

1 Senator Betzold from the Committee on Judiciary, to which  
2 was re-referred

3 S.F. No. 467: A bill for an act relating to local  
4 government; exempting certain property from condemnation  
5 proceedings; designating certain property as a conforming  
6 planned unit development for purposes of county zoning controls;  
7 providing tax-exempt status for certain real and personal  
8 property used for recreational purposes; excluding certain  
9 recreational property from the metropolitan regional open space  
10 system; prohibiting a county from restricting access to and from  
11 certain recreational property; requiring certain duties of the  
12 Disabled Veterans Rest Camp in Washington County; amending  
13 Minnesota Statutes 2004, sections 88.44, by adding a  
14 subdivision; 103B.331, by adding a subdivision; 272.02, by  
15 adding a subdivision; 375.18, by adding a subdivision; 376.55,  
16 by adding a subdivision; 394.25, by adding a subdivision;  
17 398.32, by adding a subdivision; 462.357, by adding a  
18 subdivision; 473.147, by adding a subdivision.

19 Reports the same back with the recommendation that the bill  
20 be amended as follows:

21 Pages 1 and 2, delete sections 1 and 2

22 Page 2, delete sections 4 and 5

23 Page 3, delete section 7

24 Page 3, after line 27, insert:

25 "Sec. 5. [WASHINGTON COUNTY; EMINENT DOMAIN.]

26 Subdivision 1. [LIMITATION ON CONDEMNATION.] Washington  
27 County may not acquire by eminent domain property owned or  
28 leased and operated by a nonprofit organization and primarily  
29 used to provide recreational opportunities to disabled veterans  
30 and their families.

31 Subd. 2. [LOCAL APPROVAL.] This section takes effect the  
32 day after the governing body of Washington County complies with  
33 Minnesota Statutes, section 645.021, subdivision 3."

34 Page 4, line 2, delete "continue to"

35 Page 4, line 5, delete "agreement" and insert "agreements"

36 Page 4, line 17, delete "3" and insert "1"

37 Page 4, line 19, delete "1, 2, and 4 to 11" and insert "2  
38 to 4, 6, and 7"

39 Renumber the sections in sequence

40 Amend the title as follows:

41 Page 1, line 3, after "property" insert "in Washington  
42 County"

43 Page 1, line 13, delete "88.44, by"

44 Page 1, delete line 14

1 Page 1, line 15, delete the first "subdivision;" and delete  
2 "375.18,"

3 Page 1, delete line 16

4 Page 1, line 17, delete the first "subdivision;" and delete  
5 "398.32,"

6 Page 1, line 18, delete "by adding a subdivision;"

7 And when so amended the bill do pass and be re-referred to  
8 the Committee on Taxes. Amendments adopted. Report adopted.

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.....  
(Committee Chair)

March 15, 2005.....  
(Date of Committee recommendation)

1 Senator Betzold from the Committee on Judiciary, to which  
2 was referred

3 S.F. No. 588: A bill for an act relating to unlawful trade  
4 practices; prohibiting employer misrepresentation of the status  
5 of employees; providing for the recovery of costs and attorney  
6 fees for unlawful trade practices; amending Minnesota Statutes  
7 2004, section 325D.15; proposing coding for new law in Minnesota  
8 Statutes, chapter 325D.

9 Reports the same back with the recommendation that the bill  
10 be amended as follows:

11 Delete everything after the enacting clause and insert:

12 "Section 1. [181.722] [MISREPRESENTATION OF EMPLOYMENT  
13 RELATIONSHIP PROHIBITED.]

14 Subdivision 1. [PROHIBITION.] No employer shall  
15 misrepresent the nature of its employment relationship with its  
16 employees to any federal, state, or local government unit, to  
17 other employers or to its employees. An employer misrepresents  
18 the nature of its employment relationship with its employees if  
19 it makes any statement regarding the nature of the relationship  
20 that the employer knows or has reason to know is untrue and if  
21 it fails to report individuals as employees when legally  
22 required to do so.

23 Subd. 2. [AGREEMENTS TO MISCLASSIFY PROHIBITED.] No  
24 employer shall require or request any employee to enter into any  
25 agreement, or sign any document, that results in  
26 misclassification of the employee as an independent contractor  
27 or otherwise does not accurately reflect the employment  
28 relationship with the employer.

29 Subd. 3. [DETERMINATION OF EMPLOYMENT RELATIONSHIP.] For  
30 purposes of this section, the nature of an employment  
31 relationship is determined using the same tests and in the same  
32 manner as employee status is determined under the applicable  
33 workers' compensation and unemployment insurance program laws  
34 and rules.

35 Subd. 4. [REPORTING OF VIOLATIONS.] Any court finding any  
36 person guilty of violating this section shall transmit a copy of  
37 the documentation of the finding of guilt to the commissioner of  
38 labor and industry. The commissioner of labor and industry  
39 shall report the finding of guilt to relevant state and federal

1 agencies, including at least the commissioner of commerce, the  
2 commissioner of employment and economic development, the  
3 commissioner of revenue, the federal Internal Revenue Service,  
4 and the United States Department of Labor.

5 Subd. 5. [CIVIL REMEDY.] A person injured by a violation  
6 of this section may bring an action for damages against the  
7 violator. There is a rebuttable presumption that a losing  
8 bidder on a project on which a violation of this section has  
9 occurred has suffered damages in an amount equal to the profit  
10 it projected to make on its bid. The court may award attorney  
11 fees, costs, and disbursements to a party recovering under this  
12 section. If the person injured is an employee of the violator  
13 of this section, the employee's representative, as defined in  
14 section 179.01, subdivision 5, may bring an action for damages  
15 against the violator on behalf of the employee.

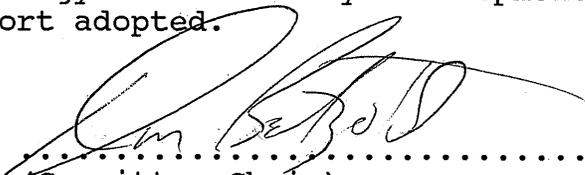
16 Sec. 2. [REVISOR'S INSTRUCTION.]

17 The revisor of statutes shall insert a first grade headnote  
18 prior to Minnesota Statutes, section 181.722, that reads  
19 "MISREPRESENTATION OF EMPLOYMENT RELATIONSHIPS."

20 Delete the title and insert:

21 "A bill for an act relating to employment; prohibiting  
22 employers from misrepresenting the nature of employment  
23 relationships; providing a civil remedy; proposing coding for  
24 new law in Minnesota Statutes, chapter 181."

25 And when so amended the bill do pass and be re-referred to  
26 the Committee on Jobs, Energy and Community Development.  
27 Amendments adopted. Report adopted.

28  
29   
30 .....  
31 (Committee Chair)

32 March 15, 2005.....  
33 (Date of Committee recommendation)

1 Senator Betzold from the Committee on Judiciary, to which  
2 was re-referred

3 S.F. No. 308: A bill for an act relating to landlord and  
4 tenant; regulating actions by government units to obtain  
5 remedies for building and other code violations; amending  
6 Minnesota Statutes 2004, section 504B.395, subdivision 1.

7 Reports the same back with the recommendation that the bill  
8 do pass and be placed on the Consent Calendar. Report adopted.

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.....  
(Committee Chair)

March 15, 2005.....  
(Date of Committee recommendation)

**Senate Judiciary Committee**  
**March 15, 2005**  
**12:00 Room 112**  
**Agenda**

SF 467 (Bachmann) Exempting certain property from condemnation proceedings.

SF 308 (Marko) Residential building code violations remedy actions authority expansion.

SF 588 (Chaudhary) Employer misrepresentation of employee status as unfair trade practice; costs and attorney fees recovery.

Jeffrey Miller, Carpenters Union

Jim Vagle, Building Association of Minnesota

Jason Greve, Associated Building Contractor

Todd and Natashi Podratz, Independent Contractors

**Senate Counsel, Research,  
and Fiscal Analysis**

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# Senate

State of Minnesota

## **S.F. No. 467 - Disabled Veterans Camp in Washington County**

**Author:** Senator Michele M. Bachmann

**Prepared by:** Harry Walsh, Senate Counsel (651/296-6200)

**Date:** March 9, 2005

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**S.F. No. 467** amends various laws to protect the existing status of the Disabled Veterans Camp in Washington County. The amendments are general in form but conditioned so that only that camp is affected by them. It is possible that, if circumstances changed, another camp property could enter the described class. Several of the amendments prohibit a county from acquiring the camp property for any of several county purposes. Certain obligations are also imposed on the camp.

**Section 1** prohibits a county from acquiring the camp for forestry purposes.

**Section 2** prohibits a county from acquiring the camp for water management purposes.

**Section 3** makes the camp exempt from property taxation.

**Section 4** prohibits a county from acquiring the camp for any of various county purposes.

**Section 5** prohibits a county from acquiring the camp for nursing home purposes.

**Section 6** exempts the camp from county planning and zoning controls.

**Section 7** prohibits a county from acquiring the camp for park purposes.

**Section 8** makes the camp a lawful use for the purposes of planning and zoning controls.

**Section 9** excludes the camp from the metropolitan regional recreational open space system.

**Section 10** prohibits counties from imposing access controls on the park that restrict ingress or egress beyond a certain limit.

**Section 11** requires the camp to continue and develop its present services; to give Washington County first refusal in case of a sale; and to rotate use of the camp facilities.

HW:cs

A handwritten signature in black ink, appearing to be the initials 'HW' with a stylized flourish above the 'W'.

1

## A bill for an act

2 relating to local government; exempting certain  
3 property from condemnation proceedings; designating  
4 certain property as a conforming planned unit  
5 development for purposes of county zoning controls;  
6 providing tax-exempt status for certain real and  
7 personal property used for recreational purposes;  
8 excluding certain recreational property from the  
9 metropolitan regional open space system; prohibiting a  
10 county from restricting access to and from certain  
11 recreational property; requiring certain duties of the  
12 Disabled Veterans Rest Camp in Washington County;  
13 amending Minnesota Statutes 2004, sections 88.44, by  
14 adding a subdivision; 103B.331, by adding a  
15 subdivision; 272.02, by adding a subdivision; 375.18,  
16 by adding a subdivision; 376.55, by adding a  
17 subdivision; 394.25, by adding a subdivision; 398.32,  
18 by adding a subdivision; 462.357, by adding a  
19 subdivision; 473.147, by adding a subdivision.

20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

21 Section 1. Minnesota Statutes 2004, section 88.44, is  
22 amended by adding a subdivision to read:

23 Subd. 2a. [LIMITATION ON CONDEMNATION.] No county may  
24 acquire property located in a county in the metropolitan area  
25 with a population of less than 500,000, and owned or leased and  
26 operated by a nonprofit organization, and primarily used to  
27 provide recreational opportunities to disabled veterans and  
28 their families, by condemnation pursuant to subdivision 2.

29 Sec. 2. Minnesota Statutes 2004, section 103B.331, is  
30 amended by adding a subdivision to read:

31 Subd. 3a. [LIMITATION ON CONDEMNATION.] No county may  
32 acquire property located in a county in the metropolitan area

1 with a population of less than 500,000, and owned or leased and  
2 operated by a nonprofit organization, and primarily used to  
3 provide recreational opportunities to disabled veterans and  
4 their families, by condemnation pursuant to subdivision 3.

5 Sec. 3. Minnesota Statutes 2004, section 272.02, is  
6 amended by adding a subdivision to read:

7 Subd. 68. [CERTAIN RECREATIONAL PROPERTY FOR DISABLED  
8 VETERANS.] Real and personal property is exempt if it is located  
9 in a county in the metropolitan area with a population of less  
10 than 500,000, and owned or leased and operated by a nonprofit  
11 organization, and primarily used to provide recreational  
12 opportunities for disabled veterans and their families.

13 Sec. 4. Minnesota Statutes 2004, section 375.18, is  
14 amended by adding a subdivision to read:

15 Subd. 9a. [LIMITATION ON CONDEMNATION.] No county may  
16 acquire property located in a county in the metropolitan area  
17 with a population of less than 500,000, and owned or leased and  
18 operated by a nonprofit organization, and primarily used to  
19 provide recreational opportunities to disabled veterans and  
20 their families, by condemnation pursuant to subdivision 9.

21 Sec. 5. Minnesota Statutes 2004, section 376.55, is  
22 amended by adding a subdivision to read:

23 Subd. 2a. [LIMITATION ON CONDEMNATION.] No county may  
24 acquire property located in a county in the metropolitan area  
25 with a population of less than 500,000, and owned or leased and  
26 operated by a nonprofit organization, and primarily used to  
27 provide recreational opportunities to disabled veterans and  
28 their families, by condemnation pursuant to subdivision 2.

29 Sec. 6. Minnesota Statutes 2004, section 394.25, is  
30 amended by adding a subdivision to read:

31 Subd. 3d. [NONPROFIT RECREATIONAL PROPERTY FOR USE BY  
32 DISABLED VETERANS.] Property located in a county in the  
33 metropolitan area with a population of less than 500,000, and  
34 owned or leased and operated by a nonprofit organization, and  
35 primarily used to provide recreational opportunities for  
36 disabled veterans and their families is a planned unit

1 development district and a legal conforming use for purposes of  
2 zoning controls.

3 Sec. 7. Minnesota Statutes 2004, section 398.32, is  
4 amended by adding a subdivision to read:

5 Subd. 1a. [LIMITATION ON CONDEMNATION.] No county may  
6 acquire property located in a county in the metropolitan area  
7 with a population of less than 500,000, and owned or leased and  
8 operated by a nonprofit organization, and primarily used to  
9 provide recreational opportunities to disabled veterans and  
10 their families, by condemnation pursuant to subdivision 1.

11 Sec. 8. Minnesota Statutes 2004, section 462.357, is  
12 amended by adding a subdivision to read:

13 Subd. 1g. [NONPROFIT RECREATIONAL PROPERTY FOR USE BY  
14 DISABLED VETERANS.] Property located in a county in the  
15 metropolitan area with a population of less than 500,000, and  
16 owned or leased and operated by a nonprofit organization, and  
17 primarily used to provide recreational opportunities for  
18 disabled veterans and their families is a planned unit  
19 development district and legal conforming use for purposes of  
20 zoning controls.

21 Sec. 9. Minnesota Statutes 2004, section 473.147, is  
22 amended by adding a subdivision to read:

23 Subd. 1a. [DISABLED VETERANS REST CAMP EXCLUDED FROM  
24 REGIONAL RECREATIONAL OPEN SPACE SYSTEM.] Property occupied by  
25 the Disabled Veterans Rest Camp on Big Marine Lake in Washington  
26 County is excluded from the regional recreational open space  
27 system.

28 Sec. 10. [RESTRICTIONS LIMITED.]

29 No county may take any action to encumber or restrict  
30 ingress or egress below levels permissible on January 1, 2005,  
31 to property located in a county in the metropolitan area with a  
32 population of less than 500,000, and owned or leased and  
33 operated by a nonprofit organization, and primarily used to  
34 provide recreational opportunities to disabled veterans and  
35 their families.

36 Sec. 11. [DISABLED VETERANS CAMP REQUIREMENTS.]

1       The Disabled Veterans Rest Camp on Big Marine Lake in  
2 Washington County ("The Camp") must continue to develop and  
3 promote camp features and amenities for veterans who are  
4 disabled or have limited physical capabilities. The Camp, by  
5 terms of separate agreement, must offer Washington County the  
6 right of first refusal to purchase the rest camp property if a  
7 sale is ever contemplated and provide an easement across the  
8 main Veterans Rest Camp Road in order to provide a connection of  
9 the north and south areas of the park. The Camp shall modify  
10 its operating policies and procedures to include provisions for  
11 the regular rotation of the use of campsites, cabins, and  
12 parking spots for travel trailers, limiting the time that any  
13 one veteran can use the cabin and campsites especially when  
14 there is a waiting list of veterans with service connected  
15 disabilities.

16       Sec. 12. [EFFECTIVE DATES.]

17       Section 3 is effective for assessment year 2005 and  
18 thereafter for taxes payable in 2006 and thereafter. Sections  
19 1, 2, and 4 to 11, are effective the day following final  
20 enactment.

## **Disabled Veterans Rest Camp** **Mission Statement**

Administer and furnish relief and welfare services as well as to provide certain recreational facilities to men and women who have served or are presently serving in the Armed Forces of the United States, and to the immediate families of said men and women as defined under current Veterans Administration guidelines, with priority given to disabled Veterans, Veterans in good standing, active duty Veterans, and the un-remarried widows or widowers of deceased Veterans, in that order.

## Rest and Recreation parks for Veterans Owned by Veterans

- Big Island on Lake Minnetonka
  - Closed , in process of selling land
- Disabled Veterans Rest Camp
  - Priority service to Veterans with disabilities
  - Open to all Veterans, Families, and guests
- Veterans on the Lake
  - 255 miles north of the cities



## Primary Supporters of the DVRC

- Disabled American Veterans
- Veterans of Foreign Wars
- American Legion



## **Community organizations that use the DVRC routinely**

- **Minnesota Assistance Council for Veterans**
- **Minnesota Veterans Hospital**
- **Minnesota Veterans Homes**
- **Military Reserve and Guard Units**
- **Boy Scouts “Eagle Projects”**
- **Point Man Ministries**

## **Reasons for Realignment and Zoning**

- **Security from condemnation and eminent domain**
- **Development of existing property**
  - Obtain permits to achieve ADA standards
- **Ability to obtain loans and Grants**

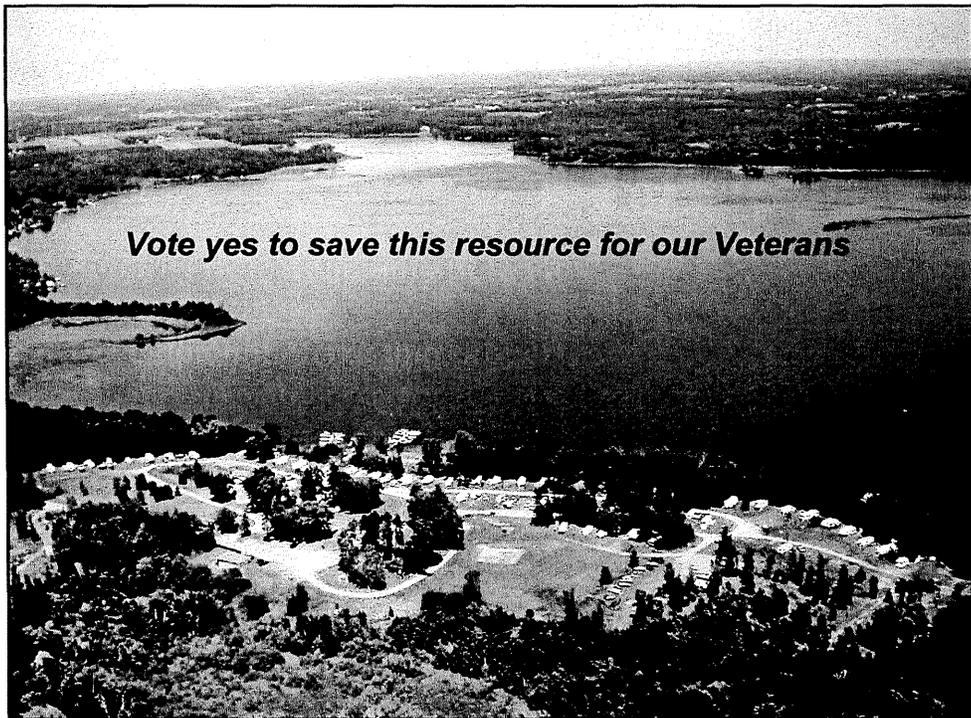
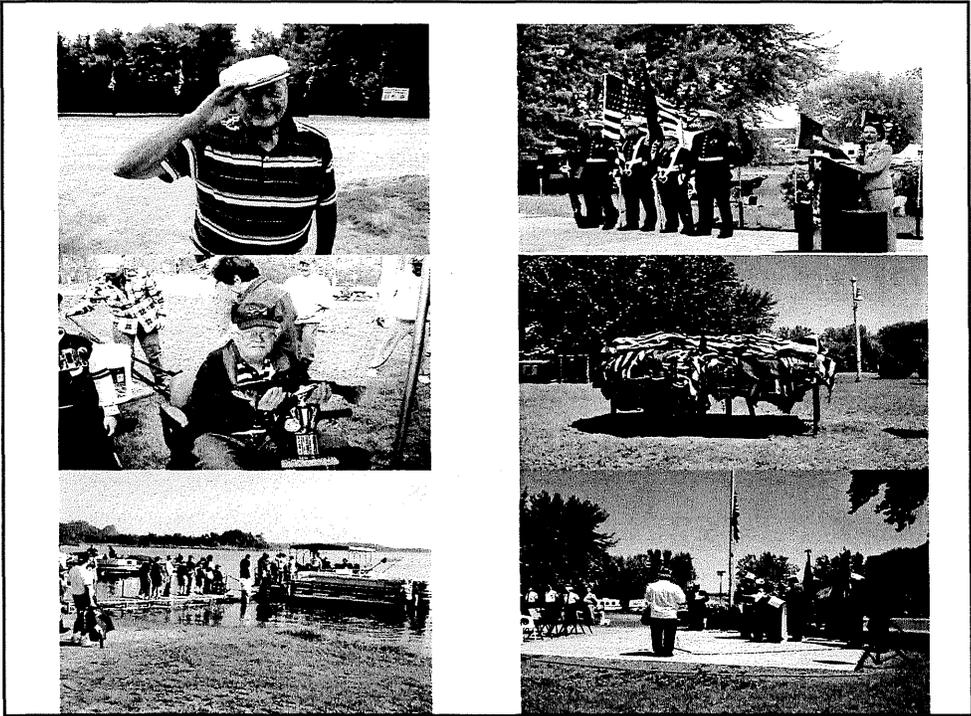


## **DVRC expansion**

- **Ten Year plan**
  - **Build new ADA shower and storm shelter**
  - **Develop the back 39 acres**
  - **Add new trailer sites**
  - **Add new cabins**
  - **Increase tenting options**
  - **Remodel existing cabins to ADA standards**
  - **Build pavilions for social events out of the weather**

## **Reasons to Preserve the Camp for Veterans Only**

- **Numbers of veterans using the camp has increased by 20 % per year since 2000**
- **Number of Veterans returning with Service connected disabilities grows daily**
- **Vets with disabilities used to be primarily from active duty, now the Reserves and Guard members are the primary affected Veterans**





"The Price of Freedom"  
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## MACV Minnesota Assistance Council for Veterans

*Serving Veterans Experiencing Homelessness Throughout Minnesota*

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vos@gotocrystal.net

February 16, 2005

Senate File # 467 ----1.1 to 1.23 posted on 1/20/2005

House File # 34-----1.1 to 1.23 posted on 1/6/2005

Dear Senator Bachman

Minnesota Assistance Council for Veterans is a 501-c-3 nonprofit whose mission is stated at the bottom of this letter. We work with veterans in Minnesota who are experiencing homelessness.

