

Statement of

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Hearing on

Leveling the Playing Field:
Protecting Workers and Businesses affected by
Misclassification

Before the
United States Senate
Committee on Health, Education, Labor, and Pensions

June 17, 2010

The International Brotherhood of Teamsters strongly supports the Employee Misclassification Prevention Act (S. 3254). We commend Senator Sherrod Brown for introducing the bill, and Chairman Tom Harkin, Subcommittee Chair Patty Murray, and other members of the committee for cosponsoring this much needed legislation. We would also like to express our appreciation to Chairman Harkin and Ranking Member Mike Enzi for convening this hearing to examine the rapidly escalating problem of worker misclassification – its impact on workers, compliant employers, and federal and state governments – and to discuss efforts to crack down on this insidious practice.

The International Brotherhood of Teamsters represents more than 1.4 million men and women in a broad array of industries and occupations. Since its founding in 1903, the Teamsters Union has been a part of American workers' long and hard fight for dignity and fairness in the workplace and a fair share of our nation's prosperity. This decades-long struggle has produced vital workplace laws guaranteeing important benefits and protections for workers.

These gains are now in jeopardy. We are seeing accelerating and intensified efforts to weaken and erode important workplace benefits and legal protections through the misclassification of workers. Millions of workers are illegally classified as independent contractors but essentially work as employees. They are independent contractors in name only and are cheated of important benefits and protections.

The problem of worker misclassification has skyrocketed. It is spreading to a broad range of industries, including industries where misclassification had not been a problem. Large segments of entire industries, such as construction, base their business model on misclassification of workers and tax fraud.

Worker misclassification cheats everyone: workers and their families; compliant and law-abiding businesses, federal and state governments and taxpayers.

The law grants workers many important workplace benefits and protections so long as the worker is an *employee*. Those who are self-employed or are genuinely independent contractor have few rights in the workplace, but do control where they work.

Workers who are misclassified by their employers as independent contractors end up with the worst of both worlds. They are without meaningful control over their work, and they are also without the legal protections and benefits of employees. They have no rights to minimum wage or overtime, or to employer-provided health insurance, retirement benefits or paid leave. They are not covered under workplace safety and health laws, nor do they have legal rights to equal opportunity in the workplace or to job-protected family and medical leave. They have no rights under the veterans' reemployment law.

Workers misclassified as independent contractors have no rights to workers' compensation if injured or killed on the job, and no rights to unemployment insurance if laid off or fired. They are liable for both the employer's share of Social Security and Medicare taxes and for their own.

Sadly, many workers are not aware they've been misclassified and assume that they are employees. Often it is only when they are injured in the workplace or let go from the job and denied benefits that they find out they are "independent contractors."

Misclassification creates an uneven playing field. Lawful and ethical employers are placed at a competitive disadvantage. Companies that misclassify their workers as independent contractors have up to a 30 percent competitive advantage over law-abiding businesses. They unfairly cut their labor and administrative costs and avoid labor and employment law obligations. Undercut by unfair competition, responsible employers are cheated out of business opportunities. This uneven playing field also depresses wages and labor standards. Law-abiding employers subsidize the freeloaders by shouldering increased burdens for workers' compensation and for the unemployment insurance fund.

Misclassification also costs federal and state governments billions of dollars in lost, but needed tax revenue. Between 1996 and 2004, \$34.7 billion of federal tax revenue went uncollected because employees were misclassified as independent contractors, according to a recent study. States also lose billions of dollars a year in income taxes, unemployment insurance taxes and workers' compensation premiums due to misclassification. Local governments with an income tax or piggy-back on federal income tax also lose revenue.

For example, on average, 30 percent of Michigan employers misclassify employees or underreport employee payroll. The state loses \$22 million-\$33 million in income tax revenue per year. The cost to the federal government has been estimated at \$57.9 million-\$96.5 million annually.

The Ohio attorney general estimates the state is losing \$890 million annually for unemployment insurance tax, workers' compensation and state and local income taxes.

In Tennessee, researchers found that approximately 21 percent of the construction workforce was misclassified as independent contractors or paid under the table in 2006. That resulted in losses of \$14 million to the state unemployment trust fund, \$91.6 million in workers' compensation premiums and \$115.4 million in federal income and employment taxes.

This revenue loss is not pocket change. There is no excuse for allowing so many businesses to avoid paying their fair share. It is imperative that Congress try to solve this problem. The Teamsters Union supports efforts by the United States Senate to crack down on businesses that illegally classify their employees as independent contractors.

But first it's important to understand why misclassification is skyrocketing.

According to the National Employment Law Project:

”under current law, there are only limited penalties, reporting requirements, and complaint procedures that regulate employers who hire independent contractors.”

There are also significant tax loopholes in the law that facilitate, indeed encourage, misclassification.

The Employee Misclassification Prevention Act is an important step in solving this escalating problem. The legislation makes it an explicit violation of the Fair Labor Standards Act to make an inaccurate classification – that is, to misclassify. It would require employers to properly classify their workers, keep records of their classification, permit workers to challenge their classification and protect them from retaliation. It would also increase penalties under appropriate circumstances.

Passage of this legislation is needed to end this escalating abuse of the law. Also needed is passage of the Taxpayer Responsibility, Accountability, and Consistency Act (S. 2882/H.R. 3408) to close current tax loopholes that facilitate misclassification and payroll fraud. Allowing this situation to continue unabated rewards cheaters at the expense of workers and law-abiding businesses and taxpayers.

The International Brotherhood of Teamsters looks forward to working with you to enact this much-needed legislation.