

The Prevailing Wage



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A Newsletter for Construction Workers

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State Cracking Down on Lawbreaking Contractors

WORKERS ENTITLED TO TRIPLE DAMAGES UNDER NEW LAW

Is your employer paying you under the table? Paying you less than the prevailing wage on publicly funded projects? Refusing to pay overtime? Have you been 'misclassified' as an independent contractor even though you're an employee? If you've encountered any of these problems, the state of Massachusetts wants to help you recover **your money**.

The Commonwealth has recently launched a major crackdown on lawbreaking employers, including those who misclassify their workers or engage in other fraudulent business practices. An anti-fraud hotline has been created so that workers who've witnessed illegal activity on the job or experienced "off-the-books" scams can phone in anonymous tips. (See related story on page 2).

There is also a new incentive for workers to come forward with such complaints. Employers who pay their workers less than what they're owed under the law, refuse to pay overtime or fail to pay their workers at all could be hit with triple damages under a new state law. Workers who've been underpaid may get back pay, plus interest, in addition to the compensation due to them.

Worker advocates say that they hope the measure sends a message to all employers in the Commonwealth that Massachusetts is serious about the business of wage enforcement. "This law puts in place a major penalty for underpaying or refusing to pay workers," says Karen Courtney, Executive Director of the Foundation for Fair Contracting of Massachusetts. "We also hope that the crackdown on lawbreaking employers will help create a more level playing field for law-abiding contractors."



APPRENTICE ALERT

When PowerComm LLC won a bid to repair street lights in Holyoke, MA, the Virginia company hired a young man from that city to work as an apprentice on the job. The only problem: PowerComm didn't have an apprentice program registered with the Massachusetts Division of Apprentice Training (DAT). The worker was called an apprentice and illegally paid at the lower apprentice rate.

FFCM monitor Art Butler became aware of the problem last year when examining PowerComm's certified payrolls. A quick check with the Division of Apprentice Training was all it took to confirm Butler's hunch: the so-called apprentice was being scammed. "This was an outfit from out of state; they came in and broke the law." Butler alerted the Attorney General's office which investigated the worker's claim and ultimately required PowerComm to pay the worker nearly \$16,000.

Apprentice scams like this one have become increasingly common among construction contractors in recent years. The FFCM has referred several cases to the Attorney General that have resulted in unregistered apprentices collecting \$50,000 in back wages from their employers. In one recent case, a contractor on a school repair project was paying the so-called apprentices \$10-15 below the legal rate.

Butler notes that he and other FFCM monitors keep a close eye out for any signs of misclassification when they examine certified payrolls. "All it takes is a quick search of the state's database and we know if an apprenticeship program is legitimate or not," says Butler.

Attention Apprentices: Want to know whether your apprentice program is registered with the state? Call 1-800-224-FAIR (3247).





Compliance Man

Dear Compliance Man:

My husband and many of his coworkers are not getting paid the prevailing wage as required on state projects. The owner of the company also fraudulently fills out certified payrolls, which as you know are required on these projects. My husband has been collecting unemployment for months, as are many others at the company, but still getting paid under the table by the owner. Many of my husband's "paychecks" bounce for his under the table work. This has been going on for years, and while we realize that we weren't doing the right thing by working and accepting these checks while collecting it has now gotten to the point where it needs to be exposed. We just want to survive as a family. I'm 100% certain that

when you interview the workers, all these issues will be found to be accurate. I hesitate to sign this letter because of the owner's volatile temper and repercussions that may happen should I become involved.

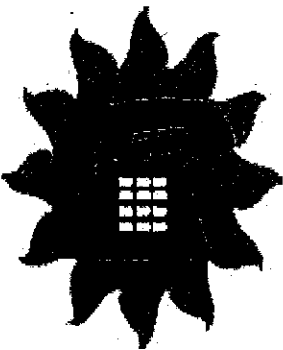
Signed
Had It

Dear Had It:

First of all, thanks so much for being brave and honest enough to come forward. This obviously wasn't an easy letter for you to write. Now for the good news. The state of Massachusetts has begun to crackdown on employers, like your husband's, who skirt the law through various "off the books" schemes. A new anonymous tipline has been set up to help workers report fraud at their workplaces, and a tough new state law will entitle workers who've been underpaid or denied overtime to triple damages paid by their employers (see related stories on this page). You've done your part by alerting authorities to what sounds like a serious case of workplace fraud.