This work requires many varied resources for us to complete our mission. Healthcare, housing, employment, continuing mental health and sober support systems as well as developing new leisure time activities and recreational opportunities for the veterans we serve.

It requires a lot of different organizations that understands the veterans needs as well as our organizations mission to have successful outcomes for this population.

The Disabled Veterans Rest Camp on Big Marine Lake is one of these organizations that enhance our productivity. We have used the camp in varied and uncomplicated ways to complete our mission. We have used them to house veterans on short-term notice until we can get them into our program. We have held annual clean up and set-up for docks and grounds by having our participants volunteer for this. Volunteering is one of our ways we promote our veterans to give back to the community. For the past two years and this coming year we have used the camp to host our charity bass tournament which has been an excellent choice for us and the participants. Recreational opportunities that we can afford are sometimes hard to come by and at the camp we are always welcome and accommodated which we deeply appreciate. It would be a great loss and shame for this camp to come under the direction of the "Big Marine Park Reserve".

We ask that you champion the legislature to exclude the Disabled Veterans Rest Camp from Big Marine Park Reserve as stated in the above noted House and Senate files.

Sincerely,

Jimmie L. Coulthard  
President/CEO

**OUR MISSION IS:** To provide/coordinate preventive, transitional and permanent housing and supportive services for veterans who are experiencing homelessness or who are in danger of becoming homeless and who are motivated towards positive change.

VAMC Building 47 One Veterans Drive Minneapolis, MN 55417 tel.612.726.9375 fax.612.726.1138  
macv@citilink.com www.mac-v.org

Bob Huber went to Post Everlasting. Bob was a dedicated Legionnaire and a great leader. He will be missed by us all. Our deepest symphony to Betty and his family.

Many of you read the note in the last Legionnaire about Amby Koll. Amby is in the Ottertail Nursing home. I'm sure Lois would appreciate cards or phone calls. She's going through a tough time. Our thoughts and prayers are with Amby and Lois.

Hats off to your Membership Director Harry and all the membership team. We continue to meet and pass every

public relations "Enhancing the image of the American Legion Family" within our state. Remember, gambling funds cannot be used for this project. It must come from post funds. We used to do everything without gaming funds. Please help if you can. I really believe this project will be helpful in our membership process. Too many times I've been asked what is The American Legion? We must do a better job of telling our story. Who we are...Where we come from...What we do... Until next month, Believe and Succeed.

March Legionnaire, 2005

# Mail Call

## Iraqi Elections

To the Editor:

January 2005 marks a significant milestone: Iraqis elections. The importance of this event is captured with a reported election sign in a Baghdad slum which states, "Your vote is more precious than gold." The goal providing the Iraqis the opportunity to live in a democratic society is a win-win for all. Not only does it minimize terrorist threats to the U.S. and the world, it is the essence of stabilizing the crucial Middle East.

The election is significant for another important reason as well. Our gallant soldiers are in a strange culture fighting not for land or domination but to free the Iraqis from a brutal way of life. These young men and women have stepped forward to provide millions of people in a far away land the opportunity to live in peace and freedom. They carry on in the American tradition as their fellow comrades of past have in other far away places such as Vietnam, Korea, and the countries of the World Wars without regard for their own personal safety. As before, the military will do their best to ensure that the election happens and will ensure that the new government and other democratic institutions are established. In addition, many efforts to improve the economy, building agricultural and industrial infrastructure and in contrast to the insurgents' goals of destruction. Our troops understand that freedom carries a heavy price, and they deserve our utmost gratitude as they risk their own futures and well-being in service to humanity.

Perhaps the justifications are not as we wish, and history will judge whether the results in Iraq are more like World War II or Vietnam. The Iraqi people face many challenges in 2005. Nevertheless, the positive aspect is that the U.S. military is there by their side-shoulder-to-shoulder-fighting for a mission greater than just an election: Self-determination. To all who serve in the name of freedom and democracy - I salute you!

**Chuck Chadwick**  
Post 21  
Moorhead

## Big Marine Takeover

To the Editor:

An article appeared in the South Washington County Bulletin regarding the attempted takeover of the historic (established in 1926) Disabled Veterans Rest Camp on Big Marine Lake by the Washington County Board, evidently for use as a public park (otherwise why attempt to take it away from the vets?)

The camp Board of Directors would like to expand facilities in order to serve even more vets. But, in their scheme to pressure veterans into selling out to the county, the County Board refuses to issue the necessary building and improvement permits. Further, the County Board is threatening to just take the camp, using its power of Eminent Domain, as it did last summer with the private boating operation just South of the camp.

The County Board claims that the Rest Camp is restricted to only a few veterans. This is patently false. While improvement might be made regarding eligibility for and time limits on mobile home sites, as the Rest Camp website <http://www.vetscampmn.org/> specifies and any visitor knows, the only qualification required to occupy facilities is ownership of honorable military discharge papers or active veteran papers. These are determinations properly made by veterans themselves, not by politicians seeking to name a park after themselves.

Bill Pulkrabek and Dick Stafford are among the most outspoken County Board members. Their arrogance is breath-taking. It out-chutzpas chutzpa. I am reminded of Kipling's poem, "Tommy," satirizing the British disdain of soldiers except during wartime. But the Rest Camp dispute is worse. These County Board members disdain veterans even during wartime. It appears the time is ripe to let the Washington County Board know how many residents support our veterans.

Senator Michelle Bachman, Representative Ray Vandever and several other legislators have authored a bill to allow veterans to retain their long-time ownership. All veterans owe them deep appreciation.

**Richard Doyle**  
Forest Lake

## Swartz Honor

To the Editor:

I would like to inform you of the honor bestowed on my husband Ken Swartz by the city of Bloomington, Minnesota. The members of the Bloomington Park Board dedicated a lighted baseball field in Ken's name in recognition of his contributions to baseball in Bloomington.

Ken is a Past Commander of Earl C. Hill Post 550 and served as Athletic Officer for many years, as well as being 10th District Baseball Director for six years. Those six years included an American Legion World Series Championship for Edina, Minnesota in 1964. During his tenure as Post Athletic Officer, he supported three Bloomington American Legion Baseball Teams, raised money for their uniforms, and established \$1,000.00 educational scholarships (one for each Legion Team) to be given to the most outstanding players.

Because he played Class A Baseball (after Legion Baseball) in his youth, he started a Class A Town Team in 1984 called the Bloomington Bulldogs. He wanted to provide young men with the chance to play baseball after they were no longer eligible for American Legion Baseball. He remembered the thrill he got when his Excelsior Class A Team won the Minnesota State Class A Championship in 1949.

The Bloomington Bulldogs celebrated their 20th anniversary this year, so now Ken has his own Baseball Team and his "Field of Dreams."

**Elaine F. Swartz**  
Phoenix

March is the month of my birthday, put a article in the community know you are doing community service

I would like to be very active in your community. I am sure that all our comrades that they so richly need some one to please feel free to contact them.

I ask you as the members of your community. Together we can make a difference.

As a sworn member of the American Legion, I am pledged to guard and transmit the principles of Democracy. As a member of the American Legion, I pledge ourselves, for the freedom and transmission of Freedom and Democracy.

I would like to be very active in your community. I am sure that all our comrades that they so richly need some one to please feel free to contact them.

"A Legionnaire"  
And now may the Lord make His face shine upon us one by one to bring us eternal peace, and let us hear, nor The bay

Amen

The Minnesota

Official Publication  
The American Legion

First published in 1917. The Minnesota Legionnaire is published by the Department of Minnesota, American Legion, 20 W. 12th St. Paul, MN 55155. Paul, MN, and at a is a member of the the National American Legion. **SUBSCRIPTION:** The Legionnaire as **PHONE:** 651-291-1000 **POSTMASTER:** Send all address changes to Legion, 20 W. 12th St. Paul, MN 55155 (ISSN 013-679.) **ADVERTISING RATES:** **E-MAIL:** azdon@mnlegion.org **WEBSITE:** www.mnlegion.org **BOARD OF PUBLICATION:** Ronning; Vice President: Secretary, Lyle F. Members include: Barton, Roseville; New Ulm; Harvey;

30

**LEGISLATIVE COMMITTEE RESOLUTION NO. 2****SUBJECT: VETS CAMPGROUNDS AT BIG MARINE, WASHINGTON COUNTY**

**WHEREAS:** The 69 acre, Vets Campgrounds at Big Marine, Washington County, was established after WWI for the sole benefit of veterans and dependents; and

**WHEREAS:** Veterans from all over the state of Minnesota and other states do enjoy and use the existing campground and other facilities, including fishing and riding on their own, handicapped pontoon boat, especially equipped for wheel chair access and other handicaps; and

**WHEREAS:** Veterans who might otherwise be living in the street or other shelters have found refuge in these facilities for camping, trailers and cabins, some for many years; and

**WHEREAS:** This hallowed campground is supported by donations from all veteran organizations at no cost to taxpayers; and

**WHEREAS:** This recreational camp is needed by all veterans, those brave women and men who gave all their efforts to defend the freedom of all citizens of our great county; and

**WHEREAS:** Washington County Parks Commission has been purchasing other lands to make another county park; and

**WHEREAS:** Washington County Board of Commissioners has already acquired 612 acres and has plans to acquire more in the next five years, which would include all or part of this same Vets Camp; and

**WHEREAS:** The Vets Camp provides a service for Veterans and their dependents and changing or selling this camp to make a county park would disrupt the good services to the veterans who earned the right to have this wonderful facility; and

**WHEREAS:** Many AFL-CIO Brothers and Sisters are veterans and can enjoy this great camp; now, therefore be it

**RESOLVED:** That the 44<sup>th</sup> Constitutional Convention of the Minnesota AFL-CIO go on record to maintain the financial independence of this Vets Camp in Washington County and to support any and all legislation to keep the camp operated by the veterans and their dependents; and, be it further

**RESOLVED:** That the Minnesota AFL-CIO oppose any and all attempts to force or coerce the camp to compromise their independence in any way.



# Disabled American Veterans

Chapter #2

1133 Rankin Street

St. Paul, MN 55116-3141

February 16, 2005

**Representative Ray Vandever (R) 52A**

529 State Office Building

100 Rev. Dr. Martin Luther King Jr. Blvd.

Saint Paul, Minnesota 55155

RE: Preservation of the Disabled Veterans Rest Camp on Big Marine Lake in  
Washington County

Dear Representative Vandever:

We write to you on behalf of the Disabled American Veterans (a congressionally chartered veterans organization), representing all of our members throughout the state of Minnesota in an effort to seek your continued support on the bills you and your constituents have recently authored, introduced, and wholeheartedly support regarding the preservation of the Disabled Veterans Rest Camp on Big Marine Lake under H.F. 34 and S.F. 467 in its original state.

Our Department Headquarters introduced and unanimously approved a resolution (copy attached) on the subject matter at our 2004 spring convention in Willmar, which was subsequently forwarded to our National Headquarters for their approval and concurrence. Having received unanimous approval at all echelons of this organization, we are submitting this resolution to you to show that we continue to support the preservation of this camp in its entirety, and we support the original concept of having this camp operate as a bona fide non-profit resort camp dedicated to our troops and veterans. The camp is now operated as a non-profit corporation governed by a Board of Directors consisting of members from our various veterans' organizations. It is our sincere hope that this camp will be able to continuously operate in this manner without any interference from county officials or other third parties, all of who have already threatened to acquire this land through eminent domain or other means for purposes of creating the Big Marine Park Reserve.

This Chapter of the Disabled American Veterans originally started this camp back in 1926 as a camp for our injured and ill veterans who returned home after the war to recover and recuperate. To this day, the camp has operated in relatively the same sense

in that it now provides a place of peace and tranquility for our veterans, with priority given to our disabled veterans.

We are continuously fighting on a daily basis to preserve our rights and benefits that we feel we rightfully deserve for our service to this great country of ours. We find it difficult to even preserve our own dignity and pride because of various governmental actions and decisions at all levels of government that have historically shown various levels of reductions or depletions in our benefits. Especially those who are veterans themselves, our benefits and rights should never be compromised at any level of government.

We want to sincerely express our sincerest appreciation and gratitude for your tireless devotion to our veterans and their causes. We know that you, your staff, and several of your constituents have dedicated an enormous amount of time to ensure our veterans and troops are looked after. It is your dedication and devotion to our veterans' causes that sets you aside from the rest and we thank you. Please ensure you pass our thanks and appreciation to Representatives Mike Charron and Karen Klinzing and to Senators Michelle Bachman and Chuck Wiger.

Sincerely,



Charlie Makidon, Commander



Edmund N. Erdos, Adjutant

Enclosure

ENE:ene

6230

**LEGISLATIVE COMMITTEE RESOLUTION NO. 2****SUBJECT: VETS CAMPGROUNDS AT BIG MARINE, WASHINGTON COUNTY**

**WHEREAS:** The 69 acre, Vets Campgrounds at Big Marine, Washington County, was established after WWI for the sole benefit of veterans and dependents; and

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**RESOLVED:** That the 44<sup>th</sup> Constitutional Convention of the Minnesota AFL-CIO go on record to maintain the financial independence of this Vets Camp in Washington County and to support any and all legislation to keep the camp operated by the veterans and their dependents; and, be it further

**RESOLVED:** That the Minnesota AFL-CIO oppose any and all attempts to force or coerce the camp to compromise their independence in any way.



**U.S. DEPARTMENT OF  
VETERANS AFFAIRS**

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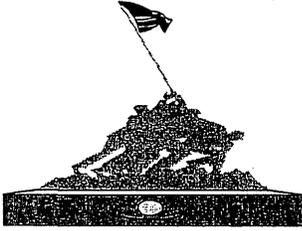
**Edmund N. Erdos**  
**Field Examiner**

St. Paul VA Regional Office

Fiduciary Unit (21F)  
Federal Bldg. 1 Federal Dr.  
Ft. Snelling  
St. Paul, MN 55111

Telephone: (612) 970-5346  
Toll-Free: (800) 827-1000  
FAX: (612) 970-5414

**Edmund N. Erdos III**



7715 – 216<sup>th</sup> Avenue NE  
Wyoming, MN 55092

Phone: (651) 408-2287 E-Mail: [EErdos@aol.com](mailto:EErdos@aol.com)

---

*Life member DAV; member American Legion (Forest Lake #225); life member NCOA; member AmVets;  
member Marine Corps Association and League; member Veterans of Foreign Wars (Forest Lake #4210); Metro  
Marines;*

*Member of the Minnesota Stand Down Board of Directors  
DAV (Department) Liaison Rep – Minnesota Veterans Home Board*

February 15, 2005

**Ray Vandevveer (R) 52A**  
529 State Office Building  
100 Rev. Dr. Martin Luther King Jr. Blvd.  
Saint Paul, Minnesota 55155

RE: Preservation of the Disabled Veterans Rest Camp on Big Marine Lake in Washington  
County

Dear Representative Vandevveer:

I write to you in an honest and faithful effort to seek your continued support on the bills you and your constituents have recently authored and introduced regarding the preservation of the Disabled Veterans Rest Camp under H.F. 34 and S.F. 467. Unfortunately, this camp has been under constant scrutiny and political debate by local county officials since about 1987 along with their efforts to acquire this camp for the Big Marine Park Reserve.

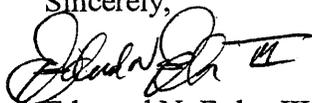
The manner and way in which our local county officials have recently subjected this camp to by way of a barrage of “political punches” has given our veterans a black eye they don’t deserve. The gesture in and of itself displays a sense of greed and unfairness to the very veteran that wore a uniform in one of our uniformed services to defend the very freedoms we have all too often taken for granted. Sadly enough, some of the very officials involved are veterans themselves. This is not the way we should treat our veterans and this is not the way we attempt to force a perceived hostile takeover of a non-profit resort camp that has been and continues to serve as the ultimate retreat for our veterans since 1926.

You have always supported our veterans and their causes and it is for this reason I hope you continue for the push to preserve this camp for the very purpose it was intended for. I graciously commend you and your staff for your efforts in supporting our veterans and their causes.

These men and women will always have a special place in our hearts and all of us know they made an exceptional sacrifice to protect our freedom and our way of life. Why must this be taken away from them? It is only fitting; appropriate, and proper that we recognize them for this very sacrifice by helping to sustain and maintain a place of respite and retreat which provides them with peace and tranquility. I am very certain you feel as I do. I sincerely thank you for your understanding and time, but more importantly, thank you for your continued support of our troops and veterans. Your tireless and dedicated efforts in supporting our veterans are truly noticeable and highly commendable.

In closing, I have enclosed an article I wrote in 2001 regarding this very same issue. If you find the time, the contents of this article is very fitting to this very issue and it represents my personal feeling, as I'm sure it also represents the feelings of many of our veterans. Thank you again for your support.

Sincerely,

A handwritten signature in black ink, appearing to read "Edmund N. Erdos III", with a stylized flourish at the end.

Edmund N. Erdos III

Enclosure

ENE:ene

# Keep Veteran's Rest Camp as it is

EDMUND ERDOS  
GUEST COLUMNIST

I recently read an article on the Veteran's Rest Camp and their fight to keep the camp. I wholeheartedly understand their concerns as I am a past member of the board of directors (Disabled American Veterans Representative - 1995) and former manager (1995 - 2000). Furthermore, I am in total agreement with the Camp's decision to turn down any attempt or offer by the county to acquire land for their county park.

