

NEW ENGLAND REGIONAL COUNCIL OF CARPENTERS

United Brotherhood of Carpenters and Joiners of America

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GLENN MARSHALL, PRESIDENT
LOCAL UNION 210

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Good morning, my name is Glenn Marshall, and I am the President of Carpenters Local 210 and District Business Manager for the carpenters in Connecticut. I represent more than 6,000 union carpenters in Connecticut who work for more than 1,500 contractors who participate in our labor-management alliance, the Carpenters Labor-Management Program. I am here today to testify in favor of the new language for **Proposed S.B. 931, An Act Concerning the Hiring of Undocumented Aliens by Contractors**, as well as **Raised Bill 7319, An Act Concerning Connecticut Jobs for Connecticut Projects**.

It is my understanding that the original language from Senator Cappiello's proposed bill is likely preempted by federal law, but the new language addresses the exploitation of many immigrant workers by unscrupulous employers.

First, I would like to thank the committee chairs for raising the bill on an issue of such critical importance to the industry. Members of the committee have strongly supported this legislation in the past, and we thank the committee and Senator Cappiello for raising awareness on issues that adversely affect our industry.

Attached to my testimony are several articles that illustrate the gravity of workers' compensation fraud. First, there is an article from The Hartford Courant (July 3, 2001) citing a New Jersey contractor, P & B Partitions, who was forced to pay \$18,000 in civil penalties and \$51,422 in back wages to 122 workers that helped build a senior living residence in Fairfield County. Many of the 122 workers were illegal aliens and many were misclassified as subcontractors. Unscrupulous contractors misclassify their employees as independent subcontractors to avoid paying overtime, workers' compensation insurance and Social Security.

I have also attached a more recent example from The Hartford Courant (March 20, 2006) involving immigrants who were exploited while working for a New York drywall company while building hotels for Hilton and Marriott in Newington, Rocky Hill and Wallingford.

For nearly 30 years, I have worked in various capacities in the construction industry on both residential and commercial jobsites. This industry remains extraordinarily competitive—particularly on more lucrative larger projects, such as hotels and nursing homes—and there is an enormous bidding advantage for companies that break the law by misclassifying their employees as independent subcontractors. The savings on workers' compensation premiums alone can be over 30% of payroll, depending upon the trade.

In addition to the articles from The Hartford Courant, I have attached an article from The New York Construction News. It outlines a study prepared by Dr. William Alpert, an associate professor of economics at the University of Connecticut, estimating the loss to Connecticut taxpayers and employers that occurs because of employee misclassification. Back in 1992, the total cost in lost federal income tax, unemployment insurance workers' compensation, state income tax and Social Security tax was estimated to be over \$500 million a year.

This problem, unfortunately, is not unique to Connecticut. I have attached a recent article from The New York Times (January 25, 2007), which outlines the results of a study in New York that estimated unscrupulous employers are costing the New York State workers' compensation system from \$500 million to \$1 billion a year in unpaid workers' compensation premiums alone.

What is unique is Connecticut's failure to enforce these laws and address this problem. There is already a Connecticut law against employer premium fraud, 31-288(g), just as there is against employees who collect workers' compensation checks they aren't entitled to. The laws against employer fraud, such as misclassifying workers as independent contractors, and employee fraud are both over 10 years old now, but there is one big difference. Because the Chief State's Attorney's office doesn't have subpoena power, any investigations regarding employer fraud have gone nowhere, while the state has prosecuted hundreds of workers' compensation fraud cases against employees.

That is why we support the new language in this bill modeled after Florida state law. Worker's compensation fraud had become an epidemic in Florida, some estimated that more than 80% of the drywall industry was operating in this illegal manner. As a result, Florida passed a law which allows the state to issue a stop work order if an employer is committing this type of workers' compensation fraud.

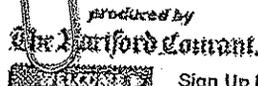
There is no panacea to the problem of workers' compensation premium fraud, but this is one more tool that would be helpful to those who are responsible for enforcing these laws. Better enforcement is critical for Connecticut employers---whether they are union or nonunion---if they hope to compete against out-of-state companies, such as P & B Partitions and New York Ceiling & Drywall, that gain an unfair bidding advantage by breaking the law.

This law is simply one more tool in the enforcement tool belt against workers' compensation premium fraud.

On another matter, we strongly support **H. B. 7319, An Act Concerning Connecticut Jobs for Connecticut Projects**. We have supported similar legislation in the past which would extend benefits and protections to construction workers working on projects that receive state assistance from DECD. For instance, in 2003 Lowe's Inc. was awarded a tax credit of more than \$20 million to construct a \$90 million distribution center in Plainfield. Unfortunately, Lowe's hired an out-of-state company, which payed their workers significantly below area standard wages and benefits, to perform work assembling machinery in the new facility while hundreds of Connecticut millwrights in southeastern Connecticut were unemployed.

Several other states have requirements attached to projects receiving state assistance, and we think the time has come for Connecticut to follow suit.

Thank you.



