Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries

Work should provide people with economic stability, safety, and the opportunity to contribute to their communities and connect with one another. It should be a place where workers are treated fairly and with respect. Good jobs should enable us to provide for ourselves and our families, and to join together to negotiate for ever higher standards.

But many corporations across the country are trying to take away the security and stability that a job should provide, by imposing the label of "independent contractor" on their workers and shifting risk and cost from the CEOs at the top to the workers who are central to the success of their businesses.

This isn't just a label. Calling workers "independent contractors" deprives them of core rights and protections such as minimum wage, overtime pay, contributions to Social Security, the right to collective bargaining under the National Labor Relations Act, workers' compensation, unemployment compensation, and protection from discrimination.

It is increasingly clear that misclassification is an issue of racial justice. Many poor workers of color and immigrant workers are stuck in a separate and unequal economy where they are underpaid, put in harm's way on the job, and left to fend for themselves.

Misclassification of employees as independent contractors enacts an enormous toll on law-abiding employers and our economy. This paper tabulates the findings of myriad studies and audits that attempt to quantify the costs of misclassification.

Background: Misclassifying Employees as Independent Contractors

Employers in an increasing number of industries misclassify their employees as independent contractors, denying them the protection of workplace laws, robbing unemployment insurance and workers' compensation funds of billions of much-needed dollars, and reducing federal, state and local tax withholding and revenues, while saving as much as 30 percent of payroll and related taxes otherwise paid for "employees."

Misclassification can take several forms. Employers call employees "independent contractors," even when the workers are not running their own businesses; they require employees to form a limited liability corporation or franchise company-of-one as a condition

of getting a job; and they pay workers off the books, without any payroll treatment at all. Workers are frequently required to sign boilerplate contracts that include exacting standards directing the workers' every move on the job, even while they state that the worker is "independent." These practices are sometimes called "payroll fraud" because they are intentional and aimed at evading the law, defrauding workers, competitors, and the state. Legitimate business-to-business transactions are not payroll fraud, because true independent contractors have a specialized skill, set their own terms, and have invested in a business that enables them to earn a profit.

Employee misclassification is a persistent problem in many of our economy's growth industries, including home care, janitorial, trucking, delivery, construction, personal services, hospitality and restaurants and, more recently, in rapidly growing app-dispatched jobs. State-level task forces, commissions, and research teams are using agency audits along with unemployment insurance and workers' compensation data to document the scope of independent contractor misclassification. Confirming the findings of earlier national studies, these state reports show that 10 to 30 percent of employers (or more) misclassify their employees as independent contractors, which indicates that several million workers nationally may be misclassified. State and federal governments lose billions in revenues annually.

National Studies and Reports

Government studies have repeatedly documented the extent to which misclassification drains federal revenues. The data is limited, however, and as noted in a 2017 U.S. Government Accountability Office (GAO) report, should be updated to give a more accurate assessment of the current economic impact.[1]

A 2010 study by the Congressional Research Service estimated that a proposed narrowing of the Internal Revenue Service (IRS) "safe harbor" rules, which currently allow employers significant leeway to treat workers as independent contractors for employment tax purposes, would yield $8.71 billion for fiscal years 2012 to 2021.[2]

A 2009 report by the GAO estimated that independent contractor misclassification cost federal revenues $2.72 billion in 2006.[3] The GAO's estimate was derived from data reported by the IRS in 1984, finding that 15 percent of employers misclassified 3.4 million workers at a cost of $1.6 billion (in 1984 dollars). From 2000 to 2007, the number of misclassified workers identified by state audits increased from approximately 106,000 workers to more than 150,000 workers per state. These numbers likely undercount the overall total of misclassified employees because states generally audit less than 2 percent of employers each year. The Questionable Employment Tax Practice initiative, a partnership between most states and the IRS, assessed approximately $50 million in taxes between June 2009 and June 2012.[4]

A 2000 study commissioned by the U.S. Department of Labor (USDOL)—the "Planmatics" study—found that between 10 and 30 percent of audited employers misclassified workers. [5] Misclassification of this magnitude exacts an enormous toll: researchers found that misclassifying just 1 percent of workers as independent contractors annually results in a

$198 million hit to unemployment insurance (UI) trust funds. This report also shows that workers would benefit tremendously from increased scrutiny; up to 95 percent of workers who claimed they were misclassified as independent contractors were reclassified as employees following review.

A 1994 study by Coopers and Lybrand estimated the federal government would lose $3.3 billion in revenues in 1996 due to independent contractor misclassification, and $34.7 billion in the period from 1996 to 2004.[6]

State Studies and Reports

A growing number of states have been calling attention to independent contractor abuses by creating inter-agency task forces and committees to study the magnitude of the problem, and passing new legislation to combat misclassification. The USDOL has signed Memoranda of Understanding in over half of the states.[7] Twenty-nine states have some form of inter-agency task force focused on misclassification.[8] Along with academic studies and other policy research, the reports document the prevalence of the problem and the attendant losses of millions of dollars to state workers' compensation, unemployment insurance, and income tax revenues.

The table at the end of this paper summarizes the findings from state-level studies.[9] The studies rely on a range of data and methods. Most studies rely on audit data from unemployment insurance and workers' compensation audits, targeted or random; some are estimates drawn from the records of multi-level government agencies; and a few used interviews with workers. Some studies examine the workforce as a whole, while others focus on industries where misclassification is rampant, such as construction.

Trends Identified in State Studies

The findings from these state studies demonstrate the staggering scope of misclassification, the difficulties in reaching precise counts of workers affected and funds lost, and the potential for enforcement initiatives to return much-needed funds to state coffers.

- **A large number of workers are misclassified.** Studies calculate the numbers of misclassified workers at high levels: an estimated 368,685 workers in Illinois;[10] 4,792 in Maine;[11] between 125,725 and 248,206 in Massachusetts;[12] 704,785 in New York;[13] between 54,000 and 459,000 in Ohio;[14] 580,000 in Pennsylvania;[15] and 214,000 in Virginia.[16] These are highlighted in the appendix table. Audits, too, generally uncover numerous cases of misclassification at an individual workplace or employer, resulting in large numbers of workers who are reclassified as employees following review. These are also summarized in the appendix table. Here are some highlights:

  - In California, in 2017 to 2018, 9 out of 10 businesses inspected were found to be out of compliance by at least one agency, and two out of five resulted in findings of violations by every California agency involved in that state's task force. The California effort resulted in more than $7.8 million assessed in lost wages.

- In Tennessee. during a one-year period ending in October 2018, the Employee Misclassification Education and Enforcement Fund unit assessed 26 penalties against employers for misclassifying their employees, for a total assessment amount of $3,029,963.29. The Uninsured Employers Fund unit assessed 234 penalties against employers for not maintaining workers' compensation insurance from September 2017 through October 2018, for a total assessment amount of $2,730,269.60.

  - In Washington State, the number of employers referred for audits and found to owe premiums remains steady year to year at about 80 percent.

- **Studies most likely underestimate the true scope of misclassification.** Many of the studies are based on unemployment insurance tax audits of employers registered with the state's UI program. The audits seek to identify employers who misclassify workers, workers who are misclassified, and the resulting shortfall to the UI program. Researchers sometimes extrapolate from UI audit data to estimate the incidence of misclassification in the workforce and its impact on other social insurance programs and taxes. These UI audits miss a large portion of the misclassified workforce, however, because they rarely identify employers who fail to report any worker payments to state authorities or workers paid completely off-the-books—the "underground economy"— where misclassification is generally understood to be even more prevalent.