SEE SOMETHING, SAY SOMETHING

NEW STATE HOTLINE SEEKS TO AID WORKERS



Suspect your boss may be breaking the law? The Massachusetts Department of Labor and Workforce Development wants to hear from you. A new state hotline and website are part of an effort by Governor Deval Patrick and his administration to curtail on wage and hour violations by employers in the Bay State. Workers are encouraged to use the anonymous tipline to report labor law violations on the job, from misclassifying employees as independent contractors to paying employees under the table. "The hotline and website are ways to report wrongdoing so that we can restore fairness in our state's economy and help those who go to work each day to earn an honest day's wage," explains Secretary of Labor and Workforce Development Suzanne Bump. There are signs that the effort may already be having an impact. Since the outreach tools were unveiled in May, more than 20 investigations into workplace fraud have been launched. To report activity that you think may be illegal, call 1-877-965-2267 or visit www.mass.gov/dol/labortaskforce. **All calls are anonymous.**

UNION APPRENTICESHIP TOPS, STUDY SAYS

A new study has found that construction workers who apprentice in union programs are far more likely to become journeymen or women in their fields than workers who participate in nonunion programs. The study, conducted by the Labor Resource Center at UMass Boston, compared union and nonunion apprenticeship programs registered with the state Division of Apprenticeship between 1997 and 2007. Among the findings: 81% of apprentices in union programs went on to journeyman status, compared to just 19% in nonunion programs. Nonunion apprenticeship programs were also more likely to be canceled than union programs. The study found that the average nonunion program was canceled after six years, whereas the average union program had been around for more than two decades.

MISCLASSIFICATION CHECKLIST

Are you an employee or an independent contractor?

According to the Attorney General's office, any individual performing a service is an employee unless:

- ✓ The individual performing the service is free from control and direction;
- ✓ The service is performed outside the usual course of the business of the employer;
- ✓ The individual performing the service has his or her own business of the same nature as the service being performed.

Still have questions about misclassification?

Call 1-800-224-FAIR

The Rap Sheet

AG Asbestos Inc. of Lawrence MA and its owner, Regina Guzman of Methuen, MA, were each indicted on six felony charges, including workers' compensation fraud, larceny by false pretenses and unemployment tax evasion. Guzman and the company allegedly underreported the company's payroll by approximately \$1.3 million to both its workers' compensation insurer and to the Division of Unemployment Assistance. The company has also been accused of directing employees to cash their paychecks for a fee at a Lawrence liquor store. AG Asbestos then bought back the paychecks for 102% of their value.

Air Safe Contracting Company, Inc. and Kathryn Earls of Wrentham, MA, must pay **\$109,515.90** in restitution and penalties for failure to pay prevailing wages and proper overtime rate for work performed on various public works projects in Massachusetts. The AG reports the contractor and its owner debarred from May 14, 2008 through May 13, 2009.

Reliable Window & Siding Inc. of Canton, MA and its owner Albert Distefano, Jr., must pay **\$95,346** in back wages and **\$5,000** in civil penalties after failing to pay prevailing wages to more than 50 employees who worked on the Edgewater Apartments Pynchon II Rehabilitation & County Lane Estates Improvement Work project in Springfield, MA. Workers on the project notified the FFCM that employees of the subcontractor were not receiving the prevailing wage.

These contractors were recently 'rapped' by the Massachusetts Attorney General's Office for violating the state's wage and hour laws. The FFCM was involved in each case, helping construction workers file claims and get back the money they were owed.

Tornare Construction Corp. of Watertown, MA and its owner, James DiStefano, must pay eight employees **\$46,655.38** in back wages due to a missed step increase. The company was also fined **\$9,530** in civil penalties (\$56,185.38 total) for failing to submit accurate certified payroll records for work performed on the Melrose Pump Station public works project. The AG's office determined that the certified payroll records Tornare had submitted to the City of Melrose did not accurately reflect what the eight employees at the work site were really being paid.

Patriots Environmental Corp. of Worcester, MA and its owner, Ronald Bussiere, have been ordered to pay a total of **\$20,769** in restitution and penalties after failing to pay prevailing wages for work performed on the Auburn High School Parking Lot Demolition Project.

