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## **Authorities Crack Down on Firms that Misclassify Workers**

**By Paul Davidson, USA TODAY**



By Nati Hamik, AP

The use of contractors is common in the construction, trucking and home health care industries.

State and federal authorities, as well as workers themselves, sharply increased crackdowns this year on companies that misclassify employees as independent contractors.

The efforts threaten to curb the big growth of contractors and freelancers in the workforce.

“We’re going to have ongoing battles,” says Barry Asin, president of Staffing Industry Analysts (SIA), a research group.

The number of worker class-action lawsuits claiming that employers misclassified them as independent contractors rose 50% this year to a record 300 or so, says Garry Mathiason, vice chairman of labor law firm Littler Mendelson.

Meanwhile, the Department of Labor says it forced employers to pay \$6.5 billion in back wages to 5,261 employees in fiscal 2010, up sharply from \$2.6 billion owed to 2,190 employees a year earlier. States are also increasing enforcement, with about 20 passing laws the past two years that make it easier to force employers to reclassify contractors as employees and seek unpaid taxes, says Jack Finn, head of the Interstate Labor Standards Association.

Companies are increasingly using contractors to meet peaks in demand and complete short-term projects. The trend intensified in the recession as firms cut staff. The portion of contingent workers in the labor force is up to about 10% from 8% five years ago, Asin says.

Using these contingent workers cuts labor costs about 30%, Labor says, as employers avoid paying unemployment taxes, workers' compensation, health care and other benefits.

About 62% of employers said at least some of their workers are misclassified, according to a September survey by SIA. Labor estimates misclassification cut federal revenue by \$3.4 billion in 2010. The practice is common in construction, trucking and home health care.

The question of whether workers should be labeled employees or contractors largely hinges on whether employers control their activities. A report last week by the National Employment Law Project concluded port trucking firms misclassify most of their workers.

Will Cantrell, 38, a truck driver at the Port of Oakland in California, says he's bound by contract to work exclusively for one company but gets no health and other benefits, and he must lease his own truck and pay fuel and other expenses. "I come in when they say, I do loads when they make the schedule," he says.

But Curtis Whalen, an executive for the American Trucking Associations, says many contractors earn upward of \$50,000 a year and choose when they work and for whom they work. Firms, he says, must hire contractors because traffic slows from January to July.

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