Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries

Work should provide people with economic stability, safety, and the opportunity to contribute to their communities and connect with one another. It should be a place where workers are treated fairly and with respect. Good jobs should enable us to provide for ourselves and our families, and to join together to negotiate for ever higher standards.

But many corporations across the country are trying to take away the security and stability that a job should provide, by imposing the label of “independent contractor” on their workers and shifting risk and cost from the CEOs at the top to the workers who are central to the success of their businesses.

This isn’t just a label. Calling workers “independent contractors” deprives them of core rights and protections such as minimum wage, overtime pay, contributions to Social Security, the right to collective bargaining under the National Labor Relations Act, workers’ compensation, unemployment compensation, and protection from discrimination.

It is increasingly clear that misclassification is an issue of racial justice. Many poor workers of color and immigrant workers are stuck in a separate and unequal economy where they are underpaid, put in harm’s way on the job, and left to fend for themselves.

Misclassification of employees as independent contractors enacts an enormous toll on law-abiding employers and our economy. This paper tabulates the findings of myriad studies and audits that attempt to quantify the costs of misclassification.

Background: Misclassifying Employees as Independent Contractors

Employers in an increasing number of industries misclassify their employees as independent contractors, denying them the protection of workplace laws, robbing unemployment insurance and workers’ compensation funds of billions of much-needed dollars, and reducing federal, state and local tax withholding and revenues, while saving as much as 30 percent of payroll and related taxes otherwise paid for “employees.”

Misclassification can take several forms. Employers call employees “independent contractors,” even when the workers are not running their own businesses; they require employees to form a limited liability corporation or franchise company-of-one as a condition
of getting a job; and they pay workers off the books, without any payroll treatment at all. Workers are frequently required to sign boilerplate contracts that include exacting standards directing the workers’ every move on the job, even while they state that the worker is “independent.” These practices are sometimes called “payroll fraud” because they are intentional and aimed at evading the law, defrauding workers, competitors, and the state. Legitimate business-to-business transactions are not payroll fraud, because true independent contractors have a specialized skill, set their own terms, and have invested in a business that enables them to earn a profit.

Employee misclassification is a persistent problem in many of our economy’s growth industries, including home care, janitorial, trucking, delivery, construction, personal services, hospitality and restaurants and, more recently, in rapidly growing app-dispatched jobs. State-level task forces, commissions, and research teams are using agency audits along with unemployment insurance and workers’ compensation data to document the scope of independent contractor misclassification. Confirming the findings of earlier national studies, these state reports show that 10 to 30 percent of employers (or more) misclassify their employees as independent contractors, which indicates that several million workers nationally may be misclassified. State and federal governments lose billions in revenues annually.

### National Studies and Reports

Government studies have repeatedly documented the extent to which misclassification drains federal revenues. The data is limited, however, and as noted in a 2017 U.S. Government Accountability Office (GAO) report, should be updated to give a more accurate assessment of the current economic impact.\(^1\)

A 2010 study by the Congressional Research Service estimated that a proposed narrowing of the Internal Revenue Service (IRS) “safe harbor” rules, which currently allow employers significant leeway to treat workers as independent contractors for employment tax purposes, would yield $8.71 billion for fiscal years 2012 to 2021.\(^2\)

A 2009 report by the GAO estimated that independent contractor misclassification cost federal revenues $2.72 billion in 2006.\(^3\) The GAO’s estimate was derived from data reported by the IRS in 1984, finding that 15 percent of employers misclassified 3.4 million workers at a cost of $1.6 billion (in 1984 dollars). From 2000 to 2007, the number of misclassified workers identified by state audits increased from approximately 106,000 workers to more than 150,000 workers per state. These numbers likely undercount the overall total of misclassified employees because states generally audit less than 2 percent of employers each year. The Questionable Employment Tax Practice initiative, a partnership between most states and the IRS, assessed approximately $50 million in taxes between June 2009 and June 2012.\(^4\)

A 2000 study commissioned by the U.S. Department of Labor (USDOL)—the “Planmatics” study—found that between 10 and 30 percent of audited employers misclassified workers.\(^5\) Misclassification of this magnitude exacts an enormous toll: researchers found that misclassifying just 1 percent of workers as independent contractors annually results in a
$198 million hit to unemployment insurance (UI) trust funds. This report also shows that workers would benefit tremendously from increased scrutiny; up to 95 percent of workers who claimed they were misclassified as independent contractors were reclassified as employees following review.

A 1994 study by Coopers and Lybrand estimated the federal government would lose $3.3 billion in revenues in 1996 due to independent contractor misclassification, and $34.7 billion in the period from 1996 to 2004.6

State Studies and Reports

A growing number of states have been calling attention to independent contractor abuses by creating inter-agency task forces and committees to study the magnitude of the problem, and passing new legislation to combat misclassification. The USDOL has signed Memoranda of Understanding in over half of the states.7 Twenty-nine states have some form of inter-agency task force focused on misclassification.8 Along with academic studies and other policy research, the reports document the prevalence of the problem and the attendant losses of millions of dollars to state workers’ compensation, unemployment insurance, and income tax revenues.

The table at the end of this paper summarizes the findings from state-level studies.9 The studies rely on a range of data and methods. Most studies rely on audit data from unemployment insurance and workers’ compensation audits, targeted or random; some are estimates drawn from the records of multi-level government agencies; and a few used interviews with workers. Some studies examine the workforce as a whole, while others focus on industries where misclassification is rampant, such as construction.

Trends Identified in State Studies

The findings from these state studies demonstrate the staggering scope of misclassification, the difficulties in reaching precise counts of workers affected and funds lost, and the potential for enforcement initiatives to return much-needed funds to state coffers.

- **A large number of workers are misclassified.** Studies calculate the numbers of misclassified workers at high levels: an estimated 368,685 workers in Illinois;10 4,792 in Maine;11 between 125,725 and 248,206 in Massachusetts;12 704,785 in New York;13 between 54,000 and 459,000 in Ohio;14 580,000 in Pennsylvania;15 and 214,000 in Virginia.16 These are highlighted in the appendix table. Audits, too, generally uncover numerous cases of misclassification at an individual workplace or employer, resulting in large numbers of workers who are reclassified as employees following review. These are also summarized in the appendix table. Here are some highlights:

- In California, in 2017 to 2018, 9 out of 10 businesses inspected were found to be out of compliance by at least one agency, and two out of five resulted in findings of violations by every California agency involved in that state’s task force. The California effort resulted in more than $7.8 million assessed in lost wages.
• In Tennessee, during a one-year period ending in October 2018, the Employee Misclassification Education and Enforcement Fund unit assessed 26 penalties against employers for misclassifying their employees, for a total assessment amount of $3,029,963.29. The Uninsured Employers Fund unit assessed 234 penalties against employers for not maintaining workers’ compensation insurance from September 2017 through October 2018, for a total assessment amount of $2,730,269.60.

