



The Independent Contractor Craze

With tax-time just around the corner, the issue of employee classification—whether you're considered an employee or a so-called "independent contractor"—becomes more significant than ever. In this issue of the *Wage Watch*, we take a look at a trend that is affecting millions of workers, and offer some hints about what to do if you receive a 1099 form this year.

When she lost her job at Honeywell in 1986, Jimmie Ruth Daughtrey was devastated. "I was 50 at the time," she later testified before the House Subcommittee on Labor. "And high-tech companies did not seem to be interested in hiring a 50-year-old grandmother without a college education as a computer programmer."

So months later, when Honeywell offered her employment in another position, Daughtrey jumped at the chance. She returned to the same building to do the same sort of work she had done before, working side by side with most of the same people. Now, however, Daughtrey was considered a "consultant" rather than an employee. "I learned that this meant that I would not get any benefits and would have to pay the employer's share of social security taxes," she recalled.

Daughtrey's situation is all too common. A growing number of employers are trying to avoid paying benefits, employment taxes and unemployment and workers' compensation premiums by classifying their workers as independent contractors. Your boss can't just call you an independent contractor, however; the IRS has established strict guidelines governing the classification of workers (see "The Fact Sheet" inside). Chances are, if you work for one employer, are paid by the hour, and use your employer's tools and equipment, you are an employee, *not* an independent contractor.

The problem of misclassification is rampant in the construction industry. The IRS estimates that approximately 20 percent of construction industry employers misclassify workers.

Misclassification by unscrupulous contractors can leave

workers with more than just a big tax bill come April 15. "Independent Contractors" may be denied unemployment benefits or workers' compensation if their employers have failed to obtain insurance or make payments on their behalf. "Don't let this stop you from filing," cautions Karen Courtney, Director of the Foundation for Fair Contracting of Massachusetts. "It's up to the employer to prove that you really are an independent contractor."

There is some evidence that the tide may be turning. In a recent case that has broad implications for companies that rely on temporary

workers and independent contractors, the US Department of Labor found that two Massachusetts temporary employment agencies, **Baystate Alternative Staffing, Inc. of Fitchburg**, and **Able Temps Referrals, Inc. of Worcester**, had misclassified 619 low-wage workers. Accusing the agencies of "willful violations of the federal wage and hour law," the Labor Department has ordered them to pay a fine of \$150,000.

According to the Department of Labor, the case stems from an investigation of the companies' recruitment and placement of workers as temporary day laborers, mostly in light manufacturing industries. The Department "found that the firms were trying to avoid paying overtime by claiming the workers were independent contractors." An Administrative law judge agreed with the Labor Department, and on October 24, the companies lost their appeal before the Massachusetts U.S. District Court.

The courts ruled that since the companies recruited, hired, placed, transported and controlled the 619 day laborers, the workers were not independent contractors.

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What's Inside?

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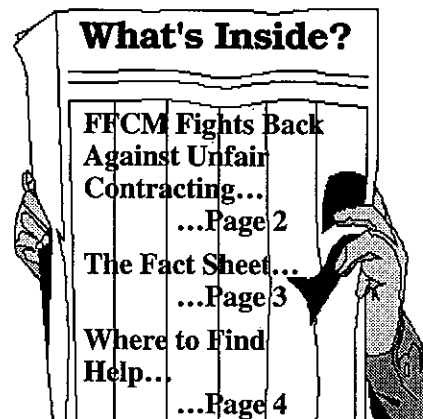
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FFCM: FIGHTING BACK AGAINST UNFAIR CONTRACTING

Are you being paid less than the prevailing wage for work on a public construction job? Have you been denied overtime pay for overtime work?

Under Massachusetts law, you have the right to sue your employer in civil court for *triple damages and attorneys' fees*, after filing a complaint with the Attorney General's Office. Once you have the written permission of the Attorney General, or after 90 days passes, you are free to pursue what's called a "Private Right of Action" claim against your employer.