Tuesday, July 3

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NEWS

Contractor Pays Penalties And Back Wages

The Hartford Courant
July 03, 2001

A New Jersey drywall contractor has paid \$18,000 in civil penalties to the Connecticut Department of Labor and \$51,422 in back wages and interest to 122 workers, the New England carpenters' union announced Monday.

Nearly all the workers who were owed back wages were Latinos, who quickly are becoming a major labor source in the drywall business, said Matthew Capece, a lawyer for the New England Regional Council of Carpenters. The union helped the workers file complaints with the state.

P&B Partitions of West Berlin, N.J., had failed to pay overtime and pay for all hours worked, Capece said. Many of the workers were treated as subcontractors, not employees, he said.

"Construction companies do that to avoid paying overtime, workers' compensation and Social Security," Capece said.

No one could be reached for comment at P&B.

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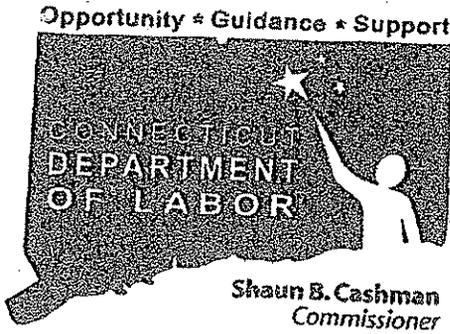
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March 19, 2002

Mr. Fernando Betancourt
 Executive Director
 Latino and Puerto Rican Affairs Commission
 18-20 Trinity Street
 Hartford, CT 06106

RE: Investigation and Enforcement Activities Concerning Exploitation of Immigrant Workers

Dear Mr. Betancourt:

Your letter to Governor Rowland regarding the important issue of the exploitation of immigrant workers performing labor in our state has been referred to the Labor Department for reply. As Labor Commissioner, I can assure you that this department has been actively involved in protecting the rights of these workers with respect to coverage of all the labor laws.

With the passage of Public Act 01-147 "An Act Prohibiting Employment Exploitation of Immigrant Labor" which Governor Rowland signed into law in 2001, the Labor Department has been given the mandate to develop programs and strategies to deal with this serious matter. We recognize that the exploitation of these workers is not limited to the construction industry but is pervasive in the service industries where we have uncovered egregious violations. The Division of Wage and Workplace Standards, which is our wage enforcement division, is in the process of developing pamphlets to distribute to Spanish-speaking workers and has already translated its complaint forms into Spanish. The Division has also hired a bilingual clerk to assist in collecting data from immigrant workers and is in the process of hiring a Spanish-speaking investigator to assist the one Hispanic investigator on staff already. I mention these examples as evidence of the high priority which this Department has continually placed on this issue, and note that this process involves the education of workers regarding their rights as well as the diligent enforcement of existing labor laws.



Governor John G. Rowland

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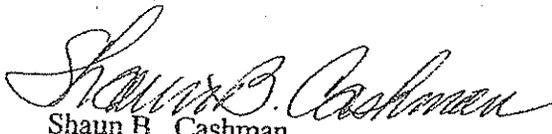
Mr. Fernando Betancourt
March 19, 2002
Page 2.

In your letter you mentioned a specific company, P&B Partitions of West Berlin, New Jersey and as your letter indicated, we have had extensive enforcement dealings with this company. The Wage and Workplace Standards Division assessed an \$18,000 fine and \$51,000 back wage order against P&B Partitions for their wilful disregard of the Connecticut wage and hour laws. It is apparent from the allegations in your letter that P&B Partitions continues to do business in Connecticut without regard for the laws of this state. Upon being informed in November, 2001, that this company was performing services in this state, this department ordered a wage enforcement agent to conduct an investigation at the jobsite in Stratford that you referred to. Unfortunately, the job was essentially completed and the workers as well as the contractor had left the State before the investigation could be completed. We are currently monitoring projects in the state to see if the company does return and have reached out to other interested entities for their assistance. If you can provide any information on the workers or the company please contact Gary K. Pechie, Director of Wage and Workplace Standards at (860) 263-6376. Any information that you provide will be kept confidential and used in the best interest of the workers.

Director Pechie is also in touch with New Jersey officials and there is currently a plan to develop a database for all labor law enforcement agencies in the Northeast to track companies who violate the law.

Your interest and concern about this serious matter of exploitation of immigrant labor is greatly appreciated. We welcome any assistance and support you can provide in ensuring that no worker is deprived of their legal rights.

Sincerely,


Shaun B. Cashman
Commissioner

cc: Peter Ellef, Governor's Office
Brenda Sisco, Governor's Office

courant.com

<http://www.courant.com/news/local/hc-worker0320.artmar20,0,486429.story?coll=hc-headlines-home>

Contractors Shortchange Immigrant Workers

By HILDA MUÑOZ
Courant Staff Writer

March 20 2006

Carlos Romero left two sons and their mother in Texas and moved to Connecticut last year after watching a TV newscast that said New England had the best-paying construction jobs.

The 38-year-old Honduran immigrant was on the verge of a divorce, but he still had the boys to support and liked the idea of earning more money, he said.