• In Washington State, the number of employers referred for audits and found to owe premiums remains steady year to year at about 80 percent.

• **Studies most likely underestimate the true scope of misclassification.** Many of the studies are based on unemployment insurance tax audits of employers registered with the state’s UI program. The audits seek to identify employers who misclassify workers, workers who are misclassified, and the resulting shortfall to the UI program. Researchers sometimes extrapolate from UI audit data to estimate the incidence of misclassification in the workforce and its impact on other social insurance programs and taxes. These UI audits miss a large portion of the misclassified workforce, however, because they rarely identify employers who fail to report any worker payments to state authorities or workers paid completely off-the-books—the “underground economy”—where misclassification is generally understood to be even more prevalent.

• **Billions of dollars of payroll are never reported to state governments.** As explained above, many employers underreport their payroll, or pay workers off the books and do not report any wages. In California and New York alone, employers fail to report billions of dollars to state agencies each year. Reliance on random audits as the sole investigatory strategy may result in an undercount of violations and unpaid taxes. Some states, including Utah and Washington, have added targeted audits to the mix.

• **Misclassification also results in lost income tax revenue to local governments.** Municipal governments supported by payroll taxes are also hit hard by misclassification. This includes some of the nation’s largest and most important economic centers.

• **Misclassification rates are disproportionately high in certain industries, such as construction, real estate, home care, trucking, janitorial, hi-tech, and the rapidly growing app-based economy.** Many misclassification studies focus on construction because the industry has been so plagued by independent contractor abuses. The Maine, Massachusetts, Minnesota, and New York studies found rates of misclassification up to several points higher in construction as compared with the workforce as a whole. Delivery drivers and truckers have also experienced widespread abuse. FedEx has faced repeated legal challenges over its practice of misclassifying drivers as independent contractors: the delivery company recently settled a California lawsuit for $228 million; drivers in about 40 states have now sued FedEx; and 16 states have negotiated with the company to end its practice of misclassifying drivers as independent contractors. An estimated two-thirds of port truck drivers are misclassified. App-based, on-demand companies Lyft, Uber, Handy, and many others treat their workers as independent contractors and are facing lawsuits by workers challenging this practice.
- **Misclassified workers make significantly less than workers paid as employees.** One government expert calculated that a construction worker earning $31,200 a year before taxes would be left with an annual net compensation of $10,660.80 if paid as an independent contractor, compared to $21,885.20 if paid properly as an employee. A study on port truck drivers found that annual median net earnings before taxes were $28,783 for drivers paid as contractors as compared with $35,000 for employees.

- **Audits are cost-effective and have the potential of returning hundreds of millions of dollars to state coffers.** Audits in the states have assessed tens of millions of dollars in unpaid unemployment taxes: in Pennsylvania, $10.4 million; in New York, $8.8 million; in New Jersey, $14 million; in Massachusetts, $15.4 million; and in Louisiana, $1.5 million. Similarly, workers’ compensation audits have resulted in $4.5 million assessed in Utah and $2.7 million assessed in Tennessee. In 2019, the State of New Jersey assessed $650 million in past-due unemployment and disability payments against a single company, Uber. These numbers do not take into account fraud that is deterred before a violation even takes place, when employers take note of aggressive enforcement activities and voluntarily come into compliance.

### Conclusion

Misclassification of employees as independent contractors exacts an enormous toll on workers, law-abiding employers, and our economy. Accurate information on the prevalence of the problem, and on patterns of violations, can help state officials to direct their efforts at the worst violators and most problematic industries. The growing body of research summarized here has been vital to recent efforts in the states to combat misclassification; new research will further facilitate enforcement.
### Appendix

