay an employee wages in accordance with the provisions of sections 31-71a to 31-71i, inclusive, or fails to compensate an employee in accordance with section 31-76k or where an employee or a labor organization representing an employee institutes an action to enforce an arbitration award which requires an employer to make an employee whole or to make payments to an employee welfare fund... The Labor Commissioner may collect the full amount of any such unpaid wages... as well as interest calculated in accordance with the provisions of section 31-265 from the date the wages or payment should have been received, had payment been made in a timely manner. In addition, the Labor Commissioner may bring any legal action necessary to recover twice the full amount of unpaid wages...

Based on the foregoing, the Attorney General's Workers' Compensation and Labor Relations Department represents the Department of Labor in civil judicial enforcement actions concerning a variety of wage and hour violations. Such violations include, but are not limited to, an employer's failure to pay wages, failure to pay overtime, failure to pay the minimum wage, failure to pay the prevailing wage, failure to maintain payroll/employment records, or failure to correctly classify employees. In addition to the aforementioned wage and hour claims, the Attorney General also brings suit on behalf of the Department with respect to the Department's assessment of civil penalties for violations of the wage statutes.

In addition, the Attorney General is authorized to bring a civil action on behalf of the Second Injury Fund of the Treasurer's office for payments made out of the fund in accordance with Connecticut General Statutes Section 31-355. Such actions may involve an employer who is unable to pay any type of workers' compensation benefit because it failed to correctly classify employees in an effort to avoid paying the proper premium for workers' compensation insurance.

Since the Joint Enforcement Commission on Employee Misclassification became effective on July 1, 2008, the Office of the Attorney General has received 44 claim referrals from the Department of Labor concerning a variety of violations. Of these referrals, five were resolved, and 39 are in various stages of litigation.

Office of the Chief State's Attorney

The Workers' Compensation Fraud Unit of the Chief State's Attorney's Office was established pursuant to Connecticut General Statute Section 31-290d. The current unit is staffed by three Police Inspectors, one Supervisory Inspector, a Secretary, and a Supervisory Assistant State's Attorney.

The cases that are routinely investigated by this unit involve violations of Connecticut General Statute Section 53a-290c, Fraudulent Claim or Receipt of Benefits. These cases generally involve claimants who have intentionally misrepresented material facts, in respect to their claims, in an attempt to defraud the insurance company.

The other type of case investigated, although less frequently, is for noncompliance with insurance requirements or for defrauding the workers' compensation insurance carrier. These violations are covered under Connecticut General Statute Section 31-88, subsections (f) and (g). These cases often are investigated in conjunction with members of the Second Injury Fund.

(f) When any employer knowingly and willfully fails to comply with the insurance and self insurance requirements of subsection (b) of section 31-284, such employer, if he is an owner, in the case of a sole proprietorship, a partner, in the case of a partnership, a principal, in the case of a limited liability company or a corporate officer in the case of a corporation, shall be guilty of a class D felony.

(g) Any employer who (1) has failed to meet the requirements of subsection (b) of section 31-284, or (2) with the intent to injure, defraud or deceive any insurance company insuring the liability of such employer under this chapter, (A) knowingly misrepresents one or more employees as independent contractors, or (B) knowingly provides false, incomplete or misleading information to such company concerning the number of employees, for the purpose of paying a lower premium on a policy obtained from such company, shall be guilty of a class D felony and shall be subject to a stop work order issued by the Labor Commissioner in accordance with section 31-76a.

In addition, criminal arrests often are made by this unit in those cases where the actual workers' compensation insurance certificate is forged. In these particular cases the charge is usually Forgery Second Degree in violation of Section 53a-139 of the Connecticut General Statutes. In some cases the unit has individuals who testify falsely under oath, as in a deposition. The charge for that offense is usually Perjury in violation of Section 53a-156.

Opportunities: Improving Capabilities to Respond to Worker Misclassification

Enhanced Information Sharing

A primary key to effectively addressing the problem of worker misclassification is enhanced information sharing. It is imperative that agencies collect data on misclassification and format it in a manner that allows agencies to respond quickly and efficiently.

Coordinated Response

Once information has been collected and shared, the response must be coordinated and well-planned to ensure an effective enforcement action. Agencies must be clear as to what their jurisdiction is concerning worker misclassification. Frequent meetings should be conducted to outline necessary steps to encourage compliance in specific industries such as construction and the health field. Although agencies may have limited resources, a well-planned and coordinated strategy in enforcement activity could alleviate this potential impediment. Agency staff can also be trained to recognize worker misclassification even though they might not deal directly with it. Training must also be conducted in investigative techniques, and how to stay safe on a construction site.

Education and Outreach

One underdeveloped opportunity is to reach out to the public and constituent groups that have a vested interest in compliance with the laws. The public should be educated on the cost of non-compliance, not only to businesses, but also to the quality of work, especially in construction. Many misclassified workers in skilled positions do not maintain the proper licenses. Companies that routinely misclassify workers do not get the proper permits to perform the work. The JEC should coordinate a public service campaign to illustrate the disregard for the laws.

