



FACT SHEET

Independent Contractor/Misclassification of Workers

BACKGROUND:

Unscrupulous employers who deliberately misclassify workers as “independent contractors” deprive workers of legitimate protections under federal and state labor laws and cost those same governments billions of dollars in lost tax revenue each year. By cheating their workers, deceitful bosses are able to cut payroll costs by up to 30 percent, placing legitimate employers at a competitive disadvantage.

Genuine independent contractors constitute but a small fraction of the American workforce – by definition, an independent contractor operates a business – but the number of misclassified workers is large and growing. In 2007, the Government Accountability Office (GAO) reported that 10 million workers in the United States were classified as independent contractors, an increase of more than two million in just six years. Other studies have found as many as 30 percent of employers misclassify their workers. While GAO has estimated misclassification of workers reduces federal revenues by up to \$4.7 billion annually, other studies place this number closer to seven billion.

POSITION:

Although some in the workforce classified as independent contractors are just that, many others are workers who have a traditional employee/employer relationship with their company but have been deliberately misclassified. It is time to stop this abusive, expensive practice. **The IBEW, along with the National Electrical Contractors Association (NECA), urges Members of Congress to support and cosponsor H.R. 6128 and S. 3786, legislation that will end the fraudulent misclassification of workers.**

STATUS:

The Fair Playing Field Act (H.R. 6128 and S. 3786) was introduced by Representative Jim McDermott (D-WA) and Senator John Kerry (D-MA) on September 14th, 2010, in the House and Senate, respectively.

These identical bills take a different approach toward changing Section 530 of the IRS code (the safe harbor provision) than previous bills did. With these changes, the legislation now has the support of both the Treasury Department and The White House.

Currently the new legislation has 11 cosponsors in the House and 10 cosponsors in the Senate.

Both bills are identical – they address the problem of misclassification by closing loopholes in the tax code.

KEY POINTS:

- Workers wrongfully misclassified as independent contractors are prevented from receiving protection under laws that govern overtime pay, workers compensation, Social Security, and unemployment insurance.
- In 2007, GAO reported that 10 million workers were classified as independent contractors, an increase of more than two million in just six years. Other studies have shown that up to 30 percent of employers misclassify their workers. Misclassification is especially prevalent in the construction industry.
- GAO estimates that misclassification reduces federal revenues by up to \$4.7 billion annually, although other studies show this number may be closer to seven billion.
- The Fair Playing Field Act addresses misclassification by closing loopholes in the tax code. Specifically, the proposed legislation amends Section 530 of the Internal Revenue Code, often referred to as “safe harbor,” to end the current law that allows employers to misclassify workers if a “significant segment” of their industry engages in this unscrupulous practice.
- In addition, both bills strengthen Internal Revenue Service (IRS) procedures for individuals to challenge their misclassification.
- Misclassification has become such a concern that President Obama included a \$25 million allocation in his Fiscal Year 2011 budget for the Departments of Labor and Treasury to give them the tools they need to address this growing problem. As a U.S. Senator he supported legislation to end this abusive practice.
- In addition, the Administration’s Middle Class Task Force, headed by Vice President Joseph R. Biden, Jr., is undertaking a new initiative to encourage and enforce the proper classification of workers.
- A 2009 study by the Ohio Attorney General’s office revealed an estimated 459,000 misclassified workers in the State of Ohio alone. A Compilation of the losses to local, state, and federal tax and benefits revenue as a result of this misclassification was nearly \$2 billion. That’s a \$2 billion loss coming from only a single state in a single year.