So he left his home of 19 years and followed the prospect of higher wages to Meriden, where a cousin offered him a place to stay. It wasn't long before he found a job with a drywall contractor, building hotel suites for the Hilton and Marriott chains in Newington, Rocky Hill and Wallingford.

The \$20-an-hour wage he was promised was nearly double what he earned in Texas, Romero said, but he and the other workers at the site - some, like him, permanent legal residents, others undocumented immigrants - were paid only a fraction of their wages.

"If you knew what I've been through. I couldn't provide what was necessary at home," he said.

He survived on instant noodles and sometimes got discounts on coffee and cookies at a gas station near one of the job sites. But Romero never missed a day of work, because he believed his boss's assurances that he would get all of his money, Romero said.

With the help of the New England Regional Council of Carpenters, Romero and dozens of his coworkers eventually complained to the state Department of Labor. After a six-month investigation, Daniel Magee, an owner of New York Ceiling & Drywall, was arrested.

Cases of unscrupulous contractors shortchanging immigrant workers are not unusual, said Miguel Fuentes, a representative of the carpenters union who helped the workers with their case. He said he works on a dozen or more such cases a year.

"I've had more and more people surface because they network so well. I met a gentleman last Friday who had my card, and I'd never met him," Fuentes said.

The Department of Labor tracks complaints from people who haven't been paid their promised wages, but it doesn't investigate whether the people making the complaints can work in the country legally.

In all of 2005, 350 people in the construction industry reported that they hadn't been paid their promised wages. In 2006, 326 such complaints already have been filed.

Last year, the department began printing complaint forms in Spanish and very recently began tracking how many complaints are made in Spanish, said Gary Pechie, director of the wage and workplace standards division at the Department of Labor. Pechie said his department is keeping

track of complaints made in Spanish to determine what areas of the state they are coming from.

"That way I can marshal my resources. ... It's more of an internal management tactic," Pechie said.

A majority of contractors follow the rules, said D'Arcy Didier, director of labor relations at the Connecticut Construction Industries Association. But some hire undocumented workers because they can pay them less and sometimes don't pay them at all, exploiting the workers' fear of being deported.

"Quite frankly, it does provide a competitive edge for non-union contractors who are not going to be following the law," he said.

Magee was arraigned last month in New Britain and charged with 69 counts of defrauding immigrant laborers, 57 counts of failure to pay wages, 12 counts of failure to pay premium overtime and one count of first-degree larceny. According to an arrest warrant, Magee did not pay his employees, most of whom were illegal immigrants from Central and South America, wages worth a total of \$202,000.

Where the money went is unclear. Magee's attorney, Richard Lawlor, said his client is not responsible for the missing wages. He said the company became financially unstable when one of its principals went on a personal shopping spree with company money. But Magee did what he could to get the workers what they had earned, he said.

Romero said he noticed soon after he arrived at the construction site that there was something wrong. His first week on the job, a mob of 40 workers, armed with their tools, threatened to kill Magee at one of the job sites over eight weeks of back pay that he owed them, Romero said.

The uprising was quelled the following day at the carpenters union office in Wallingford. Magee arrived with a paper bag from Dunkin' Donuts filled with \$55,000 in cash to pay most of them, Fuentes said.

"It was very emotional. My part was trying to keep them under control and preventing them from lashing out at him," said Fuentes. "You could see the expression in their faces, the tone in their language."

Magee paid the workers most of what he owed them, Fuentes said. Romero was happy with the \$1,200 Magee had given him and thought the problem had been resolved.

But in the weeks that followed, Romero realized it wasn't an isolated incident. Magee hand-delivered cash-filled envelopes, but the money came sporadically and covered only part of the hours Romero worked, he said.

"If we worked three weeks, he paid us one. We worked another two weeks, he paid us one. How many weeks are left?" said Romero.

He said he couldn't send his kids \$600 a month in child support. When one of his sons asked for money for a calculator for school, Romero told him he didn't even have money to buy himself laundry detergent.

He wore the least dirty shirts to work and ate instant noodles three times a day to tide him over between payments.

Qaiser K. Yosufzai, who runs the Shell gas station and food mart next to the Courtyard by Marriott near Westfarms mall, said he remembers groups of eight to 10 workers buying instant noodles, Hostess cupcakes, cookies and coffee.

He said they would complain about not getting paid.

"Sometimes they would say, 'Can we pay you tomorrow?' I would say, 'OK.' Most of the time they

were paying me," said Yosufzai. Sometimes he would give them discounts on the food and coffee, he said.

Romero said some days he resolved not to return to work, that he would ration the latest wad of cash from Magee for the essentials and look for another job. But he would return, day after day.

"I would always think the same thing: 'Instead of sleeping at home, I could be working,'" he said. "It wasn't the best decision I made."

Some money was better than none, he told himself. Plus, he believed Magee's promises that their money was on its way, Romero said.

His last day was a Saturday. The ceilings and walls still needed work, but Magee said he would take care of it and told Romero to go home. When Romero asked about his back pay, Magee said he didn't have it and told him to go to the union or the Department of Labor, Romero said.