Where We Are Now: Current Accomplishments of the JEC

- A subgroup of the JEC has developed a database to capture all referrals and complaints, and to show results of all enforcement activity.

- A complaint/referral form has been created so specific information and leads can be collected and put into a database. This form will help to track complaints in a more consistent and methodical manner and identify trends that are developing.
- The Department of Labor and Revenue Services have established a formal referral system to act quickly on joint enforcement cases and referrals.

- A website is being developed and will be updated as necessary, to publicize the problem of worker misclassification and serve as a gateway to educate workers, business and the public. This website will have links to the various agencies with guidelines covering employee/

independent contractor determination. It will also contain a referral/complaint form and information on the taskforce.

- The Stop Work Unit at the Department of Labor has issued more than 300 stop work orders for the misclassification of workers. It was determined employers wanted to avoid workers' compensation obligations. The unit has collected approximately $90,000 in civil penalties and issued two arrest warrants. More than 1,200 workers are now properly classified as employees.

- The Labor Department's Unemployment Field Audit Unit completed 2,020 compliance audits of employers and reclassified 6,700 workers from independent contractor to employee status between Oct. 1, 2008 and Sept. 30, 2009. This effort uncovered more than $53 million in wages and additional unemployment tax of $750,000. These wages would also have to be reported for state income tax purposes.

- The Labor Department's Stop Work Unit has coordinated with enforcement and regulatory entities not typically associated with worker misclassification, including local building officials and the Liquor Control Commission. The unit has also worked with several law enforcement departments with knowledge of illegal misclassification activities.

- From July 1, 2008 to June 30, 2009 the Department of Revenue Services' BETA unit conducted 61 audits related to worker misclassification and assessed $1,222,869.02 in additional tax. For the current fiscal year to date there have been 39 worker misclassification audits completed, resulting in additional tax of $780,219.96.

- The JEC conducted a sweep of a construction site as a joint effort of the Labor Department, Department of Revenue Services and the Treasurer's Office, Second Injury Fund. Subcontractors were identified and two stop work orders were issued. Leads were developed for unemployment tax and revenue services and these will be followed up for future enforcement action.

Looking Ahead:
Next Steps and Goals for the JEC

The Joint Enforcement Commission recognizes that the strategies and actions initiated to deal with the worker misclassification problem are in the early stages of development. Due to this reality, the JEC has set the following priorities to help develop an effective and efficient strategy and structure to deal with the issue.

- Develop a more defined JEC standard to help monitor and act on the information that is collected.

  Each agency must clearly identify their protocols and procedures in investigating referrals or leads. This can be done through memoranda of understanding, where appropriate, that

addresses such issues as to how data is handled, how anonymous complaints will be investigated, and issues dealing with confidentially of records.

- Establish and conduct inter-agency training in areas such as, but not limited to, investigation safety, legal issues, investigating techniques, field communication procedures and construction practices.

  A recommended training program is the OSHA-10 safety course.

- Expand and enhance the database and reporting system being developed.

  This information will be critical in the formulation and direction of future activities of the JEC.

- Create and promote a public awareness and educational outreach program/campaign about employee/worker misclassification in Connecticut.

  It is recommended that a website be developed that would provide answers to questions about the problem, and lists all agency standards on independent contractors/employees, along with basic guidelines. The website would also contain the newly-created complaint referral form (and appended to this report).

  Focus on business groups that have large incidences of misclassification, and conduct educational meetings to garner support and understanding.

- Conduct a quick analysis of the current penalty structure for non-compliance and recommend any change if there is not a sufficient deterrent to stop the illegal misclassification of employees.

  In some industries companies are able to gain an unfair competitive advantage simply by under-reporting workers/payroll and are able to do business illegally for months. There are minimal penalties that punish companies for intentionally violating the law over an extended period of time.

- Identify additional entities, both governmental and private, that can help to monitor and participate in education and enforcement activities.

  Could involve contacting municipal building officials, local law enforcement agencies and other interested worker and business groups.

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Cheating Lends Urgency To Labor Protections

September 7, 2009

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Labor Day has lost much of its original significance; it's seen more today as a celebration of the end of summer rather than a salute to the advances of working men and women. And that is too bad, because many working people in this country are still being exploited.

A lengthy study of labor law violations, reported last week in the New York Times, found appalling incidents of workers being paid less than minimum wage, forced to work for free before and after their shifts, denied earned overtime or not given enough time to eat, among other violations.

More than two-thirds of the respondents were immigrant workers, many undocumented. Some employers pay these people very low wages and no benefits, assuming they won't complain. This is the result of a seriously flawed immigration policy that works against immigrants who are willing to work, and often against companies who need workers.

A related and growing problem is the misclassification of workers — treating workers as employees but paying them as independent contractors, often in cash under the table. By doing this, employers avoid paying workers' compensation insurance, employee taxes and benefits. It is illegal. A 2-year-old law gives the state Labor Department the authority to shut down work sites where workers are being misclassified.

