

Employee Misclassification Advisory Task Force (EMATF)

2014 Annual Report



**Commissioner Burns Phillips
Abbie Hudgens, Designee
Tennessee Department of Labor and Workforce Development**

**Commissioner Julie Mix McPeak
Mike Shinnick, Designee
Tennessee Department of Commerce & Insurance**

**Carolyn Lazenby, Executive Director
Board of Licensing Contractors**



Tennessee Department of Labor and Workforce Development
Employee Misclassification Advisory Task Force

January 30, 2014

The Honorable Jack Johnson
Chairman, Senate Commerce and Labor Committee
11 Legislative Plaza
Nashville, TN 37243

The Honorable Jimmy Eldridge
Chairman, House Consumer and Employee Affairs Committee
208 War Memorial Building
Nashville, TN 37243

Dear Chairman Johnson and Chairman Eldridge:

T.C.A. § 50-6-919 created the Employee Misclassification Advisory Task Force to “study and make recommendations regarding issues relative to employee misclassification in the construction industry.” The law also requires the Task Force to submit a report on its findings and progress to your two committees on or before February 1 of each year.

In its first two annual reports the Task Force recommended funding additional investigators and fraud detection software. It also recommended the authorization of administrative penalties and stop work orders as part of the Workers’ Compensation Division’s enforcement capabilities. The General Assembly passed legislation in the 2013 session that authorized: (1) administrative penalties for employers who misclassify employees; (2) additional investigators in the Division of Workers’ Compensation to identify employers who misclassify employees; and (3) funding for fraud detection software.

The 2013 legislation was a significant step in Tennessee’s initiative to reduce employee misclassification and its detrimental effects. The problem of employee misclassification continues, however, and the Employee Misclassification Advisory Task Force is pleased to present its third annual report which includes its findings on the progress of the employee misclassification initiative in Tennessee, its findings on similar activities in other states, and recommendations for reducing the incidence and effect of misclassification in the construction services industry in Tennessee.

The Task Force appreciates the Legislature’s vision in 2010 that created the Task Force. Since that time, member agencies, businesses, and interested members of the public have worked together diligently to address the problems that misclassification has caused in the construction services industry. While there has been progress, the members of the Task Force are committed to accomplish even more in the coming year. We are very grateful for their contributions. The department and the Task Force look forward to discussing this report with you.

Sincerely,

A handwritten signature in blue ink, reading "Burns Phillips".

Burns Phillips, Commissioner
Chairman, Employee Misclassification Advisory Task Force



Commissioner Burns Phillips, Chair
Tennessee Department of Labor and Workforce
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Committee Reports can be found at:
<http://www.tn.gov/labor-wfd/EMEEF/>

EXECUTIVE SUMMARY

On June 4, 2010, the General Assembly passed Public Chapter No. 1149 creating the Employee Misclassification Advisory Task Force (“Task Force”) within the Workers’ Compensation Division of the Tennessee Department of Labor and Workforce Development (“TDLWD”). The purpose of the Task Force is to study and make recommendations regarding employee misclassification in the construction industry by seeking public input, holding public hearings, and creating committees to study and make recommendations relative to statutory issues identified in Tenn. Code Ann. § 50-6-919(b). The law also requires the Task Force to submit a report on its findings and progress by February 1 of each year. The Task Force submitted annual reports in 2012 and 2013 addressing the thirteen issues mandated by the original legislation. This report addresses the accomplishments, findings and future aspirations of the Task Force. It also recommends additional actions and legislation that will improve Tennessee’s efforts to control misclassification.

The employee misclassification initiative made significant progress in 2013. Beginning July 1, 2013, (the effective date of T.C.A. § 50-6-411) the Workers’ Compensation Division of the TDLWD began enforcing employee misclassification legislation by assessing civil penalties against construction services providers who failed to properly classify employees and/or report required information to their insurance carriers. Education and public awareness activities were undertaken to reach businesses and individuals across the state. A new educational brochure has been prepared, and an Employee Misclassification Enforcement and Education Fund (“EMEEF”) website developed and updated. New investigators are being hired, some of whom will be bilingual. The procurement process for fraud detection software has been initiated and should be completed by early summer. An updated tip form has been developed that has led to the additional identification of noncompliant employers. A process has been developed for referrals to district attorneys general.

The Task Force’s continued activities and research have led it to make additional recommendations in the 2014 Annual Report:

1. Authorize the use of stop work orders for construction services providers who are not compliant with employee misclassification laws.
2. Appropriate funds from the EMEEF to produce and distribute education materials to the public, including the translation of materials into Spanish and other languages;
3. Integrate communication capabilities of other Tennessee departments with the EMEEF initiative to reach more individuals and employers.
4. Conduct a study to determine whether the employee misclassification legislation should be extended to industries other than the construction services industry.

Background on Employee Misclassification

Problems in Tennessee that Led to EMEEF Legislation:

“Employee misclassification” occurs when an employer classifies employees as independent contractors or pays the employees “off the books.” Employers who misclassify their employees usually do not pay unemployment insurance premiums. Furthermore, they often either do not have workers’ compensation coverage or they pay substantially lower premiums because of fraudulent underreporting of payroll and/or misrepresentation of the number of employees and/or the type of work performed. This practice of “premium avoidance” is prevalent in the construction industry. Even state-funded projects are not immune to the problem of misclassified employees; dishonest employers have been found working on state-funded projects. In many instances, the behavior is deliberate and constitutes insurance and tax fraud.

Noncompliant employers usually do not deduct federal taxes (e.g., income, Social Security, Medicare) from their employees’ pay. Further, they do not pay overtime as required by the federal Fair Labor Standards Act. These practices create an unfair competitive advantage over employers who comply with federal and state employment and tax laws. In recognition of the problem, 37 states and the District of Columbia have enacted legislation in attempts to locate noncompliant employers and deter this unlawful behavior. Such conduct harms honest employers, mistreats workers, costs the treasury uncollected revenue, and has other negative societal impact.

Evidence of insurance misrepresentation has been documented in studies by Randall Thomas for The Travelers Insurance Companies. The Task Force’s 2013 Annual Report included the findings of The Travelers auditor who reviewed workers’ compensation premium audits performed for the period of 10/1/11 to 9/30/12. The purpose of that review was to demonstrate the inconsistencies in worker classification by businesses across the state when comparing workers’ compensation insurance versus unemployment insurance. It should be noted that comparisons are possible as the typical premium audit to determine the final earned premium for a workers’ compensation insurance policy involves reviewing payroll records, check registers, cash disbursements, etc. in order to determine actual exposures for the policy. As part of the review, Travelers typically reviews quarterly payroll tax reports such as federal quarterly payroll tax returns and state unemployment tax returns to verify wages as found in the customers’ payroll records against that reported to the appropriate governmental agencies. The following are the findings of Mr. Thomas’s review for the period of 10/1/12 to 9/30/13.