- **Billions of dollars of payroll are never reported to state governments.** As explained above, many employers underreport their payroll, or pay workers off the books and do not report any wages. In California and New York alone, employers fail to report billions of dollars to state agencies each year.[17] Reliance on random audits as the sole investigatory strategy may result in an undercount of violations and unpaid taxes. Some states, including Utah and Washington, have added targeted audits to the mix.

- **Misclassification also results in lost income tax revenue to local governments.** Municipal governments supported by payroll taxes are also hit hard by misclassification. This includes some of the nation's largest and most important economic centers.

- **Misclassification rates are disproportionately high in certain industries, such as construction, real estate, home care, trucking, janitorial, hi-tech, and the rapidly growing app-based economy**. Many misclassification studies focus on construction because the industry has been so plagued by independent contractor abuses. The Maine, Massachusetts, Minnesota, and New York studies found rates of misclassification up to several points higher in construction as compared with the workforce as a whole. Delivery drivers and truckers have also experienced widespread abuse.[18] FedEx has faced repeated legal challenges over its practice of misclassifying drivers as independent contractors: the delivery company recently settled a California lawsuit for $228 million;[19] drivers in about 40 states have now sued FedEx; and 16 states have negotiated with the company to end its practice of misclassifying drivers as independent contractors.[20] An estimated two-thirds of port truck drivers are misclassified.[21] App-based, on-demand companies Lyft, Uber, Handy, and many others treat their workers as independent contractors and are facing lawsuits by workers challenging this practice.[22]

- **Misclassified workers make significantly less than workers paid as employees.** One government expert calculated that a construction worker earning $31,200 a year before taxes would be left with an annual net compensation of $10,660.80 if paid as an independent contractor, compared to $21,885.20 if paid properly as an employee.[23] A study on port truck drivers found that annual median net earnings before taxes were $28,783 for drivers paid as contractors as compared with $35,000 for employees.[24]

- **Audits are cost-effective and have the potential of returning hundreds of millions of dollars to state coffers.** Audits in the states have assessed tens of millions of dollars in unpaid unemployment taxes: in Pennsylvania, $10.4 million; in New York, $8.8 million; in New Jersey, $14 million; in Massachusetts, $15.4 million; and in Louisiana, $1.5 million. Similarly, workers' compensation audits have resulted in $4.5 million assessed in Utah and $2.7 million assessed in Tennessee. In 2019, the State of New Jersey assessed $650 million in past-due unemployment and disability payments against a single company, Uber.[25] These numbers do not take into account fraud that is deterred before a violation even takes place, when employers take note of aggressive enforcement activities and voluntarily come into compliance.

Conclusion

Misclassification of employees as independent contractors exacts an enormous toll on workers, law-abiding employers, and our economy. Accurate information on the prevalence of the problem, and on patterns of violations, can help state officials to direct their efforts at the worst violators and most problematic industries. The growing body of research summarized here has been vital to recent efforts in the states to combat misclassification; new research will further facilitate enforcement.

Appendix

Annual Losses Due to Independent Contractor Misclassification: Summary of Leading State Studies					
State and latest report year	% or # of employers who misclassify; # of workers affected (estimate)	% or # of employers who misclassify (recent audit reports)	Loss to UI (estimate or audit report)	Loss to workers' comp (estimate or audit report)	Unpaid state income taxes/assessed payroll
CA[26] 2019		93% of audited employers out of compliance in 2018	Audit liability in 2018 of $15 mil	269 workers compensation violations, CalOSHA assessment in 2018 $18 mil	$249 mil assessed payroll (2017)
CO[27] 2018	33.9% (USDOL 2000) Audits are finding 4.5 workers misclassified per audit	2,469 unemployment audits identified 11,342 misclassified workers	$755,359 in unpaid unemployment premiums and interest		$167 mil (lost in income tax revenues annually)
CT[28] 2011-2012	42% of audited employers (2011)		$17 mil (estimate 1992)	$57 mil (estimate1992)	$65 mil (estimate 2011) $611,600 (collected)
GA[29] 2015	Senate study estimates between 1,500 to 4,000 workers with an avg. of 2,800 misclassified workers)				

IL[30] 2012-2013	19.5% (estimated 2005)	identified 20,000 misclassified workers (2013)	$53.7 mil estimate (2005) $5.1 mil (unreported contributions that fund UI benefits) (2013)		$250 mil in unreported taxable wages (2013)
IN[31] 2010	16.8% (estimated)		$36.7 mil (estimated)	$24.1 mil (estimated)	$147.5 mil (estimated)
IA[32] 2016		identified 442 misclassified workers	$738,554 in unpaid contributions, penalties, and interest		$16.4 mil in unreported wages
LA[33] 2015		identified 19,956 misclassified workers	$1.5 mil in unreported and unpaid UI taxes		$50 mil unreported taxable wages
ME[34] 2017	11% (estimated 1999-2002) 14% construction(1999-2002)	identified 257 employees (2017)	$314,000 (estimated 1999-2002)	6.5 mil (2016) $162,798.07	Estimated $2.6 – 4.3 mil (1999-2002) $2.4 mil in wages (2016)
MA[35] 2017	14% construction (estimated 2001-2003) Estimated 13% of GDP	identified 1,100 misclassified workers (2017)	$15.4 mil collected	$91 mil estimated loss 2001-2003 $1 mil collected	$91 -152 mil estimated loss 2001-2003 $22.7 mil (2015)
MD[36] 2019	20-30% (2008)	Identified 2,534 misclassified workers (2019)	$43 mil in unreported taxable wages (USDOL mandated audit 2018) $8.2 million in unreported taxable wages (additional		

			Workplace Fraud 2018), $149,668 in unreported taxes		
MI[37] 2008	30% (estimated 2008) No longer updated, but there is a Payroll Fraud Enforcement Unit within the AG's office		$1.5 bil (estimated 2008)		$20-33 mil (estimated 2008)
MN[38] 2013	14% (estimated 2005) 15% -30% construction (estimated 2005)	identified 256 misclassified workers in a pilot project in construction			
MO[39] 2016		identified 8,196 misclassified workers			$2.1 mil taxes due
MT[40] 2019			identified $11.6 million in wages and $124,000 in additional UI taxes in construction		
NC[41] 2017-2018			identified $65 mil wages on which UI tax had not been paid, with a tax indebtedness of $1.7 mil	Industrial Insurance Collections in 2017 $611,742	
NE[42] 2019	10% (2011)	identified 2,339 misclassified workers	$145,717 in taxes collected. Total		

			$774,759 over the period 2014-2019.		
NH[43] 2018		identified 1361 additional misclassified workers	$130,967 (2015)		Taxes on $37.76 million in wages (2015)
NV[44] 2011	31,000 misclassified employees (estimated 2011)		$8.2 mil (estimated 2011)		
NJ[45] 2018	38-42% (estimated 2007)	identified 12,315 misclassified workers (DOL audit of 1% of employers)	$14 mil (UI and disability and family leave)		$462 million in unreported wages
NY[46] 2015	10.3% (2007 estimate) 14.9% (construction estimate)	26,000 misclassified employees identified by JETF in 2014 114,000 misclassified employees identified (2007-2014)	$175 mil (estimated 2007) $8.8 mil assessed in 2014	20% of workers' comp payroll (estimated 2007) $1.1mil (incl. penalties) $640,000 (collected 2011)	$170 mil Taxes on $316 mil of wages in 2014
OH[47] 2015	45% (estimated 2009)	identified 14,045 misclassified workers	$12 - $100 mil (estimated 2009) $2.6 mil in unpaid taxes	$60-510 mil (estimated 2009)	$21-$248 mil (estimated 2009)
OR[48] 2019		identified 7,525 misclassified workers	$2.39 mil in UI tax	penalty asssessments of $15 mil.	$33 mil in unreported wages (2016)

