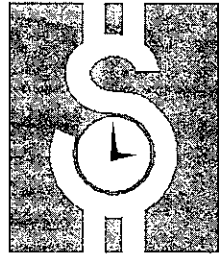


The Prevailing Wage



Watch

Volume Six, Issue One

A Newsletter for Construction workers

Winter 2005

New Massachusetts Law Cracks Down on Independent Contractor Fraud

You show up at the same construction site day after day, following the boss' orders and work schedule, but at tax time, you get something called a '1099.' These 4 little numbers mean that your employer has classified you as an "independent contractor," often a scam for tax purposes that ends up costing you and the state a bundle.

Now, thanks to a new state law, your employer must meet a strict standard before classifying you as an independent contractor. The law makes it clearer than ever before who can and cannot be issued a 1099. And according to the Attorney General's office, if you're a public construction worker, it is highly unlikely that you fit into this classification.

A growing problem

"This is a growing problem in our state," says Karen Courtney, executive director of the Foundation for Fair Contracting of Massachusetts. "Contractors tell their workers that it's a good deal for them to be independent contractors, that it's like having your own business. But come tax time, you get stuck paying twice as much as what an employee pays. It's a rip-off, and now, thanks to the new law, an employer who is caught will pay much stiffer penalties."

According to a new Harvard University study, up to 11% of construction workers in the state are misclassified by their employers. That means that as many as 15,000 construction workers will receive a 1099 instead of a W-2 come tax time.

What can you do?

The new state law will make it easier for the AG's office to go after contractors that intentionally break the law. But it will also help you if you've been misclassified as an independent contractor.

If you think that you may have been misclassified by your employer:

- Call the FFCM at 1-800-224-FAIR or write to us at info@ffcm.org. We can help you determine whether your employer broke the law.
- Consider filing a claim with the AG's office (the FFCM can help with this as well).
- File for unemployment if you were issued a 1099 and then laid off. Just because you've been misclassified does not mean that you are ineligible for unemployment benefits.
- File for workers' compensation if you are injured. Again, misclassification does not automatically mean that you are not eligible for benefits.

Contractor Cheated 150 Construction Workers

A Maynard contractor is in hot water with the Attorney General's office after investigators there found that he cheated more than 150 construction workers, failing to pay them the prevailing wage, and ripped off seven cities and towns in Massachusetts. The contractor, Milton Marder, worked through numerous companies such as National Building Services. He told cities and towns that employees were being paid the prevailing wage, but were actually paying a fraction of what the law requires. Many of the employees were Brazilian immigrants. The AG began investigating Marder in 2001, after demolition workers employed on the Holliston High School project complained that they were receiving as little as \$10 per hour. Marder also ripped off workers who were employed on the Erving and Norwell school projects, a Brockton Housing Authority project, and the Brookline library renovations. Employees were

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Compliance Man

*Got a question about your rights on the job?
Ask Compliance Man.*

Dear Compliance Man:

My husband is a heavy equipment operator for a company based in New England. Almost all the roadwork that they do is in Massachusetts, but he only receives the rate for our state, which is lower. Is he entitled to the Mass. rate when he is working there?

Signed,
An Inquiring Wife

Dear Inquiring Wife,

Yes. Regardless of the worker's state of residence, union status, or employer's business location, when working on public projects in Massachusetts, he is entitled to the *full* prevailing wage set for that project. Don't let the boss play games with your husband's pay.

While the contractor may deduct for legitimate programs such as health and welfare or pension, etc., the entire package must add up to the full prevailing wage set for that trade. The actual rate is supposed to be posted at the job site but more often it can be found inside the Clerk of the Works' trailer. You can also call us for the specific project rate. Most importantly, be sure that your husband keeps a logbook of all of his projects along with hours worked, plus all pay stubs. We'll send you a logbook free of charge.

I can be reached at 1(800) 224-FAIR.

-Compy

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allegedly underpaid by more than \$800,000. Marder faces jail time and huge fines in the case. Investigators for the AG's office, including Assistant Attorneys General Katharine Klubock, Rosalyn Garbose and James Clark, along with inspectors Greg Reutlinger, Mario Paiva and Jeffrey Ambrose investigated the case, reviewing and analyzing thousands pages of financial records.

APPRENTICE UPDATE

22 Apprenticeship Programs Suspended by State

Apprenticeship is a great way to train your way into a good paying job. But in order for apprenticeship programs to work, construction contractors must follow the law, including providing their apprentices with adequate supervision on the job, supplying the required classroom education, and ensuring that their apprentices have a state-issued ID card. When contractors fail to follow these guidelines—they risk having their apprenticeship programs suspended. Here are 22 contractors that broke the rules and are prohibited from classifying or paying any of their employees as apprentices on state and federal projects from November 11, 2004 – May 11, 2005.

- A.K. Electric Inc.
- Absolute Heating, Inc.
- Capeway Roofing Systems
- Dumas Roofing
- Emerald Excavating
- Gedick Brothers, Inc.
- Hugh's Plumbing, Inc.
- Koch Membrane Systems
- Majestic Mechanical Contractors, Inc.
- Martin Metro East Insulation (until proof of scheduling is supplied)
- May Electric Co.
- Mourad and Sons Construction & Electric
- New England Design Associates, Inc.
- Patriot Plumbing & Heating, Inc.
- Raymond Lelievre Plumbing
- Simplex Grinnell
- Sterling Electrical Associates
- Systems Electrical Services, Inc.
- Travi Construction
- Upright Fire Sprinkler Protection, Inc.
- Verizon Equipment Installation #2222
- W.R. Schofield Construction Co., Inc.