#### Annual Losses Due to Independent Contractor Misclassification: Summary of Leading State Studies

<table>
<thead>
<tr>
<th>State and latest report year</th>
<th>% or # of employers who misclassify; # of workers affected (estimate)</th>
<th>% or # of employers who misclassify (recent audit reports)</th>
<th>Loss to UI (estimate or audit report)</th>
<th>Loss to workers’ comp (estimate or audit report)</th>
<th>Unpaid state income taxes/assessed payroll</th>
</tr>
</thead>
<tbody>
<tr>
<td>CO 27 2018</td>
<td>33.9% (USDOL 2000) Audits are finding 4.5 workers misclassified per audit</td>
<td>2,469 unemployment audits identified 11,342 misclassified workers</td>
<td>$755,359 in unpaid unemployment premiums and interest</td>
<td>$167 mil (lost in income tax revenues annually)</td>
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<tr>
<td>GA 29 2015</td>
<td>Senate study estimates between 1,500 to 4,000 workers with an avg. of 2,800 misclassified workers</td>
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<tr>
<td>State</td>
<td>Year - Period</td>
<td>Misclassification Rate</td>
<td>Number of Misclassified Workers</td>
<td>Estimated Unpaid Contributions and UI Taxes</td>
<td>Estimated Unreported Taxable Wages</td>
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<tr>
<td>IL</td>
<td>2012-2013</td>
<td>19.5% (estimated 2005)</td>
<td>identified 20,000</td>
<td>$53.7 mil estimate (2005) $5.1 mil</td>
<td>$250 mil in unreported taxable</td>
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<td>misclassified workers (2013)</td>
<td>(unreported contributions that fund UI</td>
<td>wages (2013)</td>
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<td>benefits) (2013)</td>
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<tr>
<td>IN</td>
<td>2010</td>
<td>16.8% (estimated)</td>
<td></td>
<td>$36.7 mil (estimated)</td>
<td>$147.5 mil (estimated)</td>
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<tr>
<td>IA</td>
<td>2016</td>
<td></td>
<td>identified 442</td>
<td>$738,554 in unpaid contributions, penalties,</td>
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<td></td>
<td>misclassified workers</td>
<td>and interest</td>
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<td></td>
<td>$16.4 mil in unreported wages</td>
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<tr>
<td>LA</td>
<td>2015</td>
<td></td>
<td>identified 19,956</td>
<td>$1.5 mil in unreported and unpaid UI taxes</td>
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<tr>
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<td></td>
<td>misclassified workers</td>
<td></td>
<td>$50 mil unreported taxable wages</td>
</tr>
<tr>
<td>MA</td>
<td>2017</td>
<td>14% construction (estimated 2001-2003)</td>
<td>identified 1,100</td>
<td>$15.4 mil collected</td>
<td>$91 mil estimated loss 2001-2003</td>
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<tr>
<td></td>
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<td>misclassified workers</td>
<td></td>
<td>$1 mil collected</td>
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<td></td>
<td>$22.7 mil (2015)</td>
</tr>
<tr>
<td>MD</td>
<td>2019</td>
<td>20-30% (2008)</td>
<td>Identified 2,534</td>
<td>$43 mil in unreported taxable wages (USDOL</td>
<td></td>
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<tr>
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<td>misclassified workers</td>
<td>mandated audit 2018 $8.2 million in</td>
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<td></td>
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<td>(2019)</td>
<td>unreported taxable wages (additional</td>
<td></td>
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<tr>
<td>State</td>
<td>Year</td>
<td>Percentage and Notes</td>
<td>Identified</td>
<td>Taxes Due or Collected</td>
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<tr>
<td>MI</td>
<td>2008</td>
<td>30% (estimated 2008) No longer updated, but there is a Payroll Fraud Enforcement Unit within the AG’s office</td>
<td>identified 256 misclassified workers in a pilot project in construction</td>
<td>$1.5 bil (estimated 2008)</td>
<td></td>
</tr>
<tr>
<td>MN</td>
<td>2013</td>
<td>14% (estimated 2005) 15% -30% construction (estimated 2005)</td>
<td>identified 8,196 misclassified workers</td>
<td>$2.1 mil taxes due</td>
<td></td>
</tr>
<tr>
<td>MO</td>
<td>2016</td>
<td>identified 8,196 misclassified workers</td>
<td>identified $11.6 million in wages and $124,000 in additional UI taxes in construction</td>
<td>$20-33 mil (estimated 2008)</td>
<td></td>
</tr>
<tr>
<td>MT</td>
<td>2019</td>
<td>identified 2,339 misclassified workers</td>
<td>identified $65 mil wages on which UI tax had not been paid, with a tax indebtedness of $1.7 mil</td>
<td>Industrial Insurance Collections in 2017 $611,742</td>
<td></td>
</tr>
<tr>
<td>NC</td>
<td>2017-2018</td>
<td>identified 2,339 misclassified workers</td>
<td>$145,717 in taxes collected. Total</td>
<td></td>
<td></td>
</tr>
<tr>
<td>NE</td>
<td>2019</td>
<td>10% (2011)</td>
<td>identified 2,339 misclassified workers</td>
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<tr>
<td>State</td>
<td>Year</td>
<td>Estimated Misclassification Rate</td>
<td>Identified Workers</td>
<td>Costs</td>
<td>Additional Information</td>
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<tr>
<td>NV</td>
<td>2011</td>
<td>31,000 misclassified employees (estimated 2011)</td>
<td>$8.2 mil (estimated 2011)</td>
<td></td>
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<tr>
<td>NJ</td>
<td>2018</td>
<td>12,315 misclassified workers (DOL audit of 1% of employers)</td>
<td>$14 mil (UI and disability and family leave)</td>
<td>$462 million in unreported wages</td>
<td></td>
</tr>
<tr>
<td>NY</td>
<td>2015</td>
<td>26,000 misclassified employees identified by JETF in 2014</td>
<td>$175 mil (estimated 2007)</td>
<td>$170 mil Taxes on $316 mil of wages in 2014</td>
<td></td>
</tr>
<tr>
<td>OH</td>
<td>2015</td>
<td>14,045 misclassified workers</td>
<td>$12 - $100 mil (estimated 2009) $2 mil in unpaid taxes</td>
<td>$21-$248 mil (estimated 2009)</td>
<td></td>
</tr>
<tr>
<td>OR</td>
<td>2019</td>
<td>7,525 misclassified workers</td>
<td>$2.39 mil in UI tax</td>
<td>penalty assessments of $15 mil.</td>
<td>$33 mil in unreported wages (2016)</td>
</tr>
<tr>
<td>State</td>
<td>Year</td>
<td>Misclassification Rate</td>
<td>Identified Employees</td>
<td>Additional Costs</td>
<td>Unreported Costs</td>
</tr>
<tr>
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</tr>
<tr>
<td>RI</td>
<td>2018</td>
<td>identified 590</td>
<td>$200,988 assessed in additional taxes</td>
<td>$5.6 mil in unreported wages</td>
<td></td>
</tr>
<tr>
<td>TN</td>
<td>2019</td>
<td>17% in construction (2010)</td>
<td>1,253 employees identified in construction, with 260 total employers penalized</td>
<td>$8.4 - $15 mil (estimate 2010)</td>
<td>$52 - 91.6 mil (estimate 2010)</td>
</tr>
<tr>
<td>Austin, TX</td>
<td>2012</td>
<td>between 2010-2012: identified 34,846 misclassified workers</td>
<td>$2.3 mil additional tax due</td>
<td>$229 mil in misclassified worker wages</td>
<td></td>
</tr>
<tr>
<td>UT</td>
<td>2018</td>
<td>Identified 3834</td>
<td>$27.7 mil in unreported wages from DOL and random audits</td>
<td>$5.3 million estimated $1.3 mil in 23 cases</td>
<td></td>
</tr>
<tr>
<td>VT</td>
<td>2015</td>
<td>identified 1,066</td>
<td>$230,000 in employer contributions</td>
<td>$10,307.91 collected</td>
<td></td>
</tr>
<tr>
<td>VA</td>
<td>2018</td>
<td>2010: 27% of audited cases 30% construction</td>
<td>$152 mil lost 2013-17 (estimated)</td>
<td>$53.6 annually (estimated)</td>
<td>Assessed over $41 million total</td>
</tr>
<tr>
<td>WA</td>
<td>2019</td>
<td>Identified 2,500</td>
<td>Assessed $411,500 on unregistered accounts.</td>
<td>$188.4 million in delinquent premiums,</td>
<td></td>
</tr>
</tbody>
</table>
Endnotes

1 U.S. Government Accountability Office, Employment Taxes: Timely Use of National Research Program Results Would Help IRS Improve Compliance and Tax Gap Estimates, GAO-17-371 (Apr. 2017), http://www.gao.gov/assets/690/684446.pdf. The report recommends that the IRS analyze the results of the National Research Programs study on employment tax returns filed from tax years 2008 to 2010. Following the study, the IRS has failed to analyze the results. The GAO report notes that the study was the first the IRS had done on employment taxes in over 30 years. The report states that “[w]ithout completed analysis of the NRP employment tax results, IRS risks using outdated data to make decisions about compliance and areas of the tax gap to pursue.” The GAO report reviewed the NRP data and notes that independent contractor misclassification (“worker classification issues”) is among the issues most frequently requiring adjustment.