PA[49] 2016	25% (2008)	identified 29,327 misclassified employees	$200 mil (2008) $10.4 mil (recovered)	$81 mil (2008)	
RI[50] 2018		identified 590 misclassified employees (2016)	$200,988 assessed in additional taxes		$5.6 mil in unreported wages
TN[51] 2019	17% in construction (2010)	1,253 employees identified in construction, with 260 total employers penalized	$8.4 - $15 mil (estimate 2010) In FY 2017, $3 mil	$52 - 91.6 mil (estimate 2010) $3 mil* In FY 2017, assessment of $2.7 mil.	
Austin,TX[52] 2012		between 2010-2012: identified 34,846 misclassified workers	$2.3 mil additional tax due		$229 mil in misclassified worker wages
UT[53] 2018		Identified 3834 misclassified workers	$27.7 mil in unreported wages from DOL and random audits	$5.3 million estimated $1.3 mil in 23 cases	
VT[54] 2015		identified 1,066 misclassified workers	$230,000 in employer contributions	$10,307.91 collected	
VA[55] 2018	2010: 27% of audited cases 30% construction				$28 million in unpaid income taxes annually
WA[56] 2019		Identified 2,500 unregistered businesses	$152 mil lost 2013-17 (estimated) Assessed $411,500 on unregistered accounts.	$53.6 annually (estimated) $188.4 million in delinquent premiums,	Assessed over $41 million total

				including underground economy.	
WI[57] 2020		2018: 2,459 audits 44% of audited employers CY 2019 33.3%, CY 2000 $23%, 40% construction	CY2019: $57 mil; CY 2020: $17 mil (estimated) $12.6 mil identified 2013-2020	2018 $1.9 mil	$91 million in unpaid state income tax. $50.7 million in business tax losses (estimated 2019)

Endnotes

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http://www.senate.ga.gov/sro/Documents/StudyCommRpts/EmployeeMisclassificationFinalReport.pdf.

30 Under a new statute, a report must be submitted to the governor no later than December 1, 2020. See Il Pub. Act 101-0527,

https://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=101-0527&GA=101. In 2013, Illinois audited 3,635 employers and identified that Illinois employers wrongly classified nearly 20,000 workers as independent contractors rather than full-time employees, which resulted in over $250 million in unreported taxable wages and $5.1 million in unreported contributions that fund unemployment insurance benefits. Misclassified Employees Force Taxpayers to Subsidize Costs, Harm Economy, ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY (Aug. 11, 2014), http://www.ides.illinois.gov/SitePages/NewsArticleDisplay.aspx?NewsID=227. A 2006 study estimated that independent contractor misclassification resulted in a loss of $39.2 million in unemployment insurance taxes, and between $124.7 million and $207.8 million in state incomes taxes each year from 2001 to 2005. Close to 18% of audited employers, about 56,650, misclassified employees as independent contractors. The study estimated that an average 368,685 employees were misclassified each year. The rate of misclassification by violating employers increased 21% from 2001 to 2005. Michael P. Kelsay, et al., The Economic Costs of Employee Misclassification in the State of Illinois, Department of Economics, University of Missouri-Kansas City (2006), http://www.carpenters.org/EmployerPayrollFraud/studies_reports.aspx.

31 According to a 2010 report, 47.5% of Indiana employers audited by the state in 2007-2008 – approximately 73,629 employers – were found to have misclassified workers as independent contractors; 8,200 of these employers were in the construction industry. The number of Indiana employees affected by improper misclassification is estimated to have averaged 418,086 annually for the period 2007-2008, about 16.8% of employees overall. In each year from 2007-2008, the state lost $147.5 million in state income tax revenue and $24.1 million in unpaid workers' compensation premiums, while the unemployment insurance system lost an average of $36.7 million. Michael P. Kelsay and James I. Sturgeon, The Economic Costs of Employee Misclassification in the State of Indiana, Department of Economics, University of Missouri-Kansas City (2010), http://www.isbctc.org/Uploads/UploadedFiles/docs/Misclassification_in_Indiana_Full_Study__9-10.pdf.

32 The Iowa Misclassification Task Force's 2nd Report noted that 230 employers were found to have flouted the law by misclassifying workers, creating a competitive advantage over some 72,000 law-abiding employers. Through audits and missing wage investigations completed by Unemployment Insurance Tax Bureau field auditors from July 1, 2009 through December 30, 2010, 134 employers were found to have misclassified a total of 544 workers. These employers failed to report $5,692,181 in employee wages to IWD for unemployment insurance tax purposes and owed a total of $130,511 in unpaid unemployment insurance taxes, penalty and interest. Iowa Misclassification Task Force 2nd Report, IOWA WORKFORCE DEVELOPMENT (Dec. 30, 2010), http://www.iowaworkforce.org/misclassification/MisClass2010Report.pdf.

In FY 2016, the Misclassification unit found that 44 employers misclassified 442 workers. These employers failed to report $16,485,897 in wages for UI tax purposes, resulting in assessments of $738,554 in unpaid UI taxes, penalties and interest. 2016 Annual Report, IOWA WORKFORCE DEVELOPMENT (2016), https://www.iowaworkforcedevelopment.gov/sites/search.iowaworkforcedevelopment.gov/files/documents/IWD_AnnualReport_2016_0.pdf.

In FY 2015, Iowa recouped $9,575,231 in fraud and non-fraud overpayments and established $6,047,199.00 in fraud overpayments and $957,140.00 in fraud penalty overpayment. 2015 Annual Report, Iowa Workforce Development (2015),

https://www.iowaworkforcedevelopment.gov/sites/search.iowaworkforcedevelopment.gov/files/2015%20Annual%20Report.pdf.

33 In 2018, the Louisiana Department of Revenue took legal action against three Louisiana businesses for payroll fraud through its Government Against Misclassified Employees Operational Network Task Force. The total amount owed by the three companies alone was more than $242,000. Press Release, "Department of Revenue Sues Three Businesses in Statewide Crackdown on Payroll Tax Fraud," (Jan 30, 2018), https://revenue.louisiana.gov/NewsAndPublications/NewsReleaseDetails/11458. In 2015, the Louisiana Workforce Commission audited 1,068 employers and discovered 19,956 misclassified workers. This resulted in $50 million in unreported taxable wages and approximately $1.5 million in unreported and unpaid unemployment insurance taxes. Louisiana Workforce Commission, LWC sets another record in identifying misclassified workers, Dep't of Labor, (Feb. 4, 2016), http://www.laworks.net/PublicRelations/PR_PressReleaseDetails.asp?SeqNo=1927&Year=2016&Month=2.

34 In 2016, the Office of Monitoring, Audit and Enforcement (MAE) completed 20 employee misclassification audits. The audits covered 257 employees, $1,249,032.73 in payroll, $1,988,864.28 in subcontractor wages shown on 1099's, and $10,911.86 in "casual labor" wages that resulted in $2,456,919.17 in potentially misclassified wages, which may result in $162,798.07 in unpaid workers' compensation premiums. Annual Report on the Status of the Maine Workers' Compensation System, WORKERS' COMPENSATION BOARD (February 15, 2017),

http://www.maine.gov/wcb/Departments/administration/2017_TROIKA.pdfF. rom 1999 to 2002, 11% of all Maine employers and 14% of construction employers misclassified their workers, totaling 4,792 misclassified workers across all industries. Misclassification of construction workers resulted in an annual average loss of $314,000 in unemployment compensation taxes, $6.5 million in workers compensation premiums, between $2.6 million and $4.3 million in state income taxes, and $10.3 million in FICA taxes.