Since its inception in 1926, this camp has established a long history and reputation for providing the ultimate retreat for those of us who served this grateful nation of ours. The camp is not only a retreat for those who have served; it is also a camp that provides healing and therapy to the many who continue to suffer from the horrific memories of war.

Our government, from the federal level right down to the smallest unit of government, must understand that they have an obligation to care for its veterans. That includes preserving the rights and benefits they so rightfully deserve for service to their country.

I am a 60-percent disabled Marine Corps veteran of almost 14 years active service (1979-1993), and during my tenure as manager of the camp, I have fought tooth and nail to ensure its preservation and I made sure that everyone and their uncle heard and knew about it.

The camp is one of three nonprofit camps within the state of Minnesota, dedicated to providing low-cost recreation and an atmosphere consisting of peace and tranquility to our veterans, with priority given to our disabled veterans. It may not be much to others (like some of our local gov-

ernment officials), but to some of our veterans, it's all they have.

I would only hope that those government officials who are veterans, become well read on this opinion as it concerns the very men and women they served with. I would also hope that our non-veteran government officials understand the full scope and intent of this opinion, but more importantly, to understand that the concern is very true and genuine.

Although today I do not manage the camp, I have built a lasting friendship with everyone who resides at the camp. Veterans develop a unique sense of camaraderie and have a special bond between and amongst each other that is different from the rest of us. Why reduce or take away what they have or so rightfully deserve?

Veteran's issues have always been the subject of some type of political debate or controversy in our government. Honestly, there should never be any compromise or debate when it comes to our veterans. I've defended God, Country and Corps for almost 14 years of my life.

I am still serving America with my memberships in the Disabled American Veterans, Veterans of Foreign Wars, and the American Legion, to name just a few. I give of myself back to the community, but more importantly, I give of myself to my brothers and sisters who wore a uniform to protect our freedom and way of life.

Sacrifices, we gave many. Must we sacrifice anymore?

Why am I so strong on veteran's issues? I am also in my fourth year as a very active board member to the Minnesota standout program, a program dedicated to helping our homeless and needy veterans. We always hear about the plight of homelessness in our country. However, did you know

that out of all the homeless people in America, approximately 250,000 are veterans? It's very sad, but true.

Some of you may have recently read and heard in the media about Minnesota StandDown. It is a program that is very near and dear to my heart and it is one that is dedicated to giving our veterans a helping hand so that they may live productive and fruitful lives. Every year, the 3½-day program is conducted on the U of M (West Campus) and assists over 1000 veterans and dependents with food, clothing, shelter and various other quality of life issues.

We (StandDown) set up a mini-city of tents on a ball field directly across from the Law Building of the U of M (West Campus). During this short time, veterans with needs and issues get to visit over 65 tents that provide various services, whether it be from federal, state or local government, or from a nonprofit agency or organization. It points them in the right direction.

To put this in perspective with my opinion, like StandDown, the Veteran's Rest Camp is a nonprofit organization that has been operating since 1926 to provide a service to our veterans. They've been there for over 75 years providing this service. Like everything else our veterans fought for, it should not be compromised for any reason.

As great as this country is, we should not have any homelessness, especially within the veteran community. More importantly, we should not take away or reduce their benefits. They have earned their right to seek and keep the benefits they have. Remember, without veterans "there is no USA!"

WRITER EDMUND N. ERDOS LIVES IN WYOMING.



# Disabled American Veterans

Chapter #2

1133 Rankin Street  
St. Paul, MN 55116-3141

April 5, 2004

Disabled American Veterans  
Department of Minnesota, Incorporated  
State Veterans Service Building  
St. Paul, Minnesota 55155

WHEREAS, the Veterans Rest Camp located on Big Marine Lake in northern Washington County in the State of Minnesota, was originally founded by the Disabled American Veterans of the City of St. Paul in 1926.

WHEREAS, that since its inception, this camp has established a very long history and reputation for providing the ultimate retreat for those who donned a uniform and served and/or fought for this grateful nation of ours.

WHEREAS, this camp is one of three non-profit camps of this type in this state, dedicated to providing low-cost recreation in addition to an atmosphere consisting of peace and tranquility, with priority given to our disabled veterans, many of which consider this camp their refuge, their place of healing, their chance to recover and recuperate, and perhaps someday, justify their honor and courage for having defended this nation of ours and the very freedoms we so often take for granted today.

WHEREAS, veterans from all over the state of Minnesota and from all over this country, do enjoy and have continued to enjoy the use of this facility for their recreational needs and this

facility, in cooperation with various veterans organizations, has provided a place of recreation for *all* veterans and their dependents, and more specifically, our disabled veterans, by giving them a place to fish and camp and otherwise enjoy the serenity of the outdoors, a priceless commodity for many.

WHEREAS, the revenues that support this hallowed campground are generated from its operation and donations from all veterans organizations, businesses and individuals, with absolutely no costs being borne by the taxpayer. This recreational camp is needed by all veterans - the very brave men and women who gave all their efforts, blood, sweat and tears, and some, even the ultimate sacrifice, to defend the freedom of all citizens of this country, and throughout the world.

WHEREAS, the very land this camp encompasses, has for many years been the subject of constant political debate and scrutiny by our local government officials, but more specifically, the numerous attempts of the Washington County Parks Commission and members of the Washington County Board of Commissioners, to negotiate acquisition of this land and to make it a part of the Big Marine Park Reserve. That the Veterans Rest Camp provides and invaluable service to our veterans and their dependents and any attempts to acquire this land for purposes of creating this park reserve, would grossly disrupt the services this camp provides to this elite group of citizens, who so graciously earned the right to keep and sustain this facility for their very own use and pleasure and at no time should the very existence of this camp ever be compromised for any reason.

WHEREAS, our government, from the federal level, right down to the smallest unit of local government, must understand that they have a duty and obligation to care for its veterans,

which includes preserving and sustaining the very rights and benefits they have so rightfully earned and deserve for service to this country.

THEREFORE, BE IT RESOLVED that Chapter #2 of the Disabled American Veterans (DAV) in the City of St. Paul in the state of Minnesota, opposes any and all attempts by the County of Washington to negotiate or compromise the acquisition of any part of the land, whether in whole or in part, for purposes of creating the Big Marine Park Reserve. That Chapter #2 requests to officially have it entered on record that it also supports the creation and adoption of future state legislation to be enacted for purposes of sustaining and maintaining this very camp for use by our veterans and their dependents and that this camp continue to operate under the scope and premise it was originally intended for since its inception, and that they continue to be allowed to operate independently as a non-profit organization pursuant to Section 501(c)(3) of the Internal Revenue Code.

Respectfully submitted,

Peter Buie, Chapter #2 Commander

Edmund Erdos, Chapter #2 Adjutant

ENE:ene

1 Senator ..... moves to amend S.F. No. 467 as follows:  
 2 Delete ~~everything after the enacting clause~~ and insert:  
 3 "Section 1. <sup>Sections 1, 2, 4, 5, 6 and 7</sup> ~~Subdivision 1~~ [LIMITATION ON CONDEMNATION.]  
 4 Washington County may not acquire by eminent domain  
 5 property owned or leased and operated by a nonprofit  
 6 organization and primarily used to provide recreational  
 7 opportunities to disabled veterans and their families.  
 8 ~~Subd~~ <sup>Section</sup> 2. [LOCAL APPROVAL.]  
 9 This act takes effect the day after the governing body of  
 10 Washington County complies with Minnesota Statutes, section  
 11 645.021, subdivision 3."  
 12 ~~Delete the title and insert:~~  
 13 "A bill for an act relating to Washington County; limiting  
 14 certain condemnation authority."

*Remember the section*

*Amend the title accordingly*

1 Senator ..... moves to amend S.F. No. 467 as follows:

2 Delete everything after the enacting clause and insert:

3 "Section 1. [LIMITATION ON CONDEMNATION.]

4 Washington County may not acquire by eminent domain  
5 property owned or leased and operated by a nonprofit  
6 organization and primarily used to provide recreational  
7 opportunities to disabled veterans and their families.

8 Sec. 2. [LOCAL APPROVAL.]

9 This act takes effect the day after the governing body of  
10 Washington County complies with Minnesota Statutes, section  
11 645.021, subdivision 3."

12 Delete the title and insert:

13 "A bill for an act relating to Washington County; limiting  
14 certain condemnation authority."

**Bill Summary**

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**Senate**

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Senate Counsel & Research

State of Minnesota

**S.F. No. 308 - Landlord and Tenant/Building Code Violations**

**Author:** Senator Sharon Marko  
**Prepared by:** John C. Fuller, Senate Counsel (651/296-3914)  
**Date:** February 5, 2005

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Minnesota Statutes, sections 504B.395 to 504B.471, are a comprehensive scheme to provide tenant remedies for certain landlord violations of codes and leases. A variety of entities are permitted to bring actions against a landlord for certain violations as part of a fairly complex procedure permitting actions.

Section 1 provides that a state, county, or local department or authority, which is already authorized to bring actions for certain landlord violations involving code violations, may bring those actions regardless of whether the residential building that is the subject of the action is occupied or unoccupied.

JCF:cs

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- 1 building is unoccupied, then only for violations related to
- 2 either the exterior of the structure or the exterior property
- 3 area.

## Senate Counsel & Research

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JO ANNE ZOFF SELLNER  
DIRECTOR

# Senate

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RYAN M. VENNEWITZ  
AJA WEIDMANN

## S.F. No. 588 - Unlawful Trade Practices

**Author:** Senator Satveer Chaudhary

**Prepared by:** Harry Walsh, Senate Counsel (651/296-6200)

**Date:** February 7, 2005

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**S.F. No. 588, Section 1**, prohibits false reporting by employers about the status of employees and requires reports of violations to state and federal labor and other authorities.

**Section 2** allows attorney fees in actions for unlawful trade practices relating to certain sales misrepresentation and false reporting about employees.

HW:cs



Senators Chaudhary, Kiscaden, Pogemiller, Scheid and Bakk introduced--  
S.F. No. 588: Referred to the Committee on Judiciary.

1 A bill for an act

2 relating to unlawful trade practices; prohibiting  
3 employer misrepresentation of the status of employees;  
4 providing for the recovery of costs and attorney fees  
5 for unlawful trade practices; amending Minnesota  
6 Statutes 2004, section 325D.15; proposing coding for  
7 new law in Minnesota Statutes, chapter 325D.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

9 Section 1. [325D.125] [EMPLOYERS NOT TO MISREPRESENT  
10 STATUS OF EMPLOYEES.]

11 Subdivision 1. [MISREPRESENTATION PROHIBITED.] No employer  
12 shall misrepresent the nature of its employment relationship  
13 with its employees to any federal, state, or local government  
14 unit, to other employers, or to its employees. An employer  
15 misrepresents the nature of its employment relationship with its  
16 employees if it makes any statement regarding the nature of the  
17 relationship that the employer does not in good faith believe to  
18 be true or if it fails to report individuals as employees when  
19 legally required to do so.

20 Subd. 2. [EMPLOYEE COERCION PROHIBITED.] No employer shall  
21 require or request any employee to enter into any agreement, or  
22 sign any document, that results in misclassification of the  
23 employee as an independent contractor or otherwise does not  
24 accurately reflect the employment relationship with the employer.

25 Subd. 3. [VIOLATIONS.] Any court finding any person guilty  
26 of violating this section shall transmit a copy of the

1 documentation of the finding of guilt to the commissioner of  
2 commerce. The commissioner of commerce shall report the finding  
3 of guilt to relevant state and federal agencies, including at  
4 least the commissioner of labor and industry, the commissioner  
5 of employment and economic development, the commissioner of  
6 revenue, the federal Internal Revenue Service, and the United  
7 States Department of Labor.

8       Sec. 2. Minnesota Statutes 2004, section 325D.15, is  
9 amended to read:

10       325D.15 [VIOLATIONS; RESTRAINING ORDERS.]

11       Any person violating the provisions of sections 325D.09 to  
12 325D.16 shall be deemed guilty of a misdemeanor. Each act  
13 prohibited by sections 325D.09 to 325D.16 shall constitute a  
14 separate violation and offense thereunder.

15       In addition to the penalties provided in sections 325D.09  
16 to 325D.16 the courts of this state are hereby vested with  
17 jurisdiction to prevent and restrain violation of sections  
18 325D.09 to 325D.16. Any person damaged or who is threatened  
19 with loss, damage, or injury by reason of a violation of  
20 sections 325D.09 to 325D.16 shall be entitled to sue for and  
21 have injunctive relief in any court of competent jurisdiction  
22 against any damage or threatened loss or injury by reason of a  
23 violation of sections 325D.09 to 325D.16 ~~and~~ for the amount of  
24 the actual damages, if any, and for costs including attorney  
25 fees. In order to obtain such injunctive relief, it shall not  
26 be necessary to allege or prove that an adequate remedy at law  
27 does not exist.

1 Senator ..... moves to amend S.F. No. 588 as follows:

2 Delete everything after the enacting clause and insert:

3 "Section 1. [181.722] [MISREPRESENTATION OF EMPLOYMENT  
4 RELATIONSHIP PROHIBITED.]

5 Subdivision 1. [PROHIBITION.] No employer shall  
6 misrepresent the nature of its employment relationship with its  
7 employees to any federal, state, or local government unit, to  
8 other employers or to its employees. An employer misrepresents  
9 the nature of its employment relationship with its employees if  
10 it makes any statement regarding the nature of the relationship  
11 that the employer does not in good faith believe to be true and  
12 if it fails to report individuals as employees when legally  
13 required to do so.

14 Subd. 2. [AGREEMENTS TO MISCLASSIFY PROHIBITED.] No  
15 employer shall require or request any employee to enter into any  
16 agreement, or sign any document, that results in  
17 misclassification of the employee as an independent contractor  
18 or otherwise does not accurately reflect the employment  
19 relationship with the employer.

20 Subd. 3. [DETERMINATION OF EMPLOYMENT RELATIONSHIP.] For  
21 purposes of this section, the nature of an employment  
22 relationship is determined using the same tests and in the same  
23 manner as employee status is determined under the applicable  
24 workers' compensation and unemployment insurance program laws  
25 and rules.

26 Subd. 4. [REPORTING OF VIOLATIONS.] Any court finding any  
27 person guilty of violating this section shall transmit a copy of  
28 the documentation of the finding of guilt to the commissioner of  
29 labor and industry. The commissioner of labor and industry  
30 shall report the finding of guilt to relevant state and federal  
31 agencies, including at least the commissioner of commerce, the  
32 commissioner of employment and economic development, the  
33 commissioner of revenue, the federal Internal Revenue Service,  
34 and the United States Department of Labor.

35 Subd. 5. [CIVIL REMEDY.] A person injured by a violation  
36 of this section may bring an action for damages against the

1 violator. There is a rebuttable presumption that a losing  
2 bidder on a project on which a violation of this section has  
3 occurred has suffered damages in an amount equal to the profit  
4 it projected to make on its bid. The court may award attorney  
5 fees, costs, and disbursements to a party recovering under this  
6 section. If the person injured is an employee of the violator  
7 of this section, the employee's representative, as defined in  
8 section 179.01, subdivision 5, may bring an action for damages  
9 against the violator on behalf of the employee.

10 Sec. 2. [REVISOR'S INSTRUCTION.]

11 The revisor of statutes shall insert a first grade headnote  
12 prior to Minnesota Statutes, section 181.722, that reads  
13 "MISREPRESENTATION OF EMPLOYMENT RELATIONSHIPS."

14 Delete the title and insert:

15 "A bill for an act  
16 relating to employment; prohibiting employers from  
17 misrepresenting the nature of employment  
18 relationships; providing a civil remedy; proposing  
19 coding for new law in Minnesota Statutes, chapter 181."

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LAKES & PLAINS  
Transcript of Telephone Recording  
Between Jeffrey Miller and Nathan  
Transcribed March 10, 2005  
By Patricia Martinez, Court Reporter

1 BY MR. MILLER:

2 Q. So how long have you -- You've worked for M &  
3 M out of Chaska, right?

4 A. Yeah.

5 Q. And they subcontract from Home Value?

6 A. Yep.

7 Q. Okay. So I guess -- Why don't you sub  
8 directly from Home Value?

9 A. Uh --

10 Q. Did M & M set you up to sub out of there or  
11 what?

12 A. Yeah, pretty much.

13 Q. Okay. How long have you been subcontractor  
14 for M & M?

15 A. Uh, since July of '02.

16 Q. July of '02. Okay. Did you know someone at  
17 M & M that got you into it or --

18 A. Yeah, actually my friend's buddy's parents  
19 actually own the company.

20 Q. Oh, who's that?

21 A. Gary Morris.

22 Q. Gary Morris?

23 A. Yeah, Patty Morris.

24 Q. Okay. Gary Morris. Okay. Have I ever  
25 talked to you on the job site before?

1 A. I don't think so.

2 Q. Okay. So that's Gary Morris, the big  
3 softball player, huh?

4 A. Yeah.

5 Q. Okay. So you working for him today or-

6 A. Yeah, but not here.

7 Q. Oh, is he on the job site or no?

8 A. No, he's not.

9 Q. So I guess, how does it work? Does he pay  
10 you a certain -- Does he pay you by the yard or what?

11 A. I just get paid by the hour.

12 Q. You get paid by the hour?

13 A. Yeah.

14 Q. Okay. How much is he paying you by the hour?

15 A. \$18 an hour.

16 Q. \$18 an hour. And are you responsible for  
17 your own workers' comp and stuff like that or does he pay  
18 for that?

19 A. Yeah, I'm responsible. I'm responsible for  
20 everything.

21 Q. So supplies and stuff like that?

22 A. Well, supplies, they cover all that.

23 Q. Oh, he pays for that?

24 A. Yeah, but other than that there's no like  
25 benefits or anything.

1 Q. No benefits, okay. So does he send you out  
2 by yourself or what?

3 A. Sometimes.

4 Q. Okay.

5 A. Sometimes it's just a few people.

6 Q. A couple people, who else works there with  
7 you?

8 A. Uh, I don't know all the names.

9 Q. How many guys are -- How many guys are  
10 working there for Gary?

11 A. Ten maybe.

12 Q. Ten guys. Are they all paid by the hour,  
13 too?

14 A. Yeah.

15 Q. They're paid by the hour. So they're not  
16 paid by the yard?

17 A. No.

18 Q. Okay. Do they have a store front, M & M  
19 Floor Covering or he just runs it out of his house?

20 A. Out of his house.

21 Q. Okay. So I guess you heard about us and your  
22 interested in joining. What reason are you interested  
23 in joining us for?

24 A. I was hoping I could find a better job.

25 Q. Better job as far as money or what?

1 A. Yeah, we work odd hours all the time. I want  
2 a 40-hour week.

3 Q. Oh, you're not working 40 hours a week?

4 A. No.

5 Q. Huh.

6 A. Well, it could be one week. The next week  
7 it's like 28, the next week, 30. It's all different.

8 Q. So does he supply you with a van or --

9 A. Nope.

10 Q. You've got your own van?

11 A. I've got my own vehicle. It's not a van.

12 Q. Okay. So he delivers the job -- jobs and the  
13 supplies and then you go to wherever he tells you to go?

14 A. Yep.

15 Q. So how do you do that? Does he give you a  
16 work order or what, or do you just call him everyday?

17 A. We get a schedule at the beginning of the  
18 week and we go to a house according to the schedule.

19 Q. So he gives you a schedule of where to go  
20 every -- at the beginning of the week for the entire  
21 week?

22 A. Yep.

23 Q. Oh, and sometimes you're with other guys or  
24 what?

25 A. Yep.

1 Q. You never know who you're going to be with or  
2 does he have that on the schedule, too?

3 A. Yeah, it's usually on the schedule.

4 Q. Yeah. Well, you have a unique situation  
5 working. So what, does he take taxes out of that 18  
6 bucks an hour?

7 A. Nope.

8 Q. He doesn't take taxes out of it. So you're  
9 responsible to pay your own taxes?

10 A. Yep, I'm pretty much my own company I would  
11 say. That's how they work it.

12 Q. And so you have to pay your own taxes out of  
13 the 18 bucks an hour and he just gives you a lump sum  
14 check?

15 A. Yep.

16 Q. Did you get stung by the IRS?

17 A. Not yet.

18 Q. Not yet. Are you behind or aren't you doing  
19 your taxes?

20 A. I figured it came out of there last year, but  
21 this year it's not looking so good so far.

22 Q. It's not looking very good?

23 A. Nah.

24 Q. Well, if you don't mind my me asking what did  
25 you make in the last few years? What did you make in --

1 about?

