



MISCLASSIFICATION OF WORKERS

Issue Position:

ICE, FCA, MCAA, SMACNA and TAUC vigorously support urgently needed action by Congress to repeal Section 530 of the 1978 Revenue Act, which is overly permissive in providing a safe harbor for misclassification of workers as independent contractors instead of employees. The tax gap attributable to misclassification has grown exponentially, reaching \$4.7 billion annually, according to some estimates. At the same time, the rate of misclassification continues to grow, according to Government Accountability Office, with recent estimates showing misclassification increasing 25% between 2000 and 2005, and affecting 7.4 % of the workforce nationally, or approximately 10.3 million workers. The practice of misclassifying workers creates a huge “tax gap” in Federal, state and local treasuries directly related to tax avoidance by misclassifying firms and the workers. Legally compliant construction industry employers, competing in an industry long acknowledged to be an industry of high misclassification abuse, suffer a severely negative impact. Not only does the practice create an unfair competitive advantage for cheating employers, it also negatively impacts workforce standards in the industry.

Our groups support legislation that eliminates the permissive safe harbor/excuses for misclassification of employees as independent contractors, and that that opens up Internal Revenue Service guidance to industry on proper classification criteria. Moreover, ICE/FCA/MCAA/SMACNA/TAUC also supports measures that would provide individual workers with procedures to challenge their classification and offer protection for them against retaliation for doing so. We also support greater collaboration between the IRS and the Labor Department in those cases where misclassification has been uncovered. We urge Congress to support all upcoming legislation which addresses these issues in similar ways.

Background:

Misclassification is a serious and growing problem in the construction industry. Current law and weak enforcement actually protect employers who willfully misclassify workers. Misclassification occurs when an employer improperly classifies an employee as an “independent contractor.” Misclassification allows the employer to avoid withholding and paying taxes and fringe benefits on the employee that would be required if correctly classified as an employee. This practice is prevalent in the open shop construction industry and is blatantly used as a cost-cutting tool to the detriment of workers and competing contractors as well as benefit programs at all levels dependent on employee withholding contributions. If fact, misclassification undermines the integrity of the basic national workforce policy underlying all Federal wage and hour, workforces standards, and fair employment policy laws.

Key Points:

- Misclassification costs the government and the taxpayers, at all levels, substantial, uncollected revenues. Governments lose Social Security taxes, unemployment insurance taxes, and income taxes. Less revenue means less money that is available for vital federal, state and local services and programs.
- Employers who misclassify their workers reap substantial savings and gain unfair competitive marketplace advantages by avoiding payment of Social Security and Medicare taxes, payment of federal and state unemployment insurance taxes, and payment of workers’ compensation premiums.
- The unionized sector maintains a system of apprenticeship training, health and welfare, pension benefits, and career advancement training that ensures an adequate supply of highly-skilled trade persons who are compensated and classified correctly as employees; allowing the misclassification of workers threatens to degrade the quality of high workforce standards in a vitally important industry – and one that maintains high wage and benefit standards.
- Workers who should be classified as employees also lose out on the protections and benefits of employment status, including public law benefits and employer-provided fringe benefits as well.

Updated April 2009

See reverse side for the status of current legislation

www.qualityconstructionalliance.org





MISCLASSIFICATION OF WORKERS

Status of Misclassification of Workers Legislation

Introduction of Senate and House bills expected soon.