Business Sector	# w/ Work Comp	# Filing Unemployment Taxes	Percentage with Both
Restaurants	11	11	100%
Manufacturing	53	52	98%
Mercantile	34	33	97%
Trucking	13	10	77%
Res. Construction	138	24	17%
Com. Construction	121	110	91%
Healthcare	19	17	89%
Social Services	9	9	100%
All Other	93	86	92%
Total	491	352	72%

The above numbers represent a review of businesses audited for their workers compensation policies. All treated their workers as employees and were paying workers’ compensation insurance premiums based on the wages of their employees or they would not have been involved in the audit process. The results appear to reflect some improvement when comparing results found in the prior year’s report, possibly due to the auditor’s workload shifting towards audits of larger businesses. Larger businesses are generally more apt to properly classify their workers as employees rather than contract laborers.

It remains evident to The Travelers that there is a distinct problem with the proper classification of workers in the residential construction industry. The Task Force's prior recommendations to utilize computer software to enable interaction between databases by investigators could prove most useful in The Travelers' opinion.

Financial Impact of Misclassification:

Based on estimates using 2006 data, Tennessee lost between \$2.1 million and \$3.7 million in uncollected workers' compensation premium taxes.¹ Tennessee's estimated losses from unpaid unemployment insurance premiums range from \$8.4 million to \$14.9 million.² Workers' compensation insurers lost an estimated \$52.1 million to \$91.6 million in unpaid workers' compensation premiums.³

Actual TDLWD Unemployment Insurance audit figures related to misclassification for the last two years revealed that in 2013, 1,537 audits were conducted where 1,930 misclassified workers were discovered with net total wages of \$36,442,784. In 2012, 1,421 audits revealed 2,510 misclassified workers with total wages of \$25,456,799.

Employee Misclassification and Related Legislation:

Public Chapter No. 1149 of the Public Acts of 2010 created the Task Force. T.C.A. § 50-6-919 (See Appendix A). The chapter also provided that:

- Business owners and executives in the construction services industry are required to be covered by a workers' compensation policy unless they have an exemption. T.C.A. § 50-6-902 (See Appendix B)
- Up to three (3) business owners and executives in the construction industry may apply for an exemption through the Secretary of State's office for a fee. T.C.A. § 50-6-903 was amended in 2011 to allow up to five (5) owners or executives per business to apply for an exemption through the Secretary of State's office for a fee. (See Appendix C)
- EMEEF be established which shall be funded by construction services industry exemption fees. T.C.A. § 50-6-913 (See Appendix D)
- The Task Force make annual reports to the General Assembly regarding programs and services to be funded from the EMEEF on or before February 1 beginning February 1, 2012. T.C.A. § 50-6-919 (See Appendix A)

Public Chapter 1030 of the Public Acts of 2012 amends T.C.A. § 50-6-912 (See Appendix E) to reduce the fee structure for workers' compensation exemptions registrations and renewals.

Public Chapter 424, which was signed into law on May 16, 2013, included the following provisions:

- It is a violation of the workers' compensation law for a construction services provider to misclassify employees in order to avoid paying the proper workers' compensation insurance premium, or to materially understate or conceal the amount of payroll, the number of employees employed, or to misrepresent the employees' duties. T.C.A. § 50-6-411(a)(1) (See Appendix F)
- Civil monetary penalties for employee misclassification shall be equal to the greater of \$1,000 or 1½ times the average yearly workers' compensation insurance premium that is applicable to the

¹ A 4.4% tax is imposed on workers' compensation insurance premiums.

² Based on current rates of 1.1% to 10.6% on first \$9,000.00 in wages.

Misclassified Construction Employees in Tennessee. Dr. William Canak and Dr. Randall Adams, 2010.

³ *Id.*

particular construction services provider minus any premium dollars paid on the workers' compensation policy that was the object of the understatement or concealment. T.C.A. § 50-6-411(a)(2) (See Appendix F)

- Business operators that are in violation of this section of the law shall be referred to the Tennessee Bureau of Investigation or to the appropriate district attorneys general for any action deemed necessary under any applicable criminal law. T.C.A. § 50-6-411(c) (See Appendix F)
- T.C.A. § 50-6-913(b) has been amended, effective July 1, 2014, to appropriate monies in the EMEEF for the purchase of fraud detection software and for the hiring of additional employees to investigate potential employee misclassification activity. (See Appendix D)

Prior Task Force Annual Report Recommendations:

The Task Force made the following recommendations in its 2012 Annual Report in response to the issues raised in Tenn. Code Ann. § 50-6-919(b)(1)-(6):

- Enhanced Enforcement: Provide funding for at least four (4) additional investigators in each grand division, some who are bilingual to increase detection of misclassification.
- Authorize Administrative Penalties: Authorize administrative penalties for employers who have committed workers' compensation insurance premium avoidance. Such penalties would be consistent with the practices of other states.
- Authorize Stop Work Orders Directed at Noncompliant Construction Services Providers: Stop work orders for offending construction services providers would improve enforcement capabilities, but not shut down an entire jobsite. Such measures would be consistent with the practices of other states. This recommendation was not acted on by the Legislature.

In 2013 the Task Force made the following recommendations in response to the issues raised in Tenn. Code Ann. § 50-6-919(b)(7)-(13):

- Penalties for Fraud: Enact legislation granting TDLWD's Workers' Compensation Division authority to assess civil monetary penalties against construction services providers found to have committed workers' compensation insurance premium avoidance/fraud.⁴
- Stop Work Orders to Offending Construction Services Providers: Enact legislation granting the Workers' Compensation Division authority to issue and enforce stop work orders against offending construction services providers.
- Fraud Detection Software: Provide funding for fraud detection software to increase effectiveness of program to eliminate employee misclassification.
- Investigators: Provide funding to hire twelve (12) additional investigators (four (4) in each grand division of Tennessee), with at least one (1) new investigator per grand division having interpretation/translation skills.

⁴ Thirty-Seven (37) states, along with the District of Columbia, have adopted pro-law enforcement measures to address payroll fraud, including stop work orders, penalties for failure to properly classify employees, administrative penalties for workers' compensation premium avoidance, funding for special prosecutors, and penalties for money service businesses linked to payroll fraud.

Accomplishments in the Employee Misclassification Initiative

Manpower & Technology

- With the appropriation in Public Chapter 424, the Workers' Compensation Division was authorized to establish six (6) new investigator positions, two (2) in each grand division. Several of these investigators will be bilingual in order to pursue investigation and enforcement of diverse workers in construction-related misclassification matters.
- The Task Force studied fraud detection software and made recommendations to the Division of Workers' Compensation on the most efficient and effective technology. The Division is moving forward with the procurement process for software which should be completed by early summer, 2014. The software will be funded with the appropriation in the 2013 legislation.

Investigations & Penalties

- In the six (6) months since the July 1, 2013, effective date of the EMEEF penalty statute (T.C.A. § 50-6-411), EMEEF has performed 216 inspections, resulting in 42 cases with potential violations. Thirty-three (33) tips have been received through the website during that period. Two (2) cases have been settled resulting in \$3,888.21 in assessments. One case is currently in litigation. These investigations and penalty assessments occurred prior to the hiring of any additional staff or application of new software.
- EMEEF expects the investigation and assessment of penalties to increase substantially in the second half of FY 2014.