"I didn't waste any time. I went [to the union] that same day," Romero said.

He said he doesn't know whether he will ever get the money. But he said he's determined to see this case through. In February, he canceled a flight to Honduras when he heard there was a warrant for Magee's arrest.

"I'm not happy [that he was arrested] because he has a family that probably stays up at night worrying," Romero said. "I would like for him to think things through."

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NEW YORK CONSTRUCTION NEWS

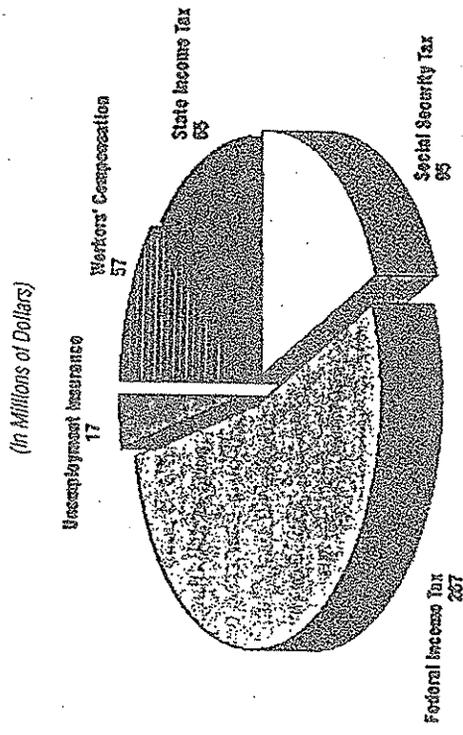
Volume XLI, No. 40

NEW YORK, NEW JERSEY, CONNECTICUT METROPOLITAN AREA

May 16, 1994/ \$1.50

CIP Study Shows Employee Misclassification In Connecticut Costs The State \$501M Yearly

Estimated Losses In Connecticut Due to Misclassifications of Independent Contractors and Failure to Report Casual or Part-Time Labor



The Carpentry Industry Partnership (CIP), a joint labor-management coalition representing local contractors and carpenters in western Connecticut, has just released the first of what is expected to be an annual study quantifying losses resulting from employee misclassification to Connecticut residents.

The study, "Costs To Connecticut Of Employee Misclassification" cost Connecticut, based on 1992 figures — which were the most recent available — \$501 million.

The study was prepared for CIP by William T. Alpert, an associate professor of economics at the University of Connecticut.

According to the study, said Jim Lohr, CIP's executive director, businesses misclassifying their employees as independent contractors can illegally cut their labor costs by 30 to 40 percent.

This occurs, he added because employers who illegally misclassify their employees as independent contractors do not pay state or Federal income tax withholding, payroll taxes from unemployment insurance, Social

(Continued on Page 6)

Security and Medicare, nor do they pay workers' compensation insurance premiums.

"Although the study estimates the problem for all Connecticut industries, the construction industry has been particularly hard hit by the misclassification scam because of the recession,

"In 1989, the IRS published a report that 'conservatively' estimated about \$15 billion was paid in 1984 to individuals who should not have been classified as independent contractors. The IRS estimates that in 1984 misclassifications resulted in the loss of \$1.559 billion in tax revenues. The \$1.559 billion tax loss includes \$899 million in lost income tax revenues, \$538 million in lost social security tax revenues and \$122 million in lost Federal unemployment insurance tax receipts," according to the CIP study.

"Translating these amounts into 1992 dollars, unadjusted for tax rate changes, we find that income tax losses amount to over \$1.2 billion, social security tax losses amount to \$727 million and unemployment tax receipt losses come to about \$165 million (both clearly understated because of payroll tax ceiling and rate increases)."

"It is extremely difficult for employers, like myself, to compete against the growing numbers of contractors who misclassify their employees," added Michael D. Hobbs, the president of Hobbs, Inc., a custom-residential builder based in New Canaan, Connecticut, and the management co-chair of the CIP.

Hobbs has testified before the House and Senate committees in Washington, D.C., over the past three years about the impact of misclassification in the construction industry.

Lohr said that CIP's work was cited in an October 16, 1992 report of the U.S. House Government Operations Committee entitled "Contractor Games: Misclassifying Employees As Independent Contractors."

Connecticut Congressman Christopher Shays (R-Fourth Congressional District) is a member of the House Government Operations Committee.

"This practice of misclassification

Table 1
Selected Federal Revenue Loss Estimates from the Misclassification of Employees

Year	Agency	Size of Loss (\$ billions)	Source of Loss
1984	IRS	1.6	Misclassified employees
1987	IRS	16.0	Sole proprietorships
1987	IRS	0.050	Audit of 1,120 employers with assets under \$3 million each (Ref. a)
1986/7	GAO/IRS	0.017	Audits of 92 out of 95 employers paying in excess of \$10,000 per year to independent contractors whose entire income came from one employer (Ref. b)
1987	IRS	0.468	5,900 ETEP audits (Ref. c)
1992	IRS	20.3	Self-employed

a. Resulted in reclassifying 46,259 "independent contractors" as employees.
 b. The 92 employers turned out to have misclassified 17,347 workers.
 c. Resulted in reclassifying 330,000 independent contractors as employees. Since fiscal year 1989, 90 percent of ETEP audits have continued to find misclassified workers.

the high costs of workers' compensation, and the competitive nature of the industry," Lohr said.

