

The Prevailing Wage



Vol. 7, Issue 2

A Newsletter for Construction Workers

Fall 2007

'TIS THE SEASON...TO KNOW YOUR RIGHTS

Fall is in the air which for public construction workers may mean that the busy summer building season is coming to an end. For many employees, the end of a job is the time to file for unemployment. But what if you work for an employer who classifies you as an independent contractor? Can you still qualify for unemployment benefits?

PROVE IT

Massachusetts law says that any employee with "proof of work" is eligible to collect unemployment benefits from the state. This means that even if your employer is on the wrong side of the law—by failing to pay unemployment insurance or misclassifying his or her employees—the state won't hold it against you. As long as you're able to present proof that you've been getting paid, you'll qualify for benefits.

CLASSIFY THIS

That's the good news. The bad news is that misclassification—the practice of falsely calling an employee an independent contractor—is a scam that often ends up costing both workers and the state a bundle. It's also increasingly common. According to a study by Harvard University, more than 1 out of 10 construction workers in Massachusetts are misclassified by their

employers. That means that come tax time, as many as 15,000 construction workers will receive a 1099 instead of a W-2.

HOW TO TELL

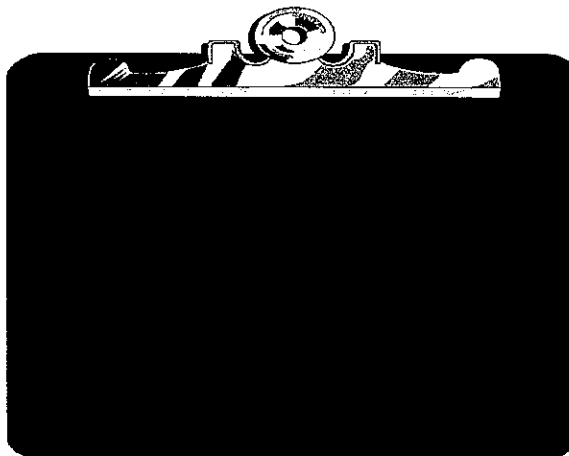
According to the Attorney General's office, almost no public construction workers fit the classification of an independent contractor. If someone tells you when, where and how to work and you're paid by the hour, week or month, chances are you're an employee. More good news: the AG's office is increasingly going after contractors who misclassify their workers. Case in point: All-State Painting, a Norwood contractor was ordered to pay \$15,000 to three employees after falsely claiming that they were independent contractors.

SAVE YOUR STUB

The painters who worked for All-State were fortunate; they'd kept excellent records, which helped the

AG determine that they were being cheated by their employer. And that's the motto of this issue of the *Wage Watch*: the key to enforcing your rights on the job lies in good record keeping. Whether it's "proof of work" for an unemployment claim or disputing a misclassification by showing when, where and for how much you worked, getting what you're owed always comes down to backing it up. Anyone for a holiday yule log book?

To order your free log book from the Foundation for Fair Contracting, call 1-800-224-FAIR or send an email to info@ffcm.org





Compliance Man

Got a question about your rights on the job?

Ask Compliance Man.

Dear Compliance Man:

My husband works for a small construction company in Western Massachusetts. He gets several different rates of pay, depending on the job, but his base pay is lower. My question is about his overtime. His employer will only pay him "straight time" not time and a half. Also, this pay is paid cash, and not regularly. Instead of receiving weekly overtime pay, it accumulates until my husband asks for some of his overtime pay. Then the boss will include a couple hundred dollars in his paycheck envelope. They are not offering us an accounting of how many overtime hours he has accumulated, what has been paid, etc., even though I've asked for it. Financially this is difficult for us—we certainly could use the money weekly, not just when we get desperate and need to ask for it. The boss claims we are "better off" receiving the money as +cash, but I'm not so sure.

