



The FAIR CONTRACTOR

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Classify—with Care

The Attorney General's office is cracking down on a fraudulent practice that's all too common: contractors that misclassify their employees. According to a recent AG advisory, the problem of misclassification undermines fair competition in the state. How? For unscrupulous contractors, falsely calling an employee an independent contractor is a way to gain an advantage under Massachusetts' low-bid construction law. Contractors that go down this path typically do so to get out of paying workers' compensation, unemployment and other employment taxes. But according to the AG's new law, the conditions under which construction workers—or any worker for that matter—can be classified as independent contractors are extremely rare.

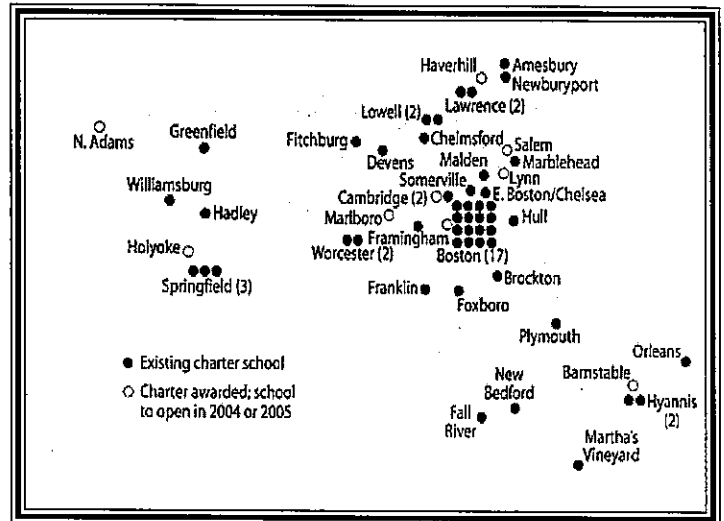
A rigid three-part test

To crack down on abuse, the AG recently introduced a tough three-part test. Employers cannot classify their employees as independent contractors unless they meet each of the following criteria:

1. The worker must be free from "control and direction" in the execution of his or her job. That means that if you are giving your employees orders and instructions regarding how to do their job, they are probably not independent contractors.
2. The worker's job or service also must be performed "outside the usual course of business of the employer."
3. The worker must work routinely in an "independently established trade, occupation, profession or business."

And a threat of debarment

To encourage contractors to follow the new law, the AG has also introduced a tough new enforcement mechanism. Contractors that misclassify their employees—and violate any of the state's wage and hour, taxation or workers' compensation statutes—will face civil and criminal penalties and possible debarment.



AG SAYS SCHOOL PROJECTS COVERED BY BID LAW

The Attorney General's office has ruled once again that charter school construction is governed by the same laws that cover other public works projects in the state. According to state law, any construction project that costs more than \$100,000 must be bid competitively. That means that the Lower Pioneer Valley Educational Corporation and its affiliate, the Lower Pioneer Valley Educational Collaborative were out of order when they issued a request for proposals (RFP) to three contractors. An RFP is not the same as competitive bidding, ruled the AG, meaning that the collaborative and the corporation were out of compliance with the Massachusetts open bidding law. The collaborative was formed in 1974 as a regional tax-exempt public entity by seven member school districts, including Agawam, West Springfield, East Longmeadow and Ludlow. "The ruling couldn't be any more clear," says FFCM executive director, Karen Courtney. "If you've got a school project and it's going to cost more than \$100,000, the bidding laws apply. It doesn't matter what you call yourself, or if you're a charter school, the law still applies."



Contractor Hall of Shame

Don't let your name appear on this list! The following contractors have been cited by the Massachusetts Attorney General's Office for violating the state's Wage and Hour laws. The FFCM has been involved in each citation. If you have questions about the law, contact the FFCM at 1-800-224-FAIR. All calls are free and confidential.

Scott Crafters Inc. and its president, Jeffrey Ivey, of Gilmer Street, Mattapan, and 34 Mallon Road, Dorchester, MA 02121 were debarred for a period of 1 year beginning June 1, 2004. Scott fell victim to the AG's 'three cites and you're out' law, in which construction contractors are barred from bidding on public construction projects if they are cited by the AG three times. The complaint was transmitted to the AG by Chris Burger of the FFCM.

American Contractors and its owner, Lawrence Derosier, have been ordered to pay a total of \$11,348 in back wages and civil penalties after misclassifying workers that were employed on the Greenfield High School re-roofing project. Five employees were misclassified as laborers when they were really roofers. The case was transmitted to the AG's office by FFCM's western Massachusetts monitor, Art Butler.

