



The FAIR CONTRACTOR

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IRS Offers "Independent Contractor" Classification Settlement as Part of a 2 Year Test Program

Contractors with problems over the classification of their workers for tax purposes will be offered a settlement option under an new IRS two-year test program. Whether a worker should be classified as an independent contractor or an employee has long been a difficult issue for many businesses, as well as for the IRS.

According to a press advisory released in early March, the IRS is establishing new procedures under an optional classification settlement program that will allow businesses and tax examiners to resolve worker classification cases earlier in the examination process.

In this program, IRS exam-

iners can offer a business under audit a worker classification settlement using a standard closing agreement developed in the IRS national office. Generally, under a closing agreement, businesses that filled Form 1099 information returns but failed to meet all the other requirements for relief under Section 530 could re-classify their workers prospectively and pay only a specified tax assessment not exceeding one year's liability. The assessment would depend on the extent to which the business has satisfied the requirements of Section 530.

Ad Campaign Targets Abuse of Independent Contractor Status

For the second year in a row, The Foundation for Fair Contracting of Massachusetts (FFCM) will broadcast a radio ad campaign warning construction workers about abuses of the IRS' "independent contractor" tax classification. The sixty second ad titled "Tax Time", will air on WBCN-FM, WEEI-AM, WKLB-FB, WJMN-FM, WXKS-FM, WZLX-FM, WPKX, WAQY, WAAF, WWTM-AM, WBEC-FM, WUPE/WUHN and is scheduled to coincide with the April 15 income tax deadline.

"By misclassifying construction trades employees as 'independent contractors', companies force their workers to pay more in self-employment taxes," explained a Foundation Spokesperson. "These same companies also elude payments for workers compensation and unemployment

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The classification settlement program began a two-year test period on March 5, 1996.

FBI, US Attorney and State DIA Charge Contractor in Workers' Comp Fraud Scheme

A Leominster man has been charged with mail fraud in connection with a scheme to fraudulently reduce his construction company's workers' compensation insurance premiums by concealing the size of his payroll.

United States Attorney, Donald K. Stern, and Richard S. Swansen, Special Agent in Charge of the Boston Field Office of the Federal Bureau of Investigation (FBI), and Daniel L. Skelly, Chief of Investigations for the Insurance Fraud Bureau of Massachusetts, announced on March 19 that an Information had been filed charging that Peter F. Zichelle executed a fraudulent scheme to reduce the workers' compensation insurance premiums for his company, Zichelle Steel Erectors, Inc.

The Information alleges that between 1990 and 1994, Zichelle falsely understated his company's payroll in order to reduce the price of his workers' compensation insurance. Zichelle concealed the size of his operation by paying a portion of his employees' wages through a separate corporation and concealing those records from the insurance company.

US Attorney Stern stated, "Working together with the FBI and the Insurance Fraud Bureau, we will continue to investigate and prosecute this type of fraud, which harms both the insurer and, ultimately, the public at large. When an employer lies to reduce his workers' compensation costs, he gains an unfair advantage over his competitors and everyone else picks up the tab in higher insurance costs."

Case Reviews

Contractor Admits Underpaying Workers

A Waltham contractor has pleaded guilty to charges that he violated prevailing wages laws and defrauded the government of unemployment taxes, the state Attorney General's office announced on February 28th. The contractor, David Rodriguez, was ordered to return \$10,500 in back wages to employees and \$5,600 in taxes to the state and was barred from bidding on public works projects for six months. Rodriguez is president of DER Inc.

Rodriguez admitted to sufficient facts in Concord District Court. In all, he admitted to 10 counts of non-payment of the prevailing wage and two counts of unemployment fraud. The violations occurred between July, 1992 and February 1994 while DER Inc. was serving as general contractor on a job at the main pumping station in the town of Lexington. The charges against him said that Rodriguez paid 12 employees, working as carpenters, laborers, and pipefitters, \$10 to \$12 an hour below the prevailing wage.

"In the unemployment system, you have to pay into the system for every employee you have and taxes are based on what the employees are making," Jonathan Ginsberg of the Attorney General's office said. "So because he was underpaying the employees, he was cheating the government as well."

Rodriguez was ordered to pay \$10,500 in back wages to employees and \$5,600 in owed taxes to the Dept. of Employment and Training. In addition, DER was barred from bidding on public projects for six months and was ordered to pay a fine of \$2,500 to the state.