But a recent investigation by the Hartford Business Journal found that despite 220 stop-work orders issued at construction sites in the past two years, the law is not stopping companies intent on illegally keeping costs down.

Connecticut's enforcement efforts are hindered by a lack of staffing and no provisions in the law for dealing with repeat offenders. Other states, including New York and Massachusetts, have more enforcement options.

Illegal practices are costing the state a fortune in lost wages and payments that have to be made up by the people who aren't cheating.

Clearly, the state still should have the tools it needs to see that workers are treated fairly. That's what the people who started Labor Day in the 19th century wanted, and what workers in the 21st century deserve as well.

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HBJ SPECIAL REPORT

Profiting From Shadow Labor

Others Pay When Subcontractors Avoid Employee Taxes

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The state's two-year crackdown on companies that avoid paying employee taxes and workers' compensation insurance has resulted in 220 stop-work orders at construction sites across Connecticut.

PHOTO/STEVE LASCHEVER

Day laborers, hoping for work, begin lining up as early as 6 a.m. at a pick-up location in Stamford.

But a Hartford Business Journal examination of state records, and interviews with employers and workers, shows that the October 2007 law that gave the state labor department authority to shut down work sites serves as little deterrent to companies intent on illegally keeping costs down.

The Journal's examination found:

• A half-dozen general contractors — whose projects include some of the most luxurious and high-priced construction along the eastern seaboard — have had nearly half of the stop-work orders issued at their sites because subcontractors misclassified workers as independent contractors rather than employees or paid them under-the-table in cash. Those large corporations avoid monetary fines and criminal penalties.

• Connecticut's enforcement efforts are hindered by a lack of staffing and no provisions in the law for barring repeat offenders from getting private work. The state's efforts pale in comparison to efforts in neighboring states such as New York and Massachusetts (see sidebar).

/STEVE LASCHEVER

where many additional
enforcement provisions are in place. Connecticut also lacks a comprehensive, interagency collaboration similar to those in the other states.

• A new economic study has found that the costs of worker misclassification may be enormous. Including the underground economy, where employees are paid under-the-table in cash, and expenses for uncompensated medical care, the total cost to "Connecticut citizens jumps to almost $10.5 billion annually," according to a study by William Alpert, professor of economics at the University of Connecticut. The report was conducted for the New England Regional Carpenter's Union. The exact cost to businesses that play by the rules has not been quantified.

Nationally, the problem is growing significantly, according to a February 2009 report by the U.S. Treasury Inspector General for Tax Administration. "When an employee is misclassified, tax revenues are not reported or paid and the burden of uncollected taxes shifts to other taxpayers," the report said.

The law defines an employee as a worker who is subject to the control and supervision of the employer and renders services that are integral to the employer's business. In that case, the employer must pay workers' compensation insurance and employee taxes.

All 220 stop-work orders have been issued to subcontractors hired to perform smaller jobs on the project, such as installing tiles or sheetrock. Nearly 41 percent were issued at sites of seven large construction companies.

They are: RMS Construction, Thomason-Stevens LLC, Avalon Bay Communities, KBE Building Corp. (formerly Konover Construction), Briad Group, Newfield Construction Inc. and Fairfield Development.

Two companies on the list, RMS Construction and KBE Building Corp., argue that the list is skewed and misleading. They maintain that they are frustrated with subcontractors who violate the law and that they are doing everything they legally can to ensure the subcontractors comply.

KBE has implemented a subcontractor employee badge program that requires its subcontractors to certify all workers are classified as employees and not independent contractors, and have government documents that ensure that they are legally permitted to work in the United States, said Robert Dunn III, vice president and general counsel for KBE Building Corp. Since its badge program was implemented, Dunn said there were just two additional stop-work orders at KBE worksites. "The problem [with the DOL's list of stop-work orders] is that it is painting something that we are not," Dunn said.

Randall Salvatore, president of Stamford-based RMS Construction, whose sites have been the subject of the largest number of stop-work orders in the state with 29, said there is confusion about how workers are classified.

"A lot of [the subcontractors], they are foreign born, and they don't fully understand the process. They are not bad people. It's the way they are going about things."

He said that in all cases, the subcontractors have been cleared by the labor department and are back on the job within days.

A key problem for general contractors is that they do not have a legal right to examine another business' payroll records, he said. If they did, then he would agree that general contractors should be held responsible.

Resa Spaziani, a DOL supervisor who heads the stop-work order effort for the DOL's division of wage and workplace standards, said she doubts the claims of many general contractors and developers who say that they are unaware of a subcontractor's subterfuge.

"So many underbid substantially that there is no way someone could do that job legally," she said.

While the general contractors are not directly involved in hiring day laborers or misclassifying workers, they become acutely aware of their subcontractors' legal problems when the state stops work at their construction site for employee wage violations.

The workers are often exploited, said Gary Pechie, director of DOL's division of wage and workplace standards. "Many of the employers are barely paying their workers. They are building major hotels, malls, $600,000 to $800,000 luxury homes off the backs of workers who are paid minimum wage," Pechie said.