Education and Awareness

- Public Awareness Initiative: In the 2013 Annual Report, the Task Force recommended a speaking tour. Representatives from the TDLWD and Tennessee Department of Commerce and Insurance (TDCI) made themselves available to speak at conferences and other meetings. Both TDLWD and TDCI staff reached out to Homebuilders Associations across the state, as well as Associated Builders & Contractors and Associated General Contractors to offer to make a presentation entitled "Employee Misclassification in the Construction Industry." Key components of the presentations include:
 - ✓ Recent history of Workers' Compensation law changes involving the Tennessee construction industry.
 - ✓ Misclassification definition and when it occurs.
 - ✓ Recap of Public Chapter 424, including the introduction of penalties.
 - ✓ Who "employee misclassification" affects.
 - ✓ Financial impacts of employee misclassification.
 - ✓ "Seven factors" used to determine if a worker is an independent contractor or employee.
 - ✓ Independent contractor's options: coverage or exemption registry.
 - ✓ Exemption registry questions and answers.
 - ✓ Getting involved in helping to reduce employee misclassification.
 - ✓ What to expect during a misclassification investigation by TDLWD staff.
 - ✓ Ways to make sure construction services providers are in compliance.
 - ✓ Insurance issues relating to workers' compensation construction law changes.

- Presentations were made in Clarksville (Dunn Insurance), Nashville (Plumbing and HVAC group), Cleveland (Homebuilders Association), Memphis (West TN Homebuilders Association), and Chattanooga (Homebuilders Association) with the goal of informing construction services providers about the new employee misclassification laws and soliciting their help in reporting misclassification in the workplace. The presentations have generally been well received and have included productive question and answer sessions. As of this writing, staff is pursuing an agency association presentation in the Knoxville area.
- To educate the general workforce about employee misclassification, the Task Force established an informational website that provides distinctions between employees and independent contractors, a tip form, and a toll free number so that citizens may report a business suspected of misclassifying its workers. The tip form and fraud tip line have been actively used to investigate complaints since the website was established in mid-2012. The Task Force also created a brochure that outlines the new penalties associated with employee misclassification noncompliance and provides contact information for various government resources.

Referrals for Criminal Prosecution

- In addition to the penalties provided for in Public Chapter 424, Tenn. Code Ann. § 50-6-411, the TDLWD shall refer cases involving business operations that are in violation of this section to the Tennessee Bureau of Investigation (“TBI”) or the appropriate District Attorney General (“DA”), for any action deemed necessary under any applicable criminal law.
- On a quarterly basis (or sooner for more egregious cases) beginning December, 2013, an EMEEF attorney is now referring cases of suspected misclassification to the appropriate local DA, who has discretion to request an investigation by the TBI. The referrals include the name and address of the employer, the source for beginning the investigation, the suspected violation(s), the dates of violation(s), whether a penalty has been assessed by the Workers’ Compensation Division, whether division administrative proceedings have been concluded, to which local DA the matter was referred and any additional notes that the EMEEF staff may find pertinent.
- At his or her discretion, the local DA may investigate the matter, refer the information to the appropriate police or sheriff’s department, or request a TBI investigation. Once the investigation is complete, the DA determines whether there is sufficient evidence to establish probable cause to believe a crime has been committed and to identify the person or persons who committed the criminal offense. If such evidence exists, the DA decides if he or she feels the evidence is substantial enough to obtain a criminal conviction and thus justify criminal prosecution. If so, the case would then proceed through the criminal justice system in the normal manner.
- The Task Force recommends that the frequency of such prosecution should be monitored. The number of cases may rise to such a level that the Task Force will recommend funding for additional staff.

In December 2013, the TDLWD referred twelve (12) cases of suspected misclassification to nine (9) local DAs for the 1st quarter of Fiscal Year 2013/14. Violations included six (6) cases of misclassifying employees as independent contractors, four (4) cases of understating wages, two (2) cases of underreporting the number of employees, one (1) case of unlawful deductions, and one (1) case of misrepresenting the type of work being performed.

Update on Revenues and Expenditures of the Employee Misclassification Education and Enforcement Fund

T.C.A. §50-6-913 created the EMEEF which shall be administered by the Commissioner of the Tennessee Department of Labor and Workforce Development. The monies in the EMEEF come from any fees collected pursuant to the fee schedule for Workers' Compensation Exemption Registrations as stated in Tenn. Code Ann. § 50-6-912 plus interest. Monies in the EMEEF must be invested by the State Treasurer in accordance with provisions of Tenn. Code Ann. § 9-4-603.

Monies in the EMEEF shall be used for the following purposes:

- All costs of the Secretary of State associated with the administration of the Workers' Compensation Exemption Registry.
- Monies remaining in the EMEEF after costs are reimbursed to the Secretary of State may be used, subject to appropriation by the General Assembly, for education and to support investigation and assessment of penalties for parties who are not compliant with laws regarding employee misclassification.

The chart below outlines the revenue, expenditures, and fund balances since the EMEEF's inception on January 1, 2011. The revenue was generated from Workers' Compensation Exemption Registry applicant registration, amendments and copy fees. Revenue collections and expenditures in FY 2010-11 through December 2013 as reported to the Division of Workers' Compensation. The drop in annual revenues from the first year is due to two factors: (1) exemption fees cover a two year period rather than annually; (2) the exemption fee was reduced 50% in 2012.

FISCAL YEAR	REVENUE	EXPENDITURES	ENDING BALANCE
2010-11	\$2,177,742	\$424,293	\$1,753,448
2011-12	1,555,009	368,496	2,939,960
2012-13	1,204,258	339,918	3,809,301
TOTAL	\$4,937,009	\$1,132,707	\$3,809,301

The Secretary of State has estimated the number of renewals and revenue for the FY 13/14 thru FY 15/16 which is the table below:

FISCAL YEAR	ESTIMATED # OF RENEWALS	MINIMUM RENEWAL FEE	ESTIMATED RENEWAL REVENUE
2013-14	8,980	\$50	\$449,000
2014-15	9,221	\$50	\$461,050
2015-16	11,828	\$50	\$591,400

Misclassification Research/Legislation in Other Jurisdictions

FY 2012-13 has seen significant progress addressing misclassification through state task forces, enforcement programs and state legislation related to misclassification.

Multiple states conducted research projects to identify the extent of misclassification and, when present, losses to state programs governing workplace and employment relations, such as workers' compensation, unemployment insurance, and income taxes. (See Appendix G for the complete report from the Research and Resources Committee that reviewed the effects, finding and legislation from other states.)

Employee Misclassification and Its Impact

- A **Texas** project found 41% of construction workers wrongly classified or receiving unreported wages. A **Massachusetts** joint task force recovered over \$21 million covering an eighteen month period. **New York's** joint task force uncovered 20,200 misclassified employees, \$282.5 million in unreported wages and assessed over \$9.7 million in unemployment insurance contributions. **Washington** compliance actions collected \$163.8 million in additional premiums, setting a new record. Its Prevention and Compliance Division collected \$9.30 for every dollar invested in enforcement. **California's** 2012 task force found that the underground economy costs the state \$9 billion in annual lost corporate, personal and sales and use taxes. **Florida's** joint task force uncovered 20,200 misclassified employees, \$282.5 million in unreported wages and assessed over \$9.7 million in unemployment insurance contributions. **Florida's** focus on "shell" companies and money service firms led to multiple arrests.