J.D. Contracting Inc. and its president, John J. Kane, of 437 Lower Hampden Road, Monson, MA 01057 and of P.O. Box 62, Wilbraham, MA 01095, have been debarred and forced to pay \$11,800 in back wages after failing to pay the prevailing wage on a public works project at the University of Massachusetts, Amherst. The AG's office debarred the contractor after citing him for wage-related violations on multiple occasions. FFCM monitor, Art Butler transmitted the case to the AG's office.

Owens Insulation and its owner, Steven J. Owens, of 72 Dayton Street, Danvers, MA, 01923, have been cited three different times by the AG's office for failing to pay employees the prevailing wage as well as failing to submit true and accurate payrolls as state law requires. Owens must pay a

total of \$2,875 for violations that occurred on the Winthrop Center Elementary School, the Salem Witchcraft School and the Peabody Carroll Elementary School public works projects. The complaints were transmitted to the AG's office by FFCM monitor, Joe Meagher.

Proline Industries and its president, David Cheffro, of 1415 Hyde Park Ave., Hyde Park, MA 02136 must pay a total of \$2,502 after the AG's office found the contractor had failed to pay the prevailing wage on the Brookline Lawrence Elementary School project, and had failed to submit true and accurate payroll records as required by state law. The FFCM transmitted the complaint to the AG's office after being contacted by an employee of the company. The case was transmitted by FFCM monitor, Chris Burger.

Sommer Electric, Inc. and its owner, Donald R. Sommer, Jr., of 60 Printworks Drive, Adams, MA 01220, have been ordered to pay back a total of \$1,515 after failing to pay two employees the prevailing wage while employed on the Town of Montague's Fire Department Headquarter Construction public works project. The case was transmitted to the AG's office by FFCM monitor, Art Butler.

Amex Inc. and its owner, John C. Flanagan, of 265 Marginal Street, East Boston, MA 02128 have received three citations totaling \$2250 for failure to submit payrolls at water tank projects in Ipswich and Wayland. The case was transmitted by FFCM monitor, Joe Meagher.

Ramco Survey Stake Co. and its president, Marcia McCloud, of 685 North Main Street, W. Bridgewater, MA 02379, have been issued 5 citations charging them with 10 violations of Ch. 149 sec.27&27B while working on the Walpole Elementary School & Milton High School projects. Contractor had to pay almost \$2,000 in restitution to 4 employees and \$3,000 in penalties. The case was transmitted to the AG's office by FFCM monitor, Chris Burger.

Capeway Roofing Systems, Inc. and its president, Jose Calheta of 664 Sanford Road, Westport, CT 02790 have been cited for failure to pay prevailing wages for work performed on the City of Chicopee's Roof Replacement at Streiber, Litwin & Stefanik School projects. Contractor had to pay total of \$3,719 in back wages and civil penalty in the amount of \$600. The case transmitted by western Massachusetts monitor, Art Butler.

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The Fair Contractor is a publication of the non-profit Foundation for Fair Contracting of Massachusetts. The FFCM mailing address is Box 256, State House Station, Boston, MA 02133. The Fair Contractor accepts letters to the editor. For information, call 1-800-224-FAIR or write www.ffcm.org.

DEBARMENT LIST

September 7, 2004 through July 12, 2005.

Electrical Energy Services and Bruce Phillips, Owner, 1455 Concord St., Framingham, MA 01701. Debarred for a period of 5 years beginning April 26, 2001 through April 26, 2006.

DNK Construction and Ronald Caramanica, Owner, 21 Central Avenue, Lakeville, MA 02347 debarred for a period of 5 years beginning April 11, 2002 through April 11, 2007.

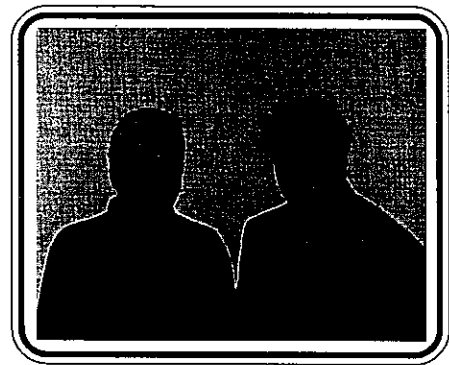
Maureen McKenna, President, Patrick McKenna, Treasurer and Sharpe Painting Contractors, Inc., 195 Faneuil St. Brighton, MA 02135 have been debarred for a period of three years, six months and 23 days beginning August 5, 2002 through February 28, 2006. This debarment excludes work on the current projects listed here: 1. Woodville School Project in Wakefield; 2. Old Rochester Regional Junior High School Project in Mattapoisett; 3. LaLiberte Junior High School Project in Raynham; 4. Lillie B. Merrill Elementary School Project in Duxbury; 8 Scituate High School Project in Scituate; 9. Jonas Clarke Middle School Project in Lexington; 10. William Diamond School Project in Lexington.