The Foundation for Fair Contracting of Massachusetts is currently helping employees with Private Right of Action claims against three different public works contractors. In a case now in District Court, dealing with overtime pay and benefits against a major paving contractor, more than 35 former employees are included in the lawsuit. Other cases are against a mechanical insulation contractor and painting contractor. According to Mary Jeanne Tufano, the attorney retained by the FFCM who will represent the employees in court, the actions will seek the full amount of back pay, with triple damages, as well as "an injunction where appropriate to prohibit continued violations by the contractors."

For more information about Private Right of Action claims, call 1-800-224-FAIR

FFCM COMPLAINTS GET RESULTS FOR WORKERS

Globe Drywall Debarred by Attorney General's Office

In a case transmitted by the Foundation for Fair Contracting, Globe Drywall Systems, Inc. of 410 Grove Street, Fall River has plead guilty to one count of failing to pay prevailing wage rates and one count of failing to provide true and accurate payroll records. The corporation had been engaged in the construction of the Weymouth Police Station, a public works project, from May 29, 1995 until January 6, 1996. According to the Attorney Generals' office, the company paid full restitution to its workers in the amount of \$1,681. In addition, the company was debarred from participating in any state or local public works projects for six months.

Worker Receives Over \$6,700 from Anchor Contractors

In an out of court settlement, a welder working for Anchor Contractors, Inc. on the Medfield Town Hall has received

\$6,750 in wages owed to him for work on the Town Hall. The settlement was reached with the assistance of both the Foundation for Fair Contracting of Massachusetts and independent counsel.

The individual had worked for over a month on the project without receiving compensation. When he refused to appear at the jobsite until paid for the work which had been performed to date, Anchor threatened by certified letter to release him and backcharge him for any and all costs incurred to complete the work.

At that time, the welder contacted the Foundation. Although out of the jurisdiction of the FFCM, the facts of the case were obtained, and through collaboration with his private attorney, a complaint was filed in the Norfolk District Court. This action ultimately led to a settlement for full damages from Anchor.

JSI Employees Awarded Backpay

In October, two workers employed by JSI, a subcontractor to T.L.T. Construction, contacted the FFCM with complaints of not receiving pay for two days worked on the Old South Meeting House Project in Boston. The FFCM filed a complaint with the U.S. Department of Labor, which later informed the FFCM that a settlement had been reached with T.L.T. to pay the workers for the 16 hours they had each worked on the days in question.

Franklin Company Debarred for Prevailing Wage Violations

Hawkins Structural Systems has been debarred from public works after pleading guilty on nine charges of failing to pay the prevailing wage and one count of failing to provide true and accurate payroll records. The company was engaged in the building of the West School in Andover from November, 1995 until July, 1996. According to the Attorney General's office, Hawkins was ordered to pay \$15,300 in restitution to its workers. The company cannot participate in public works until April 1998.

AG FILES CRIMINAL COMPLAINTS AGAINST PEABODY CONTRACTOR

A Peabody painting and carpentry contractor is facing criminal charges for non-payment of wages, failure to keep true and accurate payroll, failure to file reports with the Department of

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CASE STUDIES

The Fact Sheet

By Brett Smith

Research Director

As mentioned in the cover story, the Internal Revenue Service has established guidelines for individuals to determine if they are an independent contractor or an employee. The IRS, in Publication 1779, lists 20 factors that question the extent of control in the work relationship. The IRS asserts that you are most likely an employee if more than a few of these factors apply to you.

- Someone tells you when, where and how to work.
- You are paid by the hour, week, or month.
- The business has a right to fire you.
- The business trains you to perform services in a particular matter.
- Your services are part of the business operations because they are important to the success of the business.
- Your services are rendered personally.
- The business hires, supervises, and pays workers.
- You have a continuing relationship with the business.
- The business sets your work hours.
- You are required to work or be available full-time.
- You work on the premises of the business, or on a route or at a location designated by the business.
- You perform services in the order or sequence set by the business.
- You submit reports to the business.
- The business pays your travel and business expenses.
- The business provides your tools, materials, and other equipment.
- You have no significant investment in the business.
- You don't make a profit or suffer a loss from the business.
- You normally work for one business at a time.
- You don't offer your services to the general public.
- You have the right to quit without incurring liability.