Signed,

Frustrated and barely making ends meet

Dear Frustrated:

It sounds like you have every right to feel frustrated! If your husband's boss only paid him when he felt like it, that would be a clear violation of state and federal laws. His overtime shenanigans aren't legal either. Overtime is calculated on a weekly basis and is triggered when an employee works over 40 hours that week. Employees must be paid in full, including overtime, within six days of the end of the pay period. That means that any time your husband works more than 40 hours in a single week, his next pay check must reflect that. As for being paid in cash, his employer is within the law on this one, but he is required to give you the accounting you asked for. Whether payment is made via cash or check (promissory notes or IOUs aren't legal), it must be accompanied by a list of hours worked including overtime, hourly rate and any deductions that have been taken out. Our state and federal governments enacted these worker protections in order that workers like your husband would be "better off." The most important thing that your husband can do is keep track of exactly how many hours he's working, regular and overtime, and at what rate. If he concludes that his boss is underpaying him, then it may be time to consider filing a claim with the Attorney General's office. The FFCM will gladly help him with this (we're sending along a log book that your husband may find helpful), and will also be happy to provide his employer with a little refresher course on the law. Thanks for writing.

Compliance Man

CONTRACTOR CHARGED WITH RUNNING SHAM TRAINING SCHOOL

Asbestos removed by untrained workers

The US Department of Justice has charged the owner of the largest asbestos training program in the state with running a sham school. According to charges filed in federal court, Albania DeLeon, owner and operator of Environmental Compliance Training (ECT) of Methuen, MA, falsely reported to the state that ECT had trained dozen of workers to remove asbestos. Under state and federal law, individuals who work in the asbestos abatement industry must complete a 32-hour introductory training course. And while ECT offered such courses weekly, few workers ever received any training, attended classes, or were tested on what they knew. DeLeon also tried to cover up ECT's practice of handing out worth-



less completion certificates by having applicants sign final exam answer sheets that had already been filled in and graded. If convicted, DeLeon and one of her office employees, Jose Francisco Garcia-Garcia, face up to five years in prison and a quarter million dollar fine. State officials say that they hope that the crackdown on ECT will send a serious message to other employers who endanger the health and safety of their workers. "Asbestos work presents some risk to workers even under the best of circumstances," said Massachusetts Secretary of Labor, Suzanne Bump. "We hope this indictment and prosecution will deter other companies from similar actions that place workers in harm's way."

The Rap Sheet

The following contractors were recently 'rapped' by the Massachusetts Attorney General's Office for violating the state's wage and hour laws. The Foundation for Fair Contracting was involved in each citation, from meeting and advising workers, to providing information.

ARC Environmental Specialists Inc. and its president, Rith Chhim of Peabody, MA were ordered to fork over \$75,000 to construction workers who worked on school projects from Upton to Danvers. An investigation by the AG's office found that Chhim was guilty of prevailing wage and record keeping violations on 15 different public works projects. As part of the settlement, Chhim agreed to pay \$55,000 to a total of 53 employees. Projects on which the violations occurred include the Holten-Richmond School in Danvers, the Veterans Memorial High School in Peabody, the Memorial Elementary School in Upton and the Watertown High School in Watertown.

Brighton Construction Inc. and Peter Macone of Newton, MA must pay \$29,599 after failing to pay the prevailing wage to construction workers on the Arlington/Maynard/Ft. Devens Sidewalk Construction public works project. The company was also fined \$5,000 for failing to submit true and accurate payroll records while employed on the project.

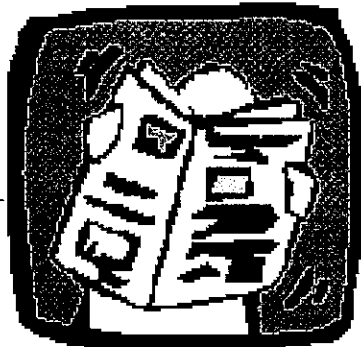
Precision Door & Window Inc. and Albert Distefano of Stoughton, MA have been ordered to pay a total of \$7,395 to seven employees who worked on the Watertown Housing Authority public works project between June and September of last year. Workers on the Watertown job contacted the FFCM last spring and reported that they were being underpaid. In addition to \$6,630 in backpay, Distefano was also fined \$765 for misclassifying the workers.

Vegetation Control Service, Inc. and Laurey Kenerson of Athol, MA were ordered to pay a total of \$7,190 after failing to pay workers in a timely manner. The FFCM learned of the potential problems last year after being alerted that the company was refusing to submit certified payroll records to local awarding authorities as state law requires.