Legislation and Enforcement

- Significant ground was covered in the state 2012-2013 legislative sessions. **Tennessee** put into place its task force recommendations for an administrative penalty for misclassification of workers and workers' compensation premium avoidance, funded new compliance investigators and provided funding for an information technology system that will provide those investigators with information on probable violators. **Oklahoma, Florida, Utah and Illinois** strengthened existing laws targeting misclassification enforcement.
- **Florida**, in particular, focused on budgeting dedicated workers' compensation fraud prosecutors and enacted new real-time reporting to state regulators of commercial check-cashing at money service businesses. Money-service businesses have become a hub for laundering unreported cash-pay. **Florida** has also put into place dedicated workers' compensation fraud prosecutors in several counties, including Dade, Broward, Hillsboro and West Palm.
- **Utah** extended the sunset date of its enforcement task force. **Texas** created a new penalty in its unemployment insurance code for not reporting employees on publicly-funded construction projects. **Illinois** adopted reporting of payments made to some construction subcontractors. Those reports can be compared to tax returns, thus disclosing unreported income. **Oregon** linked construction licenses to compliance with state revenue and employment laws, and it put into place a penalty for businesses who do not report income. The **District of Columbia** adopted a misclassification penalty.

Education and Awareness

- Multiple states initiated or expanded education programs to inform workers, the general public and employers of ways to reduce the extent of misclassification, and improve understanding of and compliance with legally required employer duties and obligations. Examples may be found in **Massachusetts, New York, Florida** and **Tennessee**.

Fraud Detection Software

- **Massachusetts'** joint task force implemented fraud detection software.
- Using fraud detection software, **Washington** found 76% of employers audited owed additional workers' compensation premiums.

Federal Government

The "Payroll Fraud Prevention Act" has been offered in the US Senate (S.1687). In effective part, the bill:

- Requires employers to notify workers about their independent contractor status;
- Imposes a penalty for employee misclassification of up to \$1,100 per worker or, if the violation is repeated or willful, up to \$5,000 per worker;
- Requires state unemployment compensation divisions to institute anti-misclassification initiatives and penalties; and
- Authorized intra-departmental cooperation within the USDOL and allows the USDOL to share investigation information with the IRS.

Aspirations/Recommendations

During the first two years of its existence, the Task Force studied the issues mandated in T.C.A. § 50-6-919 and made recommendations to the General Assembly regarding programs and services to be funded from the EMEEF as mandated in T.C.A. § 50-6-918. The Division of Workers' Compensation has begun enforcement activities to penalize noncompliant construction services providers and launched public education and awareness initiatives. However, the Task Force feels that there is much work to be done to eliminate employee misclassification and recommends that the General Assembly take the following actions:

- Authorize the use of stop work orders for individual construction services providers who are not compliant with employee misclassification laws. This recommendation was made in the 2013 report, but was not included in the legislation passed. While the terms and conditions of legislation authorizing stop work orders would have to be carefully developed to avoid unwanted and unintended results, the experience of other states shows that this authority is an effective method to reduce employee misclassification.
- Appropriate funds from the EMEEF to produce and distribute education mechanisms for the general public, including:
 - Informational materials, including brochures, in English, Spanish and other languages, to reach the construction industry's working population of Tennessee. Once completed, informational materials can be distributed by compliance field investigators, local codes and building permit departments, licensing boards, local chambers of commerce, state agencies, and by others in contact with the construction industry's working population.
 - Provide the informational website in Spanish, Kurdish, Laotian and Sudanese to reach the growing diverse Tennessee workforce.
- These projects are expected to require \$30,000 to fund them if the state in-house printing services are utilized. This amount is much more economical than proposals obtained from outside sources in 2011 and 2012. Projected costs include fees for planning, research, and strategy.
- In addition, the Task Force has aspirations for future activities that can reduce employee misclassification in Tennessee:
 - Continue educating the public about employee misclassification and its detrimental consequences for both employers and employees. The passage of Public Chapter 424 in 2013 increased the need for education about the consequences of misclassification. The Workers' Compensation Division and the Task Force can accomplish much by continuing their education programs.
 - Coordinate with other Tennessee departments to reach more individuals and employers who interact with the construction services industry.
 - Conduct a study to determine whether to recommend that employee misclassification legislation be extended to industries other than the construction services industry.
 - Place direct links to the Task Force misclassification website on the websites of the Department of Commerce & Insurance, the Secretary of State, the Department of Revenue and construction services trade associations. The additional exposure to misclassification information could be a crucial link in educating the Tennessee workforce about employee misclassification.

- Incorporate the topic of misclassification into the communication/education agendas of the TDLWD's other divisions, which have already established "circuits" to educate the public, employers and employees regarding unemployment insurance, vocational training, career opportunities, workplace safety, and workers' compensation issues. Employee misclassification education is a natural complement to such subject matters.
- TDLWD provides a quarterly electronic newsletter that reaches approximately 25, 000 employers across the State of Tennessee. The Task Force suggests using this existing form of communication as a cost-effective means of public outreach. Other state offices, including the Department of Commerce & Insurance, Board of Licensing Contractors and the Tennessee Bureau of Investigation regularly educate their own applicable audiences and could add this information to their curriculum.
- Extend speaking tours to business conventions, city and town hall meetings, contractor associations, legislative organizations, bar association meetings, college business and entrepreneurial classes, and events hosted by the insurance industry.
- Develop informational webinars, such as YouTube videos, which the State of Tennessee is capable of producing in-house.
- Issue press releases and other media releases in local communities to reach workers and employers in both urban and rural districts. For example, a 9/25/13 TDLWD media release informed the public of the new legislation authorizing civil penalties for five forms of employee misclassification, and a 12/6/12 article from The Commercial Appeal chronicled the first prosecution in Tennessee of a Memphis based contractor for workers' compensation premium fraud.
- Utilize the growing diversity of Tennessee's workforce organizations to educate their members regarding misclassification issues.
- Reach out to Spanish-language and bilingual radio stations who can reach immigrant members and educate listeners about the laws and regulations relevant to employee misclassification. Outreach opportunities include the television program Nashville Channel 5's (WTVF) "**Que Pasa Nashville?**" and printed media newspapers *El Crucero* and *Latino News*.
- Allow the Task Force to sunset June 30, 2014, but solicit the continued involvement of existing membership in a new "EMEEF Advisory Committee" that would meet periodically and operate in a consulting capacity to the Division of Workers' Compensation (TDLWD) to address ongoing needs. The Division of Workers' Compensation, with the advice of such an advisory committee, would be pleased to continue to provide the Senate Commerce and Labor Committee and the House Consumer and Employee Affairs Committee with an annual report on the employee misclassification initiative.

Conclusion

The Task Force wishes to thank the General Assembly for recognizing the dangers that “employee misclassification” poses to individuals, businesses and the economy of Tennessee and for addressing the problem through appropriate legislation and authorization. We believe that significant progress has been made in the initiative to reduce or eliminate misclassification and educate the public about the problems inherent in employee misclassification in the construction services industry. The Task Force believes that Tennessee is poised to make even further strides in awareness, education and enforcement of misclassification. With your continued support through necessary appropriations and legislation, there will be even more significant progress and achievements in the future.