"It's a culture of greed," said Spaziani. "They think they are above the law. They don't pay benefits, taxes, workers' comp insurance. And they pocket all the additional money."

She added, "Violations of undocumented workers are pervasive. It's everywhere. I can't do my job anymore without an interpreter." Spaziani noted that 75 percent of the state's stop-work orders pertain to undocumented workers.

Even documented laborers have been stung by employers. Juan Carlos, a native of Columbia who has worked in the United States for 15 years, was hired as an independent contractor by Cesar Morocho, owner of CGM Construction, a

subcontractor of the North Haven company, Diversified Technologies Consultants, to work on the construction of the U.S. Coast Guard's Command Center last year.

Carlos was paid in cash once every 15 days. But instead of earning $15 per hour as promised, he was paid $9 per hour, and, beat out of two weeks' pay.

"Usually, the workers take what they are paid. People with no paper [working visa or green card], have no choice," Carlos explained through interpreter Ted Duarte, of the New England Regional Carpenter's Union.

But Carlos did something few day laborers do. He complained. As a result, state investigators issued CGM a stop-work order in March 2008 and required restitution of back wages of $57,289 to 10 workers. Diversified Technologies Consultants paid the back taxes and CGM paid a $2,700 fine.

Some subcontractors count on the state being unable to conduct a thorough investigation. Recently, the DOL discovered that an employer provided Social Security numbers for 35 male workers, all natives of Honduras. Although the Social Security numbers were legitimate, they were for 35 women of Vietnamese descent.

"There are contractors who are defrauding the workers, the government, and other businesses that play by the rules," Pechie said.

"There are contractors who are losing their homes. Their kids are on HUSKY because they are outbid by contractors who use undocumented workers or [illegally] classify the workers as subcontractors," Spaziani said. "It's just not right. It's bank robbery with a hammer."

Spaziani recently began identifying the general contractor on the stop-work orders posted at construction sites.

But that isn't helping contractors like Bob Fitch, president of New Haven Partitions. He said he continues to lose out to bids by general contractors whose sites are the subject of numerous stop-work orders.

PHOTO/STEVE LASCHEVER

Fitch says he is frustrated to lose work, especially in this economy. "We find ourselves struggling, while they are thriving," he said.

New Haven Partitions employs an

average of 150 sheetrock specialists and runs a union shop, paying workers about $37 per hour, which includes benefits and workers' compensation insurance.

But Michael Kolakowski, president of KBE Building Corp. in Bloomfield, maintains stop-work orders are issued primarily because of missing paperwork. He said KBE is a target of a local labor union whose members have complained to the DOL. He said the union's motive is to force KBE into using only unionized workers.

"We do everything we can to ensure that people are adhering to the law. The problem is, we can only go for so far. If someone wants to cheat, they'll find a way to cheat," he said.

Subcontractors working for KBE have been shut down 10 times over the past 22 months and its worksites have been the target of protests by the New England Regional Carpenter's Union.

The union tensions are "festering up these kinds of issues," Kolakowski said. "There is a whole other story here, and unionizing would not be in the best interests of our customers."

Kolakowski said that the stop-work orders were lifted, in most cases, within a day. "When the piece of paper is produced, they lift the stop-work order," he said."

Spaziani said the idea that she would close down a site because of missing paperwork is "insulting." She said she checks an online database that provides up-to-do-date information about the status of workers' compensation insurance.

About 70 percent of the complaints come from competitors who are underbid by those who aren't complying with the laws, she said.

Fitch is among the frustrated competitors and considers the government not performing enough due diligence. "[Government officials] see the opportunity to save a few thousand dollars by hiring a company that is border line, at best, with their records," Fitch said.

He's been called in at least twice to correct shoddy workmanship at government-project sites where unclassified workers were found to have been employed, including the Coast Guard project. The University of Connecticut also hired him to replace improper dormitory firewalls.

The state has issued 10 stop-work orders at federal construction sites.

"The government," he said, "is not setting the example."

Hartford Business.com

SHARE EDITORIAL

Enforcing Labor Laws Must Be Priority

08/17/09

State authorities need to direct more resources toward the effort to crack down on subcontractors who fail to pay employee taxes and workers' compensation insurance.

As the Hartford Business Journal's Diane Weaver Dunne reports today, a team of state labor department employees issued 220 stop work orders during the past 22 months, a rate that far exceeds neighboring states such as New York and Massachusetts.

But despite the highly laudable work of those investigators, Connecticut's big-picture efforts lag significantly behind in the collection of back taxes and fines, primarily because the state does not have the kind of comprehensive enforcement program that those other states employ.

The problem of employees being misclassified as independent contractors — and the subsequent failure to pay proper taxes — affects many Connecticut businesses that play by the rules but find themselves losing out on jobs that other companies can do for less money.