2 A 2010 study by the Congressional Research Service built on earlier national studies to compare the costs and benefits of improved classification if President Obama’s proposed modification of Section 530 of the Revenue Act of 1978 were passed. The modification would permit the IRS to prospectively reclassify workers who are misclassified. The US Treasury estimated that the proposal would yield $8.71 billion for the period of FY 2012 through 2021. The CRS study acknowledged, however, that the work needed to reduce misclassification “would impose significant costs.” James M. Bickel, Tax Gap: Misclassification of Employees as Independent Contractors, CONGRESSIONAL RESEARCH SERVICE (Mar. 10, 2011), http://www.bradfordtaxinstitute.com/Endnotes/CRS_Tax_Gap_3_10_2011.pdf.

3 U.S. General Accounting Office, Employee Misclassification: Improved Coordination, Outreach, and Targeting Could Better Ensure Detection and Prevention (Aug. 2009), http://www.gao.gov/assets/300/293679.pdf. See also, Treasury Inspector General for Tax Administration, While Actions Have Been Taken to Address Worker Misclassification, and Agency-Wide Employment Tax Program and Better Data are Needed (Feb. 4, 2009), http://www.treas.gov/tigta/auditreports/2009reports/200930035r.pdf (explaining that “Preliminary analysis of Fiscal-Year 2006 operational and program data found that underreporting attributable to misclassified workers is likely to be markedly higher than the $1.6 billion estimate from 1984.”)


6 Cooper & Lybrand, Projection of the Loss in Federal Tax Revenues Due to Misclassification of Workers, Prepared for the Coalition for Fair Worker Classification (1994).


9 See also, Françoise Carré, (In)dependent Contractor Misclassification, Economic Policy Institute Briefing Paper #403 (June 8, 2015), http://www.epi.org/publication/independent-contractor-misclassification/ (summarizing findings from federal and state studies, academic report, litigation and other enforcement activity).


18 See, for example, Erin Johansson, Fed Up with FedEx: How FedEx Ground Tramples Workers’ Rights and Civil Rights (American
19 Y. Peter Yang, FedEx to Drop $228 Million to Settle Driver Wage Row, LAW360 (June 12, 2015).


21 According to a study on misclassification in the port trucking industry, approximately 49,000 of the nation’s 75,000 port truck drivers are misclassified as independent contractors. Rebecca Smith, Paul Alexander Marvy and Jon Zerolnick, The Big Rig Overhaul: Restoring Middle-Class Jobs at America’s Ports through Labor Law Enforcement (February 2014), http://www.nelp.org/page/-/Justice/2014/Big-Rig-Overhaul-Misclassification-Port-Truck-Drivers-Labor-Law-Enforcement.pdf?nocdn=1.


23 Crowley, supra note 4.

24 The Big Rig Overhaul, supra note 53.


26 California Labor Enforcement Task Force Biennial Report to the Legislature, CALIFORNIA DEPT OF IND. REL. (Mar. 2019), http://www.dir.ca.gov/letf/LETF-Legislative-Report-2019.pdf. Earlier reports: In 2013, California’s Employment Development Department’s (EDD) Tax Audit Program conducted 6,749 audits and investigations, resulting in assessments totaling $155,808,394, and identified 102,479 unreported employees. The Compliance Development Operations (CDO) within the EDD Tax Branch, which includes several programs that concentrate on the underground economy, conducted 1,876 joint inspections, which led to 919 payroll tax audits. These audits identified 180,24 previously unreported employees, assessed over $35 million in payroll tax assessments and nearly $4 million on fraud cases.

Annual Report: Fraud Deterrence and Detection Activities, CALIFORNIA EMPLOYMENT DEVELOPMENT DEPARTMENT, report to the California Legislature (June 2014), http://www.edd.ca.gov/About/EDD/pdf/Fraud_Deterrence_and_Detection_Activities_June_2014.pdf. In 2015, California’s EDD Tax Audit Program conducted 7,209 audits and investigations, resulting in assessments totaling $201,620,977, and identified 96,039 unreported employees. The CDO conducted 1,488 joint inspections, which led to 1,248 payroll tax audits. These audits identified 22,352 previously unreported employees, assessed over $45 million in payroll tax assessments and $78 million on fraud cases.


27 Task Force Report Pursuant to Executive Order B 108-3, COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT, (November 30, 2018), https://www.colorado.gov/pacific/sites/default/files/2018%20Final%20Report%20-%20Carpenters.pdf. The US DOL reported that 33.9% of audited employers in Colorado misclassified employees as independent contractors; 41,915 employers in the state had misclassified new workers as independent contractors; 85% of workers at audited employers were found to have been misclassified; 172,609 workers statewide misclassified; total taxable wages underreported statewide for new workers misclassified as independent contractors: $6,629,142; tax underreported statewide for new workers misclassified as ICs: $6,429,685; official UI rate: 17.7%; percent of state UI taxes underreported due to workers misclassified as ICs: 3.6%. See Plamatics report, note 5, supra.

28 A 1992 study estimated that the state and the federal governments were losing $500 million annually as a result of worker misclassification. Each year, state income tax receipts were reduced by $65 million; the workers’ compensation system lost $57 million in unpaid premiums; and the unemployment insurance fund lost $17 million. William T. Alpert, Estimated 1992 Costs in Connecticut of the Misclassification of Employees, Department of Economics, University of Connecticut (1992). The 2011 annual report from the Joint Enforcement Commission on Worker Classification reported that from March 1, 2010 through February 28, 2011 the Tax Division’s Field Audit Unit completed approximately 1,600 audits and another 9,000 individual wage complaint investigations. Those investigations resulted in the reclassification of approximately 6,500 workers and the discovery of roughly $50 million in previously unreported or underreported payroll. During the same period, the Department of Revenue Services conducted audits that resulted in the assessment of $611,568 in additional taxes, penalties and interest. The Department of Revenue Services assessed an additional almost $611,600 in unpaid taxes, penalties and interest. State of Connecticut Joint Enforcement Commission on Worker Classification, Annual Report, Prepared for the Honorable Daniel Malloy, Governor and the Labor and Public, EMPLOYEES COMMITTEE OF THE GENERAL ASSEMBLY (December 2011), http://www.ctdol.state.ct.us/docs/letf/HEC.pdf. Figures on incidence of misclassification among audited workers from Plamatics report, note 5, supra.

29 In 2015, Tim Mitchell of the Georgia Department of Labor testified that the GDOL conducts routine audits that has resulted in over 1,700 businesses being investigated with 4,000 misclassified employees. The Final Report of the Senate Subcommittee on Employee Misclassification, SENATE RESEARCH OFFICE, GEORGIA STATE LEGISLATURE (2015), http://www.state.ga.gov/aro/Documents/StudyCommRpts/EmployeeMisclassificationFinalReport.pdf.