Task Force Committees:

Legal Committee
Dan Bailey, Chair

Education Committee
Lynn Ivanick, Chair

Enforcement Committee
Martha Campbell, Chair

Research and Resource Committee
William Canak, Chair

Insurance Committee
Mike Shinnick, Chair

The entire Task Force extends special thanks to everyone who participated and contributed their time and efforts toward encouraging fair competition among employers and eliminating employee misclassification in the construction industry. The Task Force could not have prepared the 2014 Annual Report without your assistance.

Appendix A

Tenn. Code Ann. § 50-6-919

TENNESSEE CODE ANNOTATED
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*** Current through the 2012 Regular Session ***

Title 50 Employer And Employee
Chapter 6 Workers' Compensation Law
Part 9 Construction Services Providers

Tenn. Code Ann. § 50-6-919 (2012)

50-6-919. Employee misclassification advisory task force.

(a) There is created the employee misclassification advisory task force to study and make recommendations regarding issues relative to employee misclassification in the construction industry.

(b) The task force shall study issues relative to employee misclassification in the construction industry, including, but not limited to:

(1) The impact of employee misclassification on state and local governments of this state and the amount of state revenue, if any, that is lost or not collected due to employee misclassification;

(2) The lost earnings of the insurance industry due to employee misclassification;

(3) The estimates of the frequency of occurrence and economic impact of employee misclassification and whether particular industries are more likely to engage in the misclassification of employees;

(4) Whether state law should specify a uniform definition of the employment relationship and, if so, how it should be defined;

(5) Whether existing Tennessee laws aimed at preventing, investigating and taking enforcement action against the failure of employers to properly classify individuals as employees are effective;

(6) Whether there are ways to facilitate the sharing of information among agencies represented by task force members relative to violations of laws by employers who fail to classify individuals as employees;

(7) Whether there are new ways to pool, focus and target investigative and enforcement resources relative to employee misclassification;

(8) New strategies for systematically investigating the failure of employers to properly classify individuals as employees;

(9) Whether improvements are needed to facilitate the filing of complaints and identify potential violators, including, but not limited to, soliciting referrals and other relevant information from the public;

(10) Changes in the law, if any, that need to be made in order to ensure that agencies represented by task force members investigating the failure of employers to properly classify individuals as employees under their own statutory or administrative enforcement mechanism have the authority to refer a matter to

other participating agencies for assessment of potential liability under the other agencies' relevant statutory or administrative enforcement mechanisms;

(11) Innovative ways to prevent misclassification of employees by employers, such as through disseminating educational materials regarding the legal differences between independent contractors and employees;

(12) Methods by which public awareness of the illegal nature and harms inflicted by the failure of employers to properly classify individuals as employees can be increased; and

(13) Any other issues relative to employee misclassification in the construction industry.

(c) The task force shall seek public input and may conduct public hearings or appoint study groups as necessary to obtain information necessary to conduct its study.

(d) Membership on the task force shall be as follows:

(1) The commissioner of labor and workforce development or the commissioner's designee;

(2) The commissioner of commerce and insurance or the commissioner's designee; and

(3) The executive director of the board for licensing contractors or the director's designee.

(e) The secretary of state or the secretary of state's designee, the attorney general and reporter or the attorney general's designee, the chairman of the advisory council on workers' compensation or the chairman's designee, the executive director of the district attorneys general conference or the director's designee, and the director of the Tennessee bureau of investigation or the director's designee shall all serve as ex officio nonvoting members of the task force. The task force may appoint additional ex officio nonvoting members as it deems appropriate.

(f) The commissioner of labor and workforce development shall convene the first meeting of the task force on or after February 1, 2011, at which meeting the task force shall elect its officers from the voting members and otherwise organize itself as it deems appropriate.

(g) On or before February 1, 2012, and on or before February 1 annually thereafter, the task force shall submit a report on its findings and progress to the commerce, labor and agriculture committee of the senate, and the consumer and employee affairs committee of the house of representatives.

(h) To the extent permitted by law, every agency, department, office, division or public authority of this state shall cooperate with the task force and furnish such information that the task force determines is reasonably necessary to accomplish its purposes.

(i) In accordance with procedures set forth in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 2, the department of labor and workforce development, the department of commerce and insurance, and the board for licensing contractors may individually implement recommendations of the task force; provided, that such implementation is authorized under the existing statutory authority of the respective departments or board.

HISTORY: Acts 2010, ch. 1149, § 13.

Appendix B

Tenn. Code Ann. § 50-6-902

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*** Current through the 2013 Regular Session ***

Title 50 Employer And Employee
Chapter 6 Workers' Compensation Law
Part 9 Construction Services Providers

Tenn. Code Ann. § 50-6-902 (2013)

First of 2 versions of this section

50-6-902. Requirement that construction services providers carry workers' compensation insurance -- Exemptions -- Election by subcontractor. [Effective until July 1, 2014. See the version effective on July 1, 2014.]

(a) Except as provided in subsection (b), all construction services providers shall be required to carry workers' compensation insurance on themselves. The requirement set out in this subsection (a) shall apply whether or not the provider employs fewer than five (5) employees.

(b) To the extent there is no restriction on applying for an exemption pursuant to § 50-6-903, a construction services provider shall be exempt from subsection (a) if the provider:

(1) Is a construction services provider rendering services on a construction project that is not a commercial construction project and is listed on the registry;

(2) Is a construction services provider rendering services on a commercial construction project, is listed on the registry and such provider is rendering services to a person or entity that complies with § 50-6-914(b)(2);

(3) Is covered under a policy of workers' compensation insurance maintained by the person or entity for whom the provider is providing services;

(4) Is a construction services provider performing work directly for the owner of the property; provided, however, that this subdivision (b)(4) shall not apply to a construction services provider who acts as a general or intermediate contractor and who subsequently subcontracts any of the work contracted to be performed on behalf of the owner;

(5) Is a construction services provider building a dwelling or other structure, or performing maintenance, repairs, or making additions to structures, on the construction service provider's own property; or

(6) Is a provider whose employment at the time of injury is casual as provided in § 50-6-106.

(c) A subcontractor engaged in the construction industry under contract to a general contractor engaged in the construction industry may elect to be covered under any policy of workers' compensation insurance insuring the general contractor upon written agreement of the general contractor, regardless of whether

such subcontractor is on the registry established pursuant to this part, by filing written notice of the election, on a form prescribed by the commissioner of labor and workforce development, with the department. It is the responsibility of the general contractor to file the written notice with the department. Failure of the general contractor to file the written notice shall not operate to relieve or alter the obligation of an insurance company to provide coverage to a subcontractor when the subcontractor can produce evidence of payment of premiums to the insurance company for the coverage. The election shall in no way terminate or affect the independent contractor status of the subcontractor for any other purpose than to permit workers' compensation coverage. The election of coverage may be terminated by the subcontractor or general contractor by providing written notice of the termination to the department and to all other parties consenting to the prior election. The termination shall be effective thirty (30) days from the date of the notice to all other parties consenting to the prior election and to the department.

(d) Nothing in this part shall be construed as exempting or preventing a construction services provider from carrying workers' compensation insurance for any of its employees. The requirement set out in this subsection (d) shall apply whether or not the provider employs fewer than five (5) employees.