2 A. Oh, man, last year I made like 30 thousand.

3 Q. So you made 30 thousand and then after --  
4 after taxes, how much did you make?

5 A. Um, I don't know.

6 Q. Oh.

7 A. I couldn't tell you offhand.

8 Q. Okay. Does Gary -- Does Gary supply you with  
9 tools or --

10 A. Yeah, he gives us -- Well, he supplies us  
11 with tools, but I got some of my own, too.

12 Q. You've got some of your own, but he gives you  
13 the tools?

14 A. Yeah.

15 Q. Oh, I see. Well, I can tell you what you  
16 could do is we have informational meetings every second  
17 and fourth Wednesday of the month. And we do have  
18 contractors that are looking to hire people at certain  
19 times of the year. And I'm not exactly sure where  
20 they're at. I could talk to a couple of people and  
21 definitely get back to you. But would you be interested  
22 in coming to an informational meeting?

23 A. I could do that.

24 Q. Okay. Do you have a pen and paper by chance  
25 or do you want -- Do you want me to call at a later time

1 or do you have one handy?

2 A. I got one. Let me turn off the vehicle  
3 there.

4 Q. Okay. Where are you working today?

5 A. Chanhassen.

6 Q. Oh, Chanhassen. Are you doing some big homes  
7 out there or what?

8 A. Yeah, Lundgren homes.

9 Q. Oh, you're doing the Lundgren homes?

10 A. Yeah.

11 Q. I see. Pretty big development?

12 A. Yeah, I guess.

13 Q. Yeah, so did you start brand new and -- I  
14 mean, did Gary teach you everything you know or --

15 A. Pretty much.

16 Q. Are you working with someone today or no?

17 A. Yeah, there's a few people here. All right.  
18 I got it.

19 Q. Okay. You could come to an informational  
20 meeting at 700 Olive Street.

21 A. Yeah.

22 Q. And that's in St. Paul. And do you live out  
23 that way or --

24 A. No, I live in Belle Plaine.

25 Q. Wow, I see. So basically the meeting starts

1 at 5:00 on the second and fourth Wednesday of the  
2 month. What you do is you come way over to St. Paul  
3 from way over in Belle Plaine. You would come 94 or I  
4 don't know if you would want to come up 35E.

5 A. All right.

6 Q. Which one would you like to do, 35E?

7 A. Yeah.

8 Q. Yeah, why don't you take 35, get on 35E from  
9 down there somewhere, and go north. And when you come  
10 up near St. Paul, you'll probably go underneath 94 where  
11 the spaghetti junction is.

12 A. Uh-huh.

13 Q. And when 35E starts going north out of  
14 downtown, you want to get off at Pennsylvania. It's the  
15 first exit as you go north out of downtown on 35E.

16 A. All right.

17 Q. And then you're going to take a right and go  
18 east. And there's a couple stop signs right there, so  
19 you'll just go east and when you come up -- You got  
20 that, go east?

21 A. Yep.

22 Q. You'll come up to an intersection where you  
23 can either stay to the left and go straight over a  
24 bridge or take a right on Olive Street, and you want to  
25 take a right on Olive Street. And that blue building or

1 the concrete building with the blue banding on the  
2 left-hand side, you'll come down to the southern main  
3 entrance. Is there other guys interested in becoming,  
4 you know, trying get into the union or not really?

5 A. Uh, not really. I don't know. I haven't  
6 really talked to anybody.

7 Q. So who got you interested in it?

8 A. A buddy of mine, he's in the electrical union  
9 and I was talking to him about it.

10 Q. Yeah. I mean, right now our floor coverers,  
11 you know, are making pretty good money. You know, my  
12 brother is an installer in the field. And last year, he  
13 made about \$57,000 with full medical coverage. And how  
14 old are you, Nathan?

15 A. 24.

16 Q. 24. Yeah, I got into it when I was in my  
17 early 20's also. But last year my brother made about  
18 \$57,000, and he's got medical insurance. And at 24, you  
19 really don't care about medical insurance. At least I  
20 didn't.

21 A. It would be nice.

22 Q. Yeah, I mean, it's expensive. It's expensive  
23 stuff. You've got medical insurance, dental insurance,  
24 eye glasses, stuff like that. A pension so when you  
25 retire that you'll have something saved up so that you

1 can still sustain the same type of life that you had  
2 before. So it's a pretty good opportunity. So what --  
3 I mean, does he consider you a journeyman after -- I  
4 mean, your skill level. I mean, does he have you doing  
5 everything from stretching to seaming to everything  
6 or --

7 A. Not yet, I haven't done any seaming yet.

8 Q. Okay. So what does he have you basically  
9 doing, stripping and padding and help layout?

10 A. Yeah, stripping, padding, layout, trim, maybe  
11 stretch some drop room.

12 Q. I see. So you would probably be going  
13 through our apprenticeship school. And actually our  
14 entry-level apprenticeship level is about 13 bucks an  
15 hour on the check with complete medical coverage and  
16 benefits right now. So you're really making about  
17 \$20.74 an hour. And every six months, if you work a  
18 thousand hours, you are guaranteed a raise. And it  
19 graduates until you hit the 27 bucks an hour with  
20 benefits which comes out to about 30, 37 bucks an hour  
21 total package. So it's a pretty good deal. I mean, you  
22 know, you have your health insurance coverage and your  
23 pension.

24 I mean, I was one time at your age and I  
25 would have just wasted the money on snowmobiles and

1 motorcycles and big trucks, so I know how that is. I'm  
2 still a boy at heart because I still have toys.

3 A. That sounds about right.

4 Q. Yeah, snowmobiles. And now I have kids so I  
5 don't snowmobile as much, so now I have a Harley. But  
6 yeah, it's really easy to spend money and not put  
7 anything away so when you retire that, you know, you can  
8 have some money there. And you know, that's what you  
9 learn to appreciate after a while when you turn 40 like  
10 I did just last year. You start trying to figure out,  
11 "Oh, how am I going to retire?" And I'm glad they put  
12 money away for me because I really wasn't interested in  
13 retirement, you know, when I was your age either. It's  
14 like, "Yeah, that's way down the road, don't need to  
15 worry about it."

16 But yeah, why don't you -- I'll try to keep  
17 in contact with you and hopefully we can see you at a  
18 meeting or I can see if anyone's looking for an  
19 apprentice, to hire an apprentice, so. All right,  
20 Nathan?

21 A. All right.

22 Q. Hey, thanks for calling. And sorry it took  
23 me so long to get back to you.

24 A. All right. Thanks.

25 Q. Yeah, bye.

1 REPORTER'S CERTIFICATE

2 I, Patricia Martinez, Court Reporter in and  
3 for the County of Hennepin, State of Minnesota, hereby  
4 certify that the preceding transcript consisting of  
5 pages 1 through 13 constitutes a true and complete  
6 transcription of an audio recording to the best of my  
7 ability.

8 Date:

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12 Patricia Martinez  
13 Court Reporter  
14 Notary Public, Commission Exp. 1/31/2010  
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# MFA

**Minnesota Floorcovering Association**

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If you – like most in our industry – use subcontractor labor for installations, please take a moment to read this Open Letter to learn about important changes in the Minnesota workers' compensation law, which may have a very significant impact on the way that you do business.

MINNESOTA STATUTES ANNOTATED

LABOR, INDUSTRY

CHAPTER 176. WORKERS' COMPENSATION

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Current through End of 2002 1st Sp. Sess.,  
with Laws 2003, c. 28, art. 2, eff. May 28, 2003

**Section 176.042. Independent contractors**

**Subdivision 1. General rule; are employees.** Except as provided in subdivision 2, every independent contractor doing commercial or residential building construction or improvements in the public or private sector is, for the purpose of this chapter, an employee of any employer under this chapter for whom the independent contractor is performing service in the course of the trade, business, profession, or occupation of that employer at the time of the injury.

**Subd. 2. Exception.** An independent contractor, as described in subdivision 1, is not an employee of an employer for whom the independent contractor performs work or services if the independent contractor meets all of the following conditions:

- (1) maintains a separate business with the independent contractor's own office, equipment, materials, and other facilities;
- (2) holds or has applied for a federal employer identification number or has filed business or self-employment income tax returns with the federal Internal Revenue Service based on that work or service in the previous year;
- (3) operates under contracts to perform specific services or work for specific amounts of money and under which the independent contractor controls the means of performing the services or work;
- (4) incurs the main expenses related to the service or work that the independent contractor performs under contract;
- (5) is responsible for the satisfactory completion of work or services that the independent contractor contracts to perform and is liable for a failure to complete the work or service;
- (6) receives compensation for work or service performed under a contract on a commission or per-job or competitive bid basis and not on any other basis;
- (7) may realize a profit or suffer a loss under contracts to perform work or service;
- (8) has continuing or recurring business liabilities or obligations; and
- (9) the success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures.

**An open letter from the Minnesota Floorcovering Association  
to all Minnesota floor covering dealers**

**Regarding: subcontractor labor and related workers' compensation issues**

For years, most Minnesota floor covering retailers have used independent contractors to install floor covering products. This relationship was desired both by the retailers and the installers, most of whom did not wish to become employees of the retailer, and enjoyed the autonomy and independence that comes with "being your own boss." Along with that autonomy and independence came the responsibility to ensure that required workers' compensation coverage was provided for all installers. Traditionally, that responsibility rested with the independent contractors themselves, and not with the retailers.

But in 1996, the Minnesota Legislature changed the rules for who may be considered an "independent contractor" for workers' compensation purposes by adding a section to the Workers' Compensation Act dealing specifically with the employment status of independent contractors working in the commercial building or construction trades, which clearly encompasses our industry.

**The independent contractor statute.** Under this new law – Minn.Stat. § 176.042 – even those individuals who otherwise would clearly qualify as independent contractors under the prior law are nevertheless considered employees, *unless each of nine specific conditions are met*. If even one of these nine factors cannot be met, the installer would be considered an employee of the retailer rather than an independent contractor. This would mean that retailers would be ultimately responsible for providing workers' compensation benefits to any such installer who sustains a work-related injury.

If you are unfamiliar with this statute, it would be worth your while to review the attached copy of the statute. You will quickly see that the requirements of this law are very strict. Moreover, the Minnesota courts that have addressed the law have interpreted and applied it in an extremely strict and narrow fashion – so strict that it is difficult to imagine how most of our installer contractors could ever qualify for independent contractor status under the law.

**How are courts applying this law?** In the leading case on this issue, a flooring installer (who had operated for years as an independent contractor) injured his hand on an installation project and sought workers' compensation benefits from the retailer that had hired him. After an initial hearing, a workers' compensation judge determined that the installer qualified as an independent contractor under the nine-factor test set out in the 1996 statute. On appeal, however, the Workers' Compensation Court of Appeals reversed that determination, and held that the installer was an employee of the retailer, and was therefore entitled to receive workers' compensation benefits from the employer and its workers' compensation insurer. That decision was subsequently affirmed (without further opinion) by the Minnesota Supreme Court.

In requiring the retailer to provide workers' compensation benefits, the Court expressed its belief that the 1996 statute was intended to be "a major expansion of workers' compensation coverage in the construction industry." The court held that, to qualify as an "independent contractor," the installer must be "actually running a [construction] business, with the usual trappings associated with business operations." While the Court did not define what those "usual trappings" might be, it did provide some clues, such as: the existence of a store front or some separate facility from which the installer operates; the installer has employees or assistants (as

opposed to the “one-person operation”); the installer has some “significant” investment in facilities or equipment or “significant” recurring liabilities; the installer holds licences to perform the work; the installer advertises his services; the installer independently guarantees or warranties their work. How many of your installers have these qualities? Moreover, even where those facts might be present, the question of who “incurs the main expense” of the work would remain very problematic for our industry, as the Court apparently views the flooring “materials” themselves as an “expense.” Since that “expense” is born by the retailer, not the installer, it is difficult to imagine a situation in which one of our traditional installers could be considered an independent contractor, rather than an employee.

**The potential impact on your business.** So what does all of this mean for your business? It means that you could be responsible for providing workers’ compensation benefits – and, therefore, workers’ compensation insurance coverage – to your installers. This could lead to very significant cost increases. In our experience, workers’ compensation insurance rates can range from 12% to 25% of wages paid, depending on the type of subcontractor. Hence, if you pay a particular installer \$100,000 per year, the cost of providing workers’ compensation insurance coverage for that contractor could be as high as \$25,000 per year.

Many floor covering retailers have long required installers to provide certificates of workers’ compensation insurance. But as many of you know, these installers (in order to save premium costs themselves) often elect to provide coverage only for their employees (if any, and often there are none) and not themselves. Under the law discussed above, such an installer would be entitled to recover benefits from the retailer if he or she is determined to be an “employee” of the retailer under the law. Hence, even where you can produce a certificate of insurance for an installer, it is possible that your workers’ compensation insurer may require you to provide coverage for the installer, which would likely result in a significantly increased premium.

While it is still somewhat unclear as to how the insurance carriers will ultimately address this situation, some of our members are reporting that this issue is being raised during annual premium audits performed by their insurance carriers. Moreover, there was a bill introduced during the last legislative session that was designed to specifically prohibit employers from “misrepresenting the nature of its employment relationship with its employees,” and from requiring or requesting an employee to enter into “an agreement that results in a misclassification of the employee as an independent contractor.” While this bill did not pass during the past session, it may be reconsidered next session, and it raises the possibility that government agencies may be more closely scrutinizing the nature of your relationship with your installers.

**How can the floor covering industry respond to the law?** So what is the problem with simply paying the premiums associated with providing workers’ compensation coverage? Can’t we just roll this cost into the labor prices charged to our customers? That may be one option, but many of our members have expressed concern over whether such a policy would be consistently applied by all retailers and installers, which gives rise to concerns over unfair competition in the market. Other members have raised concerns over whether providing workers’ compensation coverage to installers might cause the I.R.S. to require that we also treat these installers as “employees” for tax purposes.

What other options do we have? One option that our members have considered is to make the Legislature aware of how this law impacts our industry, and to consider some changes to the statute. To that end, a small group of retailers hired a lobbyist to explore that issue during the last legislative session. While those initial efforts were unsuccessful in bringing about any change, this was, of course, a highly unusual legislative session. Our Association continues to believe that our representatives in the Legislature need to be made aware of how this law is impacting our industry and affecting your business.

A grass-roots campaign from floor covering retailers – including letters, faxes and e-mails to your state representative and senator – would be an effective way of sending this message. Consider the potential impact of this law on your business – can you afford to absorb potentially tens of thousands of dollars in increased workers' compensation premiums? Then contact your legislators. Make them aware of this issue. Invite them to contact you for additional details on the practical impact of this law. Urge others to do the same. If you need assistance in identifying your representatives, please contact us, and we will be happy to help.

Web sites are: [www.senate.leg.state.mn.us](http://www.senate.leg.state.mn.us) and [www3.house.leg.state.mn.us](http://www3.house.leg.state.mn.us).

If you have any questions regarding this important issue, we encourage you to contact the Minnesota Floorcovering Association for more information. And we urge you to take action now on an issue that we believe will have a very significant impact on the retail floor covering industry in general, and your business in particular. Thank you.

Sincerely,

The Board of Directors  
Minnesota Floorcovering Association

JEFFREY E. THOMAS, Employee/Appellant, v. CARPET DESIGN CTR. and GENERAL CASUALTY INS. CO., Employer-Insurer, and BLUE CROSS/BLUE SHIELD OF MINN., Intervenor.

WORKERS= COMPENSATION COURT OF APPEALS  
OCTOBER 16, 2000

HEADNOTES

~~EMPLOYMENT RELATIONSHIP - INDEPENDENT CONTRACTOR. Where the requirements of Minn. Stat. ' 176.042, subd. 2, were not all met, the compensation judge erred in concluding that the petitioner, an independent contractor in floor installation, was not an employee of the respondent pursuant to Minn. Stat. ' 176.042, subd. 1.~~

Reversed.

Determined by Wilson, J., Johnson, J., and Rykken, J.  
Compensation Judge: Paul V. Rieke.

OPINION

DEBRA A. WILSON, Judge

Jeffrey Thomas appeals from the ~~compensation judge=s decision~~ that he is ineligible for workers= compensation benefits for his work injury because he was an independent contractor under the pertinent statute and rules. ~~We reverse.~~

BACKGROUND

In 1992, Jeffrey Thomas began working as a salaried salesperson for Carpet Design Center<sup>[1]</sup> [Carpet Design], a floor covering business that also sells lighting and ceramic tile. With regard to floor covering, Carpet Design has Amajor accounts@ with forty or fifty home builders, who send their customers to Carpet Design, with flooring allowances, to choose floor coverings for installation in their new homes. On occasion, Carpet Design works directly with the builders and also handles remodeling projects.

~~According to Paul Reinertson, president and co-owner of Carpet Design, at least 85% of Carpet Design=s floor covering business includes installation, which is performed by any of the fifteen to forty installers used by Carpet Design for that work. Mr. Reinertson testified that it was his intent to use independent contractors for flooring installation in order to ensure profitability. The installation work is scheduled by Carpet Design to meet the needs of the builders. The installers are generally paid by the Asquare@ (square foot) for flooring actually installed, with additional hourly pay for certain preparation work, such as grinding or sanding plywood floor seams. Carpet Design apparently sets the pay rates based on what competitors are paying, but in some cases installers have their own price lists. Flooring installers use their own hand tools, saws, and staples, and they generally use their own vehicles to transport the flooring itself from Carpet Design=s warehouse to the job site. After completing the work, the installers submit invoices to Carpet Design, which pays the installers~~

and then charges the builders for the flooring, as installed, without breaking down the price between material and installation and including a markup on both. Carpet Design issues lien waivers covering both material and installation and offers a one-year warranty on both. One builder, Rottlund Homes, requires Carpet Design to pay installers as employees on an hourly basis. For those projects, Carpet Design withholds taxes and social security from payments to the installers, who are issued a W-2 form at the end of the year for that work. However, the ultimate basis for payment is essentially the same -- by the square. When an installer submits his or her invoice for Rottlund work, Carpet Design converts the payment into an hourly wage by dividing the total installation fee by \$25.00 or \$30.00 an hour, thereby arriving at a figure for hours worked.

By sometime in 1996, Mr. Thomas was doing both sales and wood and laminate floor installation for Carpet Design, having learned the installation process through seminars offered by Carpet Design's flooring vendors. While working in both capacities, Thomas's primary full-time job was sales, and he generally performed the installation work on nights or weekends. Carpet Design considered Thomas an employee for the sales work but an independent contractor for installation. As an installer, Thomas was required by Carpet Design to carry general liability insurance. Thomas and other installers were also asked to complete a Workers' Compensation Status Determination Test, a questionnaire prepared in response to the 1996 enactment of Minn. Stat. ' 176.042, which deals with the employment status of workers in the construction industry.

In July of 1996, Thomas formed a subchapter S corporation, Thomas Quality Homes, for the purpose of building single family homes to supplement his income. With respect to Thomas Quality Homes, Thomas functioned as a general contractor. Thomas Quality Homes had a letterhead and a business checking account but no office or other facilities. Thomas himself had a fax machine in his home, which operated on his home telephone number and which his wife also used in connection with her daycare business. At some point, Thomas began using Thomas Quality Homes invoices to bill for floor installation work he performed for Carpet Design, and he asked Carpet Design to make the checks for installation work payable to the corporation. Thomas testified that he made this request, on advice of his accountant, to simplify things for the accountant and for no other reason. Thomas also testified that Thomas Quality Homes was a flow through corporation, meaning that the cash would simply flow right through it back to me. Thomas Quality Homes invoices listed Thomas's home telephone number and cell phone number.

In October of 1997, Carpet Design terminated Thomas as a salesperson because of complaints by a builder that Thomas's work through Thomas Quality Homes gave rise to a conflict of interest.<sup>[2]</sup> Thomas continued, however, to perform laminate and wood floor installation for Carpet Design thereafter, working essentially full time in that capacity. When he was terminated from his sales position, Thomas lost health insurance benefits, the right to participate in a 401k plan, the right to reimbursement for his cell phone costs, and the use of a company vehicle, a pickup truck. However, Thomas purchased the truck from Carpet Design and used it in his installation work -- to pick up and transport materials to the job site -- as well as for personal purposes. He testified, in fact, that he used that truck and another he owned for everything.