In 2013, Illinois audited 3,635 employers and identified that Illinois employers wrongly classified nearly 20,000 workers as independent contractors rather than full-time employees, which resulted in over $250 million in unreported taxable wages and $5.1 million in unreported contributions that fund unemployment insurance benefits. Misclassified Employees Force Taxpayers to Subsidize Costs, Harm Economy, ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY (Aug. 11, 2014).

A 2006 study estimated that independent contractor misclassification resulted in a loss of $39.2 million in unemployment insurance taxes, and between $124.7 million and $207.8 million in state incomes taxes each year from 2001 to 2005. Close to 18% of audited employers, about 56,650, misclassified employees as independent contractors. The study estimated that an average 368,685 employees were misclassified each year. The rate of misclassification by violating employers increased 21% from 2001 to 2005. Michael P. Kelray, et al., The Economic Costs of Employee Misclassification in the State of Indiana, Department of Economics, University of Missouri-Kansas City (2006), http://www.carpenters.org/employer/payroll/fraud/studies/reports.aspx.

In 2018, the Louisiana Department of Revenue took legal action against three Louisiana businesses for payroll fraud through its Crackdown on Payroll Tax Fraud,” (Jan 30, 2018), https://revenue.louisiana.gov/NewsAndPublications/NewsReleaseDetails/11458. According to a 2010 report, 47.5% of Indiana employers audited by the state in 2007–2008 were found to have misclassified workers as independent contractors; 8,200 of these employers were in the construction industry. The number of Indiana employers affected by improper misclassification is estimated to have averaged 418,086 annually for the period 2007–2008, about 16.8% of employees overall. In each year from 2007–2008, the state lost $147.5 million in state income tax revenue and $24.1 million in unpaid workers’ compensation premiums, while the unemployment insurance system lost an average of $36.7 million. Michael P. Kelray and James I. Sturgeon, The Economic Costs of Employee Misclassification in the State of Indiana, Department of Economics, University of Missouri-Kansas City (2010), http://www.isbctc.org/Uploads/UploadedFiles/docs/Misclassification_in_Indiana_Full_Study_9-10.pdf.

In 2015, the Louisiana Workforce Development (DUA) recovered over $15 million in unpaid worker contributions to the UI Trust Fund and Fair Share Contribution; the

31 In 2015, Massachusetts’ Council on the Underground Economy recovered over $20 million through its enforcement efforts: the Department of Unemployment Assistance (DUA) recovered over $15 million in unpaid worker contributions to the UI Trust Fund and Fair Share Contribution; the
In 2008, Maryland found $42,806,603 in unreported taxable wages during 1,437 DOL-mandated audits of workplace fraud, with an estimated 125,725 to 248,206 workers being misclassified. The state lost an estimated $91 million to $152 million in income tax revenue and up to $91 million of worker compensation premiums. The study noted that both the prevalence of misclassification and the severity of the impact have worsened over the years.

A 2008 study of Michigan's unemployment insurance system found that an average of 30% of employers misclassify employees. The Michigan Department of Revenue recovered $826,000 in unpaid taxes; and the Attorney General’s Office brought in $2,314,000 in restitution, penalties, and fines related to violations of the state's wage and hour and independent contractor laws. The Department of Industrial Accidents (DIA) collected $1.1 million for unpaid workers' compensation taxes.

An earlier study of misclassification in the state's construction industry from 2001-2003 found that at least 14% of Massachusetts construction employers and 13% of all Massachusetts employers misclassified workers. Less conservative methods suggest that construction misclassification could run higher and range up to one in four (24%) of Massachusetts construction employers. An estimated 7,478 to 15,790 of construction employees were misclassified. In the workforce as a whole, an estimated 125,725 to 248,206 workers were misclassified.

In 2009 Maryland passed the Workplace Fraud Act of 2009 and created the Joint Enforcement Task Force on Workplace Fraud. In 2010, the Taskforce reported on its activities and accomplishments from January 1, 2010 to November 1, 2010, and found that audits conducted by the agency's Unemployment Insurance Division found an average of 20% of employers misclassify workers. The Division's report estimated that misclassification accounts for an annual loss of between $15 million and $25 million to the Unemployment Trust Fund.

In 2015, the Taskforce reported on its activities and accomplishments from January 1, 2014 to November 1, 2014, and the Taskforce issued 238 citations involving 681 workers and collected $89,000 in penalties and $35,000 in fines; the UI Division identified 8,346 misclassified workers and $11.2 million in unreported taxable wages, and returned $257,000 to the UI Trust Fund through Workplace Fraud audits; and the Comptroller's Office conducted 34 withholding tax audits and issued assessments in the amount of $189,446.

In 2008, Maryland found $42,806,603 in unreported taxable wages during 1,437 DOL-mandated audits of workplace fraud, with an additional $8,230,192 unreported taxable wages on 1,979 workers in 51 additional audits.


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In 2010, the Taskforce issued its last report in 2010 and estimated that 8% of the state's construction workers are misclassified or receive income that is not reported by their employer. Each year, about $1.5 billion in payroll is not reported to the UI Agency. Misclassification costs the state's unemployment insurance trust fund $17 million each year, and results in an estimated loss of $20 to 33 million in state income taxes. Dale Belman and Richard Block, Informing the Debate: The Social and Economic Costs of Employee Misclassification in the Construction Industry, Construction Policy Research Center, Labor and Worklife Program, Harvard Law School and Harvard School of Public Health (2004), http://www.law.harvard.edu/programs/wpr/Misclassification%20Report%20Mass.pdf.

37 A 2008 study of Michigan's unemployment insurance system found that an average of 30% of employers misclassify employees or underreport employee payroll, and that 8% of the state's construction workers are misclassified or receive income that is not reported by their employer. Each year, about $1.5 billion in payroll is not reported to the UI Agency. Misclassification costs the state's unemployment insurance trust fund $17 million each year, and results in an estimated loss of $20 to 33 million in state income taxes. Dale Belman and Richard Block, Informing the Debate: The Social and Economic Costs of Employee Misclassification in the Construction Industry, Michigan, Michigan State University (2009), http://ippsr.msu.edu/publications/ARMisclass.pdf.

Michigan established its Underground Economy Task Force in June 2008. The Task Force found that more than 8% of Michigan employees are misclassified, $16.8 million in UI payments went uncollected, and $30 million in wages were not reported. Michigan's Supreme Court, Michigan v. Michigan Department of Labor (December 1, 2006).