HISTORY: Acts 2010, ch. 1149, § 13; 2011, ch. 422, § 4.

Appendix C

Tenn. Code Ann. § 50-6-903

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*** Current through the 2013 Regular Session ***

Title 50 Employer And Employee
Chapter 6 Workers' Compensation Law
Part 9 Construction Services Providers

Tenn. Code Ann. § 50-6-903 (2013)

First of 2 versions of this section

50-6-903. Criteria for applying for exemption. [Effective until January 1, 2014. See the version effective on January 1, 2014.]

(a) Any construction services provider who meets one (1) of the following criteria may apply for an exemption from § 50-6-902(a):

(1) An officer of a corporation who is engaged in the construction industry; provided, that no more than five (5) officers of one (1) corporation shall be eligible for an exemption;

(2) A member of a limited liability company who is engaged in the construction industry if such member owns at least twenty percent (20%) of such company;

(3) A partner in a limited partnership, limited liability partnership or a general partnership who is engaged in the construction industry if such partner owns at least twenty percent (20%) of such partnership;

(4) A sole proprietor engaged in the construction industry; or

(5) An owner of any business entity listed in subdivisions (a)(1)-(3) that is family-owned; provided, that no more than five (5) owners of one (1) family-owned business may be exempt from § 50-6-902(a).

(b) A construction services provider may be eligible for and may utilize multiple exemptions if the construction services provider meets the requirements set out in subsection (a) for each such exemption and complies with § 50-6-904 for each such exemption in which the construction services provider seeks to obtain; provided, however, that a construction services provider applying for a second or subsequent exemption shall not be required to pay the fees set out in § 50-6-912(a)(1) and (2), but shall instead pay the fee set out in § 50-6-912(a)(9) for each subsequent workers' compensation exemption registration and shall pay the fee set out in § 50-6-912(a)(10) for each subsequent registration renewal.

HISTORY: Acts 2010, ch. 1149, § 13; 2011, ch. 422, § 5.

Appendix D

Tenn. Code Ann. § 50-6-913

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*** Current through the 2013 Regular Session ***

Title 50 Employer And Employee
Chapter 6 Workers' Compensation Law
Part 9 Construction Services Providers

Tenn. Code Ann. § 50-6-913 (2013)

Second of 2 versions of this section

50-6-913. Creation of employee misclassification education and enforcement fund -- Costs of administration. [Effective on July 1, 2014. See the version effective until July 1, 2014.]

(a) There is created a fund to be known as the "employee misclassification education and enforcement fund." Any fee collected pursuant to § 50-6-912(a) shall be deposited in the employee misclassification education and enforcement fund. Moneys in the fund shall be invested by the state treasurer in accordance with the provisions of § 9-4-603. The fund shall be administered by the administrator of the workers' compensation division.

(b) All costs of the secretary of state associated with the administration of this part shall be paid by the administrator of the workers' compensation division from the employee misclassification education and enforcement fund. Moneys remaining in the fund after such payment may be expended, subject to appropriation by the general assembly, at the direction of the administrator of the workers' compensation division for the purchase of computer software and hardware designed to identify potential employee misclassification activity, for the hiring of additional employees to investigate potential employee misclassification activity, for education of employers and employees regarding the requirements of this part and in support of the ongoing investigation and prosecution of employee misclassification.

(c) Any amount in the employee misclassification education and enforcement fund at the end of any fiscal year shall not revert to the general fund, but shall remain available for the purposes set forth in subsection (b). Interest accruing on investments and deposits of the employee misclassification education and enforcement fund shall be credited to such account, shall not revert to the general fund, and shall be carried forward into each subsequent fiscal year.

HISTORY: Acts 2010, ch. 1149, § 13; 2013, ch. 282, § 1; 2013, ch. 424, § 2.

Appendix E

Tenn. Code Ann. § 50-6-912

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*** Current through the 2013 Regular Session ***

Title 50 Employer And Employee
Chapter 6 Workers' Compensation Law
Part 9 Construction Services Providers

Tenn. Code Ann. § 50-6-912 (2013)

50-6-912. Fees.

(a) The secretary of state may charge the following maximum fees for each of the following:

(1) The issuance of a construction services provider registration to providers who have not been issued a license by the board\$50

(2) The issuance of a construction services provider workers' compensation exemption\$50

(3) The filing of correction information pursuant to § 50-6-905(c)\$20

(4) The filing of change of address information pursuant to § 50-6-905(d)\$20

(5) The filing of a construction services provider workers' compensation exemption renewal\$50

(6) The filing of a construction services provider registration renewal to providers who have not been issued a license by the board\$50

(7) The filling of a revocation pursuant to § 50-6-908(a)\$20

(8) The issuance of a copy of the notice issued pursuant to § 50-6-905(a)(1)\$20

(9) The issuance of a second or subsequent construction services provider workers' compensation exemption registration\$20 per registration

(10) The filing of a second or subsequent construction services provider workers' compensation exemption renewal \$20 per renewal

(b) In addition to the maximum fees authorized in subsection (a), the secretary of state is authorized to charge an online transaction fee to cover costs associated with processing payments for applications submitted online.

(c) Except as provided in subsections (a) and (b), no other fees shall be charged by the secretary of state to administer this part.

HISTORY: Acts 2010, ch. 1149, § 13; 2011, ch. 422, § 10; 2012, ch. 1030, § 2.

Appendix F

Tenn. Code Ann. § 50-6-411

TENNESSEE CODE ANNOTATED

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*** Current through the 2013 Regular Session ***

Title 50 Employer And Employee
Chapter 6 Workers' Compensation Law
Part 4 Insurance

Tenn. Code Ann. § 50-6-411(2013)

50-6-411. Misclassification of employees by construction service providers. [Effective until July 1, 2014. See the version effective on July 1, 2014.]

(a) (1) It is a violation of this section if at any time a construction services provider, as defined in § 50-6-901, misclassifies employees to avoid proper classification for premium calculations by concealing any information pertinent to the computation and application of an experience rating modification factor or by materially understating or concealing:

- (A) The amount of the construction services provider's payroll;
- (B) The number of the construction services provider's employees; or
- (C) Any of the construction services provider's employee's duties.

(2) A construction services provider who violates subdivision (a)(1) shall be subject to a penalty issued by the commissioner or commissioner's designee of up to the greater of one thousand dollars (\$1,000) or one and one half (1 1/2) times the average yearly workers' compensation premium for such construction services provider based on the appropriate assigned risk plan advisory prospective loss cost and multiplier minus the premium dollars paid on the policy that was the object of the understatement or concealment.

(b) This section shall have no effect upon a construction services provider's or carrier's duty to provide benefits under this chapter or upon any of the construction services provider's or carrier's rights and defenses under this chapter, including, but not limited to, § 50-6-108.

(c) In addition to the penalties provided for in subdivision (a)(2), the department shall refer cases involving business operations that are in violation of this section to the Tennessee bureau of investigation or the appropriate district attorney general for any action deemed necessary under any applicable criminal law.

(d) An individual or entity that is not a successor-in-interest or a principal of a construction services provider who is in violation of this section shall not be liable for the monetary penalties in this section.