On three or four occasions, Thomas was assisted in his work for Carpet Design by a friend and neighbor, Peter Tremaine. Thomas testified that Tremaine helped him to carry materials and clean up but that Tremaine did not do any installation. Thomas did not pay Tremaine for his help but would return the favor by assisting Tremaine in his landscape business or by mowing his lawn. Thomas did not ask Carpet Design's permission to have Tremaine along on the job, and Carpet

Design did not pay Tremaine, either.

While Thomas worked primarily for Carpet Design, he also installed the floors in two out of the three homes built by Thomas Quality Homes, in the homes of several relatives, and on a couple of occasions for a floor store called Redmann=s. The record indicates that Thomas obtained the jobs for Redmann=s on direct referral from Carpet Design, which apparently had no work for him on the dates in question.<sup>[3]</sup> When installing floors for his relatives and for Thomas Quality Homes, Thomas purchased the flooring materials from Carpet Design, because flooring manufacturers sell flooring only to retail flooring businesses. Other than the jobs noted above, Thomas apparently performed floor installation only for Carpet Design. He did not advertise his services as an installer, but he did have federal employer identification numbers, both for himself individually and for Thomas Quality Homes. Thomas testified that Carpet Design required all installers to obtain federal employer identification numbers.

On September 17, 1998, Thomas severed his index finger and part of his thumb while installing a floor for Carpet Design in a home built by Goff Homes. When he subsequently filed a claim petition for workers= compensation benefits, Carpet Design denied liability, contending that Thomas was an independent contractor and not an employee. The matter came on for hearing before a compensation judge on April 4 and 5, 2000, for the limited purpose of resolving the employment status issue. Evidence included the testimony of Thomas, Reinertson, two other employees of Carpet Design, and several workers used by Carpet Design for installing countertops, carpet, and ceramic tile. Documentary evidence included invoices and checks for installation work performed by Thomas, Thomas=s 1997 and 1998 W-2 forms, and A Workers= Compensation Status Determination Test@ forms completed by Thomas and by two other installers.

In a decision issued on April 20, 2000, the compensation judge determined that Thomas was an independent contractor under both the pertinent rules and the statute. Thomas= appeals.

#### STANDARD OF REVIEW

In reviewing cases on appeal, the Workers= Compensation Court of Appeals must determine whether the findings of fact and order [are] clearly erroneous and unsupported by substantial evidence in view of the entire record as submitted:@ Minn. Stat. ' 176.421, subd. 1 (1992). Substantial evidence supports the findings if, in the context of the entire record, they are supported by evidence that a reasonable mind might accept as adequate.@ Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 59, 37 W.C.D. 235, 239 (Minn. 1984). Where evidence conflicts or more than one inference may reasonably be drawn from the evidence, the findings are to be affirmed. Id. at 60, 37 W.C.D. at 240. Similarly, A[f]act findings are clearly erroneous only if the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed.@ Northern States Power Co. v. Lyon Food Prods., Inc., 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975). Findings of fact should not be disturbed, even though the reviewing court might disagree with them, unless they are clearly erroneous in the sense that they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.@ Id.

A[A] decision which rests upon the application of a statute or rule to essentially undisputed facts generally involves a question of law which [the Workers= Compensation Court of Appeals] may consider de novo.@ Krovchuk v. Koch Oil Refinery, 48 W.C.D. 607, 608 (W.C.C.A.

1993).

## DECISION

The Commissioner of the Department of Labor and Industry promulgated the independent contractors rules, Minn. R. ch. 5224.0010 et seq., in 1983. The compensation judge first analyzed the present case under Minn. R. 5224.0020, the portion of the rules dealing with artisans. Concluding that the safe harbor criteria under this rule were not all substantially met, for either employee or independent contractor status, the judge went on to apply Minn. R. 5224.0330 and Minn. R. 5224.0340, which contain general criteria for determining whether a worker is an employee or an independent contractor, and he concluded that, under those rules, Thomas was an independent contractor in his installation work for Carpet Design. The judge also determined that Thomas was an independent contractor within the meaning of Minn. Stat. ' 176.042 and that he was ineligible for workers' compensation benefits on that basis. ~~Substantial evidence may support the judge's conclusion that Thomas qualified as an independent contractor under the rules promulgated by the department. However, we are unable to affirm the judge's determination that Thomas was an independent contractor under the statute.~~

Minn. Stat. ' 176.042, effective July 1, 1996, reads as follows:

### 176.042 Independent contractors

**Subdivision 1. General rule; are employees.** Except as provided in subdivision 2, every independent contractor doing commercial or residential building construction or improvements in the public or private sector is, for the purpose of this chapter, an employee of any employer under this chapter for whom the independent contractor is performing service in the course of the trade, business, profession, or occupation of that employer at the time of the injury.

**Subd. 2. Exception.** ~~An independent contractor, as described in subdivision 1, is not an employee of an employer for whom the independent contractor performs work or services if the independent contractor meets all of the following conditions:~~

- (1) maintains a separate business with the independent contractor's own office, equipment, materials, and other facilities;
- (2) holds or has applied for a federal employer identification number;
- (3) operates under contracts to perform specific services or work for specific amounts of money and under which the independent contractor controls the means of performing the services or work;
- (4) incurs the main expenses related to the service or work that the independent contractor performs under contract;
- (5) is responsible for the satisfactory completion of work or

services that the independent contractor contracts to perform and is liable for a failure to complete the work or service;

(6) receives compensation for work or service performed under a contract on a commission or per-job or competitive bid basis and not on any other basis;

(7) may realize a profit or suffer a loss under contracts to perform work or service;

(8) has continuing or recurring business liabilities or obligations; and

(9) the success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures.

1 POINT  
FE → This provision has not yet been construed or applied on the appellate level. However, it is evident that the legislation contemplates a major expansion of workers' compensation coverage in the construction industry. The statute begins with the premise that construction workers who are otherwise independent contractors are nevertheless deemed to be employees, entitled to the protection of the act, as long as they are performing services that are part of their employer's trade or business. An exception to this presumptive employee status exists if all of the conditions of subdivision 2 are satisfied. However, a review of these conditions indicates clear legislative intent that workers who qualify as employees under subdivision 1 are not to be deemed independent contractors under subdivision 2 unless those workers are actually in business to provide residential or commercial construction or improvement services. That is, the statutory conditions for independent contractor status are designed to differentiate between those who are merely providing labor, specialized or not, and those who are actually running a business,<sup>[4]</sup> with the usual trappings associated with business operations. Considerations relevant to whether a worker is in business in this sense may vary somewhat depending on the nature of the work at issue. However, all of the specific conditions for independent contractor status listed in subdivision 2 must be interpreted and applied in keeping with the overall intent of the statute. Moreover, because employee status is the general rule under subdivision 1, the employer bears the burden of proving that the conditions for independent contractor status, listed in subdivision 2, have been satisfied.

Some of the requirements of subdivision 2 are arguably present here. For example, Thomas admittedly has federal employer identification numbers. Minn. Stat. ' 176.042, subd. 2(2). He also operated under contracts with Carpet Design Ato perform specific services@ -- wood and laminate floor installation -- and it was reasonable for the judge to conclude that Thomas controlled the means of performing the service or work.@ Id., subd. 2(3). It is less than clear that Thomas contracted to provide his installation services Afor specific amounts of money,@ id. in that total pay for his work could only be estimated prior to completion of a job. In any event, whether or not some of the conditions listed in subdivision 2 were satisfied in this case, many were not.

Thomas used his own air compressor, hand tools, saws, and vehicles in connection with his floor installation work. Ownership of hand tools is, however, apparently standard in the industry,

[5] and Thomas used his vehicles not only for floor installation but for everything, @ not unlike many ordinary employees who need vehicles for some facets of their employment. While Thomas did have a fax machine in his home, he had no separate telephone number for that machine or for other business use, his wife used the fax for her daycare operations, and there is little evidence that Thomas used the fax in connection with his installation work, as opposed to in connection with Thomas Quality Homes. Similarly, while Thomas used Thomas Quality Homes letterhead for installation invoices that he submitted to Carpet Design, there is no evidence in the record that Thomas had any office, at home or otherwise, [6] that Thomas had any business licenses relative to installation, or that Thomas advertised his availability for installation services in any way, either through the Yellow Pages, trade journals, newspapers, signage, business cards, or even by word-of-mouth. [7] Furthermore, Thomas kept no inventory or materials, other than staples. While the existence of Thomas Quality Homes complicates the analysis, the record simply will not support the conclusion that Thomas maintain[ed] a separate [floor installation] business with [his] own office, equipment, materials, and other facilities @ as specified by Minn. Stat. ' 176.042, subd. 2(1) (emphasis added).

We also find insufficient evidence in the record to support the conclusion that Thomas incurred the main expenses @ of floor installation, within the meaning of Minn. Stat. ' 176.042, subd. 2(4). The president and co-owner of Carpet Design conceded that the main expense of a flooring project is material, an expense Thomas did not and could not incur; flooring manufacturers would not sell flooring to him. However, even leaving aside the issue of whether flooring material can be considered an expense as contemplated by this provision, [8] Carpet Design had other expenses related directly to floor installation work, including employee time costs associated with any necessary moving of appliances in homes in which flooring was to be installed; employee time costs associated with scheduling jobs, scheduling installers, paying installers, and billing builders for the work performed by installers [9]; employee time costs and vehicle expenses related to occasional delivery of flooring material to the job sites; costs associated with the purchase and maintenance of an Aedger, @ a very expensive piece of equipment available for occasional use by installers without charge to them; and costs attributable to advertising the availability of installed flooring. In comparison, Thomas had unspecified expenses relating to ownership of hand tools and saws [10]; unspecified expenses for gasoline and vehicle maintenance relative to using his trucks on the job; expenses for purchase of staples, which he estimated cost about \$5.00 a job; and an expense for the purchase of general liability insurance. The importance of Thomas's expense for general liability insurance is substantially negated by the fact that it was Carpet Design that required Thomas to carry this insurance. Just as importantly, a comparison between Carpet Design's expenses and Thomas's expenses clearly indicates that it was Carpet Design, not Thomas, that incurred the kind of expenses that are typically associated with a business operation. At the very least, Carpet Design did not meet its burden of proving that Thomas incurred the main expenses @ associated with floor installation work.

The record may support the conclusion that Thomas was responsible for the satisfactory completion of work or services, @ pursuant to Minn. Stat. ' 176.042, subd. 2(5), to the extent that he was expected to make any necessary repairs to his work or be subject to a potential Acharge back @ if Carpet Design sent someone else to remedy defects in his installation. However, as Carpet Design conceded, dissatisfied builders would come to Carpet Design, not to Thomas, with any complaints about installation, and it is evident that it was Carpet Design's reputation that was at stake in those instances. Moreover, the record does not reasonably establish that Thomas was Aliable for a failure to complete the work or service, @ as also specified by subdivision 2(5) (emphasis added), because Aliable @ in this context suggests liability for damages. There is no evidence in this record

that Thomas was responsible, financially or otherwise, to find someone else to complete a flooring project in his stead or to pay any extra costs that might be associated with any delays caused by his inability to complete a job.<sup>[11]</sup>

Thomas was arguably paid by Carpet Design primarily on a per-job basis, even though he did not bid on jobs and there was no set total price, agreed upon in advance, for any given installation project. However, Thomas was entitled to additional pay, on an hourly basis, on projects in which floor grinding, unusual cleanup, or extra nailing was required. In other words, as between Carpet Design and Thomas, it was Carpet Design, not Thomas, that assumed the risk, and the corresponding financial responsibility, for any unexpected or unusual labor. Under these circumstances, it cannot be said that Thomas was paid for his work on a per-job basis and not on any other basis as contemplated by subdivision 2(6).

The remaining three conditions set forth in subdivision 2 all go to other financial opportunities and risks of business operations, that is, the opportunity for profit or loss, Minn. Stat. ' 176.042, subd. 2(7), the existence of continuing or recurring business liabilities or obligations, *id.*, subd. 2(8), and the dependency of business success or failure on the relationship of business receipts to expenditures, *id.*, subd. 2(9). These factors overlap to some extent and may logically be considered together.<sup>[12]</sup>

Thomas received income relative to floor installation for work performed and only for work performed. While he could earn more by working more, A[o]ppportunity for higher earnings from piecework does not indicate the opportunity for profit or loss. Minn. R. 5224.0340, subp. 5.<sup>[13]</sup> Thomas apparently did not set or negotiate either the per-square charge or the hourly fee for his work, both were established by Carpet Design. Thomas also had virtually no fixed expenses, other than for general liability insurance, and, as previously indicated, the importance of this expense in terms of statutory analysis is largely outweighed by the fact that it was Carpet Design that required Thomas to carry the insurance in the first place. Furthermore, having no significant fixed business expenses, Thomas had no real opportunity for loss, in a business context, as his expenditures could not as a practical matter exceed his receipts, or income. He did not incur variable expenses, such as gasoline and staple costs, unless he worked, in which case his pay would always certainly exceed his costs.<sup>[14]</sup> As for recurring business liabilities or obligations, under subdivision 2(9) (emphasis added), we see virtually nothing in the record relative to Thomas's floor installation work that would qualify, except, again, the obligation to carry liability insurance.

We emphasize here again that Thomas may indeed be an independent contractor under the rules and pre-1996 case law principles. However, for certain workers in the construction industry, such independent contractor status is no longer determinative of entitlement to workers' compensation benefits. Because Thomas was not operating a floor installation business as contemplated by Minn. Stat. ' 176.042, subd. 2, he qualifies as an employee under subdivision 1 of that provision, and the judge's conclusion to the contrary must be reversed.

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[1] Now known as Carpet Max Design Studio.

[2] The builder was evidently unhappy that Thomas Quality Homes was competing with him for home construction projects. He agreed, however, that no conflict would be present by virtue of Thomas=s continued floor installation work for Carpet Design.

[3] The owners of Redmann=s called Doug Erickson, the dispatcher for Carpet Design, to inquire about available installers, and Erickson referred them to Thomas. Erickson testified that the Redmanns are his friends.

[4] Business in the sense of a commercial enterprise or venture. See The American Heritage Dictionary 220 (2d college ed. 1991).

[5] Pursuant to Minn. R. 5224.0340, subp. 7, a worker=s ownership of hand tools, instruments, clothing, and similar items is not indicative of independent contractor status where such ownership is common practice in their particular trade.@ While we are construing the statute here, not the independent contractor rules, the rules may provide guidance where the factors in the rules are similar or identical to those in the statute.

[6] While the compensation judge indicated at several points in his decision that Thomas had a home office, there is no evidence in the record to support any such conclusion, and Thomas testified to the contrary.

[7] See, e.g., Minn. R. 5224.0340, subp. 3.

[8] Carpet Design argues that flooring material may not be considered an expense@ because Carpet Design sells the material to the builders. However, Carpet Design charges builders for the total flooring project without differentiating between labor and materials. That both labor and materials are ultimately profit items does not mean that they do not qualify as expenses initially.

[9] The record indicates that Carpet Design had at least one employee who spent the bulk of his time scheduling installers and installations.

[10] Thomas in fact testified that he had owned these basic carpentry tools for many years.

[11] See, e.g., Minn. R. 5224.0020, subp. 2G, indicating that employee status for an artisan is indicated if the artisan is not responsible for damages for noncompletion or for obtaining a replacement to complete the job@ (emphasis added).

[12] See, e.g., Minn. R. 5224.0340, subp. 5 (factors to consider in determining whether opportunity for profit or loss exists include continuing or recurrent financial liabilities or obligations and whether profit or loss in the work depends on the relationship of receipts to expenditures). It is worth noting, however, that this rule speaks in terms of Afinancial liabilities or obligations,@ while the statute uses the phrase Abusiness liabilities or obligations,@ in keeping with the more specific business orientation of the statute.

[13] See also Gerke v. Upstairs Constr. Co., No. 477-80-6800 (W.C.C.A. Apr. 21, 1997) (A<sup>v</sup>irtually all workers who are paid on a piece-work or by the project basis can earn more by performing more work . . . yet payment to such workers is generally characterized not as >profit= but

as simple earning or wages@).

[14] We suppose that Thomas could potentially incur a loss -- that is, money out of pocket -- by hiring assistants and then paying them more than he received for the work from Carpet Design. However, to use this scenario as a basis to find the opportunity for loss defies common sense. It is also important to note here that Carpet Design hired Thomas for the work, not an installation service, and there is no evidence that Thomas had the right to send someone else to perform a job in his place. Reinertson in fact acknowledged that Carpet Design chose installers based on ability. Also, Thomas never in fact paid anyone else to help him in his flooring installation work.



Thursday, March 10, 2005

## Bill Summary - A03644

[Back](#) | [New York State Bill Search](#) | [Assembly Home](#)

[See Bill Text](#)

### A03644 Summary:

SAME AS No same as

SPONSOR John

COSPNSR Nolan

MLTSPNSR

Add S44, Lab L

Establishes a task force within the department of labor to study employment classification and misclassification with respect to a worker being an employee or an independent contractor and report thereon.

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### A03644 Actions:

02/03/2005 referred to labor

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### A03644 Votes:

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### A03644 Memo:

TITLE OF BILL: An act to amend the labor law, in relation to establishing a task force to study employment classification and misclassification

PURPOSE OR GENERAL IDEA OF BILL:

The bill establishes a task force within the Department of Labor to study employment classification and misclassification.

SUMMARY OF SPECIFIC PROVISIONS: The task force shall consist of fourteen members. The Commissioner of Labor and the Dean of the New York State School for Industrial Relations shall be appointed co-chairs without voting authority. Three members shall be appointed by the Governor

including a representative from the Business Council as well as a representative from the NYS AFL-CIO. The Comptroller shall recommend three members. The speaker of the assembly as well as the Temporary President of the Senate shall recommend two members each. Finally, the Minority Leaders in both the Assembly and the Senate shall recommend one member each.

The task force shall hold regional meetings open to those invited or those wishing to speak on the issues being discussed. Vacancies shall be filled in the manner in which they were appointed and seven members shall make a quorum. The task force is authorized to use a number of agencies and public entities for assistance purposes. The task force must produce a report by May 1, 2003, which shall be distributed to the Governor, the Speaker of the Assembly, the Temporary President of the Senate, and the Chairs of the Senate and Assembly Labor Committees.

**JUSTIFICATION:**

The intent of this legislation is to correct the growing problem in our state regarding the classification and misclassification of workers as either employees or independent contractors. The ramifications of employment classification or misclassification are many, and employees' eligibility for unemployment insurance, workers' compensation and disability benefits are implicated. A study of this problem is needed so that the status of our state's workers is fairly and justly determined.

**PRIOR LEGISLATIVE HISTORY:**

A.5339 of 2001-02; labor

A.8161 of 2003-04; labor

**FISCAL IMPLICATIONS:**

None.

**EFFECTIVE DATE:**

This act shall take effect immediately.

