



# The FAIR CONTRACTOR

A Publication of the Foundation for Fair Contracting of Massachusetts

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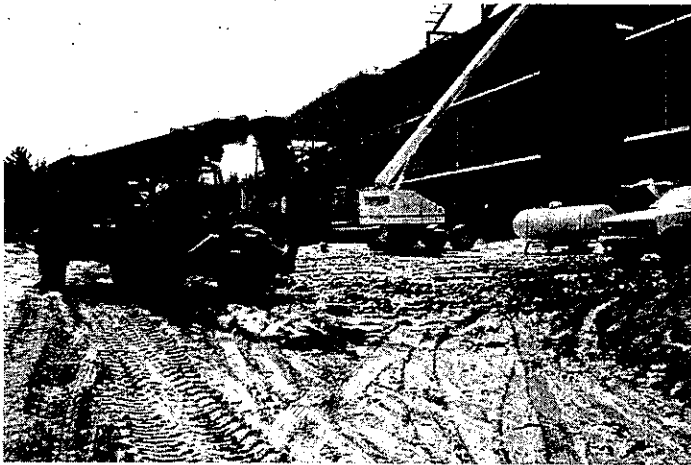
Volume 6 Issue 1

## Worcester Sanctions Contractors

*Payments withheld after 20 firms violate Responsible Employer Ordinance*

In recent months, Worcester has sanctioned 20 contractors for violating the city's Responsible Employer Ordinance while working on publicly-funded municipal projects. The ordinance, similar to those on the books in other cities throughout the state, mandates standards for contractors who do public construction.

Of those contractors sanctioned by the city, one failed to pay prevailing wages to its employees, eight contrac-



*Ordinances now on the books in several cities, including Fitchburg, the site of this project, require that contractors hire a certain percentage of their workforce from the local area.*

tors were delinquent in submitting certified payroll records and one was delinquent in submitting its weekly Responsible Employer Ordinance compliance certification. The remaining contractors were all sanctioned for failing to meet the ordinance's residency requirement, by having less than 50% of their work force made up of Worcester residents.

The projects that the violations occurred on included the Norrback Magnet and Roosevelt Magnet replacement schools in addition to several public works projects. As a penalty, payment was withheld from 15 of the contractors until they came into compliance. Payment continues to be withheld from the 5 remaining contractors.

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### FFCM TV Ads Reach Workers Statewide



Ads warning construction workers who work on public projects about common rip-offs practiced by unscrupulous contractors are currently airing throughout Massachusetts. The ads, which are being run by the Foundation for Fair Contracting, remind workers that if they work on public construction jobs in Massachusetts, they are supposed to receive the prevailing wage. Contractors who pay below the prevailing wage, fail to pay overtime, or misclassify their employees as independent contractors, explains the worker featured in the ads, are breaking the law.

The ads encourage workers who have been ripped off to pursue complaints against their employers. Airing on cable networks throughout the state, the ads will reach close to 1,000,000 viewers.

According to FFCM spokesperson Karen Courtney, workers from all over the state have been calling in response to the ads: "The good news is that we're getting the word out to public construction workers about their rights. The bad news is that there are an awful lot of law-breaking contractors out there."

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think about  
the FFCM?

*In Massachusetts, the Office of the Attorney General--especially the division of Fair Labor and Business Practices--is responsible for the enforcement of prevailing wage and overtime laws. The Foundation for Fair Contracting wanted to take this opportunity to welcome the new Attorney General Tom Reilly aboard and to ask him a few questions about his views on prevailing-wage enforcement.*

**FC: Where does prevailing wage enforcement fall in your list of priorities?**

**AG:** Enforcement of the prevailing wage is a top priority for me as Attorney General. The law was designed to maintain a fair and competitive environment for businesses and employees alike, and I intend to be vigilant in ensuring that this is the case here in Massachusetts. Workers should know that they have somewhere to turn if they are being paid below the level to which they are entitled. And contractors deserve to know that they will not be placed at a competitive disadvantage because they are obeying the law.

**FC: Will recent changes in wage enforcement law be effective in bringing prevailing wage violators to justice? Are the penalties in the new law sufficient?**

**AG:** I commend the hard work and cooperation that brought about these changes in wage enforcement law. These changes provide the Attorney General with long-awaited civil enforcement remedies that allow us to cite prevailing wage offenders for statutory violations. We are optimistic about the new authority and anticipate that it will allow us to resolve prevailing wage investigations more quickly and more effectively.

The enhanced criminal penalty structure now distinguishes between willful and non-willful offenders and provides for a jail sentence upon conviction and for heftier fines. The civil penalty structure allows us to cite offenders and order them to comply with the law, pay restitution, and/or pay a fine. The provision distinguishes between intentional and unintentional violators. These changes give us the ability to identify the most egregious

violators, charge them accordingly and recommend appropriate sentences that will not only punish them but hopefully deter future violations.