38 The Minnesota Office of the Legislative Auditor used UI audit data to estimate that 14% of employers misclassified workers in 2005 – about 17,500 employers. Misclassification rates in the construction industry were higher: 15% of construction employers and 31% of drywall employers misclassify their employees. The estimates are conservative because they exclude employers that operate in the "cash" economy or fail to register in the unemployment program. James Noble, Misclassification...


From July 1, 2010 - June 30, 2011, Nebraska UI Tax field representatives conducted 938 audits and investigations; 669 of these audits targeted high violation industries. Of these 669 audits, 1,039 misclassified workers and additional tax collections of $42,559 were uncovered. Nebraska Employee Misclassification Act, Annual Report 2010-11, Nebraska Department of Labor (2011), http://dol.nebraska.gov/employers/safety/EmpClassAct/2011%20Employee%20Classification%20Act%20Annual%20Report.pdf.


Ten years ago, Nevada Employment Security Division records indicate that 12.4 percent of benefit claims investigations involved a claim of independent contractor misclassification and 2.7 percent of audited employment was misclassified. This led to a conservative estimate of approximately 31,000 employees in the state that may be misclassified. The estimated annual revenue lost to the Unemployment Trust Fund is $8.2 million. Employee Misclassification- Bulletin No. 11-07, NEVADA LEGISLATIVE COUNSEL BUREAU (Jan. 2011), http://leg.state.nv.us/Division/Research/Publications/InterimReports/2011/Bulletin11-07.pdf.


In FY 2014, field auditors in New Jersey’s Division of Employer Accounts, which is part of the Department of Labor and Workforce Development’s TOPs offset program, found 7,741 misclassified workers. Over $16 billion of gross wages were audited, with $683 million of gross wages being underreported. Assembly Budget Committee Follow-Up Questions, NEW JERSEY STATE LEGISLATURE, (Apr. 24, 2015), http://www.njleg.state.nj.us/legislativepub/budget_2016/LPS_follow_up_response_ABU.pdf. Earlier reports from New Jersey Department of Labor and Workforce and it's found that between 38% and 42% of employers either misclassified workers or paid in cash “off-the-books” and between 25,000 and 28,286 workers were misclassified.

New Jersey State Agency Will Share Employment Tax Examination Results with the IRS, STATE OF NEW JERSEY DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT (Nov. 8, 2007).

46 A 2007 study issued by the Cornell University School of Industrial and Labor Relations, based on audits by the New York DOLU Division of select industries from 2002-05, estimated annual misclassification rates of about 10.3% in the state’s private sector and approximately 14.9% in the construction industry. Each year, an estimated 39,587 employers within those audited industries misclassified workers. Approximately 704,785 workers were misclassified. Average UI taxable wages underreported due to misclassification each year was $4,238,663, and UI tax underreported was $175,674,161. Linda H. Donaldus, James Ryan Lamarre, Fred B. Kotler, The Cost of Worker Misclassification in New York State, Cornell University
School of Industrial Labor Relations (Feb. 2007). A second 2007 study estimated that between $25 billion and $50 billion in payroll – 20% of total payroll – was unreported for workers’ compensation. The estimate may be conservative, because it was calculated by comparing payroll reported to the state for UI with payroll reported to the WC system, and did not account for payroll that was not reported to either system. Fiscal Policy Institute, Building up New York, Tearing Down Job Quality: Taxpayer Impact of Worsening Employment Practices in New York City’s Construction Industry (Dec. 2007), http://www.fiscalpolicy.org/publications2007/FPI_BuildingUpNY_TearingDownJobQuality.pdf.

http://digitalcommons.ilr.cornell.edu/reports/9/.

On July 20, 2016, Governor Cuomo signed Executive Order No. 159 establishing a permanent Joint Task Force to Fight Worker Exploitation and Employee Misclassification. N.Y. Exec. Order. No. 159 (July 20, 2016). However, the task force has not publicly released a new report that contains quantitative data from misclassification audits and investigation since February 1, 2015. See Governor Andrew M. Cuomo’s Task Force to Combat Worker Exploitation 2016 Report, New York State (2016), http://www.governor.ny.gov/sites/governorny/files/atoms/files/EWTReport_27.pdf. The Task Force reports that it has launched nearly 16,000 wage theft and misclassification cases across more than a dozen industries impacting nearly 150,000 workers. Over the past four years, the Department of Labor, a leading member of the Joint Task Force, recovered nearly $150 million in lost wages which it returned to 125,000 workers victimized by wage theft. The Task Force has directed businesses to pay nearly $9.2 million in back wages and nearly $3 million in damages. https://www.ny.gov/programs/end-worker-exploitation-and-employee-misclassification.


According to the February 2014 report by the Joint Enforcement Task Force on Employee Misclassification, since its inception in 2007, the Task Force has identified over 114,000 instances of employee misclassification and discovered over $1.8 billion in unreported wages; The 2013 sweeps were conducted at construction sites, bars/restaurants, adult entertainment venues, automotive tire and repair centers, grocery stores, and retail establishments. In 2013, completed audits and investigations of businesses found through the JETF sweeps: uncovered nearly $62.2 million in unreported wages; resulted in the assessment of over $2.2 million in additional unemployment insurance contributions; and revealed over 4,700 misclassified workers. Annual Report of the Joint Enforcement Task Force on Employee Misclassification, NEW YORK DEPARTMENT OF LABOR, (Feb. 1, 2014), http://www.labor.ny.gov/agencyinfo/PDFS/Misclassification-Task-Force-Report-2-1-2014.pdf.

47 A 2009 report by the Ohio Attorney General – extrapolating from UI audit data, and using findings from other state studies – estimated that between 54,000 and 459,000 workers were misclassified each year, and found that the state lost between $12 million and $100 million in unemployment compensation payments, between $60 million and $510 million in workers compensation premiums and between $21 million and $248 million in forgone state incomes tax revenues. Report of the Ohio Attorney General on the Economic Impact of Misclassified Workers for State and Local Governments in Ohio (Feb. 10, 2009), http://www.faircontracting.org/PDFs/prevaling_wages/Ohio_on_Misclassification.pdf.

From January 2015 through December 2015, the Ohio Department of Job and Family Services’ auditing efforts led to the detection of 14,045 workers who had been improperly classified as independent contractors. This resulted in more than $2.6 million in unpaid taxes, including $1.2 million in unpaid taxes for unemployment tax avoidance schemes. Annual Report: State Fiscal Year 2016, Dep’t of Job and Family Services (2016), http://www.odjfs.state.oh.us/forms/file.asp?id=2387&type=application/pdf.