**Contact Webmaster**



FORSTMAN AND SEIFERT

PERIOD ENDING 11/5/04  
 EMP. NAME Todd Pooler  
 115 REGULAR HOURS 25.00 1037.50  
 OVERTIME HOURS

TOTAL EARNINGS = 1037.50

F.I.C.A. TAX WITHHOLDING  
 MEDICARE TAX WITHHOLDING  
 FED. WITH-HOLDING TAX  
 STATE WITH-HOLDING TAX

TOTAL DEDUCTIONS =  
 NET PAY 1037.50

STATEMENT OF EARNINGS AND DEDUCTIONS DETACH BEFORE CASHING CHECK

FORSTMAN AND SEIFERT

PERIOD ENDING 10/3/04  
 EMP. NAME Todd Pooler  
 14 REGULAR HOURS 25.00 350.00  
 OVERTIME HOURS

TOTAL EARNINGS = 350.00

F.I.C.A. TAX WITHHOLDING  
 MEDICARE TAX WITHHOLDING  
 FED. WITH-HOLDING TAX  
 STATE WITH-HOLDING TAX

TOTAL DEDUCTIONS =  
 NET PAY 350.00

STATEMENT OF EARNINGS AND DEDUCTIONS DETACH BEFORE CASHING CHECK

FORSTMAN AND SEIFERT

PERIOD ENDING 8/27/04  
 EMP. NAME Todd Pooler  
 275 REGULAR HOURS 25.00 862.50  
 OVERTIME HOURS

TOTAL EARNINGS = 862.50

F.I.C.A. TAX WITHHOLDING  
 MEDICARE TAX WITHHOLDING  
 FED. WITH-HOLDING TAX  
 STATE WITH-HOLDING TAX

TOTAL DEDUCTIONS =  
 NET PAY 862.50

STATEMENT OF EARNINGS AND DEDUCTIONS DETACH BEFORE CASHING CHECK

FORSTMAN AND SEIFERT

PERIOD ENDING 9/3/04  
 EMP. NAME Todd Pooler  
 REGULAR HOURS  
 OVERTIME HOURS

TOTAL EARNINGS = 975.00

F.I.C.A. TAX WITHHOLDING  
 MEDICARE TAX WITHHOLDING  
 FED. WITH-HOLDING TAX  
 STATE WITH-HOLDING TAX

TOTAL DEDUCTIONS =  
 NET PAY 975.00

STATEMENT OF EARNINGS AND DEDUCTIONS DETACH BEFORE CASHING CHECK

HORSTMAN & SEIFERT CONSTRUCTION, INC.  
TRINITY HORSTMAN DL H-623-802-067-305  
MICHAEL SEIFERT DL S-163-603-829-364  
22270 Camber Avenue Ph 952-492-2283  
Jordan, MN 55352

7252

75-1195/019

DATE 11/2/09

PAY TO THE ORDER OF Travis Lorenz \$ 975.00

Nine Hundred Seventy Five & 00/100 DOLLARS



VALLEY BANK  
MINNESOTA  
200 Creek Lane North  
Jordan, MN 55352-0157  
952-492-2666  
www.valleybankjordan.com  
Your Community's Financial Center

*Michael Seifert*

39 hrs

FOR #007252 #091911959# 0070166#

HORSTMAN & SEIFERT CONSTRUCTION, INC.  
TRINITY HORSTMAN DL H-623-802-067-305  
MICHAEL SEIFERT DL S-163-603-829-364  
22270 Camber Avenue Ph 952-492-2283  
Jordan, MN 55352

7253

75-1195/019

DATE 11/2/09

PAY TO THE ORDER OF Travis Lorenz \$ 860.55

Eight Hundred Sixty Two Dollars & 55/100 DOLLARS



VALLEY BANK  
MINNESOTA  
200 Creek Lane North  
Jordan, MN 55352-0157  
952-492-2666  
www.valleybankjordan.com  
Your Community's Financial Center

*Michael Seifert*

34.5 hrs

FOR #007253 #091911959# 0070166#



## **Misclassification of Employees**

Misclassification occurs when an employer treats a worker who would otherwise be a waged or salaried employee as independent contractors (self employed).

### **Why would an employer misclassify an employee? To avoid paying:**

- Federal payroll taxes, including the 7.65% Social Security and the federal unemployment insurance tax.
- Local and City Taxes.
- Workers Compensation premiums
- State unemployment insurance premiums

### **What does the Misclassified Worker Lose?**

- Job security
- Employer tax contributions to employment benefits
- Unemployment insurance benefits
- Workers' Compensation benefits
- Protection of federal and state employment standards laws
- Overtime pay

### **What do we all Lose?**

- FICA tax dollars, which are contributed to Social Security
- Tax revenues at the federal, state and local levels
- Tax dollars for schools, infrastructure, education and city services
- Child Support payments from parents whose income is not reported, or subject to withholding taxes.
- Small businesses shoulder a disproportionate tax burden
- Legitimate, legal tax paying employers suffer from an unfair trade advantages
- Underfunded D.O.L.I.

# **R E M A R K S**

**Edward C. Sullivan. President  
Building & Construction Trades Dept.- AFL-CIO**

**The Social and Economic Costs of Employee  
Misclassification in Construction Study  
Panel Discussion**

**Construction Policy Research Center  
Labor and Worklife Program, Harvard Law  
School and Harvard School of Public Health**

**Cambridge, MA**

**December 13, 2004**

**Thank you Mark....**

**It is a special privilege to be here today to discuss this important study on employee misclassification. On behalf of the Building Trades, I want to commend Dr. Carre (CAH-RAY) and Randall Wilson for their impressive work on this critical issue. Your findings help underscore the extent to which the growing underground economy negatively affects our society.**

**The misclassification of workers has been an all too common occurrence in all sectors of our economy for years.**

**The detriment to the construction industry, in particular, has been apparent. This independent study supports the anecdotal concerns put forth by construction tradesmen or women for decades and will hopefully serve as a catalyst for long overdue reform.**

**Today, I would like to specifically address the impact that the misclassification of employees is having on workers, not just in Massachusetts, but also across the nation.**

**An employer hires a worker; the worker performs a job and agrees to be paid a set hourly rate. Workers who will receive W-2's and those who will receive 1099's at the end of the year may work side-by-side doing the same job.**

**But, there is a big difference because the misclassified worker is being denied the basic rights and benefits afforded to workers in America...rights that took over a century to achieve...unemployment benefits, overtime pay, worker's compensation, social security and, in many cases, health insurance.**

**Short term, the worker is in a losing situation. Misclassified workers, particularly immigrant workers, are often compelled to work for a rate below prevailing wage or even minimum wage.**

**Misclassified workers are also under-compensated for extra hours worked when overtime rates are denied to them.**

**And a misclassified worker is left totally vulnerable if a lay-off or accident or illness leaves them without a paycheck. At the same, the worker's Social Security account is left dormant showing no employer contribution and growth toward retirement.**

**Long term, everyone else ultimately pays the price for employers who fail to meet their legal responsibilities. A laid-off or injured worker lacking unemployment or workers compensation benefits will be forced to turn to public services to survive.**

**Injured or sick workers lacking health insurance...and their families...must seek the most expensive kind of free care at hospital emergency rooms....this free care drives up the cost of health care and insurance across the board.**

**I would suggest that unionized construction workers pay the highest price for employers' misclassification of workers. Because this illegal practice effectively denies union workers access to those jobs by creating a situation where union contractors cannot bid on a level playing field with nonunion contractors, who deliberately misclassify their workers to undercut labor costs.**

**Nonunion contractors do not bear the costs of Social Security, Medicare, workers compensation or health insurance contributions for misclassified workers. This makes them more competitive and more profitable at the expense of others.**

**Ironically, in most states, union health insurance plans are required to pay a surcharge to fund the state's free-care pool. These free-care pools pay for the health care provided to misclassified workers. Therefore, union members and legitimate employers are actually paying the costs the health care that unscrupulous employers refuse to provide.**

**In Congress and the White House, Social Security and immigration are at the top of the 2005 agenda. I would suggest that there is no better time for them to address the problem of misclassified employees because it affects both of those major issues.**

**The misclassification practice has caused a major loss in revenue into Social Security and Medicare program accounts.**

**And the economic abuse of immigrant workers is not only illegal, it is immoral.**

**We can take a lesson from our neighbors to the north. Faced with a similar report to the one being released here today, almost a decade ago Canada declared war on what they refer to as "undeclared hours" and took concerted action to stop this underground economy practice. They mobilized all industries, modernized and increased inspections and stiffened penalties for noncompliance.**

**Let me give you a brief idea of their success by telling you about what happened in the province of Quebec alone.**

**Between 1996 and 2001, in just 5 years in one province, they recovered 70 million undeclared hours, which amounted to shutting down about 70% of potential underground hours.**

**They realized a fiscal recovery of \$580 million dollars as well as the restoration of a fair and competitive market. The program itself cost them \$34 million, which amounts to a \$1 investment for every \$21 retrieved from their underground economy.**

**And those are just the monetary considerations. What was reclaimed for those affected workers and their families in fair compensation, self-esteem and peace of mind cannot be calculated in dollars alone.**

**I believe we could realize a similar outcome if federal and state authorities take direct and sustained actions to confront the problem.**

**This will be only be possible if we start recognizing the misclassification of workers for what it really is: tax evasion and insurance fraud.**

**Ladies and gentlemen, this is not an innocent mistake by an employer or employer's accountant, whether motivated by greed or used to get an unfair advantage in the marketplace.**

**Misclassifying workers is a calculated and deliberate illegal action to avoid financial responsibility to state and federal governments, insurance providers and to workers.**

**Without much stronger enforcement of the laws governing employers and employment, this problem will only continue to fuel the growth of the underground economy in the U.S.**

**To accept the status quo only serves to unfairly punish taxpayers, legal workers and law-abiding employers.**

**We are grateful to the Construction Policy Research Center Labor and Worklife Program, Harvard Law School and Harvard School of Public Health for helping to bring public attention to this critical problem.**

**I am hopeful that, armed with the results of this independent study from the UMass- Boston's McCormack Graduate School of Public Policy, we will be able to mobilize support across all industries and at both the state and federal levels for increased enforcement and needed policy change.**

**I can assure you that the Building Trades and all of organized labor will make this a priority in 2005.**

**Thank you.**

**(end)**

# **The Social and Economic Costs of Employee Misclassification in Construction**

**Françoise Carré, Ph.D. and Randall Wilson  
Center for Social Policy  
McCormack Graduate School of Policy Studies  
University of Massachusetts Boston**

A report of the

**Construction Policy Research Center**

**Labor and Worklife Program, Harvard Law School  
and  
Harvard School of Public Health**

**Elaine Bernard, Ph.D. and Robert Herrick, Sc.D. Principal Investigators**

December 17, 2004

This project was funded by the Center to Protect Workers' Rights in Silver Spring, MD.  
through a collaborative grant from the National Institute of Occupational Safety and Health.

## I. Summary Findings

With this study, a cross disciplinary team of the Center for Construction Policy Research has taken a first and significant step in documenting employee misclassification in the Massachusetts construction industry. This report documents the dimensions of misclassification and its implications for tax collection and worker compensation insurance.

Misclassification occurs when employers treat workers who would otherwise be waged or salaried employees as independent contractors (self employed). Or as one report commissioned by the U.S. Department of Labor put it, misclassification occurs "when workers (who should be) getting W-2 forms for income tax filing instead receive 1099- Miscellaneous Income forms."<sup>1</sup>

Forces promoting employee misclassification include the desire to avoid the costs of payroll taxes and of mandated benefits. Chief among these factors is the desire to avoid payment of worker compensation insurance premiums.

Employee misclassification creates severe challenges for workers, employers, and insurers as well as for policy enforcement. Misclassified workers lose access to unemployment insurance and to appropriate levels of worker compensation insurance. Also, they are liable for the full Social Security tax. They lose access to employer-based benefits as well. For employers, the practice of misclassification creates an uneven playing field. Employers who classify workers appropriately have higher costs and can get underbid by employers who engage in misclassification. The collection of Unemployment Insurance tax, and to some degree that of the income tax, are adversely affected by misclassification. Worker Compensation insurers experience a loss of premiums.

Using several years of de-identified data on unemployment insurance tax audits made available by the Massachusetts Division of Unemployment Assistance (DUA), we have developed estimates of the dimensions of misclassification in the state and particularly in the construction industry.

Because this study relies on Unemployment Insurance tax audits to develop estimates of the dimensions and impacts of misclassification, it addresses primarily the forms of misclassification that can be documented. It does not fully capture the scope of underground economy activities in construction and other sectors.

### Employee Misclassification in Massachusetts

- During the years 2001-03, at least one in seven, or 14%, of MA construction employers are estimated to have misclassified workers as independent contractors. This conservative estimate translates into a minimum of 2,634 construction employers statewide.<sup>2</sup> Across all industries<sup>3</sup>, 13% of employers were found to under-report worker wages and UI tax liability to the Commonwealth and thus to have misclassified workers. This represents about 26,000 employers statewide. This conservative estimate is based on audits of employers that, while not selected by fully statistically random methods, are considered random, or non-targeted, audits in common auditing practices (Planmatics 2000).

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<sup>1</sup> Lalith de Silva et al. 2000. *Independent contractors: prevalence and implications for Unemployment Insurance programs*. Planmatics, Inc., Prepared for US Department of Labor Employment and Training Administration. Planmatics, 2000. (Hereafter, Planmatics 2000.)

<sup>2</sup> The yearly number of establishments averaged over 2001-03 was 18,803 in construction and 194,315 across all industries.

<sup>3</sup> The "all industries" category includes Construction as well.

- *Less conservative methods suggest that construction misclassification could run higher and range up to one in four (24%) of MA construction employers.* Projecting this rate to actual DUA establishment counts, we estimate that up to 4,459 construction employers are misclassifying workers statewide. Construction employers appear to engage in misclassification more frequently than the average of all employers. Across all industries, up to 19% of employers misclassified at some point over the period, amounting to about 36,500 employers. This less conservative method includes a mix of random audits and of audits explicitly targeted based on past behavior (and thus more likely to uncover misclassification).
- *When construction employers misclassify, they do so extensively.* A key measure of misclassification is the degree or severity of its impact *within* employers who misclassify. This measure indicates that *misclassification is a common occurrence rather than an isolated incident in construction companies where misclassification occurs.* According to our low estimate, 4 in 10 workers are misclassified in construction employers found to be misclassifying in 2001-03. The severity of impact of misclassification found among construction employers is one of the three highest among industrial sectors.
- When we consider the workforce of all employers (those that misclassify and those that do not), *at least one in twenty (5.4%) construction workers in MA is estimated to be misclassified as an independent contractor during 2001-03, according to our conservative estimate.* The extent of misclassification is slightly higher in construction than the average across all industries (4.5%). And as we look at larger pools of data that include audits that are explicitly targeted based on past record, the extent of workers misclassified as independent contractors goes up to 11% in construction.
- We estimate that the actual number of workers affected across the Commonwealth ranges from almost 7,478 to about 15,790 construction workers.<sup>4</sup> For the workforce as a whole, it could range from about 125,725 to 248,206.
- *While misclassified individuals lose out on unemployment insurance, the unemployment insurance system is adversely affected as well.* We estimate that from \$12.6 million to \$35 million in unemployment insurance taxes are not levied on the payroll of misclassified workers as should be. Of these amounts, from \$1.03 to \$3.9 million are due to misclassification in construction.
- *At income tax time, workers misclassified as independent contractors are known to under-report their personal income; therefore, the state experiences a loss of income tax revenue.* Based on an estimate that 30% of the income of misclassified workers is not reported, we roughly estimate that \$91 million of income tax are lost. Of these, \$4 million are lost due to misclassification in construction. Based on an estimate that 50% of misclassified worker income goes unreported, a rough estimate of income tax loss amounts to \$152 million of revenue. Of these, \$6.9 million are due to misclassification in construction.
- The worker's compensation insurance industry loses on premium collection, a significant issue if, as is reported in previous studies<sup>5</sup>, misclassified workers are surreptitiously added onto companies' worker compensation policies *after* they are injured. For these workers, benefits are paid out even though premiums were not collected. We estimate that up to \$91 million of worker compensation premiums are not paid for misclassified workers. Of this amount, \$7 million are not paid due to construction misclassification.
- The prevalence of misclassification has increased over the years since 1995 and so has the severity of impact. This is true for construction and across all sectors. Our low estimate for the

<sup>4</sup> The yearly number of workers over the period 2001-03 was 138,736 in construction, and 2,797,203 across all industries.

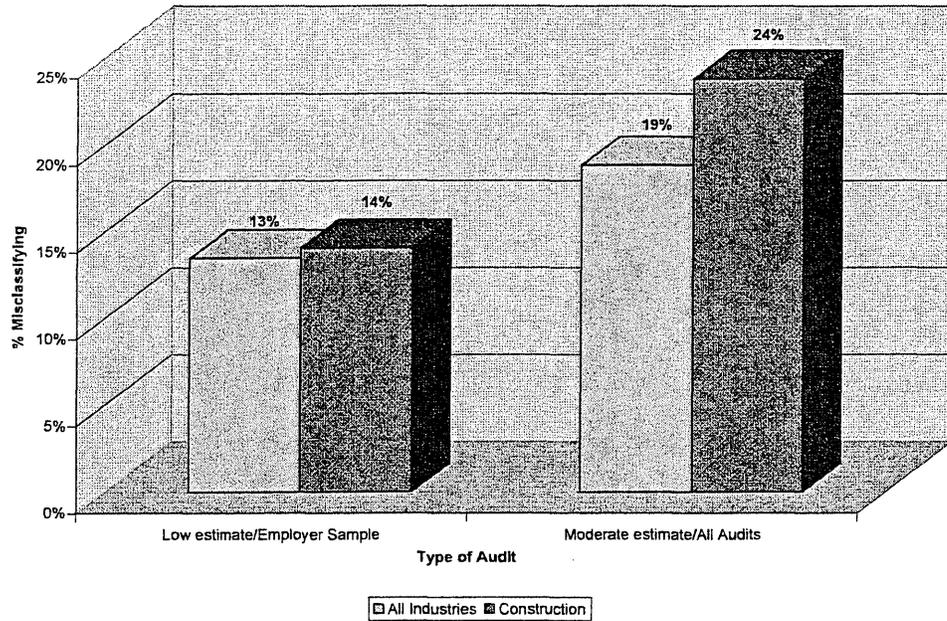
<sup>5</sup> Planmatics, 2000.

percent of construction employers found to be misclassifying was 10% for 1995-97 and 11% for 1998-2000 as compared to 14% for the 2001-03 period. The low estimate for all industries combined was 8% for the period 1995-97 and 11% for 1998-2000 as compared to 13% for the most recent period. The severity of impact, that is, the percent of workers misclassified *in the workforce of employers found to be misclassifying* appears to have increased as well.

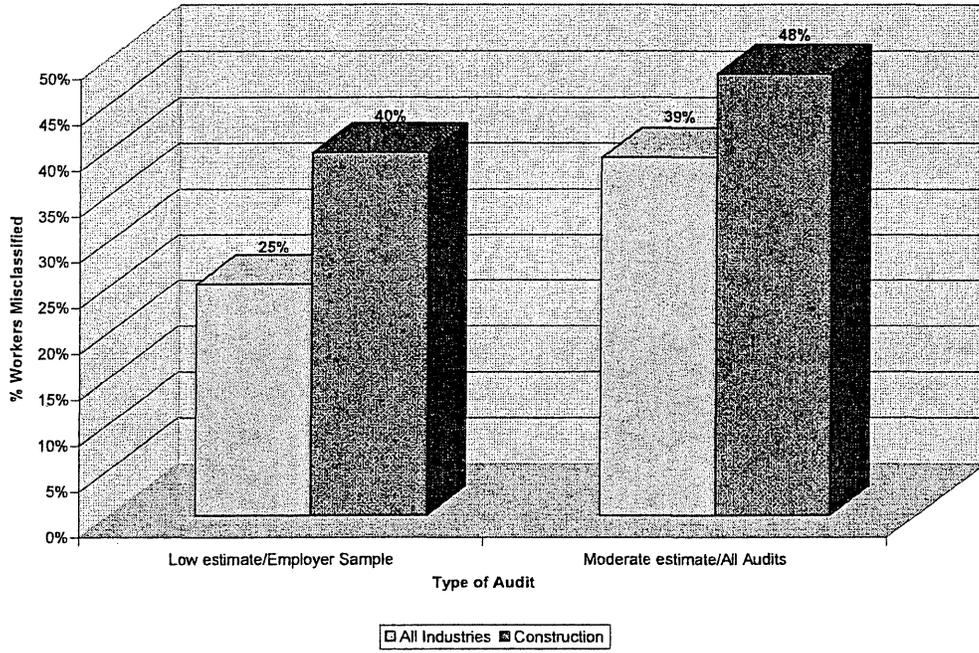
- We believe that worker misclassification is a compelling problem requiring attention. It has significant consequences for workers, employers, insurers, and for tax revenues. We strongly recommend that a study employing both business and individual income tax returns be conducted with the Department of Revenue. It would provide an even more accurate measure of the tax revenue implications of misclassification. Workers, businesses, revenue collection agencies, and policy analysts all stand to benefit from better documentation of the impacts of misclassification.

