

US Department of Labor Builds Enforcement in the Construction Industry

Employers in every business look for avenues to improve their bottom lines. In the particularly competitive construction industry, the U.S. Department of Labor has seen an increase in violations of the Fair Labor Standards Act as some employers shortchange employees in an attempt to bolster their potentially narrow profit margins while remaining able to win bids. The DOL's Wage and Hour Division (WHD) is taking an aggressive and proactive stance against such violations nationwide.

Increasingly, developers and prime contractors coordinate production, but contract out the physical work to smaller subcontractors who employ workers themselves or who further subcontract the work on site. Because subcontractors must compete against numerous other small contractors in their localities to win bids, they face an intense pressure to lower the cost of their services, often at the expense of workers' wages and employment conditions.

WHD is employing new strategies to combat this 'race to the bottom' culture so that construction workers in this country will not see their wages and benefits undercut and so that law-abiding employers will not face unfair competition from contractors who use a workforce so eager for work that it is willing to settle for substandard wages and work in unsafe conditions.

WHD enforces federal minimum wage, overtime pay, recordkeeping, and child labor requirements of the Fair Labor Standards Act (FLSA). Covered, nonexempt workers are entitled to a minimum wage of not less than \$7.25 per hour effective July 24, 2009. Nonexempt workers must be paid overtime at a rate of not less than one and one-half times their regular rates of pay after 40 hours of work in a workweek. The FLSA also prohibits hazardous work for minors under age 18 and restricts minors under age 16 to certain occupations and hours of employment.

WHD is committed to combat the prevalence of pay practices in the construction industry that violate the FLSA, such as paying straight time for overtime (often in cash, "off the books"); allowing employees to "bank" overtime hours which are later paid at straight time when they have a "short week"; failing to pay for work performed prior to or after regular working hours, such as loading and unloading materials and tools needed for the day; failing to pay travel time between jobsites or between a main office and a jobsite; failing to maintain complete and accurate records of each employee's daily and weekly hours worked; and misclassifying employees as "independent contractors."

The misclassification of employees as independent contractors is an alarming trend, particularly in the construction industry. The practice is a serious threat both to workers entitled to good and safe jobs, as well as to employers who obey the law. Misclassified workers are deprived of overtime and minimum wage protections, forced to pay taxes that their employers are legally obligated to pay, and are left with no recourse if they are injured or discriminated against in the workplace. By misclassifying these workers as independent contractors and not employees, these workers are further denied protections like unemployment insurance and Family and Medical Leave, which are afforded to employees. Honest employers have a difficult time competing against those who circumvent the law through such misclassification and may not be paying the proper overtime compensation, FICA, unemployment insurance taxes, or workers compensation premiums. The department is committed to leveling the playing field for employers who play by

the rules, as well as for the American taxpayers who are, in turn, severely cheated by such practices.

The Department's Misclassification Initiative, launched under the auspices of Vice President Biden's Middle Class Task Force, is making great strides in combating this pervasive issue and to restoring these rights to those denied them. In September 2011, Secretary of Labor Hilda L. Solis announced a major step forward with the signing of a Memorandum of Understanding (MOU) between the Department and the Internal Revenue Service (IRS). Under this agreement, the agencies will work together and share information to reduce the incidence of misclassification of employees, to help reduce the tax gap, and to improve compliance with federal labor laws. Wage and Hour is also partnering with individual states, whose statutes are also being skirted by this practice, further resulting in millions of legally-due tax dollars remaining unpaid. Last year WHD hired over 300 new investigators to help combat these practices.

Each year, WHD regional and local offices plan and execute enforcement and outreach initiatives to target and to remedy such widespread labor violations. When violations are found, the Agency vigorously pursues corrective action, using all enforcement tools available – including litigation, administrative subpoenas, civil money penalty assessment, and the assessment of liquidated damages – to ensure accountability and to deter future violations. Increasingly, WHD is seeking the assistance of upper-tier contractors to assist in ensuring that their subcontractors operate in compliance.

WHD is currently conducting a nationwide enforcement initiative focusing on residential construction— another sector where WHD has observed high incidences of noncompliance affecting the wages and working conditions of many vulnerable workers. This ongoing initiative involves on-site investigations of work sites, including payroll record reviews, employee interviews, and the examination of potential joint-employment situations to determine the prevalence of FLSA violations. Investigations usually include all levels of contractors and subcontractors on a job site.

Additionally, WHD engages key employer associations to help provide employers with compliance assistance information, and to secure cooperation in promoting industry-wide compliance and accountability. Similarly, WHD conducts outreach to workers and community groups to demonstrate the agency's commitment to addressing systemic wage and child labor violations and to encourage vulnerable workers to come forward with potential violations. In 2010, the agency launched the Secretary of Labor's "We Can Help" campaign, specifically to reach such vulnerable workers who may not otherwise be aware of their rights or file complaints if those rights have been violated.

The Wage and Hour Division remains committed to providing the tools necessary to assist construction companies in achieving and maintaining full compliance with the labor statutes administered by the agency. For more information about the requirements of the FLSA, call the Division's toll-free helpline 1-866-4US-WAGE (1-866-487-9243). Information is also available on the internet at <http://www.dol.gov.whd>.