

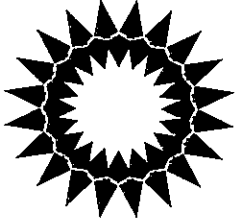


# The FAIR CONTRACTOR

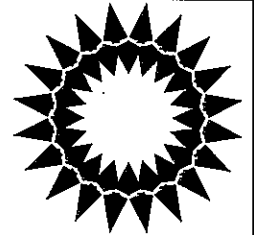
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## FFCM MARKS ITS MOST SUCCESSFUL YEAR



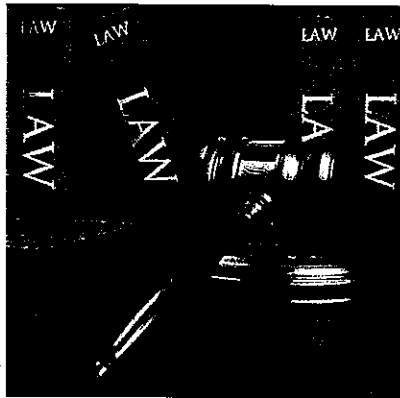
The Foundation for Fair Contracting of Massachusetts is celebrating the conclusion of its most successful year, during which the group exposed the unscrupulous practices of law-breaking contractors and helped workers recoup over three quarters of a million dollars. Karen Courtney, the FFCM's executive director, attributes the year's success in part to experience. "We've been in business now for almost twenty years and we are familiar with every kind of prevailing wage-related fraud that's out there. The Attorney General's commitment to enforcement has been crucial to our success." In the past year, the FFCM saw the reso-

lution of several high-profile complaints against major employers who were violating Massachusetts wage laws. Many of the complaints were triggered by individual workers who contacted the FFCM to report that they were being underpaid or being cheated on their benefits. The resulting investigations often turned up fraud on a much broader scale. If a worker notifies the Foundation that he or she isn't being paid the prevailing wage or has been misclassified as an independent contractor, it's highly unlikely that they're the only worker who's being defrauded.

## SJC RULES: BID LAW APPLIES TO UMASS LOWELL PROJECT

The Massachusetts Supreme Judicial Court (SJC) reversed a lower court ruling and affirmed that an agreement between UMASS Lowell and Brasi Development for the development, maintenance and long term lease of a dormitory was a public construction contract subject to Massachusetts public law. The university had claimed that because the \$20 million dollar student housing complex would be owned and maintained by the developer, it was private and not subject to the state's bid law. The Court disagreed. The law "does not distinguish between buildings that a public agency will own and buildings that a public agency will lease. Rather it focuses on the creation of a project by the agency for the agency's use in carrying out its public purpose" (emphasis ours). Among the factors critical to the SJC decision were changes to or omis-

sions from the original Request for Proposal, including increased length of the lease agreement, expanded university supervision of the construction process, and use of university property and public funds.



The Brasi Development v. Attorney General & another case originated with a bid protest by the Foundation for Fair Contracting and the lowest bidder on the university project. After the Attorney General upheld the protest and was reversed by the Superior Court, it appealed to the state's highest court. Foundation Executive Director, Karen Courtney praised the

SJC action. "This decision will help prevent future attempts to undermine the public bid law with sleights of language. A public project by any other name is still a public project."

# Contractor Hall of Shame

*The following contractors have been cited, debarred or ordered to pay settlements by the Attorney General's office for violating the state's wage and hour laws. The Foundation for Fair Contracting was involved in each case, helping construction workers file claims and get back the money they were owed.*

**R.O.U Construction Company** and its owners, **Alfredo Garcia** and **Carlos Garcia**, were ordered to pay workers a total of \$183,764 in restitution and \$15,000 in civil penalties. An investigation found that the company had repeatedly violated the state's prevailing wage laws while employed on various public works projects across Massachusetts.

**Orlando Painting, Inc.** and its owner, **Gary J. Orlando**, received 18 citations from the AG's office and were ordered to pay \$68,912 in restitution and \$36,720 in civil penalties. The company was found to have violated Massachusetts labor laws while working on various projects statewide.