Note: If you are an apprentice and have questions about your rights, or if your employer appears on this list and you want more information, call the Foundation for FairContracting at 1-800-224-FAIR



The Wage Watch 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 Wage Watch accepts letters to the editor. For information, call 1-800-224-FAIR or write www.ffcm.org.

The Rap Sheet

The following are some of the contractors recently 'rapped' by the Massachusetts Attorney General's Office for violating the state's wage and hour laws.

Scott Crafters, Inc. and its president, Jeffrey Ivey of Dorchester, have been debarred from bidding on public construction projects for a period of one year. The FFCM alerted the AG's office that the painting contractor was not paying the prevailing wage, and had failed to submit certified payroll records, as the law requires. The contractor received three citations and the AG's office moved to debar the contractor. Brian Macera investigated the case for the AG.

AN Construction Services Inc. must pay \$11,000 in wages and fines after failing to pay two employees for work they did. The AG found that owner, Jose Amaral, and president, Pedro Nedio, failed to pay two employees \$7,000 in wages for work on the Center Elementary School project in Mattapoisett. AN Construction Services also failed to pay the prevailing wage to its workers and failed to submit accurate certified records for work performed on the school. The FFCM and the Town worked together in compiling the case. Inspector Mario Paiva investigated the case for the AG.

Hayward, Boynton & Williams, Inc. and its owner, Brian Murphy of Taunton, paid a total of \$8,347.84 after failing to pay 6 operating engineers the prevailing wage. One of the workers, who was employed on a public works project at the Taunton Municipal Airport, contacted FFCM which then transmitted the case to the AG's office. Inspector Brian Macera investigated the case for the AG.

Capeway Roofing and its owner Jose Calheta of Westport, CT must pay a total of \$4,319 after failing to pay the prevailing wage to 17 employees who worked on public school projects in Chicopee. The FFCM noticed that the contractor was not paying the legally required wage during a routine payroll inspection. This case was transmitted to the AG's Western MA office where it was investigated by AG Inspector Joe Drzyzga.

Dex By Terra and its owner, Daniel L. Terra of Hudson, must pay a total of \$2,233.70 after failing to pay prevailing wages to 12 laborers who worked

on the Westwood High School public works project in 2004. The FFCM transmitted the case to the AG's office where it was investigated by Inspector Edward Horniak.

Souliere & Zepka Construction Inc. and its owner, Michael Zepka, must pay \$1000 after failing to submit certified payroll records while employed on the North Adams library renovation project. The FFCM transmitted the case to the AG's office, where Joe Drzyzga did the investigation.

U.E.L Contractors and its owner Pamela Dobeck has been cited and fined \$200 by the AG's office for failing to submit certified payroll records while employed on the Falmouth Waste Water Treatment Facility. The FFCM transmitted the case to the AG and Inspector Mario Paiva did the investigation.

Amex Inc. and its owner John C. Flanagan, has received three citations totalling \$2250 for failure to submit payrolls at water tank projects in Ipswich and Wayland, a case the FFCM transmitted. Supervising Inspector Greg Reutlinger was responsible for the investigation.

The following cases involve contractors who reached a settlement with the AG's office but were not issued formal citations.



Thompson Waterproofing has agreed to pay a total of \$15,974.75 in restitution and penalties after failing to pay the prevailing wage to a laborer who worked on the Dracut-Englesby School project. The worker contacted the FFCM after receiving a mailing that informed him how much he was supposed to making on the job.

P.A. Landers has agreed to pay a total of \$2167.85 to 14 laborers who were employed on the Abington Route 18 project last year. The FFCM became aware that the contractor had been paying a lower rate than the law requires and transmitted the case to the AG's office. Bob LeMarre investigated the case for the AG.

Incor Group, Inc., in a settlement with the AG, paid \$1329.83 in back wages to its workers on a City of Worcester project. AG Inspector Robert Lemarre investigated.



Drywall Contractor Sentenced

Brockton drywall contractor Jame H. Dormon of Foxborough, MA will spend almost a year in the big house after the Attorney General found that Dormon failed to pay construction workers the prevailing wage. Dormon and his company were also found to have committed unemployment tax and insurance fraud. An investigation by the AG's office found that Dormon owed more than \$82,000 to workers who framed, hung and taped drywall on public and private building projects throughout Massachusetts. Some of the worksites included the Hamilton-Wenham and Marlboro school projects, plus the Topsfield Library.

In addition to cooling his heels in jail, Dormon also has to pay \$150,000 to the workers and institutions he cheated. "This sends a strong message to other Massachusetts contractors who might be breaking the law," said Karen G. Courtney, FFCM executive director. "It says that if you're going to cheat and you get caught, you could very well end up behind bars." The case was jointly investigated by Inspector Greg Reutlinger of the AG's Fair Labor and Business Practices Division and the Insurance Fraud Bureau of Massachusetts. It was prosecuted by Assistant Attorneys General Christopher Buscaglia and Ian McKenny of the AG's Insurance and Unemployment Fraud Division.

Where to Find Help

FFCM Hotline - 1-800-224-FAIR

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
413-784-1240**

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

**184 North St.
Springfield, MA 01201
417-447-7324 x218**

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

**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
1-617-727-3492**

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

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