

Testimony of
John J. Flynn, President, International Union of Bricklayers & Allied Craftworkers
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Good morning, Madam Chair. My name is John J. Flynn, and I am President of the International Union of Bricklayers and Allied Craftworkers, or BAC. On behalf of the nearly 100,000 members of BAC, I want to thank you and the Committee for convening these hearings on the worker misclassification crisis. This morning, I would like to briefly speak about what misclassification of employees as independent contractors means to government, to BAC's members, and to American workers in general.

The Hidden Dangers of the Misclassification Crisis

The misclassification of employees as independent contractors has become such a rampant problem, so great in its scope, that it can no longer be thought of as just a "labor issue." To the contrary, Madam Chair, it is a crisis. It is a crisis of national, universal urgency, because it depresses wage markets, threatens the finances of our government and – most importantly – it undermines the fundamental dignity of workers and degrades the fabric of our society.

But the most insidious element of the misclassification crisis is this: the vast majority of Americans have no idea that it exists. Ask the average American the difference between an employee and an independent contractor, and you'll probably get a blank look. Ask the average American – for that matter, ask the average Member of Congress – how much tax revenue is *stolen* from the federal government by deliberate misclassification of employees as independent contractors, and I doubt that they'll know that it's well over 3.3 *billion* dollars per year. Over 3 billion dollars – and that's an estimate that's nearly a decade old. But even that dated estimate – 3.3 billion dollars – is roughly 20 times the annual budget of the agency that's supposed to prevent misclassification, the Department of Labor's Wage & Hour Division. That's a significant loss to our government. And that doesn't even to begin to account for the untold billions of dollars that have been lost to our Social Security system due to employee misclassification. How much of the alleged Social Security crisis is really due to the misclassification crisis? We just don't know, because the government hasn't been asking the question. Madam Chair, the first step in solving this crisis is making sure that the American people and their representatives know just how grave it is.

The Devastating Effects of Misclassification on Workers and Government

Now at this point, I think it might be helpful to outline just what employee misclassification is, and what it costs all of us. When an employer takes a worker, and treats that worker as an independent contractor rather than an employee – despite the fact that the employer controls and directs how the worker performs his or her work, and exercises financial control over the economic aspects of the worker's job – then the employer is *misclassifying* the worker. In so doing, the employer is evading tax obligations and worker compensation insurance obligations. As I remarked earlier, the federal government is denied well over 3 *billion dollars* every year in

tax revenue because employees are misclassified as subcontractors. Social Security loses out on a similarly large amount. State and local governments shoulder a huge financial burden as a result of misclassification. And the nation's workers' compensation and unemployment insurance systems are starved of vital funds when employers misclassify workers as independent contractors.

Furthermore, by misclassifying employees as independent contractors, unscrupulous employers avoid labor and employment laws, prevailing wage laws, and other legislation intended to ensure that workers are dealt with in a fair and equitable manner. These employers deny their workers the opportunity to obtain the benefits regularly available to employees, such as unemployment insurance. Employers who misclassify their employees as independent contractors don't pay for their employees' health insurance – and that contributes to the public health crisis and the Medicaid crunch. And finally, when misclassified employees seek to organize to fight for their rights, they're told that they can't do so – because they supposedly aren't "employees" under the National Labor Relations Act. In short, Madam Chair, employee misclassification is the perfect tool for permanently disenfranchising working Americans. It creates an inescapable circle of low-wage work, and a bottomless pool of desperate workers.

BAC's Efforts to Combat the Misclassification Crisis

For all of these reasons, BAC has made combating the misclassification crisis our top legislative priority in 2007. And beyond the legislative arena, our union has been very aggressive in developing programs to help end the practices of fraudulent misclassification. We are engaged in a number of efforts to address misclassification throughout the various states, but today I'd like to focus on Illinois, because we've found this is a state with some of the country's most serious and best organized fraudulent misclassification schemes.

As part of our effort to collect data on the scope of the crisis in Illinois, we reviewed a University of Missouri-Kansas City study of the economic costs of misclassification in the State of Illinois. The study was sponsored in part by the National Alliance for Fair Contracting. The report confirmed the practical realities that our members were experiencing in Illinois, particularly in the Chicago area. From the worker point of view, there are several key findings:

- The state's unemployment insurance system "lost an average of \$39.2 Million every year from 2001 to 2005 in unpaid unemployment insurance taxes."
- The incidence of misclassification has risen in Illinois from 5.5% of employees in 2001 to 8.5% in 2005. This represents a 55% increase in the misclassification rate from 2001-2005.
- Finally, the number of workers misclassified statewide averages nearly 370,000 per year -- and that number is growing.

Now this report – like a similar report that was just issued by Cornell University which detailed the devastating effects of misclassification in New York – didn't tell us anything our members didn't already know. Because the construction industry is so sensitive to prices, our members

are all too aware that they are losing jobs to companies that cheat. And so we felt that we needed to augment our research with a practical understanding of the crisis. Several of our union's organizers went undercover to see just how misclassification worked – one of them, Joe Probola, is here in the gallery today. What he and his fellow organizers learned was shocking.

They discovered a network of accountants and insurance brokers – a network whose primary business is to aid and abet the fraudulent misclassification of workers. They found that this network would teach employers about how easily they could cheat the system. Accountants would actually coach employers how to use misclassification to exploit undocumented immigrants. And the most amazing part of it all was how easy it was to get this network to give up their tricks. It was as if they had no fear of being caught, of being exposed as part of a conspiracy to evade labor and tax laws. Madam Chair, our organizers' story is chilling – because it illustrates how commonplace misclassification has become. And that's why we're here today – asking this committee to fight for the basic right to be recognized as an employee, with all of the rights of an employee.

And that is exactly what we asked of Illinois public officials when we started reaching out to them with the facts that we had learned. Perhaps the most striking thing that our representatives discovered in speaking with the officials was how so many of them lacked an initial understanding of how pervasive and how dangerous misclassification had become. But with time, we've been able to work with Illinois officials, including the state Attorney General, to develop a plan to fight misclassification. We're hoping that today is the first step in the federal government's fight.

With that, Madam Chair, I want to thank you for providing us the opportunity to appear here today. We're glad that this Committee is taking the misclassification crisis seriously, and I can assure you that as you confront the crisis, you will have the unswerving support of BAC, and of all the union building and construction trades.