# Facts at a Glance

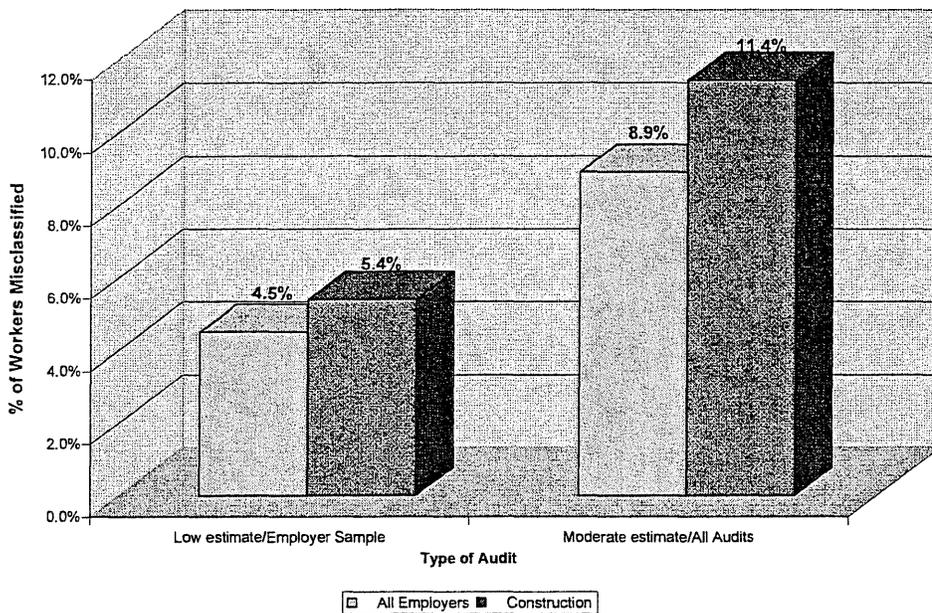
## % Employers Misclassifying Workers 2001-2003



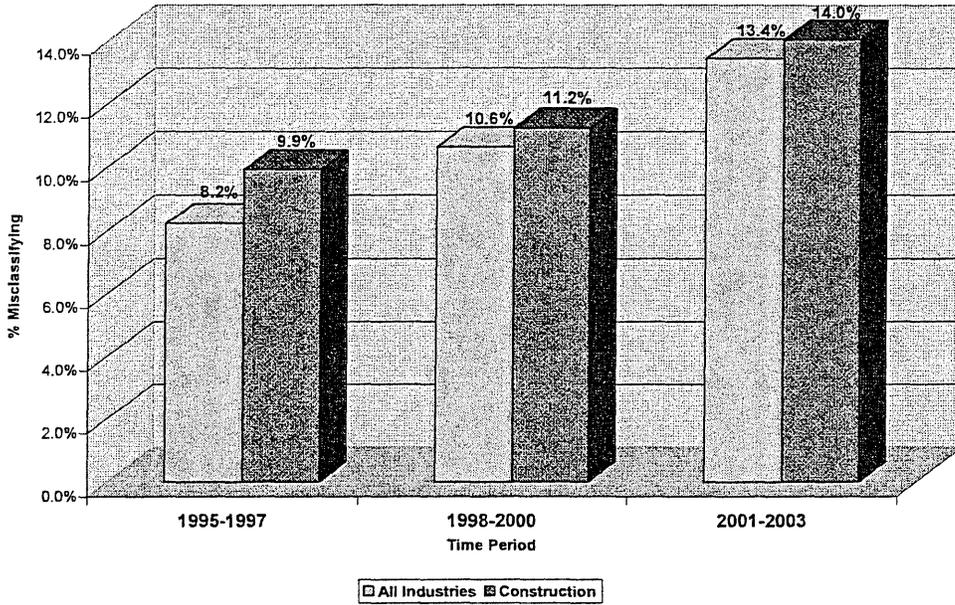
### % Workers Misclassified in Misclassifying Employers



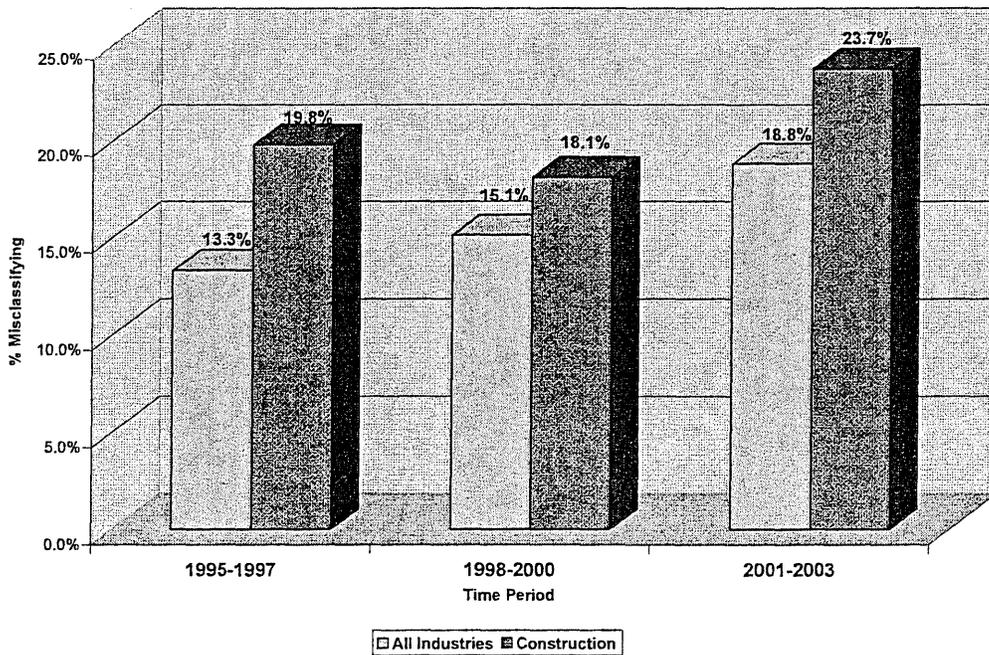
### Extent of Workers Misclassified 2001-2003



**Misclassification Rate by Time Period: Low Estimate/Employer Sample**



**Misclassification Rate by Time Period: Moderate Estimate/All Audits**



## Acknowledgements

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## II. The Problem

*Misclassification occurs when employers treat workers who would otherwise be waged or salaried employees as independent contractors.* Or, as one report commissioned by the U.S. Department of Labor put it, "when workers (who should be) getting W-2 forms for income tax filing instead receive 1099- Miscellaneous Income forms."<sup>6</sup> In practice, these workers must take out their own taxes for Social Security and Medicare, rather than having the employer withhold them. But determining who is an employee, and who is a contractor, is sometimes far from simple. The distinction is complicated by deliberate deceptions on the part of employers (and workers, at times), who seek to avoid paying taxes and meeting other legal obligations to employees and to government. But even when there is no intent to deceive, ambiguities in employment law and relationships can result in misclassification, or make it easier to occur.

*How is misclassification accomplished?* Misclassification usually begins at the point when workers are hired. Practices vary widely. In one common pattern, employers put prospective hires to work as self-employed contractors and, for tax purposes, issue them a "1099" Miscellaneous income form. (Workers are sometimes referred to on construction sites as "1099s" or "subs," as well as independent contractors.) The paperwork does not stop there. Sometimes, before workers can begin employment, employers require them to purchase their own workers' compensation and liability insurance coverage. They are expected to sign certificates of worker's compensation insurance and of liability insurance as well as various other waivers absolving the employer of obligations. (However, because this workers' compensation insurance only covers the holders' employees, it has no value for the worker and only protects the employer in case of tax and/or insurance audits.) Another pattern, at the other end of the spectrum of practices, entails entirely informal arrangements with cash payment and no 1099 tax reporting. This second pattern leaves no documentation; the practice is part of what is termed the "underground economy" and is often paired with the hiring of unprotected, undocumented workers.

*Forces promoting employee misclassification include the desire to avoid the costs of payroll taxes, and of mandated benefits.* One factor stands out, however. A recent Department of Labor-sponsored report found that the "number one reason" for misclassifying workers lies in avoiding

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<sup>6</sup> Planmatics, 2000.

payment of workers' compensation insurance premiums and thus escaping workplace injury and disability-related disputes.<sup>7</sup> Driven by increased medical costs, worker compensation costs rose significantly over the past 20 years.<sup>8</sup> And in industries such as construction worker compensation costs are particularly high.<sup>9</sup>

*Misclassification creates severe challenges for workers, employers and insurers as well as for policy enforcement.* For workers who are misclassified, it creates immediate and long term problems. These include the lack of access to unemployment insurance, and to appropriate levels of worker compensation insurance.<sup>9</sup> They entail liability for the full Social Security tax (rather than half for employees). They also include the loss of access to health insurance, and other employer-based social protection benefits. If injury strikes, it can be catastrophic for the worker.

Misclassification creates challenges for compliant employers because it creates an uneven "playing field." Employers who respect the law and classify employees appropriately have a higher wage bill and can get underbid by contractors that do not comply and have lower costs.

Misclassification presents a two-fold challenge for policy implementation. The *enforcement* of labor standards such as health and safety standards, or of wage and hours regulations is made more difficult in contexts where there are misclassified independent contractors. *Tax collection* is affected as well. This includes collection of unemployment insurance tax. It also includes state income tax because independent contractors are known to underreport their income.

The worker compensation insurance industry is also adversely affected by misclassification. Employers with misclassified workers have been known to surreptitiously add uncovered independent contractors, or those with insufficient coverage, back onto a company's worker compensation policy *after* they are injured. Therefore, benefits are paid out to workers for whom an insurance premium has not been paid according to a U.S. DOL commissioned study.<sup>10</sup>

Misclassification presents broader societal costs that are harder to document. For example, workers without health insurance might resort to publicly subsidized emergency medical care. The costs of "uncompensated care pools" make their way into the costs of health and worker compensation insurance. Also, workers who sustain injuries, and have inadequate worker compensation coverage, make use of public assistance when they are unable to work.

A problem of this importance for individual workers, businesses, and government requires thorough documentation. This study of the Center for Construction Policy Research represents a significant step in documenting employee misclassification in the Massachusetts construction industry and in estimating the costs of misclassification in terms of tax loss and worker compensation insurance premium losses. In subsequent work, these researchers will benchmark Massachusetts results with those of other New England states.

Using several years of de-identified data on unemployment insurance tax audits made available by the Massachusetts Division of Unemployment Assistance, we have developed estimates of the dimensions of misclassification in the state and particularly in the construction industry.<sup>11</sup> Using methods established in previous studies in particular one commissioned by the U.S. Department of Labor (Planmatics 2000), we present projections of the costs of misclassification for unemployment insurance, income tax, and worker compensation insurance systems.

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<sup>7</sup> Planmatics, 2000.

<sup>8</sup> This rapid growth has tapered in recent years but the cost of Worker Compensation insurance remains high.

<sup>9</sup> Misclassified workers must establish that they are indeed employees in order to receive unemployment or worker compensation insurance.

<sup>10</sup> Planmatics, 2000, p. 76.

<sup>11</sup> This study analyzes data on private sector employers exclusively.

Unemployment insurance (UI) tax audit records are a key source of information on employee misclassification. When an audit finds workers not covered by UI who should be (and documents under-reported wages), the cause is virtually always misclassification as independent contractor of someone who should be an employee included in the company payroll. Therefore, information from UI tax audits is a useful proxy for employee misclassification.<sup>12</sup>

Because this study relies exclusively on UI tax audits to develop estimates of the dimensions and impacts of misclassification, it addresses primarily the forms of misclassification that can be documented. It cannot fully capture underground economy activities in construction and other sectors.

### III. Dimensions of Misclassification in Massachusetts

#### When employers engage in misclassification

During the years 2001-03, at least one in seven, or 14%, of MA construction employers are estimated to have misclassified workers as independent contractors. This conservative estimate translates into a minimum of 2,634 construction employers statewide. Across all industries<sup>13</sup> as a whole, 13% of employers were found to under-report worker wages and UI tax liability to the Commonwealth and thus to have misclassified workers. This represents about 26,000 employers statewide. This conservative estimate is based on audits of employers that, while not selected by fully statistically random methods, are considered non-targeted or random audits in common auditing practices (Planmatics 2000).

*Less conservative methods suggest that construction misclassification could run higher and range up to one in four (24%) of MA construction employers.* Projecting this rate to actual DUA establishment counts, we estimate that up to 4,459 employers are misclassifying construction workers statewide. Construction employers appear to engage in misclassification more frequently than the average of employers across all industries. State wide, up to 19% of all employers misclassify at some point over the period, amounting to about 36,500 employers. This less conservative method includes a mix of random audits and of audits explicitly targeted based on past behavior (and thus more likely to uncover misclassification).

#### Prevalence of Misclassification: Percent of Employers Found to Misclassify Workers as Independent Contractors - Massachusetts 2001-2003

	Low estimate (Employer Sample)	Moderate estimate (All Audits)
All Industries	13%	19%
<b>Construction</b>	<b>14%</b>	<b>24%</b>

#### Estimated Number of MA Employers Found to Misclassify Workers 2001-03

	Low estimate (Employer Sample)	Moderate estimate (All Audits)
All industries	26,038	36,531
<b>Construction</b>	<b>2,634</b>	<b>4,459</b>

<sup>12</sup> In audit data, "new workers" that is, previously uncovered workers who are to be added to the employer payroll for UI tax purposes are proxies for misclassified workers.

<sup>13</sup> This "all industries" category includes Construction as well.

## Workers affected by misclassification

To understand how workers are affected by misclassification, we use two measures. The first measure is the percent of workers misclassified *within employers found to have misclassified workers*. This first measure is the degree of impact, or *severity of impact*, of misclassification when it occurs. The second is the percent of workers misclassified *among all workers in construction or in the state as a whole* (including employers who misclassify and those who do not). This second measure is the *extent of misclassification*.

### 1) Severity of impact of misclassification:

The measure of severity of impact indicates that in construction companies where misclassification occurs, it is a common occurrence rather than an isolated incident. According to the low estimate, 4 in 10 workers are misclassified in these employers. A less conservative estimate counts 1 in 2 workers affected among construction employers that are misclassifying. The severity of impact measure is higher in construction than average. Construction ranks among the top three industries in the state in terms of severity of impact.

### Percent of Workers Misclassified among Misclassifying Employers: 2001-2003

	Low estimate- (Employer Sample)	Moderate estimate (All Audits)
All industries	25%	39%
<b>Construction</b>	<b>40%</b>	<b>48%</b>

### 2) Extent of misclassification

Over the 2001-03 period, at least one in twenty (5.4%) construction workers in MA is estimated to be misclassified as an independent contractor during 2001-03. The extent of misclassification is slightly higher in construction than the average across all industries (4.5%). As we look at larger pools of data that include audits that are explicitly targeted based on past record, the extent of workers misclassified as independent contractors increases up to 11.4% in construction.

Based on these proportions, we estimate that the actual number of workers affected across the Commonwealth ranges from almost 7,500 to about 16,000 construction workers. For the workforce as a whole, it could range from about 125,700 to 248,206.

### Extent of MA Workers Misclassified as Independent Contractors

	Low estimate- (Employer Sample)	Moderate estimate (All Audits)
All industries	4.5%	8.9%
<b>Construction</b>	<b>5.4%</b>	<b>11.4%</b>

### Estimated Number of MA Workers Misclassified as Independent Contractors

	Low estimate- (Employer Sample)	Moderate estimate (All Audits)
All industries	125,725	248,206
<b>Construction</b>	<b>7,478</b>	<b>15,790</b>

## The problem worsens over time

The prevalence of misclassification has increased over the years since 1995 and so has the severity of impact. This is true for Construction and across all industries. This trend holds for random, or non-targeted, audits (low estimate/Employer Sample), a group of audits whose characteristics have not changed significantly over time, according to the DUA audit department. The trend also holds for all audits, a group whose composition has changed over time. The mix of audit methods has included a growing share of targeted audits and those are more likely to result in a finding of misclassification.<sup>14</sup> Nevertheless, findings from the random audits present compelling evidence that misclassification is increasing in construction as well as statewide, across all industries.

### Percent of employers found to be misclassifying across time: All Industries

	1995-1997	1998-2000	2001-2003
Low estimate (Employer Sample)	8%	11%	13%
Moderate estimate (All Audited Employers)	13%	15%	19%

### Percent of employers found to be misclassifying across time: Construction Employers

	1995-1997	1998-2000	2001-2003
Low estimate (Employer Sample)	10%	11%	14%
Moderate estimate (All Audited Employers)	20%	18%	24%

Additionally, where misclassification occurs, it is displaying greater severity of impact, meaning that the share of workers affected within misclassifying employers appears to have increased over the years. This pattern holds particularly for Construction.

### Severity of Impact of Misclassification: % of Workers Misclassified in Misclassifying Employers Across Time: Low Estimate (Employer Sample)

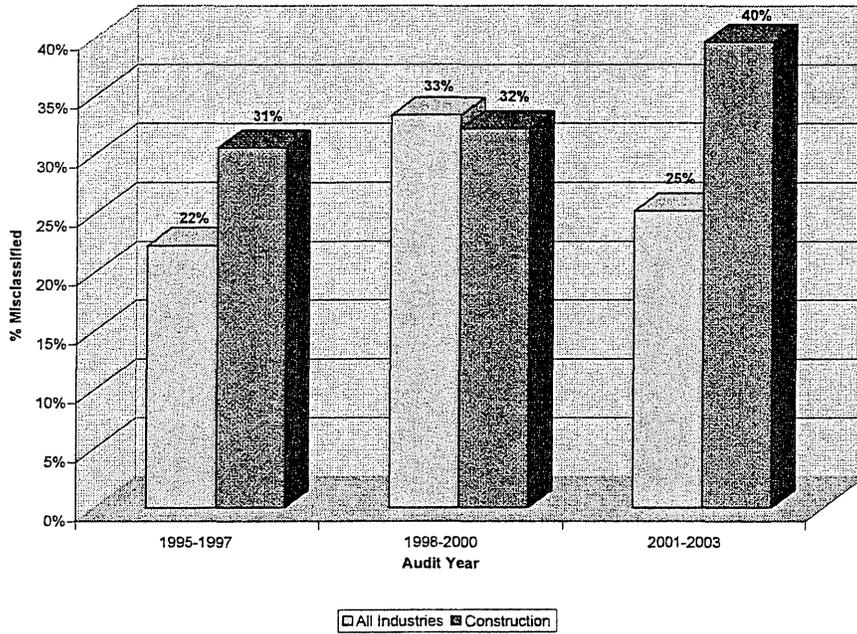
Audit Year	Construction	All Industries
1995-1997	31%	22%
1998-2000	32%	33%
2001-2003	40%	25%

### Severity of Impact of Misclassification: % of Workers Misclassified in Misclassifying Employers Across Time: Moderate Estimate (All Audits)

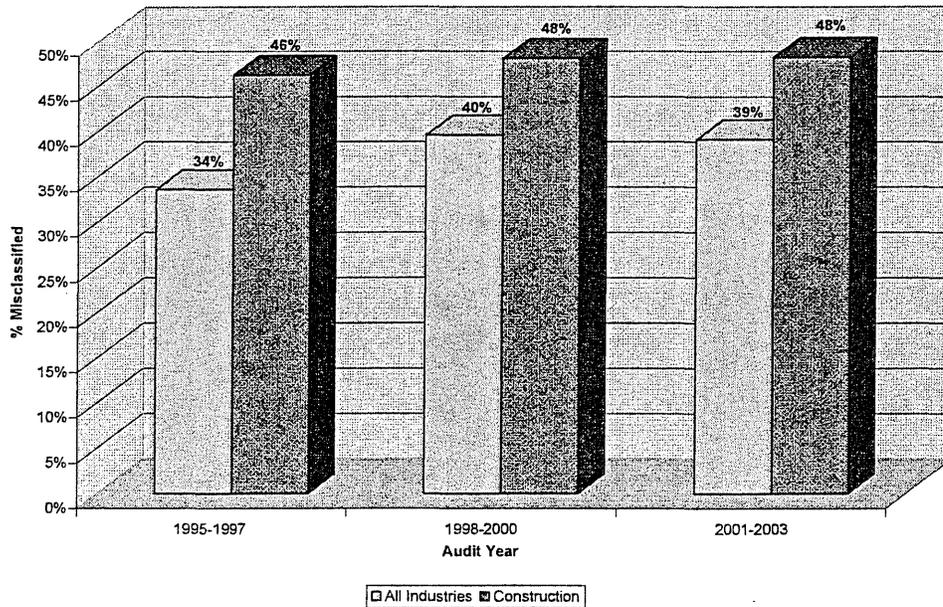
	Construction	All Industries
1995-1997	46%	34%
1998-2000	48%	40%
2001-2003	48%	39%

<sup>14</sup> As discussed in a later section, targeted audits result from a study of past behavior related to UI tax payment or a contested UI claim.