Massachusetts law may be even tougher in defining what constitutes independent contracting, especially on prevailing wage issues. For more information, contact the Attorney General's office.

If you are still not sure whether you are an employee or inde-

pendent contractor, you should review the following IRS documents; Publication 15 "Employer's Tax Guide," Publication 15-A "Employer's Supplemental Tax Guide," and Form SS-8 "Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding." All are available FREE by calling 1-800-829-3676.

WESTERN MASS LANDSCAPING FIRM CHARGED WITH FAILURE TO PAY PREVAILING WAGE

Complaints have been issued against a Cheshire landscaping firm for prevailing wage and overtime violations. According to Attorney General Scott Harshbarger, Francis A. Waterman of Waterman Excavating and Landscaping, has been charged with three counts of underpayment of the prevailing wage, one count of failure to keep true and accurate payroll records, and one count of failure to pay proper overtime.

The violations allegedly occurred in 1997 while Waterman was engaged in sidewalk reconstruction, a public works project, in Cheshire. Waterman is alleged to have underpaid and failed to pay overtime to three of his employees. If convicted, the firm will be prohibited from doing public works for six months and face fines of up to \$10,000.

THE FOUNDATION FOR FAIR CONTRACTING OF MASSACHUSETTS

The FFCM was created to help construction workers when contractors try to take advantage of them, paying less than the prevailing wage, or failing to pay overtime on public works projects. The FFCM can assist you by:

- ✓ Helping you file a wage or overtime complaint with the Attorney General's Office;
- ✓ Letting you know how to go about suing your employer in civil court for triple back pay;
- ✓ Keeping you informed about your rights on the job through the *Wage Watch*.

**But we can't do any of this without your help!
Don't forget to document your work:**

- ✓ Save your pay stubs;
- ✓ Keep a log of the job
- ✓ Call us @ 1-800-224-FAIR



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• *Independent Contractor*

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The companies, which can still appeal to the U.S. Court of Appeals, have been ordered to pay \$150,000 to the U.S. Department of Labor, and the Department has also filed suit to collect \$280,000 owed to the 619 employees in back wages and damages.

The hefty fine levied against these two agencies may encourage other companies to think twice about misclassifying employees as a means of avoiding payment of overtime and employee benefits.

If you have questions about your employment status, call the IRS at 1-800-829-3676 and request a form SS-8; for information about wage and hour standards, call the Attorney General's office near you. See "Where to Find Help" for a complete listing. Parts of this story were taken from America@Work, October 1997, p. 16-17.

• *AG Files Complaint*

Continued from page 2

Employment and Training, and workers compensation fraud. According to Massachusetts Attorney General Scott Harshbarger, complaints have been issued in Peabody District Court against George Vasiliades and Olympic Painting.

The Attorney General's office alleges that three employees who did painting work for Vasiliades between 1996 and 1997 were misclassified as independent contractors and not paid. The employees allege to be owed approximately \$10,400. Vasiliades was also charged with unemployment tax violations for his alleged failure to make any unemployment tax payments since 1987 to the Department of Employment and Training.

For information about filing a wage complaint, call the Foundation for Fair Contracting at 1-800-224-FAIR.

Where To Find Help

FFCM Hotline

1-800-224-FAIR (3247)

The Industrial Accident Board

1-617-727-4900

(Workers' Compensation Claims)

National Labor Relations Board

1-617-565-6700

Occupational Health & Safety Administration

1-617-565-7164 (OSHA)

Mass. Dept. of Labor & Industries

1-617-727-3492

The Attorney General Wage Complaints

1-617-727-3477

AG's Springfield Office

165 Liberty St., Springfield, MA

1-413-784-1128

AG's Pittsfield Office

46 Summer St., Pittsfield

(Open Tuesday) 1-413-447-7324

AG's Worcester Office

340 Main St., 2nd Fl., Worcester

(Open Mon. & Tues.) 1-508-792-9404

AG's Fall River Office

(Open Tuesday) 1-508-672-9026

Wage Watch

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