Françoise Carré and Randall Wilson, The Social and Economic Costs of Employee Misclassification in the Maine Construction Industry, Construction Policy Research Center, Labor and Worklife Program, Harvard Law School and Harvard School of Public Health (2005), http://www.law.harvard.edu/programs/lwp/Maine%20Misclassification%20Maine.pdf.

35 Massachusetts Council on the Underground Economy has assessed nearly $110 million from non-compliant businesses between 2009 and 2017, with $7.1 million assessed in 2017 alone. Estimates are that the underground economy could account for 13% of Massachusetts GDP, Annual Report 2017, COUNCIL ON THE UNDERGROUND ECONOMY https://archives.lib.state.ma.us/bitstream/handle/2452/807660/ocn989072980-2017.pdf?sequence=1&isAllowed=y. In 2015, Massachusetts' Council on the Underground Economy recovered $15.4 million through its enforcement efforts. The DUA identified over 1,100 misclassified workers and $22.7 million in unreported wages. The DIA collected $1,013,600 in fines for unpaid workers' compensation insurance. 2015 Annual Report, COUNCIL ON THE UNDERGROUND ECONOMY, Massachusetts Department of Labor (2015), http://archives.lib.state.ma.us/bitstream/handle/2452/724712/ocn989072980-2015.pdf?sequence=1&isAllowed=y. In 2014, Massachusetts' Joint Task Force on the Underground Economy and Employee Misclassification recovered over $20 million through its enforcement efforts: the Department of Unemployment Assistance (DUA) recovered over $15 million in unpaid employer contributions to the UI Trust Fund and Fair Share Contribution; the

Department of Revenue recovered $826,000 in unpaid taxes; and the Attorney General's Office brought in $2,314,000 in restitution, penalties, and fines related to violations of the state's wage and hour and independent contractor laws. The Department of Industrial Accidents (DIA) collected $1.1 million for unpaid workers' compensation taxes. Joint Task Force on the Underground Economy and Employee Misclassification 2014 Annual Report, Massachusetts Department of Labor, (2015), http://www.mass.gov/lwd/eolwd/cue/jtf-annual-report-2014.pdf.

An earlier study of misclassification in the state's construction industry from 2001-2003 found that at least 14% of Massachusetts construction employers and 13% of all Massachusetts employers misclassified workers. Less conservative methods suggest that construction misclassification could run higher and range up to one in four (24%) of Massachusetts construction employers. An estimated 7,478 to 15,790 of construction employees were misclassified. In the workforce as a whole, an estimated 125,725 to 248,206 workers were misclassified. The state lost an estimated $91 million to $152 million in income tax revenue and up to $91 million of worker compensation premiums. The study noted that both the prevalence of misclassification and the severity of the impact have worsened over the years. Françoise Carré and Randall Wilson, The Social and Economic Costs of Employee Misclassification in the Construction Industry, Construction Policy Research Center, Labor and Worklife Program, Harvard Law School and Harvard School of Public Health (2004), http://www.law.harvard.edu/programs/lwp/Misclassification%20Report%20Mass.pdf. A complete list of annual reports can be found at https://www.mass.gov/service-details/annual-reports-for-the-council-on-the-underground-economy-cue.

36 In 2018, Maryland found $42,806,603 in unreported taxable wages during 1,437 DOL-mandated audits of workplace fraud, with an additional $8,230,192 unreported taxable wages on 1,197 workers in 51 additional audits. Joint Enforcement Task Force on Workplace Fraud, 2018 Annual Report, (Feb. 12, 2019), https://www.dllr.state.md.us/workplacefraudtaskforce/wpftfannrep2018.pdf.

In 2015, the Task Force reported the following activities and accomplishments: the Workplace Fraud Unit issued 145 citations involving 229 workers and collected $126,216 in penalties and $18,813 in fines; the UI Division identified 8,346 misclassified workers and $41 million in taxable unreported wages through US DOL mandated audits and identified 1,648 misclassified workers and $11.2 million in unreported taxable wages, and returned $289,000 to the UI Trust Fund through Workplace Fraud audits; and the Comptroller's Office completed one joint audit which resulted in $13,719.81 assessed for Withholding Taxes. 2015 Annual Report: Joint Enforcement Task Force on Workplace Fraud, DEPARTMENT OF LABOR (Mar. 4, 2016), https://www.dllr.state.md.us/workplacefraudtaskforce/wpftfannrep2015.pdf.

The Taskforce's 2014 report reported the following activities and accomplishments: from January 1, 2014 to November, 2014, the Workplace Fraud Unit issued 238 citations involving 681 workers and collected $89,000 in penalties and $35,000 in fines; in 2014, the UI Division identified 6,589 misclassified workers and $27 million in taxable unreported wages through US DOL mandated audits and identified 1,403 misclassified workers and $6 million in unreported taxable wages, and returned $257,000 to the UI Trust Fund through Workplace Fraud audits; and the Comptroller's Office conducted 34 withholding tax audits and issued assessments in the amount of $1.894 million. 2014 Annual Report of the Joint Enforcement Task Force on Workplace Fraud (Dec. 2014), http://www.dllr.maryland.gov/workplacefraudtaskforce/wpftfannrep2014.pdf. A complete list of the Task Force reports can be found at https://www.dllr.state.md.us/workplacefraudtaskforce/.

In 2008, then Secretary of Maryland's Department of Labor, Licensing and Regulation Thomas E. Perez reported that audits conducted by the agency's Unemployment Insurance Division found an average of 20% of employers misclassify workers. The Division's report estimated that misclassification accounts for an annual loss of between $15 million and $25 million to the Unemployment Trust Fund. The Secretary noted that the estimate is likely conservative because audits are random, do not target industries where misclassification is most prevalent, and do not capture the underground economy. Testimony of Thomas E. Perez, Secretary of the Department of Labor, Licensing and Regulation, on HB 1590, before the House Economic Matters Committee (Mar. 20, 2008),http://www.dllr.state.md.us/whatsnews/testimonymisclass.shtml.

In 2009 Maryland passed the Workplace Fraud Act of 2009 and created the Joint Enforcement Task Force on Workplace Fraud. The Task Force established work-groups on enforcement and education and began coordinating unemployment insurance tax investigations, identifying 8,474 misclassified workers and approximately $50.9 million in unreported wages paid to employees. David W. Stevens, An Estimate of Maryland's Annual Net Unemployment Compensation Tax Loss from Misclassification of Covered Employees, Baltimore, MD (Feb. 1, 2009)

37 A 2008 study of Michigan's unemployment insurance system found that an average of 30% of employers misclassify employees or underreport employee payroll, and that 8% of the state's construction workers are misclassified or receive income that is not reported by their employer. Each year, about $1.5 billion in payroll is not reported to the UI Agency. Misclassification costs the state's unemployment insurance trust fund $17 million each year, and results in an estimated loss of $20 to 33 million in state income taxes. Dale Belman and Richard Block, Informing the Debate: The Social and Economic Costs of Employee Misclassification in Michigan, Michigan State University (2009), http://ippsr.msu.edu/publications/ARMisClass.pdf.

Michigan established its Underground Economy Task Force in June 2008. The Task Force found that more than 8% of Michigan employees are misclassified, $16.8 million in UI payments went uncollected, and $30 million in wages were not reported. Michigan Supreme Court, Underground Economy (June 2010), http://courts.mi.gov/Administration/SCAO/Resources/Documents/Publications/Reports/UETF-2010.pdf.

