



MASSACHUSETTS BUILDING TRADES COUNCIL, AFL-CIO

256 Freeport Street, Dorchester, MA 02122-2833 • Tel: (617) 436-3551 / Fax: (617) 436-4163

e-mail: mbtcaflcio@aol.com

President

Francis X. Callahan, Jr.

Vice President

Paul J. Ward

Secretary-Treasurer

Louis A. Mandarini, Jr.

April 25, 2008

Testimony of the Massachusetts Building Trades Council, AFL-CIO Senate Committee on Small Business and Entrepreneurship April 28, 2008

Senator John F. Kerry, Chairman
Committee on Small Business & Entrepreneurship
Washington, DC 20510-6350

Dear Senator Kerry:

The Massachusetts Building Trades Council is an 88-year-old organization that represents over 75,000 working men and women belonging to 74 local unions and district councils across the Commonwealth of Massachusetts. Our members work for thousands of union contractors that pay good wages, provide comprehensive health and retirement benefits, pay their taxes and play by the rules.

The Massachusetts Building Trades Council fully supports the Committee's efforts to address the issue of the underground economy and the vast array of problems associated with it. Four years ago we played an active role in securing changes to the Massachusetts misclassification statute that is regarded as the best in the nation. Since that time we have worked closely with Governor Deval Patrick's Executive Office of Labor and Workforce Development and Attorney General Martha Coakley's office to crack down on employers that misclassify their workers. These efforts were formalized in March of this year when Governor Patrick signed an executive order establishing a Joint Task Force on the Underground Economy and Employment Misclassification. We have consistently supported these efforts because the spread of abuses associated with the underground economy threaten over 100 years of progress that unions have made in the construction industry.

The construction industry is highly competitive. Our contractors compete for work on a daily basis. When they bid for work their costs include: decent wages, social security and Medicare contributions, workers compensation premiums, and unemployment insurance premiums. They cannot compete against contractors that deliberately misclassify their workers to avoid these costs which amount to about 30% of an honest contractor's labor costs. This often costs an honest contractor the job, which in turn results in lost work opportunities for our members.

Building Our Communities the Union Way

The impact on our members is enormous: They lose paychecks, contributions to their retirement plans, and sometimes eligibility for healthcare coverage. Our apprentices lose the on-the-job training hours required to progress through our apprentice training programs. The end result of the underground economy is a race to the bottom in which the winners are those employers that are willing to cheat the most aggressively.

While the impact on our members is very serious, the impact on misclassified workers is worse. Misclassification strikes at the core of the social contract between employers and employees that has evolved over the last 100 years. In addition to being denied decent wages, misclassified workers are ineligible for unemployment benefits and workers compensation benefits, do not accrue social security credits and almost always lack health insurance. They are also responsible for paying the employer and employee-side FICA and FUTA taxes, or 15 % of their gross wages, while employees pay only 7.65%. Most importantly, they lose the protections of a host of labor laws including: minimum wages, overtime pay, workplace safety, discrimination, sexual harassment, the family and medical leave act, and the right to join a union.

Although the construction industry experiences a higher incidence of this abuse, this problem is not limited to construction. The impact on misclassified workers is obvious, but employees, employers and taxpayers who play by the rules also pay a high price for those employers who seek to avoid their legal responsibilities.

The impact on the Commonwealth of Massachusetts includes:

- The Massachusetts General Fund loses an estimated \$152 Million in unpaid income taxes.
- The Unemployment Insurance Trust Fund loses \$35 Million in revenues.
- \$91 million in unpaid workers compensation premiums were lost over a 2-year period, forcing the rest of us to cover injured workers in the Workers Compensation Trust Fund. In fiscal year 2004, approximately \$4,331,754 was paid to uninsured claimants from assessments levied on the rest of us.
- Honest employers are forced to compete with employers who deliberately misclassify their workers to undercut labor costs. This results in lost business for them and lost work opportunities for their employees.
- Laid-off or injured workers lacking unemployment or workers compensation benefits are forced to turn to public services to survive.
- Those workers show up at hospital emergency rooms further draining the Health Safety Net Fund.

The impact at the national level includes:

- The federal treasury loses an estimated \$4.7 billion annually.
- GAO estimates that 10.3 million workers, or 7.4% of the total workforce, were misclassified in 2005.
- IRS found in its most recent analysis, that 15% of employers misclassified employees as independent contractors.

While much progress has been made in Massachusetts there is still much work to be done at the federal level. We urge the committee and the congress to adopt changes that will end or at least curb the abuses of the underground economy. To do this the Massachusetts Building Trades Council supports the passage of H.R. 5804 - Taxpayer Responsibility, Accountability, and Consistency Act.

H.R. 5804 - Taxpayer Responsibility, Accountability, and Consistency Act:

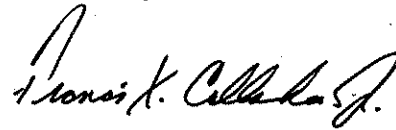
- Repeals Section 530 of the 1978 Revenue Act, the "safe harbor" provisions that prohibit the Internal Revenue Service from collecting employment taxes from employers that reasonably misclassify their workers. It would replace it with a new safe harbor provision contained within Section 3511 of the Internal Revenue Code that lawmakers said would clearly define who can be classified as an independent contractor.
- Allows workers to petition the IRS for a review of their classification status.
- Requires the Treasury Department to send Congress annual reports on worker classification.
- Increases the penalties imposed on taxpayers for failing to file correct information returns to the IRS.

Many in the business community have argued that these changes will jeopardize their ability to utilize legitimate independent contractors and unjustly penalize those that make honest mistakes. This is simply not true. The misclassification of workers as independent contractors is not an innocent mistake by an employer or employer's accountant. It is a **calculated and deliberate illegal action** to gain an unfair advantage in the marketplace by avoiding financial responsibility to state and federal governments, insurance providers and to workers. It fosters a race to the bottom whose winners are those that are willing to break the most laws. The losers are the rest of us who play by the rules.

Senator John F. Kerry, Chairman
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Thank you for the opportunity to testify before the committee today. The Massachusetts Building Trades Council and its affiliated local unions look forward to working with the committee to address these issues.

Sincerely,

A handwritten signature in cursive script that reads "Francis X. Callahan, Jr." The signature is written in black ink and is positioned above the printed name and title.

Francis X. Callahan, Jr.
President

FXC/scc