Attorney General's Debarment List

Miazga, Inc., Raymond Miazga, President, (Belchertown) debarred through March 1, 1998

New England Reliance Electric, Inc., S. Dilendick, Pres., D. Vivian, Mgr. (Medford) debarred through April 24, 1996

N.H. Concrete Cutting and Coring, Inc. and F. Nixon, Pres., (Newton) debarred through November 30, 1997

Crocker Architectural Sheet Metal Co., Inc., C. Crocker-Hebert, Pres. (Worcester) debarred through May 16, 1996

S.V. Raleigh Development Corp., S. Raleigh, Pres. (Centerville) debarred through May 16, 1996

D&K Building Movers, D. Popoloski, Pres. (Roxbury) debarred through August 1, 1996

DER, Inc. (Waltham) debarred through August 23, 1996.
D. Rodrigues, Pres., debarred through February 23, 1997

Feddy General Contractor, Inc., Ferdinand (Feddy) Nwankwo, Pres. (Londonderry, NH) debarred through September 20, 1996

Worcester Elevator Company Admits To Failure To Pay More Than \$23,000 In Wages And Overtime

A Worcester elevator repair and maintenance company and its officers have admitted that they failed to pay their six employees the state's prevailing wage and overtime worth more than \$23,000, Attorney General Scott Harshbarger announced on February 7.

Elevator Maintenance and Repair, Inc., Paul M. Hale, president and Ronald Vigeant, treasurer/clerk, each admitted to sufficient facts in Worcester District Court for a guilty finding on three counts of failure to pay the prevailing wage, three counts of failing to pay overtime wages and three counts of failing to provide true and accurate payroll records.

Judge Dennis J. Brennan sentenced Elevator Maintenance and Repair, Hale and Vigeant to three years of probation with full restitution at the rate of \$1,000 per month. In addition, he fined them \$10,000 and debarred them from bidding on public works contracts for 60 days.

Elevator Maintenance and Repair, Inc., was under contract with the Monson Developmental Center, Palmer; North Central Correctional Institution, Gardner; and the City of Springfield School Department to provide maintenance and repair services from 1993 to 1995. During this time, they failed to pay their employees the state-mandated wage for work on these contracts and did not pay time-and-a-half for overtime hours. In all, they failed to pay \$23,836.11 in wages and overtime.

Centerville Contractor Debarred for Six Months

A Centerville contractor has been debarred from public works projects after it admitted to sufficient facts and was found guilty today of five counts of violating the state prevailing wage law.

S.V. Raleigh Development Corporation and its president, Steven Raleigh, were debarred from public works projects for six months and ordered to pay \$15,000 in restitution to its employees performing steel work on five public projects around the state. The workers were paid up to \$20-per-hour less than the state-mandated prevailing wage for steel workers.

The jobs included:

- 1993 Massachusetts Highway Department construction job on a storage shed in Oxford;
- 1993 and 1994. Massachusetts Highway Department construction of a storage shed in Bridgewater;
- 1993 Division of Capital Planning and Operations job on a storage shed at MCI-Concord;
- 1993 and 1994 Braintree Electric Light Department garage construction complex;
- Massachusetts Highway Depart. storage shed in Freetown.

New Hampshire Contractor Guilty of Wage Fraud; Banned From Public Bidding for Two Years

A New Hampshire cement contractor pled guilty in Salem District Court to one count of failure to pay the prevailing wage, one count of failure to keep true and accurate payroll records and one count of unemployment tax fraud.

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Case Reviews

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New Hampshire Concrete Cutting and Coring, Inc. of Newton, N.H. and its president, Frederick Nixon, of New Hampshire, were ordered to pay \$15,000 restitution to its employees, \$1,000 in fines and restitution to the Department of Employment and Training, and were debarred from bidding on public works projects for two years.

Employees of the firm were completing cement mason work on the Salem Middle School in 1992 and 1993. They were underpaid by up to \$23-an-hour less than the state-mandated prevailing wage for cement mixers. In addition, Nixon alleged that many employees were "partners" in the business.

"This case is an example of an employer cheating both workers out of wages and the Commonwealth out of unemployment tax revenues," said Attorney General Scott Harshbarger. "Fraudulent activity such as this drives up the cost of doing business for the vast majority of businesses that pay their taxes and follow the law."

AG Gains \$32,000 For Workers

Attorney General Scott Harshbarger announced that his office has reached an agreement with a New Hampshire contractor that underpaid its workers.

The company, Meter and Backflow Services, Inc., of Concord, NH, agreed to pay employees \$27,000 in restitution and make a \$5,000 contribution to Harshbarger's Student Conflict Resolution Experts (SCORE) program.

The employees of the company completed work on the installation of water meters for the town of Adams in 1993. Following an investigation, it was determined employees were paid up to \$19/hour less than the state-mandated \$27.86/hour for the work.

Worcester Subcontractor Debarred for 6 Months

A Worcester subcontractor has been debarred from working on public projects after admitting to sufficient facts for a guilty finding on charges of violating the prevailing wage law in November of 1995.