A number of general contractors who find themselves high on the state's list of companies with the most stop-work orders also complain that a less-than-comprehensive enforcement program leaves the incorrect impression that they don't make any effort to weed out subcontractors who break the law.

Connecticut seemed to recognize the importance of stepping up its regulatory efforts when the legislature passed a law in 2007 that provided the labor department with power to issue stop work orders.

Subsequently, lawmakers authorized the establishment of a volunteer Workers Misclassification Advisory Board to be comprised of five state agencies and various construction management and labor representatives.

Connecticut's board met first on Jan. 16. It has not met again.

In February, Gov. M. Jodi Rell proposed that the Employee Misclassification Advisory Board — along with 70 state boards and commissions — be eliminated.

Much of the momentum that the state had generated in passing the 2007 law and the subsequent establishment of the committee has been stifled by inactivity and shifting priorities.

For people like Donald Shubert, president of the Connecticut Construction Industries Association, the lack of continued commitment is deeply disappointing.

Shubert noted that the panel included Chief State's Attorney Kevin Kane, Attorney General Richard Blumenthal and labor department Commissioner Patricia Mayfield — powerful figures who represent the kind of interagency collaboration found in New York and Massachusetts.

Consider how those efforts have paid off. In New York, authorities recovered more than $4.8 million in unemployment taxes since September 2007, issued more than $1 million in unemployment insurance fraud penalties, and more than $1.1 million in workers' compensation fines and penalties. In Massachusetts, authorities recovered $1.4 million between fines, unpaid wages and tax assessments.

Economist William Alpert, a University of Connecticut professor, estimates that the state could be losing up to $1.5 billion in state income tax revenue alone from employee misclassification and workers being paid off the books.

In a state with a deep budget deficit and businesses that are struggling to survive, it is hard to fathom why stronger enforcement of employee-classification laws is not a priority. Connecticut's business community should be outraged that the efforts made months ago have dissolved.

The time has come for Connecticut authorities to put a task force back in place to support the labor department's work.

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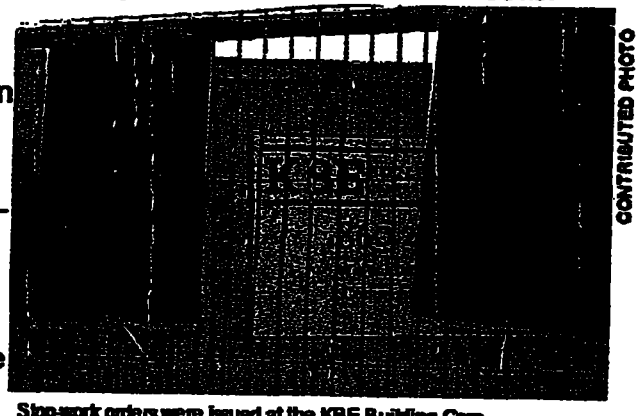
SHARE HBJ SPECIAL REPORT

State Lags In Enforcement Resources

By Diane Weaver Dunne
ddunne@HartfordBusiness.com
08/17/09

A team of five Connecticut labor department employees issued 220 stop-work orders during the past 22 months in their efforts to stop employee misclassification and "under-the-table" cash payments. That's nearly 200 more stop-work orders than the number issued by New York and Massachusetts.



CONTRIBUTED PHOTO

Stop-work orders were issued at the KBE Building Corp. construction site at 320 Universal Drive, North Haven in late June.

However, the state lags significantly behind in the collection of back taxes compared with neighboring states that have developed a comprehensive, multi-agency approach to tackling the problem.

New York has taken the lead in the Northeast in its battle against the underground economy, establishing its task force in September 2007. It has identified more than $4.8 million in unpaid unemployment taxes, issued more than $1 million in unemployment insurance fraud penalties, and issued more than $1.1 million in workers' compensation fines and penalties. The task force also discovered more than $12 million in unpaid wages.

Notably, New York's crackdown included just 27 stop-work orders. But it collects much more in fines and back taxes because each order triggers additional action not generally taken in Connecticut.

Key to New York's success was coordinated enforcement sweeps, coordinated assignments and systematic referrals and data sharing between 15 state agencies.

Massachusetts, which modeled its task force after New York's, reported in June that it had "recovered" $1.4 million in fines, unpaid wages and tax assessments within its first 12 months. Its collection of fines associated with workers' compensation was $24,750, less than a third of the $90,000 collected by Connecticut. However, Massachusetts collected about $238,000 in unpaid taxes.

Although Connecticut's labor department makes referrals to the appropriate federal and state agencies when stop-work orders are issued, the state is not tracking tax collections related to worker misclassification enforcement efforts. Tax collection is the responsibility of the state's Department of Revenue.

Unlike Massachusetts and New York, Connecticut hasn't adopted a multi-agency enforcement task force. But lawmakers did pass a law that became effective July 2008 that authorized the establishment of a Workers Misclassification Advisory Board — all volunteer — to be comprised of five state agencies and various construction management and labor representatives.

Connecticut's board met once, on Jan. 16.