(e) The funds collected by the commissioner of labor and workforce development or the commissioner's designee for penalties assessed pursuant to subdivision (a)(2) shall be deposited in the employee misclassification education and enforcement fund established by § 50-6-913 to be administered by the commissioner of labor and workforce development.

HISTORY: Acts 2013, ch. 424, § 1.

Appendix G

Research and Resources Committee's 3rd Annual Report to the Employee Misclassification Advisory Task Force

State Task Force & Enforcement Programs and Related Initiatives State Legislative Enactments Related to Misclassification

2012-13 Task Force, Enforcement Programs and Initiatives

Texas 2013 study

Researchers from the University of Texas and the Workers' Defense Project interviewed construction workers in Austin, Dallas, Houston, San Antonio and El Paso. They published their findings in *Build a Better Texas: Construction Working Conditions in the Lone Star State*. Research data was also consulted. The report concluded that 41 percent of the construction workforce, or over 300,000 construction workers, in Texas are either paid unreported compensation or wrongly classified as independent contractors, costing the state an estimated \$54.5 million in lost unemployment contributions. The resulting federal income tax loss is \$1.06 billion.

Massachusetts Joint Enforcement Task Force on the Underground Economy and Employee Misclassification 2012

The Joint Enforcement Task Force (JTF) includes the Department of Industrial Accidents; the Department of Labor Standards; the Department of Unemployment Assistance; The office of the Attorney General, Fair Labor Division; the Executive Office of Administration and Finance, Division of Capital Asset Management; the Department of Revenue; Supplier Diversity Office, the Executive Office of Public Safety and Security; the Executive Office of Health and Human Services; Massachusetts Office for Refugees and Immigrants; the Executive Office of Housing and Economic Development, Division of Banks; the Division of Professional Licensure; the Office of Small Business and Entrepreneurship; the Office of the Treasurer, Alcoholic Beverages and Control Commission; the Massachusetts Commission Against Discrimination and the Insurance Fraud Bureau.

From July 2011 through December 2012 the JTF recovered \$21.4 million in wages, state taxes, unemployment contributions and penalties. In 2012, JTF received 237 complaints through its referral phone line, web sites and complaints made to member agencies. JTF performed over 24,000 compliance checks and investigations in 18 months: 17,000 of those were done in 2012. In just three audits over five months, the JTF found 2,300 misclassified workers and \$11 million in unreported wages. The state also put into place automated fraud detection technology, and it has begun an updated study on the size of the underground economy and employee misclassification.

The JTF is also increasing its education program for employers and employees. Also, member agencies have been engaged in cross-agency training.

Annual Report of the Joint Enforcement Task Force on Employee Misclassification 2013

Members of the New York state Joint Enforcement Task Force (JETF) include the Department of Labor, Unemployment Insurance Division, the Division of Labor Standards, the Division of Safety and Health, the Office of Special Investigations and the Bureau of Public Work; Workers' Compensation Board; Workers' Compensation Fraud Inspector General; the Department of Taxation and Finance; the Attorney General's Office and the Comptroller of the City of New York.

In 2012 the JETF uncovered 20,200 misclassified employees, \$282.5 million in unreported wages and assessed over \$9.7 million in unemployment insurance contributions. In addition, the JETF did reach-out education programs.

Operation Dirty Money, Florida

Florida's Division of Insurance Fraud has cooperative task force investigations in the state that have been focused on the use of shell companies and money service businesses engaged in workers' compensation premium fraud schemes in the construction industry. The task forces include local law enforcement, the Office of the Attorney General and county state's attorney offices. Florida has also put into place dedicated workers' compensation fraud prosecutors in several counties, including Dade, Broward, Hillsboro and West Palm.

To date, Operation Dirt Money has shut down over 40 shell companies and has identified over \$500 million in fraudulent transactions. Their work is ongoing.

Washington State Department of Labor & Industries: Partnering to Prevent Fraud and Abuse; 2012 Annual Fraud Report to the Legislature

Washington operates a state-insurance program for workers' compensation enforced by the Department of Labor & Industries (L&I). For a number of years, Washington has had in place anti-fraud detection software. In 2012 L&I compliance actions collected \$163.8 million in additional premiums, setting a new record. L&I's fraud Prevention and Compliance Division collected \$9.30 for every dollar invested in enforcement. The anti-fraud detection software has helped improve audit selection to the degree that 76 percent of employers audited were found to owe additional workers' compensation premiums.

California Legislative Finding

California passed into law AB 576 which forms a joint enforcement task force of state revenue agencies on the underground economy. They found that the underground economy costs the state \$9 billion in lost corporate, personal and sales and use taxes.

US Senate Hearing of the Health, Education, Labor and Pension Subcommittee on Employment and Work Place Safety, November 2013: Payroll Fraud: Targeting Bad Actors Hurting Workers and Businesses

The hearing heard an employee witness and employer witnesses on misclassification and the use of independent contractors. One employer witness from Tennessee recounted how his construction company lost work due to unfair competition from employers that misclassify its workers. The other employer witness testified how his last-mile package delivery service benefits by the use of independent contractors. The employee witness spoke about how he was forced into independent contractor status, and how he suffered a severe workplace injury that, as a result of his classification, was not covered by workers' compensation. Also testifying was a representative of the National Employment Law Project. She spoke about the various state initiatives and the losses suffered by state and federal governments. Senators on the panel recognized the proper use of independent contractors and spoke of the need to address the abuses to assist employees and law-abiding employers.

At the hearing Subcommittee Chair, Sen. Casey, announced his plan to introduce legislation that would create a penalty under the Fair Labor Standards Act for the failure to properly classify an individual as an employee. The NELP witness stated that about less than half the states have passed similar legislation, but federal legislation will be helpful because of the unevenness of enforcement between the states.

2012-2013 State legislative sessions: new laws improving payroll fraud/misclassification enforcement

Summary: Significant ground was covered in the state 2012-2013 legislative sessions. **Tennessee** put into place its task force recommendations for an administrative penalty for workers' compensation premium avoidance and funding new compliance investigators and an information technology system that will provide those investigators with information on probable violators. **Oklahoma, Florida, Utah and Illinois** strengthened existing laws targeting misclassification enforcement. **Florida**, in particular,

focused on budgeting dedicated workers' compensation fraud prosecutors and enacted new real-time reporting to state regulators of commercial check-cashing at money service businesses. Money-service businesses have become a hub for laundering unreported cash-pay. **Utah** extended the sunset date of its enforcement task force. **Texas** created a new penalty in its unemployment insurance code for not reporting employees on publicly-funded construction projects. **Illinois** adopted reporting of payments made to some construction subcontractors. Those reports can be compared to tax returns, thus disclosing unreported income. **Oregon** linked construction licenses to compliance with state revenue and employment laws, and it put into place a penalty for business who do not report income. The **District of Columbia** adopted a misclassification penalty. An enforcement task force of state-taxing authorities was put into place in **California**. Significantly, the **California** legislature found that the state loses \$9 billion of revenue each year due to the underground economy.