According to the study, workers also have a strong incentive to engage in misclassification schemes. "First, unemployed people may be faced with a grim choice between accepting independent contractor status or remaining jobless. Second, independent contractors are not subject to income and payroll tax withholding. It is estimated by the Internal Revenue Service (IRS) that workers not subject to withholding voluntarily report or tax purposes only between 62 and 76 percent of their incomes while employees subject to withholding report virtually 100 (99.5) percent of their incomes. Third, employees classified as independent contractors are entitled to claim as deductions from their income taxes certain work-related expenses which may be deducted by workers classified as employees." "Finally," the report continued, "younger workers in particular tend to see little value in social security, workers' compensation, private pension plans or health insurance and prefer to take a portion of the value of these benefits in the form of current cash payments. Thus, harsh economic realities and economic incentives are compelling reasons for employers and workers alike to flout the laws on worker classification."

On a national level, the report states that "the IRS and General Accounting Office (GAO) have made attempts to estimate tax losses from misclassification of employees."

is devastating for local construction workers. By working as independent contractors, more construction workers are no longer protected by mandated benefits, such as Social Security, workers' compensation and unemployment insurance, nor do they enjoy the legal protections of an employee," added John Cunningham, president of Carpenters' Local 210 and the labor co-chair for CIP.

"Misclassification may very well be the most insidious cancer in the construction industry, and the only cure is better enforcement of the law," Cunningham said.

The study was released to focus the attention of Federal and State enforcement agencies, particularly the Internal Revenue Service (IRS) and the Connecticut Department of Revenue Services, said Hobbs, adding that "without proper enforcement, taxpayers and employers will continue to lose millions of dollars."

"As an employer who plays by the rules, it is extraordinarily frustrating to watch my taxes increase, and my unemployment and workers' compensation insurance premiums go up while many of my competitors are not even paying their fair share," Hobbs said.

"Turning construction into a low-wage, no benefit industry will make it very difficult to recruit the skilled, hard-working,

(Continued on Page 7)

Table 2
Summary of Findings
Most Reasonable Estimates of Losses to Connecticut Through Misclassification of Employees as Independent Contractors and Through Failure to Report Casual or Part-Time Workers
(Annual losses in millions of dollars)

STATE TAX LOSSES	Independent Contractor Errors Only		Independent Contractor Errors plus Non-reporting of Casual or Part-Time Workers		Best Estimate of Both Costs
	1989	1992	1989	1992	
State Income Tax	\$16	\$48	\$32	\$98	\$65
Unemployment Insurance (Ref. a)	\$8		\$17		\$17
Workers' Compensation	\$25	\$30	\$52	\$62	\$57
SUB-TOTAL STATE LOSSES	\$49	\$86	\$101	\$177	\$139
FEDERAL LOSSES					
Federal Income Tax	\$34	\$204	\$267	\$462	\$267
Social Security Tax	\$35	\$56	\$73	\$117	\$95
GRANT TOTAL — STATE AND FEDERAL LOSSES FOR CONNECTICUT	\$118	\$346	\$441	\$756	\$501

Ref. a — No high and low estimates were computed for unemployment insurance.

CIP Study

(Continued from Page 6)

young carpenters I will need to be successful in the future," Hobbs noted.

"After all, how much purchasing power does a carpenter making \$8 an hour cash have in Fairfield County, Connecticut?" he asked.

"Misclassifying employees as independent contractors is not the right direction for the construction industry, and it is not the right direction for America," Hobbs added.

In addition to the numerous Congressional hearings in Washington, D.C., the State of Connecticut has taken several steps to address the growing problem of misclassification in the construction industry. These steps include:

- Allow employers to sue competitors who win bids by misclassifying their employees as independent contractors.
- Make it a Class D felony to willfully mis-

classify workers as independent contractors.

- Establish a workers' compensation fraud unit to investigate employee fraud and employer workers' compensation fraud, such as misclassifying workers.

- Increase the number of labor investigators from two to seven who are responsible for ensuring compliance of labor laws on state-funded construction projects;

- The Government Administration and Elections Committee issued a report of "The Construction Fraud Task Force in February, 1994, examining the problem and urging stronger compliance efforts.

The report concludes that misclassification in Connecticut and the industry nationwide is growing and that serious examination of all of the issues related to classification must be done.