Bortolotti Construction and Robert Bortolotti of

Marston Mills, MA must pay \$5,311 after failing to pay the prevailing wage to six employees on the Wannacomet Water Main Replacement project in Nantucket, MA. Workers on the project notified the FFCM that they were being paid less than the law requires. The workers eventually received more than \$4,000 in backpay, while Mr. Bortolotti was also ordered to pay a \$1,180 penalty for breaking the law.

Electronic Environmental Corp. and Kenneth Rappaport of Marlboro, MA have been ordered to pay a total of \$3,853 after failing to pay the prevailing wage to employees repairing generators. A total of four workers on the Boston Public Schools public works project were underpaid between May and June of 2006. In addition to the backpay received by the workers, Mr. Rappaport was also ordered to pay a civil penalty of \$650.



Pro-Fit Mechanical Insulators, Inc. and William Frasier of Uxbridge, MA must pay a total of \$1,137 for failing to pay employees on the Ashland School public works project the prevailing wage. Workers on the project notified the FFCM that the employer had failed to pay them their step raise as state law requires. In addition to the backpay, the employer also paid a penalty in the amount of \$415.

L&H Construction, Inc. and Liliane M. Gately of Medford, MA were ordered to pay \$603 after failing to pay employees the prevailing wage on the Needham High School public works project. The AG's office found that Gately had underpaid three workers on the project between July and September of 2006.

The state of Massachusetts requires that public works contractors submit payroll records every week in order to ensure that construction workers are receiving the legally-required wage. If they fail to do so, they'll be fined by the AG's office. Get caught three times, and the contractor is barred from bidding on public works projects. The following contractors failed to submit payrolls.

Vegetation Control Service, Inc. and Laurey Kenerson of Athol, MA, various Mass highway herbicide application public works projects.

Guenther Construction, LLC and Robert Guenther, Bristol, CT, Easton Middle School project.

ATTENTION APPRENTICES



IF YOUR CAREER IN PUBLIC CONSTRUCTION IS JUST GETTING STARTED, YOU SHOULD KNOW THAT THERE ARE LAWS ON THE BOOKS PROTECTING YOUR RIGHTS. MASSACHUSETTS REQUIRES THAT ANY APPRENTICESHIP PROGRAM MEET SEVERAL BASIC REQUIREMENTS, INCLUDING A MINIMUM OF 2,000 HOURS PER YEAR OF ON-THE-JOB TRAINING (THE EQUIVALENT OF FULL-TIME EMPLOYMENT), 150 HOURS OF RELATED CLASSROOM INSTRUCTION, AND STEP RAISES AS YOU MOVE TOWARDS COMPLETION OF THE PROGRAM. IF YOUR APPRENTICESHIP **DOESN'T** OFFER THESE, CALL THE FOUNDATION FOR FAIR CONTRACTING TODAY AT 1-800-224-FAIR OR EMAIL US AT INFO@FFCM.ORG. A NEW LAW ALSO SAYS THAT APPRENTICES WHO WORK ON PUBLIC CONSTRUCTION JOBS HAVE TO CARRY AN APPRENTICE ID CARD. THE CARD, WHICH INCLUDES YOUR NAME, PHOTO, INFORMATION ABOUT YOUR EMPLOYER, AND THE PROJECTED DATE OF YOUR GRADUATION, IS INTENDED TO PROTECT YOU AND YOUR RIGHTS AS AN APPRENTICE. IF YOU DON'T HAVE A CARD, CALL THE DIVISION OF APPRENTICE TRAINING AT (617) 626-5409.

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WHERE TO FIND HELP

FFCM Hotline - 1-800-224-FAIR

Division of Apprentice Training
1-617-626-5409

IRS - For tax-related questions
1-800-829-3676

National Labor Relations Board
1-617-565-6700

Occupational Health & Safety Administration
1-617-565-8110

Massachusetts Department of Labor
1-617-626-6953

US Department of Labor (federal projects)
1-617-624-6700

The Massachusetts Attorney General's Fair Labor and Business Practices Division:

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Boston, MA 02108
617-727-3465

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