On January 26, 2016, Governor Snyder of Michigan issued Executive Order 2016-3, abolishing the state's Interagency Task Force on Employee Misclassification through the rescission of E.O. 2008-1. The Task Force issued its last report in 2010 and has not been active since. Senate Fiscal Agency Memorandum, "Executive Order 2016-3" (Feb. 10, 2016), available at http://www.senate.michigan.gov/sfa/statebudget%5Ceoreorganization2016-3.pdf.

But in April 2019, Attorney General Dana Nessel established a Payroll Fraud Enforcement Unit within the AG's office. Michigan Department of Attorney General,"Nessel: Payroll Fraud Charges in the Works," https://www.michigan.gov/ag/0,4534,7-359-92297_47203-501080--,00.html.

38 The Minnesota Office of the Legislative Auditor used UI audit data to estimate that 14% of employers misclassified workers in 2005 – about 17,500 employers. Misclassification rates in the construction industry were higher: 15% of construction employers and 31% of drywall employers misclassify their employees. The estimates are conservative because they exclude employers that operate in the "cash" economy or fail to register in the unemployment program. James Noble, Misclassification

of Employees as Independent Contractors, PROGRAM EVALUATION DIVISION, MINNESOTA OFFICE OF THE LEGISLATIVE AUDITOR (2007), http://www.auditor.leg.state.mn.us/ped/pedrep/missclass.pdf.

In 2012, the Department of Employment and Economic Development (DEED) completed 159 audits and identified 256 misclassified workers. William Boyer, "An Evaluation of the Contractor Registration Pilot Project and the Misclassification of Workers in the Construction Industry," Minnesota Department of Labor & Industry Research and Statistics (Dec. 31, 2013), http://www.dli.mn.gov/CCLD/PDF/ReportMisclassificationPilotProject.pdf.

39 Mo. Dep't of Labor and Indus. Relations, Are you Off the Books? (2013), http://labor.mo.gov/offthebooks

In FY 2016, the Misclassified Worker Detection System of the Division of Employment Security conducted 2,108 audits, identifying 8,196 workers who were misclassified. $2,171945 additional taxes were due because of the misclassified workers. 2016 Annual Report, DEPARTMENT OF LABOR & INDUSTRIAL RELATIONS (2016), https://labor.mo.gov/sites/labor/files/pubs_forms/2016AnnualReport.pdf.

40 Task Force on Wage Integrity and Misclassification in the Construction Industry, Montana Department of Labor & Industry, (Dec. 9, 2019), http://erd.dli.mt.gov/Portals/54/Documents/Integrity%20in%20Wage%20Reporting%20Task%20Force/WageTheftReport-Final.pdf?ver=2019-12-23-104821-813.

41 Annual Report FY 2018, NORTH CAROLINA INDUSTRIAL COMMISSION http://www.ic.nc.gov/2018AnnualReport.pdf.

42 Employee Classification Act Annual Report, July 2018-June 2019, Nebraska Department of Labor, https://www.dol.nebraska.gov/webdocs/Resources/Items/ECA%20FY1819%20V2.pdf . From July 1, 2015 to June 30, 2016, the Nebraska Department of Labor's UI Tax division conducted 805 audits, and identified 1,397 misclassified workers. The UI Tax field representatives also collected $82,899.83 in additional taxes. Employee Classification Act Annual Report 2016, Department of Labor (2016), https://www.dol.nebraska.gov/webdocs/Resources/Items/Employee%20Classification%20Act_2016_FINAL.pdf.

From July 1, 2011 to June 30, 2012, UI Tax field representatives completed 766 audits and missing wage investigations. Of those, 727 field audits targeted high violation industries resulted in 947 misclassified workers and additional tax collections of $44,826.08. Nebraska Employee Classification Act: Annual Report, Nebraska Department of Labor (2012), http://govdocs.nebraska.gov/epubs/L1500/A002-2012.pdf.

From July 1, 2010 - June 30, 2011, Nebraska UI Tax field representatives conducted 938 audits and investigations; 669 of these audits targeted high violation industries. Of these 669 audits, 1,039 misclassified workers and additional tax collections of $42,559 were uncovered. Nebraska Employee Misclassification Act, Annual Report 2010-11, Nebraska Department of Labor (2011), http://dol.nebraska.gov/employers/safety/EmpClassAct/2011%20Employee%20Classification%20Act%20Annual%20Report.pdf.

43 See Eighth Report of the Joint Agency Task Force on Employee Misclassification Enforcement, (Sep. 1, 2018), https://www.nh.gov/nhworkers/documents/8th-report.pdf. Bob Sanders, "State's Crackdown on Worker Misclassification Not All it's Cracked Up to Be," New Hampshire Business Review, (May 30, 2014), http://www.nhbr.com/May-30-2014/States-crackdown-on-worker-misclassification-not-all-its-cracked-up-to-be/ .

For the calendar year 2015, the New Hampshire Employment Security (NHES) performed 513 field audits, identifying 745 workers who had been misclassified. Additionally, NHS ordered correction of $7,324,363 in additional reported wages, and $130,967 in additional taxes. Sixth Report of the Joint Agency Task Force on Employee Misclassification Enforcement, Task Force on the Misclassification of NH Workers (Sep. 1, 2016),http://www.nh.gov/nhworkers/documents/6th_rpt_emtf.pdf. A complete list of Task Force reports can be found at https://www.nh.gov/nhworkers/reports.htm.

44 Nevada passed a bill in 2019 that establishes a new Task Force on Employee Misclassification. SB 493 (2019), https://www.leg.state.nv.us/Session/80th2019/Bills/SB/SB493_EN.pdf.

Ten years ago, Nevada Employment Security Division records indicate that 12.4 percent of benefit claims investigations involved a claim of independent contractor misclassification and 2.7 percent of audited employment was misclassified. This led to a conservative estimate of approximately 31,000 employees in the state that may be misclassified. The estimated annual revenue lost to the Unemployment Trust Fund is $8.2 million. Employee Misclassification- Bulletin No. 11-07. NEVADA LEGISLATIVE COUNSEL BUREAU (Jan. 2011), http://leg.state.nv.us/Division/Research/Publications/InterimReports/2011/Bulletin11-07.pdf.

45 Report of Gov. Murphy's Task Force on Employee Misclassification, (July 2019), https://www.nj.gov/labor/assets/PDFs/Misclassification%20Report%202019.pdf.

In FY 2014, field auditors in New Jersey's Division of Employer Accounts, which is part of the Department of Labor and Workforce Development's TOPs offset program, found 7,741 misclassified workers. Over $1.6 billion of gross wages were audited, with $68.3 million of gross wages being underreported. Assembly Budget Committee Follow-Up Questions, NEW JERSEY STATE LEGISLATURE, (Apr. 24, 2015), http://www.njleg.state.nj.us/legislativepub/budget_2016/LPS_follow_up_response_ABU.pdf. Earlier reports from New Jersey Department of Labor and Workforce audits found that between 38% and 42% of employers either misclassified workers or paid in cash "off-the-books," and between 25,000 and 28,286 workers were misclassified.

New Jersey State Agency Will Share Employment Tax Examination Results with the IRS, STATE OF NEW JERSEY DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT (Nov. 8, 2007).