**FC: A recent survey of contractors has indicated growing frustration at the level of non-compliance with the prevailing wage law. What can you do to respond to this frustration among law-abiding employers?**

**AG:** Successful prosecution of the most egregious violators is the most effective deterrent for those who may be considering non-compliance with the prevailing wage. Proactive education and outreach efforts are other effective tools in achieving compliance. My Fair Labor and Business Practices Division has become increasingly proactive. Last year, they created a Prevailing Wage Enforcement Team comprised of seven inspectors who have developed a particular expertise and who specialize in the investigation of prevailing wage cases. Division staff members also regularly participate in training, seminars and other outreach activities focused on educating business and labor groups about their rights and obligations under the Commonwealth's wage and hour laws.

**Q and A  
with AG  
Tom Reilly**

**FC: Do you think prevailing wage violators should face debarment as a penalty?**

**AG:** On the issue of debarments as a penalty, the law is now clear. The new legislation does not give the Attorney General the authority to decide whether to debar companies for prevailing wage violations. Rather, it sets forth when such debarments should occur automatically by law, based on the nature and the scope of the violation.



**Confused about wage and overtime laws?  
Call the FFCM at 1-800-224-FAIR**

## SURVEY SAYS

The results of the FFCM's survey of contractors in Massachusetts are in! Thanks to all of you who took the time to respond.

■ Union vs. Non-Union responses:

Union	59%
Non-union	41%

■ General Contractor, Sub-Contractor, Both:

General	32%
Sub	60%
Both	8%

■ Where do you get your information about the Prevailing Wage Law?

FFCM	29%
State Officials	43%
Clerk of the Works	9%
Other Contractors	5%
Contracting Assoc.	14%

■ How well do you think the Prevailing Wage Law is enforced?

Very Well	9%
Fairly Well	29%
Inconsistently	43%
Not at all	19%

■ Average estimate on the percentage of contractors that violate the Prevailing Wage Law:

37%

■ Have you ever lost an award to a contractor you believed was unscrupulous?

Yes	85%
No	15%



## Half Full?

In our recent survey of contractors in Massachusetts, we asked readers what they know about the Foundation for Fair Contracting. The good news is that quite a few of you think that the FFCM is doing a great job:

"The FFCM is doing a good job."

"The FFCM is a great watchdog organization."

"The FFCM is badly needed!"

"We'd like to see more of you! Please increase your site visits in the Worcester area."

"You are doing your best to find law-violating contractors."

The bad news is, some of you wish we would close our doors for good!

"The FFCM is a union front for the Attorney General's office that tries to paint a bad picture for non-union contractors."

"The FFCM wastes time, effort and money that would be better spent working for the real 'prevailing' wage instead of harassing people trying to earn a living!"

"You like to discredit contractors. Your newsletter is all bad news. Try helping instead of hurting."



## Or Half Empty?



The Fair Contractor is published quarterly by the non-profit Foundation for Fair Contracting of Massachusetts. Our mailing address is Box 256, State House Station, Boston, MA 02133 For information, call 1-800-224-FAIR.

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### **Contractors resistant to local hiring requirements**

While contractors have generally opposed attempts to enforce standards at the municipal level, they have been particularly resistant to requirements that 50% or more of the work force on publicly-funded projects be local residents. In Worcester, contractors have complained that they are unable to hire enough city residents to satisfy the ordinance.

"One very prominent trend that we are encountering from both general contractors and subcontractors," noted City of Worcester purchasing director John Orell in a recent report to the City Manager, "is their contention that they are unable to secure enough City of Worcester residents to meet the ordinance's requirements..."

Worcester has been granting waivers to those firms that can prove that they've advertised in local papers as well as appealed to local unions but still have been unable to recruit area workers. Despite contractor resistance to the local hiring requirement, the City remains steadfast in its determination to enforce the ordinance. Concludes Orell in his report to the city: "It is our firm policy that, as per the ordinance, firms must meet the 50% residency requirement" or apply for a waiver if a real hardship exists.

In other cities, efforts have been mounted to repeal local hiring ordinances. In Fitchburg, an ordinance passed by the City Council in 1997 requiring 50% of the workers on public projects to be Fitchburg residents has yet to be enforced. Supporters of the ordinance argue that with Fitchburg slated for close to \$75 million worth of public construction, local residents deserve equal access

to quality jobs. The City Council in Fitchburg is expected to revisit the issue of local hiring ordinances later this spring.

### **Worcester move sends signal to other cities**

With Responsible Employer Ordinances now on the books in cities such as Fall River, New Bedford, Cambridge, Springfield and Lowell, contractors as well as worker advocates are wondering if the Worcester crack-down signals a new willingness by municipalities to enforce what have often been regulations on paper only.

According to Brett Smith, Research Director at the Foundation for Fair Contracting of Massachusetts, consistent enforcement of the regulations would serve to level the playing field, helping fair contractors and workers alike. "The whole point of these ordinances is to weed out law-breaking contractors before the bidding process, instead of waiting until they are on the job. When a contractor knows that a city is vigorously enforcing its responsible employer ordinance, that contractor is faced with a simple choice: either do what's legal or don't do business."

**We want to hear what you think  
about the state of fair contracting in  
Massachusetts. Write to:  
Foundation for Fair Contracting,  
P.O. Box 256, State House Station,  
Boston, MA 02133**

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