Table 7

Causes of Error in Classification and Wages

Illinois 1987

(Percents)

Percentage Distribution by Primary Error Cause

Industry	No Error	Wage or Benefits Error (Ref. a)	Independent Contractor Determination Error	Failure to Report Casual or Part-Time Labor	Failure to File Reports
TOTAL	52.59	13.70	15.12	16.48	2.11
Construction	72.50	2.27	11.62	8.88	4.72
Manufacturing	48.78	13.27	18.63	19.31	0.00
Transportation, Communication and Public Utilities	24.00	17.57	52.80	5.63	0.00
Wholesale and Retail Trade	50.00	15.37	9.06	22.22	3.35
Finance, Insurance and Real Estate	70.44	14.60	6.31	5.96	2.69
Services	51.74	14.28	14.20	18.86	0.93
Other	35.04	22.56	38.07	3.91	21.17

Ref. a includes errors in calculating total wages, excess wages; failure to report meals, tips, etc.; and miscellaneous errors.

Sources: Paul L. Burgess, "Illinois Employer Compliance Study Overview," Illinois Department of Employment Security, 2/21/90; and Paul L. Burgess and Robert D. St. Louis, "Employer Compliance with Illinois Unemployment Insurance Reporting Requirements," February 1990, Table 3, p. 45.

The New York Times
January 25, 2007 Thursday Late Edition - Final

Study Says Many Firms Cheat New York Workers' Comp System

BYLINE: By STEVEN GREENHOUSE

SECTION: Section B; Column 4; Metropolitan Desk; Pg. 1

A new study estimates that employers cheat New York State's workers' compensation system by not paying \$500 million to \$1 billion a year in required insurance premiums, forcing other employers to pay higher premiums.

The study by the Fiscal Policy Institute, a liberal research group, found that these illegal underpayments represent 15 percent to 20 percent of all the workers' comp premiums that are supposed to be paid each year statewide.

Some companies pay no premiums while others underpay by underreporting the size of their work force to qualify for lower premiums, the study said.

Government, business and labor leaders say the noncompliance hurts the state's business climate by forcing law-abiding companies to pay higher workers' comp premiums when many corporations are already complaining that their premiums are too high.

"We were surprised to find this magnitude of noncompliance," said James Parrott, the chief economist for the Fiscal Policy Institute. "This noncompliance has helped cause at least two things: very low benefits for injured workers in New York, which are among the lowest in the country, and second, despite these low benefits, workers' comp premiums that are considered very high."

Mr. Parrott said inadequate data made it hard to pinpoint the exact amount of cheating.

The report asserts that if more companies paid their full premiums, the extra money would enable the state to cut workers' comp premiums over all and increase benefits for injured workers. The report maintains that a lack of enforcement has emboldened employers to cheat.

"Not being honest on payroll has become almost an accepted practice in New York State," said Art Wilcox, a workers' comp expert with the New York State A.F.L.-C.I.O. "It hurts the competitiveness of a business that does the right thing. It hurts the competitiveness of an insurance broker who refuses to play games with payroll. And it certainly hurts any insurance carrier who won't bend the rules because they're competing against people who will."

Michael Moran, a spokesman for the American Insurance Association, said he found it difficult to believe the level of noncompliance found by the study. "It is very important for insurance companies to be paid correctly for all the people they cover," he said. "They work at it very hard. They try to audit to make sure that things are right."

The Fiscal Policy Institute based its calculations on financial numbers filed with state agencies. It bolsters the finding of a report last year by the state's association of insurance agents, which estimated, based on inside knowledge of industry practices, that up to 20 percent of New York's employers did not pay all their required premiums.

"New York's honest businesses who are playing by the rules have had to subsidize those who don't even cover their employees or those who seriously underpay for the coverage they do have," said David Dickson, president of the association, Professional Insurance

Agents of New York State. "It approaches plain fraud."

Gov. Eliot Spitzer has pledged to make major changes in the workers' comp system, hoping to hold down premiums and increase benefits. The maximum benefit an injured worker can now obtain is \$400 a week.

"Although we do not know the magnitude of the underreporting of workers' comp obligations, we recognize that it is a serious problem," said Christine Anderson, a spokeswoman for the governor.

Insurance experts say that a company with, say, 100 employees might tell its insurer that it has only 70 workers and then pay premiums for only 70.

But if any of the company's 100 employees are injured on the job, they would be likely to qualify for worker's comp benefits -- either medical coverage and weekly benefits in lieu of wages -- when they are out of work. This means that the amount collected in premiums might fall short of the amount spent on benefits. As a result of such a shortfall statewide, insurers often pressure New York officials to increase premiums for all employers in an effort to balance total premiums paid in with total benefits paid out.

"The lack of aggressive enforcement forces everybody in the process to bend the rules," said Mr. Wilcox of the A.F.L.-C.I.O. "If insurance company A enforces the law but all the rest don't, then the client will end up with insurance company B or C or D."

In finding underpayments, the Fiscal Policy Institute first looked at the total amount of employee payroll -- \$389 billion -- that the state's employers reported for 2003 to the Labor Department and Tax Department when they paid their unemployment insurance taxes. Then the institute examined the total payroll reported to the state agencies and the industry association that handle payroll data for employers paying workers' comp insurance. The total payroll reported for workers' comp came to just \$311 billion (after the policy institute made some adjustments to account for excluded job categories.)

