
UNEMPLOYMENT
INSURANCE

Progress, Prospects, Priorities

CHANGE to WIN
THE AMERICAN DREAM *for* AMERICA'S WORKERS

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December 8, 2009

Not just a few bad apples —

- Nationwide data

- In 1984, about 15% of employers misclassified at least some of their employees (*IRS Audits, 1984 Strategic Initiative*).
 - In 1998, approximately 10% to 30% of *randomly* audited employers in 9 states were found to have misclassified some workers. Targeted audits found levels reaching e.g. 65% in CA (*Planmatics for DOL, 2000, focusing on UI*).
 - Between 2000-2005, payroll employment (employees) in the U.S. grew by 2.4%, but nonemployer growth (includes misclassified workers) was 23.6%, nearly a 50 percent increase (*Fiscal Policy Institute, 2007*).
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■ State Studies

- **IL:** Conservatively estimated that 18% of employers misclassify about 30% of their workers. Nearly 8% of all workers are misclassified, a 55% increase between 2001 and 2005 (*Univ. of Missouri-Kansas City, Economic Costs of Employee Misclassification*).
- **ME:** Found 29% of employers audited in 2004, 39% in 2005, 43% in 2006 (mostly construction employers) and 41% in 2007 to have misclassified at least some workers (state UI audits by Maine DOL cited by Gov. John Baldacci).
- **NJ:** Based on mixed audits, misclassification and cash “off the books” rates was 42% (38% among random audits). In addition to the construction industry (41%), audits “found significant patterns of violation in food processing plants, courier services, dental assistants [53%], waitresses, nail salons, nurses, secretaries, and landscaping [62%].”

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- **Misclassification has reached epidemic proportions and in many industries, has devolved into massive cash pay and money laundering operations.**
 - **NY: Construction Company Owner Pleads Guilty For Paying Millions In Off-The-Books Wages To Evade Payroll Taxes**
 - **FL: Pompano Construction Company Owners Sentenced In Workers' Compensation, Tax, And Mail Fraud Conspiracy**
 - **KY: Spectrum Interiors And Its President Sentenced By Federal Judge, Plus \$2 Million Fine**
 - **This is fraud as a business model – used by major multinational corporations (e.g., in small package delivery and trucking, construction, janitorial and security guard services, home care, hospitality...).**
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Lost Rights, Lost Revenues

- Misclassified workers lose entire panoply of federal and many state employment protections, social insurance, safety net benefits.
 - **The U.S. Treasury is losing revenues**
 - The U.S. government loses an estimated \$3-4 billion/year (income, FUTA, payroll) due to misclassification [based on 1984 estimated incidence] (GAO, TIGTA, etc.).
 - Unreported and underreported cash pay drains billions more from federal coffers. E.g., CA workers' comp study: Found as much as \$100 billion in underreported payroll in 2002, amounts to a loss in federal employment tax revenue alone of about \$15 billion, *in one year, from one state (UC Berkeley, Fraud in Workers' Comp Payroll Reporting, 2007)*.
 - **State coffers losing too**
 - **IL:** Lost ~\$39 million/yr. from 2001 to 2005 (~\$54 million in 2005) due to unlevied UI taxes on misclassified workers, \$96 million/yr. in workers' comp, and \$125 million in state income taxes (*Univ. of Missouri-Kansas City, Economic Costs of Misclassification, 2006*).
 - **OH:** Estimate losses at least \$20 million/yr. in UI taxes, \$103 million/yr. in workers' comp premiums, about \$36 million/yr. in state income taxes (*AG Cordray, Economic Impact of Misclassification, 2009*).
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Section 530 Safe Harbor

- No retroactive liability if meet all statutory bases
 - Consistent treatment as independent contractor, and
 - Consistent reporting as independent contractor, and
 - Reasonable reliance on:
 - ✓ Judicial precedent, IRS rulings, or advice/letter to employer,
 - ✓ Past IRS audit in which employer emerged with no tax penalty for misclassification-related employment tax violations, or
 - ✓ “Long-standing recognized practice of a significant segment of the industry”
- No *prospective* obligation to reclassify
- Burden on the IRS to raise first, regulatory limits
- **H.R. 3408, The Taxpayer Responsibility, Accountability, and Consistency Act of 2009**

Best resources:

United Brotherhood of Carpenters

<http://www.carpenters.org/misclassification/index.html>

NELP

http://www.nelp.org/site/issues/category/independent_contractor_misclassification_and_subcontracting

IRS (Independent Contractor of Employee?)

<http://www.irs.gov/pub/irs-utl/emporind.pdf>