**American East Painting, Inc.** and its owner, **Anthony Celestine**, were issued three civil citations and ordered to pay \$36,000 in fines and more than \$53,000 in restitution for intentionally violating Massachusetts' prevailing wage, payroll record keeping and wage and hour laws. In addition to the fines and restitution, the company and its owner have been barred from bidding on public construction work for one year.

**Lima Drywall, LLC** and its owner, **Leonardo Lima**, were issued civil citations by the AG's office in the amount of \$5,000 for violating various state labor laws and ordered to pay \$40,435 directly to employees on the affected projects. The company has also been

barred from bidding on public construction projects for one year.

**Hemi Enterprises Inc.** and its owner, **Elizabeth Roberts**, must pay employees more than \$15,000 in restitution and \$3,500 in civil penalties as a result of failing to pay the prevailing wage on several public works projects throughout Massachusetts. Roberts and her company were also fined \$3,500 for failing to submit true and accurate certified payroll records as state law requires.

**BC Construction** and its owner, **Michael Cresta**, were ordered to pay employees more than \$15,000 and issued a civil citation in the amount of \$1,500. The AG's office found that the company and its owner failed to pay prevailing wages to employees who worked on public construction projects in Duxbury and Nahant.

**Burke Construction Co. Inc.** and its owner, **John J. Burke**, have returned more than \$15,000 to employees who were paid less than the prevailing wage on several Massachusetts public works projects. The AG's office also ordered the company and its owner to pay a civil citation in the amount of \$1,500 for the violations.

**KJA Flooring Contractors** and its owner, **Keith Amica**, must pay employees \$10,626 in restitution and a civil citation in the amount of \$2,500 for intentionally failing to pay prevailing wages to its employees. The violation occurred while the contractor was employed on the Peabody District Court project.

**Environmental Restoration Inc.** and its owner, **Charles J. Minasalli**, must pay employees \$4,107 in restitution for unintentional failure to pay prevailing wage for work performed on the Muraco Elementary School project in Winchester, MA. The company and its owner were also ordered to pay a civil citation in the amount of \$890.

**West Floor Covering, Inc.** and its owner, **Sally West**, must pay a civil citation in the amount of \$1,250 and \$2,782.88 in restitution after failing to pay prevailing wages for work performed on the Bedford High School public works project.



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Two construction companies have been barred from bidding on public works projects in Massachusetts for one year after failing to pay civil citations to the AG. **Emery Construction Corp.** and its owner, **Brett S. Emery**, failed to pay a civil citation for \$10,000 for intentionally failing to furnish certified payroll records, while **Payne Construction Co., Inc.** and its owner, **Emmanuel M. Payne**, failed to pay citations in the amount of \$9,611.



## REO COMPLIANCE REQUIRED

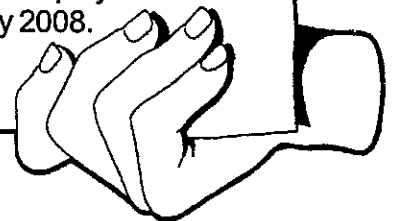
Do contractors have to meet the standards set by a Responsible Employer Ordinance or REO? According to a recent AG decision, the answer is a clear YES. The case in question involved a sheet metal subcontractor on a Fall River public works project. Fall River has in place an REO mandating basic standards for contractors who perform taxpayer-funded work. One such standard requires construction contractors to have registered apprentice training programs. The AG found that because the subcontractor, Montle Plumbing and Heating Co., Inc., didn't have an apprentice program for sheet metal workers, the company wasn't eligible to work on the project. A subsequent decision by the AG's office on a new Fall River school went even further, requiring cities and towns to reopen bidding if none of the contractors that bid on city jobs meets the standards mandated by an REO. The message is that cities and towns as well as contractors are responsible for REO compliance. "These are significant decisions because they make clear that Responsible Employer Ordinances have real teeth," explains FFCM's Jill Alexander. "With regard to the REO apprenticeship provision, the state is saying that a community can require contractors to help train the next generation of construction workers, and given the aging construction workforce, that's crucial."