Vicheth Enterprise Inc. of Lowell, MA and its owner, Vanthy Keo, must pay a total of **\$19,414** in back wages and penalties after failing to pay prevailing wages for work performed on the Medfield Middle and High Schools. Between April 2004 and August 2004, the company underpaid 16 workers

Barille Corporation of Marlboro, MA and its owner, Anthony R. Barrile, must pay a total of **\$14,669.67** in civil penalties and back wages after failing to pay prevailing wages to six employees who worked on several Massachusetts public works projects between 2004 and 2005. The company also failed to submit true and accurate certified payroll records for work performed on a number of projects including the Assabet River Rail Trail.

P/A Landers has agreed to pay a total of **\$10,170.73** to 17 laborers who were employed on the Abington Route 18. The FFCM became aware, after reviewing certified payrolls, that the contractor had been paying a lower rate than the law requires and transmitted the case to the AG's office. The case was settled, no citation was issued.

Veterans Scaffold Services, Inc. of Blackstone, MA and its president, Kenneth G. Schmitt, must pay **\$8,989.30** (\$1,150 in civil penalties and \$7,839.39 in restitution) after failing to pay prevailing wages for work performed on the Mount Wachusett Community College Library Renovations public works project in Gardner, MA.

Rockwood Corp. and its owner, Pierce A. Law of Syracuse, NY, must pay a civil citation in the amount of **\$7,500** for misclassifying employees as independent contractors for work performed on the Billerica Boston Rd. Standpipe Rehabilitation project.

Time Savers Inc. and its owner, John Gugliotta, of Hopedale, MA must pay **\$7,313.54** for failure to pay prevailing wages for work performed on five public works projects in Massachusetts.

Green Acres Landscape and Construction Co. of Lakeville, MA and its owner, Joseph Barbosa, were issued a civil citation in the amount of **\$5,544.47** for failure to pay prevailing wages for work performed on the Belmont Highland Meadow Cemetery public works project.

Premier Caulking of Derry, NH was issued a civil citation in the amount of **\$4,000** for failure to pay prevailing wages to workers on the Chelsea Soldiers' Home public works project.

Arena's Fencing Inc. of Springfield, MA and its owner, Mark Arena, must pay **\$3,715.41** for failing to pay overtime rate to employees who worked on the Park & Athletic Fields Site public works project in Agawam, MA. The total includes a \$780 civil penalty and \$2,935.41 in restitution.

Fine Steel, Inc. of Perkasio, PA and its owner, Mathew Fine, were issued civil citations for intentional failure to pay prevailing wages and intentional failure to furnish records for inspection in the amount of **\$3,570.52** while working on the Wastewater Treatment Facility public works project in Lee, MA.

D'Agostino Associates of Newton, MA and its owner, John D'Agostino, were issued civil citations in the amount of **\$3,155.40** for failing to pay prevailing wages for work performed on the Police Station in Dennis, MA and **\$2,862.85** for failure to pay prevailing wages for work performed on the Franklin DPW public works project.

Paul J. Rogan Co. Inc. of Braintree, MA and its owner, Paul J. Rogan, must pay **\$1,757.98** (\$750 in a civil penalty and \$1,007.98 in restitution) for failure to pay prevailing wages for work performed on the Police Area-1 Station public works project in Boston MA.

Nial Construction of Kittery, ME and its owner, David Sullivan, paid **\$1,632** in back wages and penalties after failing to pay prevailing wages to three workers who were employed on the North Reading Police Department project between August 2006 and March 2007.

AirCare Environmental Service Inc. and its owner, James M. Clary, III of Canton, MA, must pay civil citations in the amount of **\$1,331.40** for failure to pay prevailing wages and failure to submit certified payroll records to the awarding authority on a weekly basis for work performed on the Early Childhood Care project in Middleboro, MA.

CONTINTUED FROM PAGE 3

WHERE TO FIND HELP

FFCM Hotline - 1-800-224-FAIR(3247)

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:

One Ashburton Place
Boston, MA 02108
617-727-3465

1350 Main St. 4th Floor
Springfield, MA 01103
413-784-1128

One Exchange Place
Worcester, MA 01608
508-792-7600

105 William St.
New Bedford, MA 02740
508-990-9700

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