"Manufacturers are paying significant amount of workers' comp, and they obviously pay more than they need to because it looks like a large percentage of companies aren't paying into the system," said Randall Wolken, president of the Manufacturers Association of Central New York. "If we're inadvertently increasing some companies' costs, we inadvertently drive some companies out of the state."

Last July, the state's insurance superintendent, Howard Mills, denied a request by insurers to increase workers' comp premiums, saying, "The insurers' efforts to fight fraud -- both claimant and employer fraud -- can be said to be anemic at best."

At the time, Mr. Mills, who stepped down last month, said that without a greater commitment by insurers to fight fraud, it would be hard to justify any overall increase in premiums.

One common practice, insurance experts say, is for companies, often taxi or trucking companies, to say that their drivers are independent contractors (who are not required to be part of the workers' comp system) when by many definitions they are actual employees.

As part of the campaign against fraud, Manhattan District Attorney Robert M. Morgenthau and the State Insurance Fund, a state agency that provides workers' comp coverage to 194,000 employers, arrested Anthony Spychalsky last month and charged his company, NY Ceiling & Drywall, with underpaying premiums by at least \$207,000. Mr. Spychalsky pleaded guilty on Jan. 8 to insurance fraud.

Many industry experts say the State Insurance Fund, which focuses on providing coverage to small business, is more aggressive in pursuing premium fraud than private insurance carriers.

Robert Lawson, the insurance fund's spokesman, said that in 2006, the fund's 200 auditors did 88,398 field audits. All the audits yielded an additional \$89 million in revenues, coming to \$493,000 per auditor, Mr. Lawson said.

Mr. Dickson, the head of the insurance agents' group, said, "The level of audits that are conducted by the commercial carriers and the frequency of the audits, I don't see that at the same standard as the State Insurance Fund's efforts."

Kenneth Adams, president of the Business Council of New York State, said, "Whatever can be put in place to limit and reduce fraud by employers or injured workers, that will produce benefits throughout the system."

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*** THIS DOCUMENT IS CURRENT THROUGH ALL 2003 LEGISLATION ***

*** ANNOTATIONS CURRENT THROUGH AUGUST 11, 2004 ***

TITLE 31. LABOR
CHAPTER 440. WORKERS' COMPENSATION

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Fla. Stat. § 440.107 (2004)

§ 440.107. Department powers to enforce employer compliance with coverage requirements

(1) The Legislature finds that the failure of an employer to comply with the workers' compensation coverage requirements under this chapter poses an immediate danger to public health, safety, and welfare.

(2) For the purposes of this section, "securing the payment of workers' compensation" means obtaining coverage that meets the requirements of this chapter and the Florida Insurance Code. However, if at any time an employer materially understates or conceals payroll, materially misrepresents or conceals employee duties so as to avoid proper classification for premium calculations, or materially misrepresents or conceals information pertinent to the computation and application of an experience rating modification factor, such employer shall be deemed to have failed to secure payment of workers' compensation and shall be subject to the sanctions set forth in this section. A stop-work order issued because an employer is deemed to have failed to secure the payment of workers' compensation required under this chapter because the employer has materially understated or concealed payroll, materially misrepresented or concealed employee duties so as to avoid proper classification for premium calculations, or materially misrepresented or concealed information pertinent to the computation and application of an experience rating modification factor shall have no effect upon an employer's or carrier's duty to provide benefits under this chapter or upon any of the employer's or carrier's rights and defenses under this chapter, including exclusive remedy.

(3) The department shall enforce workers' compensation coverage requirements, including the requirement that the employer secure the payment of workers' compensation, and the requirement that the employer provide the carrier with information to accurately determine payroll and correctly assign classification codes. In addition to any other powers under this chapter, the department shall have the power to:

(a) Conduct investigations for the purpose of ensuring employer compliance.

(b) Enter and inspect any place of business at any reasonable time for the purpose of investigating employer compliance.

Examine and copy business records.