In February, Gov. M. Jodi Rell proposed that the Employee Misclassification Advisory Board — along with 70 state boards and commissions — be eliminated. Rell's office did not return a request for comment as of press time.

Donald Shubert, president of the Connecticut Construction Industries Association, was appointed to the board and attended its first and only meeting. Shubert said that Chief State's Attorney Kevin Kane, who heads the state's workers' compensation fraud bureau, Attorney General Richard Blumenthal and labor department Commissioner Patricia Mayfield were very engaged during the meeting.

Unclear as to why the board has not met again, he said his organization considers enforcement very important. And while his organization applauds and respects the job that the state's labor department is doing with very limited resources, more enforcement is needed, he said.

"This is an investment in state government that more than pays for itself in more than one way," said Shubert. "We would strongly encourage Connecticut to follow [Massachusetts' and New York's'] lead."

To Massachusetts, its task force has been well worth it. "This is really found money," said George Noel, director of labor in Massachusetts, who referred to its recovery of more than $1 million during its first year starting up.

And there's more money that could be found, according to numerous studies. Economist William Alpert, a University of Connecticut professor, estimates that the state could be losing up to $1.5 billion in state income tax revenue alone from employee misclassification and workers being paid off the books.

"I feel that what we are working with, we have really started to make an impact. We are a unit of five, but that is not only what we do," said Resa Spaziani, a DOL

supervisor who heads the state's stop-work order efforts. She noted that some of the five involved with stop-work orders also have caseloads of 150 to 200 pertaining to other matters.

Prior to launching its task force, Massachusetts dedicated about 11 labor department employees part time on workers misclassification and off-the-books enforcement. That number grew to 122 state employees when the task force was established.

George Noel, director of the Massachusetts Department of Labor, said the key to its enforcement success is its collaboration. "We break down the silos, work with each other."

The task force developed a shared database where complaints are input. It also developed a check list that helps the members readily identify which tax laws, labor license regulations, and other laws may be violated, he said.

The Massachusetts collaboration has revealed that businesses not complying with one labor law are likely to violate other labor laws as well, Noel said.

The task force's most powerful compliance tool is its threat to pull a state-issued license, which allows the task force to leverage its power over compliance with other state agencies pretty quickly, he added.

The fines and penalties also increase substantially when multi-agency regulations are considered, he added. Some businesses make a conscious business decision to not comply with labor laws and consider the risk of getting caught and paying one fine simply the cost of doing business.

"But when you have to pay back unemployment taxes, income taxes, all kinds of back taxes, it increases the price of poker," Noel added.

Other states — Vermont, Maine, and New Hampshire — are looking at same model, Noel said, and will come together for a conference in October in Holyoke, Mass.

Send A Comment to the Hartford Business Journal

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State of Connecticut
DIVISION OF CRIMINAL JUSTICE

Testimony of the Division of Criminal Justice

In Support of:

H.B. No. 5204 (RAISED) An Act Implementing the Recommendations of the Joint Enforcement Commission on Employee Misclassification

Joint Committee on Labor and Public Employees
March 4, 2010

The Division of Criminal Justice respectfully recommends the Committee's Joint Favorable Substitute for H.S. No. 5204, *An Act Implementing the Recommendations of the Joint Enforcement Commission on Employee Misclassification.* The Division concurs in the amendments submitted to the Committee concerning revisions to section 31-69a and subsection (g) of section 31-288 of the general statutes.

The Division is among the various state agencies represented on the Joint Enforcement Commission on Employee Misclassification. Our primary role is through the Workers' Compensation Fraud Control Bureau in the Office of the Chief State's Attorney, which is responsible for the investigation and prosecution of criminal violations of the Workers' Compensation statutes. While the public may be most familiar with the prosecution of individuals who commit fraud in the improper collection of benefits, the bureau also prosecutes employers who fail to meet requirements such as having the necessary coverage for their employees. This is the area of expertise the Division of Criminal Justice brings to the Joint Enforcement Commission's work.

With regard to H.B. No. 5204, the Division supports the bill and the amendments for revisions to section 31-69a and subsection (g) of section 31-288. The Division believes these further revisions will make a good bill even better. Specifically, the revision to subsection (g) of section 31-288 strengthens the position of the state and its ability to prosecute the failure to pay assessments for Workers' Compensation insurance and the Second Injury Fund.

Respectfully submitted,

Kevin T. Kane
Chief State's Attorney

RICHARD BLUMENTHAL
ATTORNEY GENERAL

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Office of The Attorney General
State of Connecticut

TESTIMONY OF
ATTORNEY GENERAL RICHARD BLUMENTHAL
BEFORE THE LABOR AND PUBLIC EMPLOYEES COMMITTEE
MARCH 4, 2010

I appreciate the opportunity to support House Bill 5204, An Act Implementing the Recommendations of the Joint Enforcement Commission on Employee Misclassification with the attached amendment.