Crocker Architectural Sheet Metal Co., Inc. and its president, Cristine Crocker-Hebert, were debarred from public works projects for six months and ordered to pay \$10,000 in back wages to sheet metal workers on the Taunton State Hospital project and \$2,000 in court costs for failure to provide true and accurate payroll records.

The employees were paid up to \$24-per-hour less than the state mandated hourly rate of \$33.82 for sheet metal workers. In a separate agreement, the company agreed to pay \$8,000 in back wages owed to employees who completed work on the Frank Walker Building in Marlborough.

Harshbarger Recovers Overtime Wages for Stannah Employees

Attorney General Scott Harshbarger announced that his office has recovered overtime pay for employees of a Hopkinton

FFCMail Box

Foundation for Fair Contracting
P.O. Box 256
State House Station
Boston, MA. 02133

Re: The Fair Contractor:

I would like to respectfully request that you stop sending the above referenced garbage to my office effective immediately. Thank You.

Very truly yours,

David C. Driscoll, President
Carr Enterprises, LTD

To Whom It May Concern:

We are pleased to be a recipient of your publication, "The Fair Contractor".

As a union subcontractor, it has been difficult in the past to competitively bid on public projects against non-union subcontractors because of the abuse that has existed with respect to legitimately paying prevailing wage rates.

Your informative publication is timely and effective.

Very Truly Yours,

Diane Waters, Vice President
Continental Steel Erection Co., Inc.

company.

Harshbarger's Fair Labor and Business Practices Division recovered \$3,200 in owed overtime pay from Stannah Stairlifts, Inc., of Hopkinton, a firm which installs and services lifts and elevators.

An employee of Stannah filed a complaint with Harshbarger's office this year, alleging the company failed to pay time-and-a-half for overtime hours. An investigation by Harshbarger's office concluded the allegations were accurate.

As a result, Stannah agreed to pay the \$3,200 in overtime pay, as well as donate \$1,500 to Harshbarger's Student Conflict Resolution program, called SCORE. The SCORE program helps students resolve conflicts through discussions before students resort to violence.



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Construction Firm Owner Gets Prison in Scam

An Andover man has been sentenced to a year in federal prison for participating in a scam to illegally lower the premiums paid by his construction company for its workers' compensation insurance.

John J. Boutin, owner of N.B. Johnson Steel Erectors Inc. And N.B. Johnson Construction Co. Inc. Was also ordered by the court to make \$3.5 million in restitution to Liberty Mutual Insurance, the company which wrote the workers comp premiums for the business. Liberty Mutual officials could not be reached for comment on the case.

Boutin's \$20 million company was one of the largest reinforcing bar contractors in Boston working on such jobs as the Deer Island Sewage Plant and the Fleet Center parking garage.

According to the indictment, Boutin conspired with consultant Norman Bernstein to fraudulently reduce the premiums for the two firms by understating the size of their payrolls and reporting that workers in high-risk jobs like steel installation were engaged in less dangerous work. Bernstein is currently under indictment for his part in engineering the scam.

Frauds related to workers comp. premiums represent 3 percent of all cases seen by the Insurance Fraud Bureau of Massachusetts but account for 25 percent of the dollar loss, according to Daniel Skelly, chief of investigations.

Ad Campaign

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insurance as well as other required state and federal taxes. This gives them an unfair economic advantage over responsible contractors who comply with the laws. And it leaves working men and women paying the bill for employer owed taxes."

The FFCM ad closes with one worker advising a second construction worker to call the IRS for more information about the "independent contractor scam."

Wage, Payroll Workshops Offered At UMass-Dartmouth

Two specialized workshops covering public bidding, prevailing wage, certified payrolls and construction safety will be held at the University of Massachusetts-Dartmouth on April 17.

Both workshops will be held in Room 203 of the Main Auditorium. Parking will be available in Lot 5.

The workshops will provide governmental awarding authorities and contractors information on how new state and federal laws will affect their operations. There is no cost to attend either workshop. A fee of \$10 will be charged for lunch, which will be served in the Resident's Dining Hall on the campus.

From 10 a.m. to noon, the first workshop, "Public Bidding, Prevailing Wage and Certified Payrolls," will be given by Assistant Attorneys General Marsha Hunter and Francis X. Flaherty, Jr. From the office of Massachusetts Attorney General Scott Harshbarger.

The second workshop, starting at 1 p.m., "Construction Safety and Health," will be given by Patrick J. Griffin and Peter Barletta, compliance safety and health officers from the Occupational Safety and Health Administration of the U.S. Department of Labor.

For forms and more information about the workshops, call Donald Linhares at (508) 999-8098 or 999-8100.

"This tax dodge by unscrupulous contractors can leave workers with a big headache and an even bigger tax bill on April 15," said the FFCM. "However, there are ways employees can fight back, and the ad will give them enough basic information to start the process."

The Foundation for Fair Contracting
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