- (d) Administer oaths and affirmations.
 - (e) Certify to official acts.
 - (f) Issue and serve subpoenas for attendance of witnesses or production of business records, books, papers, correspondence, memoranda, and other records.
 - ↘ (g) Issue stop-work orders, penalty assessment orders, and any other orders necessary for the administration of this section.
 - (h) Enforce the terms of a stop-work order.
 - (i) Levy and pursue actions to recover penalties.
 - (j) Seek injunctions and other appropriate relief.
- (4) The department shall designate representatives who may serve subpoenas and other process of the department issued under this section.
- (5) The department shall specify by rule the business records that employers must maintain and produce to comply with this section.
- (6) If a person has refused to obey a subpoena to appear before the department or its authorized representative or produce evidence requested by the department or to give testimony about the matter that is under investigation, a court has jurisdiction to issue an order requiring compliance with the subpoena if the court has jurisdiction in the geographical area where the inquiry is being carried on or in the area where the person who has refused the subpoena is found, resides, or transacts business. Failure to obey such a court order may be punished by the court as contempt, either civilly or criminally. Costs, including reasonable attorney's fees, incurred by the department to obtain an order granting, in whole or in part, a petition to enforce a subpoena or a subpoena duces tecum shall be taxed against the subpoenaed party.
- (7) (a) Whenever the department determines that an employer who is required to secure the payment to his or her employees of the compensation provided for by this chapter has failed to secure the payment of workers' compensation required by this chapter or to produce the required business records under subsection (5) within 5 business days after receipt of the written request of the department, such failure shall be deemed an immediate serious danger to public health, safety, or welfare sufficient to justify service by the department of a stop-work order on the employer, requiring the cessation of all business operations. If the department makes such a determination, the department shall issue a stop-work order within 72 hours. The order shall take effect when served upon the employer or, for a particular employer work site, when served at that work site. In addition to serving a stop-work order at a particular work site which shall be effective immediately, the department shall immediately proceed with service upon the employer which shall be effective upon all employer work sites in the state for which the employer is not in compliance. A stop-work order may be served with regard to an employer's work site by posting a copy of the stop-work order in a conspicuous location at the work site. The order shall remain in effect until the department issues an order releasing the stop-work order upon a finding that the employer has come into compliance with the coverage requirements of this chapter and has paid any penalty assessed under this section. The department may require an employer who is found to have failed to comply with the coverage requirements of s. 440.38 to file with the department, as a condition of release from a stop-work order, periodic reports for a probationary period that shall not exceed 2 years that demonstrate the employer's continued compliance with this chapter. The department shall by rule specify the reports

required and the time for filing under this subsection.

(b) Stop-work orders and penalty assessment orders issued under this section against a corporation, partnership, or sole proprietorship shall be in effect against any successor corporation or business entity that has one or more of the same principals or officers as the corporation or partnership against which the stop-work order was issued and are engaged in the same or equivalent trade or activity.

(c) The department shall assess a penalty of \$ 1,000 per day against an employer for each day that the employer conducts business operations that are in violation of a stop-work order.

(d) 1. In addition to any penalty, stop-work order, or injunction, the department shall assess against any employer who has failed to secure the payment of compensation as required by this chapter a penalty equal to 1.5 times the amount the employer would have paid in premium when applying approved manual rates to the employer's payroll during periods for which it failed to secure the payment of workers' compensation required by this chapter within the preceding 3-year period or \$ 1,000, whichever is greater.

2. Any subsequent violation within 5 years after the most recent violation shall, in addition to the penalties set forth in this subsection, be deemed a knowing act within the meaning of s. 440.105.

(e) When an employer fails to provide business records sufficient to enable the department to determine the employer's payroll for the period requested for the calculation of the penalty provided in paragraph (d), for penalty calculation purposes, the imputed weekly payroll for each employee, corporate officer, sole proprietor, or partner shall be the statewide average weekly wage as defined in s. 440.12(2) multiplied by 1.5.

(f) In addition to any other penalties provided for in this chapter, the department may assess against the employer a penalty of \$ 5,000 for each employee of that employer who the employer represents to the department or carrier as an independent contractor but who is determined by the department not to be an independent contractor as defined in s. 440.02.

(8) In addition to the issuance of a stop-work order under subsection (7), the department may file a complaint in the circuit court in and for Leon County to enjoin any employer who has failed to secure the payment of workers' compensation required by this chapter from employing individuals and from conducting business until the employer presents evidence satisfactory to the department of having secured the payment of workers' compensation required by this chapter and pays a civil penalty assessed by the department under this section.

(9) The department shall adopt rules to administer this section.

(10) The department may bring an action in circuit court to recover penalties assessed under this section, including any interest owed to the department pursuant to this section. In any action brought by the department pursuant to this section in which it prevails, the circuit court shall award costs, including the reasonable costs of investigation and a reasonable attorney's fee.

(11) Any judgment obtained by the department and any penalty due pursuant to the service of a stop-work order or otherwise due under this section shall, until collected, constitute a lien upon the entire interest of the employer, legal or equitable, in any property, real or personal, tangible or intangible; however, such lien is subordinate to claims for unpaid wages and any prior recorded liens, and a lien created by this section is not valid against any person who, subsequent to such lien and in good faith and for value, purchases real or personal property from such employer or becomes the mortgagee on real or

personal property of such employer, or against a subsequent attaching creditor, unless, with respect to real estate of the employer, a notice of the lien is recorded in the public records of the county where the real estate is located, and with respect to personal property of the employer, the notice is recorded with the Secretary of State.

(12) Any law enforcement agency in the state may, at the request of the department, render any assistance necessary to carry out the provisions of this section, including, but not limited to, preventing any employee or other person from remaining at a place of employment or job site after a stop-work order or injunction has taken effect.

(13) Agency action by the department under this section, if contested, must be contested as provided in chapter 120. All penalties assessed by the department must be paid into the Workers' Compensation Administration Trust Fund.

(14) If the department finds that an employer who is certified or registered under part I or part II of chapter 489 and who is required to secure the payment of workers' compensation under this chapter to his or her employees has failed to do so, the department shall immediately notify the Department of Business and Professional Regulation.

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