46 A 2007 study issued by the Cornell University School of Industrial and Labor Relations, based on audits by the New York DOL UI Division of select industries from 2002-05, estimated annual misclassification rates of about 10.3% in the state's private sector and approximately 14.9% in the construction industry. Each year, an estimated 39,587 employers within those audited industries misclassified workers. Approximately 704,785 workers were misclassified. Average UI taxable wages underreported due to misclassification each year was $4,238,663, and UI tax underreported was $175,674,161. Linda H. Donahue, James Ryan Lamare, Fred B. Kotler, The Cost of Worker Misclassification in New York State, Cornell University

School of Industrial Labor Relations (Feb.2007), A second 2007 study estimated that between $25 billion and $50 billion in payroll – 20% of total payroll – was unreported for workers' compensation. The estimate may be conservative, because it was calculated by comparing payroll reported to the state for UI with payroll reported to the WC system, and did not account for payroll that was not reported to either system. Fiscal Policy Institute, Building up New York, Tearing Down Job Quality: Tax payer Impact of Worsening Employment Practices in New York City's Construction Industry (Dec. 2007), http://www.fiscalpolicy.org/publications2007/FPI_BuildingUpNY_TearingDownJobQuality.pdf.

http://digitalcommons.ilr.cornell.edu/reports/9/.

On July 20, 2016, Governor Cuomo signed Executive Order No. 159 establishing a permanent Joint Task Force to Fight Worker Exploitation and Employee Misclassification. N.Y. Exec. Order. No. 159 (July 20, 2016). However, the task force has not publicly released a new report that contains quantitative data from misclassification audits and investigation since February 1, 2015. See Governor Andrew M. Cuomo's Task Force to Combat Worker Exploitation 2016 Report, New York State (2016), https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EWTFReport_27.pdf. The Task Force reports that it has launched nearly 16,000 wage theft and misclassification cases across more than a dozen industries impacting nearly 150,000 workers. Over the past four years, the Department of Labor, a leading member of the Joint Task Force, recovered nearly $150 million in lost wages which it returned to 125,000 workers victimized by wage theft. The Task Force has directed businesses to pay nearly $9.2 million in back wages and nearly $3 million in damages. https://www.ny.gov/programs/end-worker-exploitation-and-employee-misclassification.

In 2014, an earlier Joint Enforcement Task Force iteration of sweeps and collaborations identified nearly 26,000 instances of employee misclassification, nearly $316 million in unreported wages, and nearly $8.8 million in unemployment insurance contributions. Annual Report of the Joint Enforcement Task Force on Employee Misclassification NEW YORK DEPARTMENT OF LABOR, (Feb. 1, 2015), https://www.labor.ny.gov/agencyinfo/PDFs/Misclassification-Task-Force-Report-2-1-2015.pdf.

According to the February 2014 report by the Joint Enforcement Task Force on Employee Misclassification, since its inception in 2007, the Task Force has identified over 114,000 instances of employee misclassification and discovered over $1.8 billion in unreported wages; The 2013 sweeps were conducted at construction sites, bars/restaurants, adult entertainment venues, automotive tire and repair centers, grocery stores, and retail establishments. In 2013, completed audits and investigations of businesses found through the JETF sweeps: uncovered nearly $62.2. million in unreported wages; resulted in the assessment of over $2.2 million in additional unemployment insurance contributions; and revealed over 4,700 misclassified workers. Annual Report of the Joint Enforcement Task Force on Employee Misclassification, NEW YORK DEPARTMENT OF LABOR, (Feb. 1, 2014),http://www.labor.ny.gov/agencyinfo/PDFs/Misclassification-Task-Force-Report-2-1-2014.pdf

47 A 2009 report by the Ohio Attorney General – extrapolating from UI audit data, and using findings from other state studies – estimated that between 54,000 and 459,000 workers were misclassified each year, and found that the state lost between $12 million and $100 million in unemployment compensation payments, between $60 million and $510 million in workers compensation premiums and between $21 million and $248 million in forgone state incomes tax revenues. Report of the Ohio Attorney General on the Economic Impact of Misclassified Workers for State and Local Governments in Ohio (Feb. 18, 2009), http://www.faircontracting.org/PDFs/prevailing_wages/Ohio_on_Misclassification.pdf.

From January 2015 through December 2015, the Ohio Department of Job and Family Services' auditing efforts led to the detection of 14,045 workers who had been improperly classified as independent contractors. This resulted in more than $2.6 million in unpaid taxes, including $1.2 million in unpaid taxes for unemployment tax avoidance schemes. Annual Report: State Fiscal Year 2016, Dep't of Job and Family Services (2016), http://www.odjfs.state.oh.us/forms/file.asp?id=2387&type=application/pdf.

48 Interagency Compliance Network Report to the Oregon Legislature, (Mar. 2019), https://www.oregonlegislature.gov/citizen_engagement/Reports/2019-ICN-Interagency-Compliance-Network-Report.pdf. In 2016, the Oregon Interagency Compliance Network (ICN) conducted 9 audits, finding a total of 217 workers were misclassified. The ICN discovered $13,563,149 in unreported wages, and assessed $279,834 in UI tax. The OED also conducted 1,573 audits in 2016, discovering 3,440 workers who were misclassified, $20,237,668 in unreported payroll, and $416,630 in UI tax. Interagency Compliance Network Report to the Oregon Legislature, (April 2017), https://www.oregonlegislature.gov/citizen_engagement/Reports/2017%20ICN%20Legislative%20Report_2017_04%20FINAL.pdf.

49 A 2008 study found that 9% of Pennsylvania's workforce, or 580,000 workers, are misclassified as independent contractors each year. Misclassification resulted in a loss of over $200 million to the unemployment compensation trust fund and $81 million to the workers compensation system. Testimony of Patrick T. Beaty, Deputy Secretary for Unemployment Compensation Programs, Pennsylvania Department of Labor and Industry, before the House of Representatives Commonwealth of Pennsylvania, Labor Relations Committee on HB 2400, The Employee Misclassification Prevention Act (Apr. 23, 2008), http://www.legis.state.pa.us/cfdocs/legis/TR/transcripts/2008_0091_0001_TSTMNY.pdf.

In 2016, the Office of Unemployment Compensation Tax Services (OUCTS) completed 4,061 employer audits and discovered 29,327 misclassified or unreported workers. Additionally, the OUCTS discovered $11.1 million in underreported taxes. The net underreported taxes were $10.4 million after including overreported taxes, Financial Operations of the Pennsylvania Unemployment Compensation Program, Actuarial Evaluation 2016, Dep't of Labor & Industry (2016), http://www.workstats.dli.pa.gov/Documents/ActuarialEvaluation.pdf.

The Office of Unemployment Compensation Services conducted audits of registered and unregistered employers in industries, where historically workers have been misclassified. During 2013, OUCTS discovered 14,381 misclassified workers and $4.3 million in underreported contributions, http://www.portal.state.pa.us/portal/server.pt?open=18&objID=1279851&mode=2.

50 In 2016, the Division of Taxation found that 590 Rhode Island employees had been improperly classified, resulting in $5.6 million in unreported wages and an assessment of $200,988 in additional state taxes. Underground Economy and Employee Misclassification Task Force 2017 Annual Report, Rhode Island Dep't of Labor and Training, (Mar. 15, 2015), http://www.misclassification.ri.gov/pdfs/2017MisclassiAnnRrt.pdf.

In 2014 Rhode Island had created an Underground Economy and Employee Misclassification Task Force, which issued its initial report on March 15, 2015. The Task Forcecreated a website for reporting misclassification and has been building a

cohesive structure across several state agencies to adequately address misclassification, and plans to make legislative recommendations in its next report. Underground Economy and Employee Misclassification Task Force 2015 Annual Report, (Mar. 15, 2015), http://www.misclassification.ri.gov/pdfs/2015MisclassAnnRpt.pdf.

