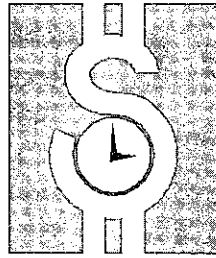


The Prevailing Wage



Watch

Volume Five, Issue Two

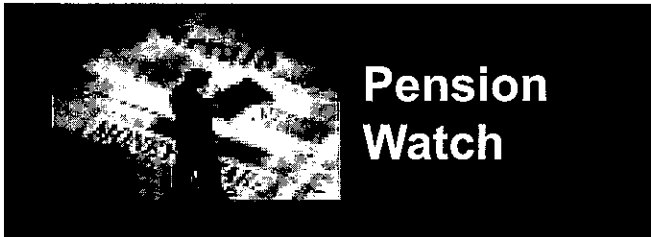
A Newsletter for Construction workers

Winter 2003-2004

Watch that Pension

FFCM monitors warn of disturbing new fraud

As FFCM monitor Art Butler made the rounds of public construction jobs in Western Massachusetts, collecting the certified payrolls that contractors are required to submit under state law, he noticed a troubling new trend: employers who withheld money from employee paychecks, diverting it to a non-existent pension plan.



Pension Watch

"I call this a 'cash cow,'" said Butler. "It's a pension plan in which only the employer benefits. At the end of the day, there's nothing for the employee."

In one recent case, Butler encountered an employer who was checking off \$9 per hour and earmarking it for an employee pension plan--except there was no plan. The 'cash cow' is just one in a series of scams, he notes. There are also phony profit-sharing swindles, in which employees never seem to share in the profit, and requirements for vesting that few employees ever meet.

What's behind the rash of retirement rip-offs? A legal loophole that forces union contractors to hand over pension contributions just fourteen days after their made, but gives non-union companies a full year to do so. "Problems arise when the employer just holds onto the money and uses it for cash flow," says Butler.

Happy New Year!

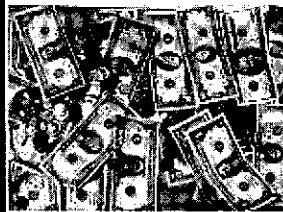
from the

Foundation for Fair Contracting

Best wishes for a safe and prosperous 2004

FFCM Wins Big Bucks for Workers Public construction workers recoup more than \$250,000

2003 has been the most successful year ever for the Massachusetts Foundation for Fair Contracting as the non-profit



watch-dog group helped nearly 150 construction workers win back more than \$250,000 from employers who cheated them on the job. "These

were all construction workers who'd been paid less than the prevailing wage, denied overtime or received less money than they were legally entitled to," said Karen Courtney, FFCM executive director. "With our help and the help of the Attorney General's office, these workers have gotten back the money that legally belonged to them." The record haul for workers included a number of high-profile cases, including a claim against a painting company that recovered close to \$85,000 for 10 painters, and more than \$17,000 for 27 laborers.

The FFCM is currently assisting workers in several cases involving phony retirement plans.

How can you be sure that the same thing doesn't happen to you? Federal law requires that your employer share information with you about your pension or other retirement plan. You have a right to see a plan description, and your employer faces a \$100 per day fine if he or she fails to produce a plan description after 30 days.

If you fear that you are the victim of a 'cash cow' scheme, contact the Foundation for Fair Contracting. "Pay attention to what your check says," Butler urges. "If you suspect too much is being taken out of your check, call us."



Compliance Man

Answering your questions about law, life on the job, and more.

Dear Compliance Man:

I'm a construction worker and since I've worked for my boss I've never seen overtime. There are times when I'll work well over 40 hours and not get overtime. Isn't this illegal? You're probably thinking: why don't you just say something to your boss? I guess I never had the courage, but I'm meeting with him today and I'm going to say something about all of this. I'm nervous, but this is my life and I work very hard for my living and I just want what's mine. If it turns out that I'm being ripped off can I get back pay?

Signed:

Shorted in Sturbridge

Dear Shorted:

Thanks for writing. Your suspicions are right on the money. You should be getting at least time and a

half your regular hourly rate anytime you work more than 40 hours in a week. The good news is that you can get some of that money back by filing a claim for overtime under either the federal or state minimum wage laws. As you prepare to file your claim, it's a good idea to try to assemble as much documentation as you can--pay stubs, your own notes about when and where you worked--anything that shows a history of your employer breaking the law. Keep in mind that there is a statute of limitation for overtime claims, meaning that you have to file your claim within a certain period of time, two years for overtime claims, three years for prevailing wage claims. Also, under state law, you may be entitled to triple damages if it's determined that your employer's violations were "intentional." In addition, if you make a claim under state law and it is successful, you're also entitled to collect attorney's fees. Both the federal and state statutes prohibit retaliation against you because you file a claim for overtime wages due under the law.

If this sounds confusing--and legal matters almost always are--give us a call at the Foundation for Fair Contracting. We'd be happy to help you prepare your claim. Good luck!