California

AB 576 Revenue recovery and collaborative enforcement team act : (1) Bill establishes a pilot program task force to address tax evasion in the underground economy. (2) There is a legislative finding that the underground economy costs the state \$9 billion a year in lost revenue. (3) Task force team agencies to include Franchise Tax Board, Department of Justice, Board of Equalization and Employment Development. (4) Bill establishes an advisory board to the partnership that includes other state agencies. Those advisory agencies include: Health and Human Services, Consumer Affairs, Industrial Relations, Insurance and Motor Vehicles. (5) Advisory agencies may notify taxing agencies if a violation is discovered that would result in increased tax revenues. (6) Partnership agencies are required to provide a centralized intake, data, research and complaint review process. Participating agencies to collaborate in civil and felony-level investigations. (7) Reports to the legislature required. (8) Partnership sunsets January 1, 2019 unless re-enacted.

District of Columbia

Workplace Fraud Amendment Act: 1) Prohibits the failure to properly classify an individual as an employee in the construction industry. (2) Act creates a presumption of employment. (3) Primary enforcement is with the mayor, and mayor is given investigatory subpoena powers. (4) Failure to comply with information requests can result in fines. (5) Agencies are required to share information on violations. (6) Failure to classify results in penalties per employee. Penalties include: fines, stop work orders, compliance with other labor and tax laws and restitution. Fines increase for repeat violators, and can include debarment. (7) Penalties extend to successor corporations. (8) Prohibited acts include aiding and abetting and forming or using shell corporations. (9) If a violation involves public construction, payments can be withheld to the employer for restitution and taxes. A repeat violator will be debarred. (10) Private actions are allowed by interested parties. (11) Fines the use, creation and "sale" of shell corporations to assist violations. (12) Co-conspirators are fined. (13) Whistleblower protection. (14) Record keeping requirements for employees and independent contractors. (15) Requires notice to workers classified as independent contractors. (16) Civil penalty money to be used for enforcing the Act.

Florida

Budget: The budget maintained dedicated workers' compensation fraud prosecutors in Dade and Hillsborough counties. Funding for dedicated prosecutors were added in Broward and Palm Beach counties.

HB 217/SB 410 Data base and other requirements for money service businesses: (1) Requires licensees engaged in check cashing to submit certain transaction information to the Office of Financial Regulation (OFR) related to payment instruments cashed, including the payee's workers' compensation policy number if the payee is a business. (2) Requires OFR to maintain transaction information in centralized check cashing database. (3) Requires OFR to solicit bids for a database to maintain certain transaction information relating to check cashing. The data base is to interface with the secretary of state to verify registration and incorporation and the department of financial services for workers' compensation

coverage verification. (4) Authorizes OFR to request funds and to submit draft legislation after certain requirements are met.

Illinois

HB 923 Transaction reporting of payment for services in the construction industry (1) Requires contractors to report payments to individuals, sole proprietors and partnerships (who are not classified as employees) for construction services to the department of labor. (2) Exempts from reporting (a) contractors that meet responsible bidder standards, (b) retail businesses and (c) contractors working for retail businesses. (3) The report is shared with other state or federal agencies for law enforcement purposes. (4) Reports are not subject to public disclosure. (5) Penalties are provided for non-reporting of construction service transactions.

HB 2649 Improvements to construction industry misclassification fraud act: (1) The bill adds provisions on investigations and provides for a formal hearing process to resolve cases. (2) Ten percent of the civil penalties recovered by the department of labor will be distributed to all affected employees. (3) Civil penalties are lowered to \$1,500 to \$1,000 per violation in the first audit, and from \$2,500 to \$2,000 per violation in subsequent audits. (4) The bill creates individual liability for corporate officers that acted knowingly and who fail to satisfy the definition of “responsible employer” under the Procurement Code.

Oklahoma

SB 519 An act relating to contractors: (1) Requires resident and non-resident contractors to have in their possession workers’ compensation information. Contractors who fail to execute a tax bond shall be fined up to 10 percent of the contractor’s total bid. (2) Contractors submitting bids on public works are required to write on the bid (a) their Oklahoma tax identification numbers issued by the tax commission, employment security, IRS and Social Security Administration, and (b) upon written request show proof of workers’ compensation. Failure to show proof or to do work without those numbers shall result in a fine by the tax commission of up to 10 percent of the bid, along with any other penalties allowed by law. (3) Before beginning work on a public works project, the successful bidder must have its credentials verified in writing by the tax commission. Items to be verified include (a) at the time of the bid the contractor had valid tax registrations, (b) at the time of the bid the identification numbers were accurate, (c) a surety bond, if required, has been filed, (d) at the time of the bid whether the contractor was required to have any state license, registration or certificate prior to bidding and whether such are current, (e) at the time of the bid the contractor was eligible to participate, (f) at the time of the bid whether the contractor was in compliance with the state workers’ compensation code and whether the contractor is still in compliance and (g) whether the contractor was in compliance with any other verification deemed appropriate in relation to its qualifications to bid. Failure shall result in cancellation and rescission of the contractor’s selection, and a fine by the tax commission up to 10 percent of the contractors bid, in addition to any other penalties allowed by law. (4) Tax commission can levy its fines for any violation regardless whether the contractor was a successful bidder.

Oregon

HB 2464c Transaction reporting of payment for services: Current law requires IRS 1099 MISC to be filed with state revenue services, but imposed no penalties. This bill, as amended imposes such a penalty for non-filers in all industries. Fines are \$50 per non-filed report up to a maximum of \$2,500, and for willful violations \$250 per return up to \$25,000.

HB 2540 Relating to construction contractor licensing: The licensing board may revoke, suspend or refuse to issue a contracting license if the board finds that a person has supplied a government entity or person with information, knowingly or with reason to know, that results in any person evading all or in part any of the following obligations: (a) federal, state or local income taxes, (b) Social Security contributions, (c) unemployment taxes, (d) workers’ compensation premiums, (e) wage and hour laws, (f) federal or state safety laws, (g) child support, (h) alimony, (i) a judgment, (j) a garnishment or (k) any other law or debts identified by board rule.

Tennessee

HB 551/SB 833 Administrative penalties for premium fraud: (1) Allows the labor department to fine construction service providers for workers' compensation premium fraud. (2) Penalty money to be deposited into an enforcement fund and such fund can be used to purchase a data system for identifying potential violators and for hiring additional investigators. (3) Uncovered violations must also be reported to the Tenn. Bureau of Investigation or the appropriate district attorney.

Texas

HB 2015 An act relating to classification of workers performing services under certain government contracts: (1) Contractors and subcontractors under a government contract must properly classify workers as employees or independent contractors. The act uses the unemployment-code definitions. Enforcement is through the Texas Workforce Commission (TWC). (2) Violations result in a \$200 penalty per person. (3) Violations must be brought to the TWC's attention within three years of the occurrence.

Utah

SB 44 Construction trades licensing revisions: The bill (1) reduces the number of days that an unincorporated entity is required to submit an ownership report, (2) a license is suspended automatically if the entity becomes unincorporated or transfers the license to an unincorporated entity, (3) applies financial responsibilities to owners of unincorporated entities and license applicants, (4) requires government entities to require a contractor to provide proof of workers' compensation coverage, payment of unemployment contributions and withholding of taxes and (5) makes it unlawful for an unincorporated entity to provide construction labor or to engage in construction if an owner is using a Social Security number that belongs to someone else.

SB 22 Worker classification enforcement council: The enforcement council sunsets July 1, 2016 instead of July 1, 2013.