49 A 2008 study found that 9% of Pennsylvania’s workforce, or 580,000 workers, are misclassified as independent contractors each year. Misclassification resulted in a loss of over $200 million to the unemployment compensation trust fund and $81 million to the workers compensation system. Testimony of Patrick T. Beatty, Deputy Secretary for Unemployment Compensation Programs, Pennsylvania Department of Labor and Industry, before the House of Representatives Commonwealth of Pennsylvania, Labor Relations Committee on HB 2400, The Employee Misclassification Prevention Act (Apr. 23, 2008), http://www.legis.state.pa.us/cfdocs/legis/TX/transcripts/2008_0091_0001_TSTMNY.pdf.

In 2016, the Office of Unemployment Compensation Tax Services (OUCTS) completed 4,061 employer audits and discovered 29,327 misclassified or unreported workers. Additionally, the OUCTS discovered $11.1 million in underreported taxes. The net underreported taxes were $10.4 million after including overreported taxes, Financial Operations of the Pennsylvania Unemployment Compensation Program, Actuarial Evaluation 2016, Dep’t of Labor & Industry (2016), http://www.workstats.dli.pa.gov/Documents/AcuariaalEvaluation.pdf.

The Office of Unemployment Compensation Services conducted audits of registered and unregistered employers in industries where historically workers have been misclassified. During 2013, OUCTS discovered 14,381 misclassified workers and $4.3 million in underreported contributions, http://www.portal.state.pa.us/portal/server.pt?open=18&objId=1279851&mode=2.

50 In 2016, the Division of Taxation found that 590 Rhode Island employees had been improperly classified, resulting in $5.6 million in unreported wages and an assessment of $200,988 in additional state taxes. Underground Economy and Employee Misclassification Task Force 2017 Annual Report, Rhode Island Dep’t of Labor and Training, (Mar. 15, 2015), http://www.misclassification.ri.gov/pdfs/2017MisclassAnnRpt.pdf.

In 2014 Rhode Island had created an Underground Economy and Employee Misclassification Task Force, which issued its initial report on March 15, 2015. The Task Force created a website for reporting misclassification and has been building a
A 2009 study found that 38% of the construction workers in the Austin area were misclassified. In "vertical construction" alone, this misclassification resulted in an estimated loss of at least $8,618,869 in federal taxes and state unemployment taxes.


For a 2012 study, researchers from the same companies surveyed 1,194 construction workers, conducted in-depth interviews with workers and employers, and analyzed government data, finding that at least 41% of Texas construction workers are misclassified as independent contractors, costing the Texas UI Fund $54.5 million annually. The researchers also found that 7.6% of state’s estimated losses from unemployment insurance premiums range from $8.4 million to almost $15 million to the state’s unemployment insurance program. Between $7.8 million and $12 million in Social-Security and Medicare taxes. William Canak & Randall Adams, Misclassified Construction Employees in Tennessee (January 15, 2010); Employee Misclassification Advisory Task Force, 2012 Annual Report (January 30, 2010), http://www.tn.gov/labor-wfd/EMEEF/2012_EMATF_AnnualReport.pdf.

Based on estimates using 2006 data, Tennessee lost between $2.1 million and $3.7 million in uncollected workers' compensation premiums taxes Tennessee’s estimated losses from unpaid unemployment insurance premiums range from $4.6 million to $14.9 million. Workers’ compensation insurers lost an estimated $52 million to $91.6 million in unpaid workers’ compensation premiums. 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. http://www.workcompcentral.com/fileupload/uploads/2014-07-17-030728EMEEF%202014%20Annual%20Report%20%20%20.pdf.


Audits by Traveler’s Insurance Company over a 12-month period beginning in October 2011 revealed that only about 63% of employers insured by Travelers classified workers as employees for both workers’ compensation and unemployment purposes. A business has workers and has obtained a workers’ compensation insurance policy to cover those workers, the same workers should be eligible for unemployment insurance, and the business should pay unemployment taxes in addition to workers’ compensation insurance premiums. It should be noted that the majority of businesses misclassifying workers are smaller businesses. It is at this “grass roots” level that the misclassification begins and finds its way to the other business sectors such as commercial construction. Only 50% of trucking businesses and 12% of residential construction businesses consistently classified workers as employees for both workers compensation and unemployment insurance. Tennessee’s Employee Misclassification Advisory Task Force recommended sharing information among existing agencies and appointing additional investigators to identify noncompliant employers, but small scale investigations support the assertion that employee misclassification is prevalent in some industries. Investigations of 32 companies in the drywall, painting, framing, general construction, and roofing industry identified 1,035 misclassified workers and half a million in money owed to the state. Investigations of 23 drywall employers identified 884 misclassified workers and $374,652 in money owed to the state.


The Employee Misclassification Advisory Task Force’s first annual report in 2012 highlights findings contained in Dr. William Canak and Dr. Randall Adams’ 2010 study. The study estimates that between 2,190 and 38,680 construction workers were either misclassified or unreported in 2006- approximately 17% of all construction workers. The study also estimated losses of between $8.4 million and almost $15 million to the state’s unemployment insurance program, between $52 million and $91.6 million to the state’s workers compensation program, between $15.2 million and $73.4 million in federal incomes taxes, and between $7.8 million and $42 million in Social-Security and Medicare taxes. William Canak & Randall Adams, Misclassified Construction Employees in Tennessee (January 15, 2010); Employee Misclassification Advisory Task Force, 2012 Annual Report (January 30, 2010), http://www.tn.gov/labor-wfd/EMEEF/2012_EMATF_AnnualReport.pdf.


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For a 2012 study, researchers from the same companies surveyed 1,194 construction workers, conducted in-depth interviews with workers and employers, and analyzed government data, finding that at least 41% of Texas construction workers are misclassified as independent contractors or paid off-the-books in cash or by check. The researchers extrapolated from this 41% figure to estimate that approximately 308,793 construction workers in the state are misclassified as independent contractors, costing the Texas UI Fund $54.5 million annually. The researchers also found that 7.6% of construction workers experienced wage theft within the past year, costing the state an estimated $8.8 million in lost sales tax. Build a Better Texas: Construction Working Conditions in the Lone Star State, Workers Defense Project in collaboration with the Division of Diversity and Community Engagement at the University of Texas at Austin (Jan. 2013), http://www.workersdefense.org/buildabettortexas_FINAL.pdf.