Compliance Man

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

period while they were employed on the Sumner/Callahan Tunnel Ventilation System Rehabilitation project in Boston and East Boston. The 43 workers were being paid \$6 under the prevailing wage. The FFCM had been reaching out to Charter employees for some time, warning them that they might be underpaid. The case was handled by Assistant Attorney General Karla Zarbo and investigated by Inspector Brian Macera, both of AG Reilly's Fair Labor and Business Practices Division.

A Chelsea environmental company has been ordered to pay 43 laborers more than \$88,000 and pay \$6,000 in fines to settle charges that it violated the state's prevailing wage law. **Charter Environmental** and its owner, **Robert Delhorne** of Belmont, were charged with underpaying the workers over a two year

Two painting contractors based in Malden and Dracut must pay at least \$33,000 in restitution and penalties to six workers who worked on the UMass Dartmouth public works project in 2002. The two contractors, **Avalon Painting Co.** and **Arruda's Painting**, were paying their immigrant workers anywhere from \$8 to



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The Rap Sheet

Continued from previous page

\$15 an hour. Some of the workers, who were painting dormitories at the University, contacted the FFCM for assistance. "We were happy to help them get their money back," said FFCM monitor Chris Burger, who helped the workers file their claim. Mario Pavia investigated the case for the AG's office.

The AG's office has ordered **Franny's Landscape Co.** and its owner, **Francis Venuto, Jr.** of Framingham, to pay 27 laborers more than \$17,000 after underpaying them on the Fitzgerald School public works project in Cambridge, MA. One of the workers who received restitution contacted the FFCM to complain about the contractor. The AG's office also determined that Franny's had failed to submit certified payroll records to the awarding authority weekly as required by law. Robert Lamarre investigated the case for the AG's office.

Airpro Mechanical and its owner **Stephen Calderone** must pay four public construction workers a total of \$14,693 after failing to pay them the legally required wage on the Holliston High School public works project. Airpro was also fined for failing to submit true and accurate certified payroll records for more than a year while working on the project. One of the workers contacted the FFCM after receiving a mailing alerting him to the possibility of abuse on the job. Greg Reutlinger investigated the case for the AG's office.

All State Roofing Company and its owner **James Terault** must pay \$12,163 to four workers who were underpaid for two months while employed on the Berkshire Community College public works project. One of the workers contacted FFCM Western Massachusetts monitor Art Butler after receiving a mailing and filed a complaint with the AG's office with his assistance. Robert Lamarre investigated the case for the AG's office.

Langone Heating and Plumbing Supply, Inc and its owner, **Ellis L. Langone** of Agawam, has been ordered to pay multiple workers a total of \$9,365 laborers after failing to pay them the prevailing wage on the Colonial Acres and Springfield Streets public work project. During a routine examination of payroll records, an FFCM monitor noticed that the workers

on the job were not receiving the legally-required rate. Stephen Spencer investigated the case for the AG's office.

Fleet Environmental and its owner, **Robert Zammito** of Randolph, MA, must pay \$407 after failing to pay three workers the prevailing wage on the Stoneham Colonial Park public works project. The AG's office also determined that Fleet had failed to submit true and accurate payrolls while employed on the project. Jeffrey Ambrose investigated the case for the AG's office.

Shannon Construction and owner **Lawrence Moloney** must pay \$1000 for intentionally failing to submit payroll records on the Rockland/Abington Water Main project. Mario Pavia investigated the case for the AG's office.

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.

D.C. Masonry and Sons and owner **Douglas Caverly**, UMass/Mullen Center project.

LB Form Company of Oak Bluffs, MA and owner **Laurie Turney**, Chillmark Free Public Library public works project.

NEED, Inc and owner **James F. McGuinness**, Falmouth Mullen Hall Elementary School public works project.

Do You Think You Might Be Owed Money? Let the FFCM Help.

If you've been underpaid on a public construction job, the FFCM can help you get the money you are owed. Our monitors will tell you whether you have a case, explain how the law works and help you file a complaint with the Attorney General's office.

Call 1-800-224-FAIR Today!

Working on an Emergency Job? You Still Get the Rate

It was an emergency job by any measure: heavy rains had soaked through the new school building, ruining a recent paint job. But when two painters began the work of repairing the mess, their boss informed them that they'd be paid a wage far below the prevailing rate. The reason: the contractor maintained that emergency jobs are exempt from state and federal prevailing wage laws.

It didn't sound right to the construction workers, so they contacted the Foundation for Fair Contracting to find out what the law actually says. "Very clear in this case," says FFCM monitor Joseph Meagher. "Whether its a small project or an emergency projects, if it involves public money the workers should be receiving the prevailing wage."

- There is no exemption for small projects or emergency jobs.
- There is no dollar threshold that must be met before the prevailing wage applies.
- Workers who are modifying a public job--repainting, fixing windows, etc...--also receive the prevailing wage.

Where to Find Help

FFCM Hotline - 1-800-224-FAIR

Division of Apprentice Training
1-617-727-3486

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
1-617-727-3492

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

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

200 Portland St.
Boston, MA 02114
617-727-3465


165 Liberty St.
Springfield, MA 01103
413-784-1128

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

184 North St.
Pittsfield, MA 01201
413-447-7324 x218

105 William St.
New Bedford, MA 02740
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