In 2008, the General Assembly established a joint commission of 5 state agencies (Attorney General, Chief State's Attorney, Labor, Revenue Services and Workers Compensation Commission) to work collaboratively on the problem of some businesses misclassifying employees as independent contractors. In addition, the legislation created an advisory group to the joint commission consisting of representatives from business and labor.

Misclassification costs employees important compensation and benefits while fraudulently failing to pay assessments for unemployment compensation and workers compensation. Misclassification also creates an unfair advantage for companies over other competitors who properly designate their employees and provide the legally required benefits.

The Joint Commission recently issued its first annual report which contained a recommendation for studying the current level of penalties for misclassifying employees. The commission and the advisory group have agreed to recommend the attached legislation to increase the civil penalties for failing to obtain workers compensation insurance or knowingly misrepresenting one or more employees as independent contractors from $300 per violation to $300 for each day the violation occurs. A company can often save thousands of dollars each month by misclassifying employees. At $300, the civil penalty is merely a cost of doing business. The per day fine recommended in the attached amendment will substantially increase the law's deterrence. I would support even higher penalties -- up to $1,000/day -- but this proposal is solid step in the right direction.

In addition, the amendment also clarifies that the criminal penalty for knowing violations of the misclassification law includes defrauding the state of Connecticut. The current language only focuses on the violator's intent to injure or defraud an insurance company. However, the state of Connecticut -- through the failure to pay legal assessments for unemployment and workers compensation -- is also harmed. This language will enhance the ability of the chief state's attorney to bring criminal action in the most egregious cases.

I urge the committee's favorable consideration of the attached amendment.

2010 GENERAL ASSEMBLY SESSION
JOINT ENFORCEMENT COMMISSION ON WORKER MISCLASSIFICATION
(March 3, 2010 p.m.)

SUMMARY: Proposed amendment to House Bill 5204, An Act Implementing the Recommendations of the Joint Enforcement Commission on Employee Misclassification. This amendment assesses the current civil penalty of $300 for each day that an employer fails to obtain worker's compensation insurance or knowingly misrepresents one or more employees as independent contractors. Under current law, the funds are credited to the Labor Department for use in the enforcement of employment regulation, wages, and the workers compensation statute.

The amendment also expands the workers compensation criminal penalty to include intent to defraud the state of Connecticut when knowingly misclassifying workers and adds a violation of a subsection that contains an alternative approach for paying workers compensation assessments.

TEXT:

Sec. 1. Section 31-69a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*): (a) In addition to the penalties provided in this chapter and chapter 568, any employer, officer, agent or other person who violates any provision of this chapter, or chapter 557 or subsection (g) of section 31-288, shall be liable to the Labor Department for a civil penalty of three hundred dollars for each violation of said chapters and for each violation of subsection (g) of section 31-288 and each day of such violation of section 31-288g shall constitute a separate offense, except that any person who violates (1) a stop work order issued pursuant to subsection (c) of section 31-76a, shall be liable to the Labor Department for a civil penalty of one thousand dollars and each day of such violation shall constitute a separate offense, and (2) any provision of section 31-12, 31-13 or 31-14, subsection (a) of section 31-15 or section 31-18, 31-23 or 31-24 shall be liable to the Labor Department for a civil penalty of six hundred dollars for each violation of said sections.

(b) The Attorney General, upon complaint of the Labor Commissioner, shall institute civil actions to recover the penalties provided for under subsection (a) of this section. Any amount recovered shall be deposited in the General Fund and credited to a separate nonlapsing appropriation to the Labor Department, for

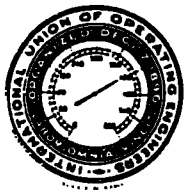
other current expenses, and may be used by the Labor Department to enforce the provisions of chapter 557, this chapter and subsection (g) of section 31-288 and to implement the provisions of section 31-4.

Sec. 2. Subsection (g) of section 31-288 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

(g) Any employer who (1) has failed to meet the requirements of subsection (b) or subsection (c) of section 31-284, or (2) with the intent to injure, defraud or deceive any insurance company insuring the liability of such employer under this chapter or the state of Connecticut because of the failure to pay workers compensation assessments in accordance with the provisions of section 31-345 or second injury fund assessments in accordance with the provisions of section 31-354, (A) knowingly misrepresents one or more employees as independent contractors, or (B) knowingly provides false, incomplete or misleading information to such company concerning the number of employees, for the purpose of paying a lower premium on a policy obtained from such company, shall be guilty of a class D felony and shall be subject to a stop work order issued by the Labor Commissioner in accordance with section 31-76a.

International Union of Operating Engineers

LOCAL UNIONS 478, 478A, 478C, 478D, 478E

AFFILIATED WITH  THE AFL-CIO

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Pg 1, Line 12

Testimony Offered in SUPPORT of House Bill 5204

An Act Implementing the Recommendations of the Joint Enforcement Commission on Employee Misclassification

Good afternoon Senator Prague, Representative Ryan and distinguished members of the Labor and Public Employees Committee. My name is Nate Brown, and I am here today testifying on behalf of the Operating Engineers Local 478, an organization representing over 4000 construction workers with over 300 signatory contractors.