## AG TO OUT OF STATE LAWBREAKERS: PAY UP

The AG's office has cited two out of state construction contractors for violating the state's prevailing wage law. Henkels & McCoy, Inc., an engineering and utility infrastructure contractor based in Blue Bell, Pennsylvania and SimplexGrinnell, a contractor based in Boca Raton, FL, were both fined and ordered to pay restitution to their Massachusetts employees. Henkels & McCoy was found to have underpaid or misclassified 59 employees on two different public construction projects: the MBTA's Greenbush Commuter Line and the I-91 Intelligent Transportation System project. Henkels & McCoy has agreed to pay \$145,000 in restitution to its employees and \$15,000 in penalties to Massachusetts. SimplexGrinnell failed to pay the prevailing wage to 169 employees for work performed on the UMass-Amherst and Logan Airport public works projects. The company will pay nearly \$125,000 to the affected workers as well as a \$7,500 fine to the Commonwealth. When the FFCM became aware of the violations, it transmitted both cases to the AG's office for enforcement.

## AG SEES 'RED' OVER PAINTING INDUSTRY VIOLATIONS

The Massachusetts Attorney General's office is cracking down on what it sees as persistent wage violations in the painting industry. During the last two years, the AG's office has investigated 27 cases after employees came forward to complain that they were being underpaid. As a result of the investigations, nearly \$560,000 has been paid back to approximately 250 employees, and the worst violators have been barred from bidding on public works projects in the state. One painting contractor snared in the AG's crackdown: Orlando Painting, Inc. The FFCM was contacted by two employees of Orlando Painting who alleged that their employer was failing to pay the prevailing wage. The FFCM forwarded the complaint to the AG's office which found that Orlando had broken the state's wage law at six public construction projects from December 2006 to February 2008.



## STATE CRACKS DOWN ON FRAUD, INDEPENDENT CONTRACTING SCAMS

With the Massachusetts budget straining beneath record deficits, state officials are poised to crack down on employers who try to pass off their regular employees as independent contractors. Not only does the practice burden the misclassified worker with a hefty tax bill, it also deprives the state of revenue. Now the state is fighting back. The Task Force on the Underground Economy, created by Governor Patrick in 2008, brings together various state agencies involved in labor, licensing and tax laws, enabling them to function more effectively to combat workplace fraud and misclassification. During the past year, the Task Force convened regional town hall meetings around the state to hear testimony about how the underground economy affects local communities. The message has been clear: law-abiding employers report that the underground economy keeps them from competing fairly and undermines the laws intended to protect workers. Since the Task Force was created, more than 500 workers have called 1-877-96-LABOR with complaints about employer fraud, including misclassification.


While the practice of wrongly labeling workers as independent contractors takes place in multiple industries, abuse is particularly high in construction. A study by Harvard University found that four in ten construction workers are misclassified by their em-

ployers, who seek to get out of paying unemployment insurance, workers' compensation payments and other benefits. In one recent case, Martin Bourke, Inc., a painting contractor based in Northborough, was fined \$7500 after an investigation found that the owner and his company had repeatedly misclassified employees as independent contractors. In 2008, Attorney General Martha Coakley issued an advisory to clarify the law. As a result, there is little question regarding who is and isn't an independent contractor. If workers are provided with equipment and told when to work and what to do, they are not independent contractors.

## STATE SUPPORTS APPRENTICESHIP

Construction projects funded by economic stimulus money may also become a major source of job training thanks to a new Massachusetts law. Section 33 of Chapter 30 of the Act of 2009 requires that not less than 20% of total labor hours on public works projects funded by the 2009 American Recovery and Reinvestment Act (ARRA) be performed by apprentices registered with the State Division of Apprentice Training. Contractors on ARRA projects exceeding \$1 million must submit periodic utilization reports to awarding authorities and provide a compliance plan if apprentice hours fall below 5%. Advocates for construction workers say that the measure will help ensure a pipeline of skilled labor well into the future, filling an anticipated shortage of trained workers.

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