For a 2012 study, researchers from the same companies surveyed 1,194 construction workers, conducted in-depth interviews with workers and employers, and analyzed government data, finding that at least 41% of Texas construction workers are misclassified as independent contractors or paid off-the-books in cash or by check. The researchers extrapolated from this 41% figure to estimate that approximately 308,793 construction workers in the state are misclassified as independent contractors, costing the Texas UI Fund $54.5 million annually. The researchers also found that 7.6% of construction workers experienced wage theft within the past year, costing the state an estimated $8.8 million in lost sales tax. Build a Better Texas: Construction Working Conditions in the Lone Star State, Workers Defense Project in collaboration with the Division of Diversity and Community Engagement at the University of Texas at Austin (Jan. 2013), http://www.workersdefense.org/buildabettortexas_FINAL.pdf.


The Labor Commission reviewed 90 specific complaints of misclassification for worker’s compensation in 2016, finding employers noncompliant in 57 of these cases. The Commission assessed the penalties in the amount of $2,474,363 and collected $741,135. In six and a half years ending June 30, 2016, the Department of Workforce Services Unemployment Insurance Division (DWS/UI) completed 6,985 random audits covering $1.89 billion in total reported wages. DWS/UI identified $54.5 million in unreported wages paid to 7,955 misclassified workers. In fiscal year 2016 alone, 854 random audits were completed, identifying 961 misclassified workers and $7.5 million in unreported wages. In that same 6.5-year period, DWS/UI completed 2,327 targeted audits of Utah employers, identifying over $172.3 million in total unreported wages paid to 27,493 misclassified workers. In 2016 alone, DWS/UI completed 379 targeted audits, identifying 5,912 misclassified workers and $97.3 million in unreported wages. Worker Classification Coordinated Enforcement Council, Annual Report, Utah Labor Commission, (Aug, 30, 2016), http://le.utah.gov/interim/2016/pdf/00003546.pdf.

The Unemployment Insurance Division of the Department of Workforce Services completes both “random” and “targeted” audits by Traveler’s Insurance Company over a 12-month period beginning in October 2011 revealed that only about 63% of employers insured by Travelers classified workers as employees for both workers’ compensation and unemployment purposes. A business has workers and has obtained a workers’ compensation insurance policy to cover those workers, the same workers should be eligible for unemployment insurance, and the business should pay unemployment taxes in addition to workers’ compensation insurance premiums. It should be noted that the majority of businesses misclassifying workers are smaller businesses. It is at this “grass roots” level that the misclassification begins and finds its way to the other business sectors such as commercial construction. Only 50% of trucking businesses and 12% of residential construction businesses consistently classified workers as employees for both workers compensation and unemployment insurance. Tennessee’s Employee Misclassification Advisory Task Force recommended sharing information among existing agencies and appointing additional investigators to identify noncompliant employers, but small scale investigations support the assertion that employee misclassification is prevalent in some industries. Investigations of 32 companies in the drywall, painting, framing, general construction, and roofing industry identified 1,035 misclassified workers and half a million in money owed to the state. Investigations of 23 drywall employers identified 884 misclassified workers and $374,652 in money owed to the state.
The Virginia Joint Legislative Audit and Review Commission (JLARC) relied on data compiled by the Virginia Employment Security Division (January 1, 2008 and June 30, 2012) for its study. The division completed 5233 “random” audits, covering $1.4 billion in total reported wages. The random audits identified $42 million in total unreported wages to 6,949 workers who were misclassified as “independent contractors.” The random audits revealed a variance of 2.9% (.029). During the same time period the division completed 913 targeted audits of Utah employers, covering $970 million in total reported wages. Targeted audits, which primarily use IRS Form 1099 information to identify potential unreported workers, yield different results. The targeted audits identified $138 million in total unreported wages to 11,144 workers who were misclassified as independent contractors. The targeted audits revealed a variance of almost 14%. (14).


In 2015, the UI Auditors completed 455 full-scale audits, through which the auditors found 1,066 misclassified workers netting approximately $230,000 in employer contributions. Moreover, the Workers’ Compensation investigations unit opened 178 new investigations and issued 20 administrative penalty citations, assessing a total of $71,350 in penalties, and collected $10,307.91 in penalties. Overall, a total of $43,051.07 has been collected in 2015 for WC penalties.


The Virginia Joint Legislative Audit and Review Commission (JLARC) relied on data compiled by the Virginia Employment Commission (VEC) in 2010, finding that of the 1% of employers audited by the VEC, 27% of them had misclassified at least 1 employee. The study acknowledged that the targeted nature of the audits may have resulted in an inflated estimate of the proportion of employees misclassified in all sectors. JLARC’s study also found that roughly $28 million was lost in unpaid state income taxes. Review of Employee Misclassification in Virginia, JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION, Report to the Governor and the General Assembly of Virginia (June 11, 2012).


The state issues an annual Benchmark Report. Of note, the 2016 Washington State Underground Economy Benchmark Report reported that, in FY 2016, the three departments uncovered a combined 2,270 unregistered businesses that were assessed nearly $98.5 million in unpaid taxes, premiums, penalties, and interest. The Department of Labor & Industries conducted 820 audits with an associated $93 million in assessments from worker misclassification and unregistered businesses. The Economic Security Division found more than 12,300 unreported or misclassified workers through audits and assessed a total of more than $1,383,600 on unregistered accounts. The Department of revenue assessed a total of $87.8 million in taxes from more than 780 businesses, recovered over $180,000 in fraud-related dollars. Moreover, the DOR collected over $46 million through its Tax Discovery Program.


The 2010 Washington State Underground Economy Benchmark Report reported that, in FY 2010, the three departments uncovered a combined 1,677 unregistered businesses that were assessed nearly $319 million in unpaid taxes, premiums, penalties, and interest. The Department of Labor & Industries conducted 5,846 audits with an associated $26.4 million in assessments from worker misclassification and unregistered businesses; the Employment Security Division conducted 4,006 audits with an associated $2.51 million in assessments from worker misclassification, unreported wages and unregistered businesses; and the Department of Revenue assessed a total of $29,718,684 in unreported taxes, penalties and interest from previously unregistered businesses that were involuntarily registered. Underground Economy Benchmark Report: 2010 Report to the Legislature, Joint Report of the Washington State Department of Labor and Industries, Washington State Department of Revenue, and the Washington State Employment Security Division (November 2010).

The 2010 Annual Fraud Report to the Legislature: Targeting Fraud and Abuse, Washington State Department of Labor & Industries, reported on the Fraud and Compliance program examining workers’ compensation fraud in Washington State. The program identified unpaid premiums for 62% of employers that were targeted for audits, based on a screening process, and they assessed $26.4 million through employer audits. The Report also noted that the program brought in over $7 for every dollar invested, when the program’s operating costs were compared to the money recovered, collected and avoided during the
fiscal year. For FY 2010, nearly 250 FTEs were employed in the program.