I come before you today to testify in support of House Bill 5204 and to respectfully request your approval of the bill. Misclassification of employees has become a serious issue in Connecticut's construction industry. While there are many professional and law abiding contractors in the state of Connecticut, the severe recession has resulted in some contractors looking for ways to save money. Unfortunately sometimes they arrive at those savings by failing to pay taxes, workers compensation insurance, social security and other employment costs. Additionally, some contractors are misclassifying their employees on prevailing wage projects by falsifying their certified payroll.

The contractor may report an employee as a laborer when that employee was actually running a piece of construction equipment that commands a higher rate of pay. One of the primary reasons for the significant increase in misclassifications over the past 24 months is that the economic downturn in residential construction in the private sector building market has forced many contractors, who typically perform those types of work, into the public building and infrastructure construction sector of the industry. Most of these companies typically pay their employees in the range of $15.00 to $20.00 per hour with little or no benefits.

Sadly, with more workers than employment opportunities, workers feel as though they have no choice but to take what they can get. No worker wants to go their boss and complain when the industry is so depressed and there are 5 other people lined up to take the job.

There is the perception among some contractors that the current penalties for misclassification - IF they are caught - are just one of the "costs of doing business".

Employment classifications need to be enforced by the state of Connecticut and the penalties for violating the law need to be significant in order to have a deterrent effect. While there are many upstanding contractors in the State of Connecticut there are some bad actors who need to realize that there are severe consequences when you violate the law and take advantage of the hard working construction workers of Connecticut.

S – 600

CONNECTICUT
GENERAL ASSEMBLY
SENATE

PROCEEDINGS
2010

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Mr. President, move to place this item on the consent calendar.

THE CHAIR:

Without objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President.

Continuing calendar page 27, Calendar 381, House Bill Number 5006, move to place this item on the consent calendar.

THE CHAIR:

Without objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President.

Calendar 382, House Bill Number 5157, move to place this item on the consent calendar.

THE CHAIR:

Without objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President.

Calendar 383 is PR. Moving to calendar page 28, Calendar 384, House Bill Number 5204, Mr. President, move to place this item on the consent calendar.

THE CHAIR:

Seeing no objection, so ordered.

S – 601

CONNECTICUT
GENERAL ASSEMBLY
SENATE

PROCEEDINGS
2010

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Bill 5265; Calendar 313, substitute for House Bill 5002.

Calendar page 20, Calendar 314, House Bill 5201.

Calendar page 24, Calendar 340, substitute for Senate Bill 175.

Calendar page 25, Calendar 346, substitute for Senate Bill 151; Calendar 350, Senate Bill 333; Calendar 371, substitute for House Bill 5014.

Calendar page 26, Calendar 375, House Bill 5320.

Calendar page 27, Calendar 379, substitute for House Bill 5278; Calendar 380, substitute for House Bill 5452; Calendar 381, substitute for House Bill 5006; Calendar 382, House Bill 5157.

Calendar page 28, Calendar 384, substitute for House Bill 5204.

Calendar page 29, Calendar 395, substitute for Senate Bill 127; Calendar 396, Senate Bill 147.

Calendar page 30, Calendar 413, House Bill 5024; Calendar 414, substitute for House Bill 5401.

Calendar page 31, Calendar 419, substitute for House Bill 5303.

Calendar 32 -- page 32, Calendar Number 421, substitute for House Bill 5388; and on calendar page 34, Calendar 46, substitute for Senate Bill 68;

Calendar 50, substitute for Senate Bill 17.

Calendar page 35, Calendar 64, substitute for Senate Bill 187.

Calendar page 37, Calendar 109, substitute for Senate Bill 189.

Calendar page 39, Calendar Number 148, substitute for Senate Bill 226.

Calendar page 40, Calendar 182, substitute for Senate Bill 218.

Calendar page 41, Calendar 188, substitute for Senate Bill 200.

Mr. President, that completes those items placed on the consent calendar.

THE CHAIR:

All right. If the Clerk has made an announcement that a roll call vote is in progress in the Senate on the first consent calendar, the machine will be open. Senators may cast their vote.

THE CLERK:

The Senate is now voting by roll call on the consent calendar. Will all Senators please return to the chamber. The Senate is now voting by roll call on the consent calendar. Will all Senators please return to the chamber.

THE CHAIR:

Would all Senators please check the roll call board to make certain that your vote is properly recorded. If all Senators have voted and if all votes are properly recorded, the machine will be locked, and the Clerk may take a tally.

THE CLERK:

Motion is on adoption of Consent Calendar Number 1.

Total Number Voting	35
Those voting Yea	35
Those voting Nay	0
Those absent and not voting	1

THE CHAIR:

Consent Calendar Number 1 is passed.

Are there any announcements or points of personal privilege? Are there any announcements or points of personal privilege?

Senator LeBeau.

SENATOR LEBEAU:

Thank you, Mr. President, for a -- for an announcement.

THE CHAIR:

Please proceed.