51 Annual Report on Employer Coverage Compliance, Tennessee Bureau of Workers' Compensation, (Feb 1, 2019), https://www.tn.gov/content/dam/tn/workforce/documents/injuries/2019ComplianceAnnualReport.pdf.

Audits by Traveler's Insurance Company over a 12-month period beginning in October 2011 revealed that only about 63% of employers insured by Travelers classified workers as employees for both workers' compensation and unemployment purposes. If a business has workers and has obtained a workers' compensation insurance policy to provide coverage to those workers, the same workers should be eligible for unemployment insurance, and the business should pay unemployment taxes in addition to workers' compensation insurance premiums. It should be noted that the majority of businesses misclassifying workers are smaller businesses. It is at this "grass roots" level that the misclassification begins and finds its way to the other business sectors such as commercial construction. Only 50% of trucking businesses and 12% of residential construction businesses consistently classified workers as employees for both workers compensation and unemployment insurance. Tennessee's Employee Misclassification Advisory Task Force recommended sharing information among existing agencies and appointing additional investigators to identify noncompliant employers, but small scale investigations support the assertion that employee misclassification is prevalent in some industries. Investigations of 32 companies in the drywall, painting, framing, general construction, and roofing industry identified 1,035 misclassified workers and half a million in money owed to the state. Investigations of 23 drywall employers identified 884 misclassified workers and $374,652 in money owed to the state.

2013 Annual Report, EMPLOYEE MISCLASSIFICATION TASK FORCE, (2013), http://www.tn.gov/labor-wfd/EMEEF/AnnualReports/2013_EMATF_AnnualReport.pdf

The Employee Misclassification Advisory Task Force's first annual report in 2012 highlights findings contained in Dr. William Canak and Dr. Randall Adams' 2010 study. The study estimates that between 21,990 and 38,680 construction workers were either misclassified or unreported in 2006 - approximately 17% of all construction workers. The study also estimated losses of between $8.4 million and almost $15 million to the state's unemployment insurance program, between $52 million and $91.6 million to the state's workers compensation program, between $15.2 million and $73.4 million in federal incomes taxes, and between $7.8 million and $42 million in Social-Security and Medicare taxes. William Canak & Randall Adams, Misclassified Construction Employees in Tennessee (January 15, 2010); Employee Misclassification Advisory Task Force, 2012 Annual Report (January 30, 2010), http://www.tn.gov/labor-wfd/EMEEF/2012_EMATF_AnnualReport.pdf.

Based on estimates using 2006 data, Tennessee lost between $2.1 million and $3.7 million in uncollected workers' compensation premium taxes Tennessee's estimated losses from unpaid unemployment insurance premiums range from $8.4 million to $14.9 million. Workers' compensation insurers lost an estimated $52.1 million to $91.6 million in unpaid workers' compensation premiums. Actual TDLWD Unemployment Insurance audit figures related to misclassification for the last two years revealed that in 2013, 1,537 audits were conducted where 1,930 misclassified workers were discovered with net total wages of $36,442,784. In 2012, 1,421 audits revealed 2,510 misclassified workers with total wages of $25,456,799. https://ww3.workcompcentral.com/fileupload/uploads/2014-07-17-030728EMEEF%202014%20Annual%20Report%20to%20Leg.pdf.

52 A 2009 study found that 38% of the construction workers in the Austin area were misclassified. In "vertical construction" alone, this misclassification resulted in an estimated loss of at least $8,618,869 in federal taxes and state unemployment taxes. Building Austin, Building Injustice: Working Conditions in Austin's Construction Industry, Workers Defense Project in collaboration with the Division of Diversity and Community Engagement at the University of Texas at Austin (June 2009), http://www.workersdefense.org/wp-content/uploads/2013/04/Building-_Austn_Report-2.pdf.

For a 2012 study, researchers from the same organizations surveyed 1,194 construction workers, conducted in-depth interviews with workers and employers, and analyzed government data, finding that at least 41% of Texas construction workers are misclassified as independent contractors or paid off-the-books in cash or by check. The researchers extrapolated from this 41% figure to estimate that approximately 308,793 construction workers in the state are misclassified as independent contractors, costing the Texas UI Fund $54.5 million annually. The researchers also found that 7.6% of construction workers experienced wage theft within the past year, costing the state an estimated $8.8 million in lost sales tax. Build a Better Texas: Construction Working Conditions in the Lone Star State, Workers Defense Project in collaboration with the Division of Diversity and Community Engagement at the University of Texas at Austin (Jan. 2013), http://www.workersdefense.org/Build%20a%20Better%20Texas_FINAL.pdf.

From fiscal years 2010 to 2012, the Texas Workforce Commission audited 25,277 employers within 20 industries. The audits identified 34,846 misclassified workers, $2.4 million in additional payroll taxes due to the unemployment insurance fund, and $229,086,702 misclassified worker wages. Legislative Budget Board, Texas State Government Effectiveness and Efficiency Report, 84th Texas Legislature (Jan. 2015), http://www.lbb.state.tx.us/Documents/Publications/GEER/Government_Effectiveness_and_Efficiency_Report_2015.pdf.

53 Eighth Annual Report, (Aug. 31, 2018), https://le.utah.gov/interim/2018/pdf/00004224.pdf.

The Labor Commission reviewed 90 specific complaints of misclassification for worker's compensation in 2016, finding employers noncompliant in 57 of these cases. The Commission assessed the penalties in the amount of $2,474,363 and collected $741,135. In six and a half years ending June 30, 2016, the Department of Workforce Services Unemployment Insurance Division (DWS/UI) completed 6,985 random audits, covering $1.89 billion in total reported wages. DWS/UI identified $54.5 million in unreported wages paid to 7,955 misclassified workers. In fiscal year 2016 alone, 854 random audits were completed, identifying 961 misclassified workers and $7.5 million in unreported wages. In that same 6.5-year period, DWS/UI completed 2,327 targeted audits of Utah employers, identifying over $172.3 million in total unreported wages paid to 27,493 misclassified workers. In 2016 alone, DWS/UI completed 379 targeted audits, identifying 5,912 misclassified workers and $47.3 million in unreported wages. Worker Classification Coordinated Enforcement Council, Annual Report, Utah Labor Commission, (Aug. 30, 2016), http://le.utah.gov/interim/2016/pdf/00003546.pdf.

The Unemployment Insurance Division of the Department of Workforce Services completes both "random" and "targeted"

audits of Utah employers. In the four-and-a-half year period between January 1, 2008 and June 30, 2012, the division completed 5233 "random" audits, covering $1.4 billion in total reported wages. The random audits identified $42 million in total unreported wages to 6,949 workers who were misclassified as "independent contractors." The random audits revealed a variance of 2.9% (.029). During the same time period the division completed 913 targeted audits of Utah employers, covering $970 million in total reported wages. Targeted audits, which primarily use IRS form 1099 information to identify potential unreported workers, yield different results. The targeted audits identified $138 million in total unreported wages to 18,114 workers who were misclassified as independent contractors. The targeted audits revealed a variance of almost 14% (.14). Jody McMillan, Chief of Contributions, Utah Department of Workforce Services, Effective Methods to Detect and Deter Worker Misclassification (Oct. 24, 2012).

54 The Vermont Workers' Compensation Task Force issued a report in April 2009. It found that 10-14% of Vermont employers misclassify their workers. Vermont Workers' Compensation Task Force 2008-2009 Progress Report, http://www.nh.gov/nhworkers/documents/vt_08-09_rpt.pdf.