Jason M. Cortell & Associates, Inc. and its officer, Jason M. Cortell, of 504 Union Wharf, Boston, MA 02109 have been debarred for a period of 5 years beginning June 7, 2004 through June 7, 2009. This debarment excludes work on the following projects: 1. South Boston Piers Transitway Project at Russia Wharf in Boston; 2. Route 2 Improvement Project DEIR in Leominster & Fitchburg; 3. Term Sampling/Logan Clam Flats Mitigation Project at Logan Airport in Boston; 4. Post -EIR Permitting, Runway 14/32 at Logan Airport in Boston; 5. Airport Improvements FEIR Project in Nantucket; 6. Environmental Regulatory Tracking; ConEd & Cambridge Research Park in Cambridge; 7. Marina Development, Federal & State Environmental Permits in Plymouth.

Suburban Fire Protection and Jan Motyl-Szary, individually, of 100 Otis Street, Unit 5, Northboro, MA 01532 and **Marian Motyl-Szary, individually**, of 6 Nash Street, Westborough, MA 01581, have been debarred for a period of 309 days beginning

HVAC Mechanical Systems and its president, Robert Marzeoti and its treasurer, Katherine Cataldo, of 46 Letchworth Ave., North Billerica, MA 01862, have been debarred for a period of 1 year beginning February 28, 2005 through February 28, 2006.

Frederick Industrial Coating Inc. and its president, Shawn A. Frederick of 1 Orient Ave., Suite 2, Everett, MA and of 14 Baker Street, Dorchester, MA 02125, for a period of 1 year beginning February 28, 2005 through February 28, 2006.



Don Sauvageau & Art Butler, Western Mass Monitor

MEET THE NEW MONITOR

The Foundation for Fair Contracting is pleased to introduce its newest monitor, covering central Massachusetts. Don Sauvageau is originally from Lunenburg and has spent more than 40 years in the construction trades. A sheet metal worker by trade, Sauvageau retired three years ago, but hasn't lost his passion for making sure that the laws governing construction are enforced. The FFCM's new monitor knows plenty about construction. In addition to his history as a sheet metal worker, Don has also worked with building inspectors and has taught seminars on the art of building inspection. As for what he plans to do for the FFCM in the Worcester area, Don says that he's got his work cut out for him. "This is an area that could definitely use a lot of attention. There is cheating and wage violations, and a lot of workers are being misclassified." And when he's not out collecting payrolls and making sure construction contractors in central Massachusetts are obeying the law, Don is likely to be engaged in his favorite activity: trout fishing. "You can find me knee deep in a stream."

APPRENTICE ID LAW NOW ON THE BOOKS

Attention contractors who employ apprentices: a new law went into effect last year that requires apprentices to have state-issued identification cards. Available from the Division of Apprentice Training DAT, the new ID cards include such information as the apprentice's name, start date and the name and address of the committee or contractor employing the apprentice. The law also requires that photocopies of the ID's be included with the certified payroll records that contractors employed on public works projects are required to submit to the state each week. The ID cards are part of a new effort to crack down on apprentice fraud. If your apprentices don't have official ID cards, call the DAT at 617-626-5407.

OMITTING INFORMATION COULD COST YOU A CONTRACT

The new bid reform law requires that all GC's and filed sub-bidders be certified by the Division of Capital Assets and Management (DCAM) as a condition of bidding on a public building project over \$100,000. Watch for DCAM to pay more attention to a contractor's past experience on public and private construction projects. All contractor information must be complete and accurate.

Here is an example of how omitting important information can cost you time and money. In recent years, Cameron Painting and its owner, Donald Cameron of Chicopee, MA, have been cited by the Attorney General's Office for multiple violations of wage and OSHA laws. But when Cameron bid on a project at UMASS Amherst, the contractor neglected to mention his history of citations. UMASS rejected Cameron Painting's low bid. Cameron later appealed to the AG, which ultimately decided in favor of UMASS and asserted that failure to disclose information in bid certification documents could lead to debarment.

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The following contractors were cited by the AG's office for failing to submit certified payroll records while employed on public works projects:

Bortoletti Construction, Inc. and its owner, Robert J. Bortoletti: Dennis Public Library public works project.

Souliere & Zepka Construction, Inc. and its owner, Michael Zepka: City of North Adams, additions and renovations to the public library public works project.

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