In 2015, the UI Auditors completed 455 full-scale audits, through which the auditors found 1,066 misclassified workers netting approximately $230,000 in employer contributions. Moreover, the Workers' Compensation investigations unit opened 178 new investigations and issued 20 administrative penalty citations, assessing a total of $71,350 in penalties, and collected $10,307.91 in penalties. Overall, a total of $43,051.07 has been collected in 2015 for WC penalties.

Report on Misclassification Enforcement and Activities of the Misclassification Task Force, (Jan. 15, 2016), http://legislature.vermont.gov/assets/Documents/2016/WorkGroups/House%20Commerce/Reports%20and%20Resources /W~Department%20of%20Labor~Report%20on%20Misclassification%20Enforcement%20and%20Activities%20of%20the %20Misclassification%20Task%20Force~2-23-2016.pdf.

55 The Virginia Joint Legislative Audit and Review Commission (JLARC) relied on data compiled by the Virginia Employment Commission (VEC) in 2010, finding that of the 1% of employers audited by the VEC, 27% of them had misclassified at least 1 employee. The study acknowledged that the targeted nature of the audits may have resulted in an inflated estimate of the proportion of employees misclassified in all sectors. JLARC's study also found that roughly $28 million was lost in unpaid state income taxes. Review of Employee Misclassification in Virginia, JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION, Report to the Governor and the General Assembly of Virginia (June 11, 2012), http://jlarc.virginia.gov/pdfs/reports/Rpt427.pdf.

On August 14, 2014, Governor Terry McAuliffe issues Executive order 24 to establish an Inter-Agency Task Force on Worker Misclassification and Payroll Fraud. 2015 Annual Report, Virginia Dep't of Labor and Industry (2015), http://www.doli.virginia.gov/media_room/annual_reports/2015/2015%20Annual%20Report.pdf. Governor Northam reconstituted the Interagency Taskforce via Executive Order in 2018, which issued its first set of recommendations soon thereafter. The Report for Executive Order 38 from the Inter-Agency Taskforce on Misclassification and Payroll Fraud, https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/Final_Worker-Misclassification-Report.pdf.

56 Underground Economy Benchmark Report, 2019 Annual Report to the Legislature, (Dec. 2019), https://app.leg.wa.gov/ReportsToTheLegislature/Home/GetPDF?fileName=2019UndergroundEconomyBenchmarkReport_a8 e37651-117f-455e-9506-541daad7f05d.pdf.

A 2019 study found that the state lost $152 million in unemployment taxes between 2013 and 2017, $385 million in federal income taxes, $268 million in unpaid workers' compensation premiums, $299 million in payroll taxes and $9 million in federal unemployment taxes. Lisa Xu and Mark Erlich, Economic Consequences of Misclassification in the State of Washington, Harvard Labor and Worklife Program, (Dec. 2019), https://lwp.law.harvard.edu/files/lwp/files/wa_study_dec_2019_final.pdf. The state issues an annual Benchmark Report. Of note, the 2016 Washington State Underground Economy Benchmark Report reported that, in FY 2016, the three departments uncovered a combined 2,270 unregistered businesses that were assessed nearly $98.5 million in unpaid taxes, premiums, penalties, and interest. The Department of Labor & Industries conducted 820 audits with an associated $9.3 million in assessments from worker misclassification and unregistered businesses. The Economic Security Division found more than 12,300 unreported or misclassified workers through audits and assessed a total of more than $1,383,600 on unregistered accounts. The Department of revenue assessed a total of $87.8 million in taxes from more than 780 businesses, recovered over $180,000 in fraud-related dollars. Moreover, the DOR collected over $46 million through its Tax Discovery Program.

Underground Economy Benchmark Report: 2016 Annual Report to the Legislature, Joint Report of the Washington State Department of Labor and Industries, Washington State Department of Revenue, and the Washington State Employment Security Division (December 2016),

http://www.lni.wa.gov/Main/AboutLNI/Legislature/PDFs/Reports/2016/UndergroundEconomyBenchmarkReport.pdf .

The 2010 Washington State Underground Economy Benchmark Report reported that, in FY 2010, the three departments uncovered a combined 1,677 unregistered businesses that were assessed nearly $39 million in unpaid taxes, premiums, penalties, and interest. The Department of Labor & Industries conducted 5,846 audits with an associated $26.4 million in assessments from worker misclassification and unregistered businesses; the Employment Security Division conducted 4,006 audits with an associated $2.51 million in assessments from worker misclassification, unreported wages and unregistered businesses; and the Department of Revenue assessed a total of $29,718,684 in unpaid taxes, penalties and interest from previously unregistered businesses that were involuntarily registered. Underground Economy Benchmark Report: 2010 Report to the Legislature, Joint Report of the Washington State Department of Labor and Industries, Washington State Department of Revenue, and the Washington State Employment Security Division (November 2010), http://www.lni.wa.gov/Main/Docs/UEBenchmarkFY2010.pdf.

The 2010 Annual Fraud Report to the Legislature: Targeting Fraud and Abuse, Washington State Department of Labor & Industries, reported on the Fraud and Compliance program examining workers' compensation fraud in Washington State. The program identified unpaid premiums for 62% of employers that were targeted for audits, based on a screening process, and they assessed $26.4 million through employer audits. The Report also noted that the program brought in over $7 for every dollar invested, when the program's operating costs were compared to the money recovered, collected and avoided during the

fiscal year. For FY 2010, nearly 250 FTEs were employed in the program.

An earlier report by the Washington Department of Revenue studied discrepancies in the number of businesses that had registered with the IRS but not with the State, finding that in-state and out-of-state businesses registered with the IRS in 2004 failed to pay $274 million in state taxes: $225 million in state income taxes, $14.8 million in unemployment insurance taxes, and $34.5 in workers compensation premiums. In-state construction employers failed to pay $13.1 million in taxes: $1 million in state income tax, $3.4 in unemployment insurance taxes, and $8.7 million in workers compensation. In 2001, the state lost $183 million in taxes from employers registered with neither the IRS nor the state. Washington State Dept. of Labor and Industries and the Washington State Employment Security Dept., Unregistered Business Study: Joint Report of the Washington State Dept. of Revenue (November 2007), http://dor.wa.gov/docs/reports/Unregistered_Business_Study_finalfinal.pdf. The Joint Legislative Task Force on the Underground Economy in the Construction Industry also found that over $100 million state income taxes were not being paid in that industry. http://www.leg.wa.gov/JointCommittees/UECI/Documents/FinalReport_1-20-2009.pdf.

57 Task Force on Payroll Fraud and Worker Misclassification Report, Wisconsin Dep't of Workforce Development, (Mar. 2020), https://dwd.wisconsin.gov/misclassification/pdf/2019-2020-misclassification-task-force-report.pdf. From January to October 2016, the Worker Misclassification unit conducted 526 investigations, with 82 resulting in audits. The 82 audits yielded 997 workers misclassified, and $384,900 in UI tax, interest, and penalties assessed. 2016 Annual Report, Wisconsin Dep't of Workforce Development (2016), http://dwd.wisconsin.gov/dwd/pdf/annual_report_2016.pdf.T he Wisconsin Unemployment Insurance Division found earlier that 44% of the workers investigated in the course of employer audits had been misclassified. Report of the Worker Misclassification Task Force, Submitted to Secretary Roberta Gassman, Wisconsin Department of Workforce Development (June 2009), http://docs.legis.wisconsin.gov/2009/related/drafting_files/wisconsin_acts/2009_act_292_sb_672/02_sb_672/09_4432df_pt 02of04.pdf