**% Workers Misclassified in Misclassifying Employers Over Time:  
Randomly Audited Employers 1995-2004**



**% of Workers Misclassified in Misclassifying Employers Over Time:  
All Audited Employers 1995-2004**



## IV. Implications of Employee Misclassification in Massachusetts

We estimate the implications of employee misclassification for unemployment insurance tax revenues as well as state income tax revenues. We also estimate the amount of workers' compensation insurance premiums lost due to misclassification. These cost estimates rely upon our *Low Estimates* of prevalence and extent of misclassification (random audits). They are therefore conservative estimates. In fact, our approach is more conservative than that used in the DOL commissioned study (Planmatics 2000) which used a rate of prevalence derived from mixes of random and targeted audits. (Further details on calculation methods are in the Appendix.)

### The implications of employee misclassification for Unemployment Insurance tax

Workers who should be misclassified as employees lose out when work ceases, and they are ineligible for unemployment insurance compensation. In some cases, workers may be unaware that they are ineligible. Some employer audits are triggered when workers file for unemployment insurance and the claim is contested.

In addition to individuals, the unemployment insurance system is also affected by misclassification. The unemployment insurance tax is a payroll tax and, when workers are misclassified, the tax is not levied on their earnings, as it should. We estimate that from \$12.6 to \$35.1 million of UI tax were lost over the period 2001-03 due to misclassification statewide.<sup>15</sup> Of that amount, from \$1 to \$3.9 million of UI tax were lost due to misclassification in the construction sector per se. These losses correspond to annualized averages ranging from \$3.4 to \$11.7 million statewide, and \$334,000 to \$1.3 million due to construction alone.

For the period 2001 to 2003, we further estimate that the state lost an estimated \$83 to \$142 in unpaid UI taxes per worker misclassified in all industries, and between \$134 and \$251 per construction worker misclassified (2001-2003).

**Estimate of UI Tax Impacts from Misclassification, MA 2001-2003<sup>16</sup>**

	All industries	Construction
Low estimate (Employer sample/Random audits)	\$12,629,058	\$1,030,311
Moderate estimate (All audits)	\$35,125,471	\$3,961,678

To derive these estimates of the size of the UI tax loss, we replicated the method used in the 2000 US DOL commissioned report to assess the impacts of misclassification on UI trust funds. Essentially, the method entails computing the average tax loss per worker due to misclassification for the audit sample and multiplying this amount by the estimated number of workers misclassified statewide.

<sup>15</sup> The low estimate is derived using the percent of workers misclassified in the random/Employer Sample audit results only. The Moderate estimate is derived using the percent of workers misclassified in results from all audit types.

<sup>16</sup> These figures were computed using the methodology of Planmatics, Inc., in a report for the U.S. Department of Labor.

## The implications of employee misclassification for state income tax revenues

At income tax time, workers misclassified as independent contractors are known to under-report their personal income (they are over-represented among taxpayers found to owe taxes relative to their share of taxpayers and the problem seems to have worsened).<sup>17</sup> Therefore, the state experiences a loss of income tax revenue. Based on an estimate that 50% of misclassified worker income goes unreported, a rough estimate of income tax loss amounts to \$152 million of revenue. Of these, \$7 million are due to misclassification in construction. Based on an estimate that 30 % of the income of misclassified workers is not reported, we roughly estimate that \$91 million of income taxes are lost. Of these, \$4 Million are lost due to misclassification in construction.

This is a broad estimate applying the state's 5.3 percent income tax rate to the unreported share (50% or 30%) of personal income of misclassified workers. We assumed that any standard or itemized deductions were taken fully on the reported share of income and therefore do not apply to the unreported income.<sup>18</sup>

These cost estimates make conservative assumptions about the share of misclassified independent contractor income that goes unreported. A U.S. General Accounting Office report cites IRS reports that self-employed workers operating formally under-report 32 % of their business income<sup>19</sup> but that "informal suppliers" (self employed reporting cash income) do not report 81 percent of their income (GAO 1997, p. 3). Therefore, an estimate of tax loss prompted by employee misclassification could be higher, if higher shares (than 50%) of total income go unreported.

It is also worth noting that we did not compute the loss of federal tax revenue which is also likely to be high. The IRS estimates that unreported income contributes to most of the tax gap (difference between taxes owed and taxes collected).<sup>20</sup>

	30% of income is not reported	50% of income is not reported
All industries	\$91,546,482	\$152,577,470
Construction	\$ 4,161,507	\$ 6,935,845

<sup>17</sup> Historically, self-employed workers (whether misclassified or not) have tended to under-report their income, according to federal sources. For example, of \$79.2 billion in taxes owed the IRS in FY93, 74 % was owed by taxpayers with primarily non-wage income. Also, the IRS Inspector General reported that the number of 1099 information returns with missing or incorrect Taxpayer Information Numbers (an indicator of possible misclassification) grew by 36% from 1995-98 (US Treasury Department 2001).

<sup>18</sup> For this computation, we estimated the annual (self employment) earnings of misclassified construction workers to be \$35,000. This is a conservative estimate, lower than median earnings in the state. We used this estimate because we found the UI audit file to be an unreliable source of information on total earnings. We estimated average annual earnings for workers across all industries to be \$45,796, a simple average computed on the BLS-ES202 database for Massachusetts.

<sup>19</sup> A 1974 IRS report indicated that all independent contractors (misclassified or not) did not report 26% of their income, so under-reporting may be worsening over time (US Treasury Department 2001, p. 7).

<sup>20</sup> Out of a \$62.8 billion income tax gap from individuals in 1992, 32% or \$20.3 billion was due to self-employed workers (GAO 1994).

## **The implications of employee misclassification for worker compensation**

The workers compensation insurance industry loses on premium collection, a significant issue if, as is reported in previous studies, misclassified workers are surreptitiously added onto companies' worker compensation policies *after* they are injured. For these workers, benefits are paid out even though premiums were not collected.

Data were not available to us to compute the extent to which benefits are paid to workers for whom premiums were not paid. However, we estimate the amount of insurance premiums that would have been collected were workers not misclassified.

We estimate that over the period 2001-03, up to \$7 million of worker compensation premiums were not paid for misclassified construction workers and up to \$91 million of premiums were not paid for misclassified workers across all industries. This estimate is broad. It applies an average worker compensation premium of \$15 per \$100 of payroll to the estimated amount of wages for misclassified workers statewide, in construction and across all industries. Alternatively, with an average worker compensation premium of \$12 per \$100 of payroll, we estimate that \$5.5 million of premium were not paid for misclassified construction workers and \$73 million were not paid for misclassified workers in all industries.

A more detailed estimate would apply detailed rates for construction trades (such as finished carpentry, or drywall) appropriately weighed by the share of employment accounted for by each trade.

## **V. What lies behind the Low and Moderate Estimates?**

We have taken a *conservative approach* in estimating the overall prevalence, extent, and tax implications of misclassification in Massachusetts. We derived estimates on the number of employers engaged in misclassification, the number of workers affected, and their tax revenue consequences using the results of a subset of audits that are the audits labeled random,<sup>21</sup> or non-targeted, according to standard auditing practices. (The Massachusetts Division of Unemployment Assistance refers to these audits as the "Employer Sample.")

In choosing to work with Unemployment Insurance tax audits to develop low and moderate estimates of misclassification, we took the lead from a study commissioned by the U.S. Department of Labor (Planmatics 2000). Our estimates for "low," and "moderate" rates of misclassification are based on the different categories employed by the DUA for selecting audit candidates. *Low* estimates are based solely on audits listed here as "random" or less targeted (the Employer Sample) while *moderate* estimates are based on all categories of audits from random to targeted. Targeted audits find higher levels of prevalence of misclassification. (Further details are provided in the Appendix.)

## **VI. How does the situation in construction compare to that in other industries?**

In Massachusetts, the percent of construction employers engaged in misclassification and the overall percent of workers affected are slightly higher than average but not among the highest. *However, when construction employers are found to be misclassifying, the percent of their workers affected by misclassification ( "severity of impact" measure) is among the highest among industrial sectors.* In other words, the construction sector as a whole has a prevalence of misclassification that is high but, most importantly, it includes firms that, when engaged in misclassification, do so for a significant share of their workers. In the employer sample, among employers engaged in misclassification, up to 40 percent of the workforce is found to be misclassified.

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<sup>21</sup> This is the nomenclature used by US DOL to describe these audits (Planmatics 2000).

Prevalence of Misclassification by Industry and Audit Type – 2001-03

	Low estimate- (Employer Sample)	Moderate estimate (All Audits)
Transportation/utilities	21.4%	28.7%
Information	20.9%	28.7%
Professional/business services	19.0%	22.2%
Education/health services	15.7%	18.7%
Natural resources	14.6%	17.6%
<b>Construction</b>	<b>14.0%</b>	<b>23.7%</b>
<b>Total (all industries)</b>	<b>13.4%</b>	<b>18.8%</b>
Manufacturing	12.9%	15.3%
Other services, private	12.5%	20.0%
Financial activities	10.8%	15.7%
Leisure/hospitality	10.4%	13.7%
Trade	10.1%	13.4%

Extent of Misclassification by Industry and Audit Type: Percent of Total Employment Affected

	Low estimate- (Employer Sample)	Moderate estimate (All Audits)
Transportation/utilities	12.0%	17.0%
Other services, private	8.5%	13.1%
Professional/business services	7.2%	13.5%
Education/health services	5.4%	16.1%
<b>Construction</b>	<b>5.4%</b>	<b>11.4%</b>
<b>Total (all industries)</b>	<b>4.5%</b>	<b>8.9%</b>
Natural resources	4.1%	10.6%
Leisure/hospitality	4.0%	4.8%
Trade	3.8%	5.0%
Financial activities	3.7%	7.2%
Information	3.1%	14.3%
Manufacturing	1.4%	2.5%

## Severity of Impact by Industry and Audit Type: Percent of Misclassified Workers among Employers Found to be Misclassifying

Industry	Low estimate- (Employer Sample)	Moderate estimate (All Audits)
Transportation/utilities	48%	52%
Other services, private	44%	52%
<b>Construction</b>	<b>40%</b>	<b>48%</b>
Professional/business services	29%	43%
Natural resources	28%	43%
Leisure/hospitality	26%	29%
<b>Total (all industries)</b>	<b>25%</b>	<b>39%</b>
Education/health services	24%	55%
Financial activities	23%	34%
Trade	19%	25%
Manufacturing	13%	16%
Information	10%	44%

## VII. Strengths and limitations of estimates of misclassification

Prior research on misclassification has generated estimates *for all industries* primarily, rather than for construction per se. Only one federal study provides a 1984 estimate that 20 % of construction employers engage in misclassification (GAO 1996).

In this section, we examine in greater detail estimates from other studies for all industries and compare these with the estimates we derived from our analysis of the Massachusetts UI tax audit data. This exercise has enabled us to put lower and upper bounds to our estimate.

### Comparing Massachusetts 2001-03 estimates to data from other states

The table below summarizes the results of the study commissioned by the U.S. Department of Labor for misclassification *across all industries* in nine states (Planmatics 2000), as well as a 1984 Treasury Department estimate (U.S. GAO 1996) for employers nationwide.

#### Past State and National Estimates of the Prevalence of Employer Misclassification

	Low	Moderate	High
All industries (MA)	13%	19%	
All industries (9 states) 1/	5-10%	13-23%	29-42%
All industries (US) 2/		15%	
<b>Construction MA</b>	<b>14%</b>	<b>24%</b>	
<b>Construction (US) 2/</b>		<b>20%</b>	

1) All industries based on DOL/Planmatics state estimate ranges, ~1999

2) Based on 1984 Treasury Department estimate, cited by U.S. GAO. (1996)

For all industries, our estimates for MA generally fall close to or within the ranges found in other states and for the US as a whole. The US DOL-commissioned study arrayed 9 states according to their mix of “targeted” and “random” audits. In the table above, the low estimate for the 9 states sample is derived only from states with a low proportion of targeted audits in their audit mix. Conversely the high estimate is derived only from results for states with higher share of targeted audits in their mix and the moderate estimate from states with 30 to 50 % of random audits in their mix.

Our study’s moderate estimate —derived from the complete and mixed set of audits— falls directly within the ranges found in other states with similar audit mix. Our low estimate for all Massachusetts employers is slightly higher (13%) than for states from the U.S. DOL study with a high share of random audits (5-10%).

The next table compares MA to the DOL study’s state findings in greater detail. It also presents the degree to which each state did target audit candidates versus relying on more “random” selection methods. For the 9 states in the DOL study, we observe that, as expected, the more a state targets employers (by size/industry/location, by past record, by presence of worker claim), the higher is the observed rate of misclassification. Massachusetts generally conforms to this pattern. For the period 2001-2003, the DUA utilized “random” (less targeted) methods for a little over half of all audits (56%). It is thus closest to the “moderately random” states listed below. Our observed rate of misclassification (from audits of all types) which generated the Moderate estimate for all industries, at 19%, falls between the “low random” state of Minnesota (13% employers misclassifying) and moderate-random Wisconsin, with a misclassification rate of 23%.

**Prevalence of Misclassification in All Industries: MA vs. DOL State Estimates**

State	% employers misclassifying workers	% of audit group randomly sampled	Dominant Audit method
MD	5%	100%	High randomness
WA	10%	98%	High randomness
CO	5%	90%	High randomness
MA	19%	56%	Mod-High randomness
MN	13%	30-50%	Moderate randomness
NE	10%	30-50%	Moderate randomness
NJ	9%	30-50%	Moderate randomness
WI	23%	18%	Low randomness
CN	42%	5%	Low randomness
CA	29%	1%	Low randomness

Another source of comparison comes from another New England state, Maine.<sup>22</sup> The state relies exclusively on audits that are considered fully random. For the Maine Construction industry, the rate of misclassification is 14.2 percent (Peterson 2004 for Maine Department of Labor, to be released). On a number of dimensions — construction wages as share of state’s average wage, distribution of construction establishments by subsectors, and distribution of employment by subsectors— the Maine construction industry does not differ significantly from that in Massachusetts. However, the two state construction industries have different unionization rates; about 10% in Maine as compared to 28 % in Massachusetts (estimates). Also, the share of value of construction work is highest for the

<sup>22</sup> Audit results from Maine will be the object of a separate report produced collaboratively with the Maine Department of Labor.

building, developing and general contracting category in Massachusetts (43% of construction work\$\$\$). In contrast, it is highest for the specialty trade contractors in Maine (44% of construction work \$\$\$).<sup>23</sup>

## VIII. Next Steps

This study has made significant headway toward documenting the dimensions and impacts of misclassification in construction in the state. Next steps include, first, examining more closely the misclassification of workers across construction subsectors (for example, carpentry or dry walling) because accounts from the field indicate that there is wide variation across subsectors in prevalence. Second, next steps also include comparing the findings from Massachusetts with those from other New England states. While keeping in mind variations in characteristics of the construction industry across states (e.g. firm size, distribution of activity across types of contractors), we plan to use estimates of incidence, severity, and extent derived from UI tax audit results elsewhere in New England as a further means to gauge the dimensions of misclassification in Massachusetts. Third, we will explore in greater detail policy proposals for addressing misclassification and look at approaches that have been successful in other states. This task will be particularly timely if misclassification is growing in prevalence as it appears to be. A final report for this project will provide an analysis of policy issues and present the results of Massachusetts in the context of those for other New England states.

More importantly, this study's findings have established that worker misclassification is indeed a compelling problem requiring attention and one with significant consequences for workers, employers, insurers, and for tax revenues. A problem of this importance requires further and more precise documentation, one that would enable analysts to project revenue losses with greater confidence than is possible when relying on UI tax audit data which require making several assumptions.

A tested and more accurate method for measuring misclassification has been established in a national study by the U.S. General Accounting Office (U.S. GAO 1989) and rests on the combined use of business and individual tax information. Such a study could be replicated with state level tax information. This approach entails matching "1099 information returns" filed by businesses on behalf of their independent contractors with individual income tax returns for the workers concerned. This match enables analysts to apply criteria such as deriving all or most of one's income from a single business payer (a strong indicator of misclassification) and thus to estimate the percent of workers misclassified. The federal study (U.S. GAO 1989) that first established this method found that very stringent criteria (e.g. at least \$10,000 of income all from a single business payer) point to misclassification that, in turn, is confirmed in virtually all cases (through an IRS audit). Using these criteria, or slight variations of these criteria,<sup>24</sup> would generate measures of the number of workers misclassified in a given tax year and the number of businesses engaged in misclassification, as well as a very reliable accounting of misclassified earnings and tax losses.

We strongly recommend the replication of this federal study with Massachusetts tax information. Such a replication would require investment from, and the collaboration of, the Massachusetts Department of Revenue because it entails using individual tax record information (as well as the

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<sup>23</sup> Sources used included: U.S. Department of Labor, Bureau of Labor Statistics, ES-202 Series (wages, distribution of employment and of establishments by subsector); U.S. Census Bureau, Current Population Survey (unionization); and U.S. Bureau of the Census, 1997 Economic Census, Construction—Geographic Area Series. (Massachusetts, Maine). General Statistics for Establishments With Payroll By State. Table 2, page 9 (value of construction work by subsector).

<sup>24</sup> For example, the criterion might be amended to receiving most or 70% of one's self-employment earnings from a single business payer.

sharing of federal business income tax return information by the Internal Revenue Service with the Massachusetts DOR). The information generated with the present study presents a compelling case for making this investment in better documenting misclassification in the Commonwealth through a study of tax records. More precise measures of misclassification would inform a more specific policy debate about means to address it. Our study also makes clear that multiple parties stand to benefit from better documentation of the dimensions and implications of worker misclassification —individual workers stand to gain better social protection, tax authorities stand to recover tax revenue losses, and compliant employers would benefit from an even playing field.

Further research will also need to devise means to document underground activities and their implications. These do not leave traces in UI or tax records that we can readily examine.

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## Appendix A - Estimation Methods

### *Audit Year*

We assigned each audit record to a specific year (1995-2004) and to three-year cycles (1995-1997, 1998-2000, and 2001-2003). This was done on the basis of the Massachusetts DUA's "year complete" variable, using the calendar date of the audit's official completion. While a portion of the audits may have actually been initiated in the year prior to completion, we believe that the resulting distortion is small when audits are grouped in three-year periods.

### *Calculating the Prevalence of Employer Misclassification (% of employers with misclassified workers)*

Employers are assumed to be misclassifying workers if their audit record reveals one or more 'new worker.' New workers are those who were not covered previously by Unemployment Insurance. We calculate the percentage of all (randomly) audited employers who are misclassifying, and apply the result to the total number of UI-covered employers in the state. We thus assume that the sample of employers selected for auditing is representative of (can stand for) all UI-contributing employers statewide.

### *Calculating the Severity of Impact of Misclassification (% of workers misclassified within employers misclassifying workers as independent contractors.)*

To estimate the severity or degree of misclassification among those employers who under-report workers (who would otherwise be covered by UI), we assume that audited employers found to be misclassifying can represent all misclassifying employers in the state. We compute the percentage of workers among these audited employers who are misclassified (or "new workers,") and use it as proxy for the statewide severity (% misclassified) among all Massachusetts employers that misclassify workers.

### *Calculating the Extent of Workers Misclassified (% of all workers misclassified as independent contractors)*

We assume that total workers employed by audited employers can represent all UI-covered workers statewide. To estimate the extent of worker misclassification, we compute the percentage of workers at all audited employers who are "new workers," or previously unreported for purposes of unemployment insurance taxes. This percentage is applied to the total number of UI-covered workers in the state.

### *Calculating Losses in Unemployment Insurance Taxes*

Revenue losses from underpayment of UI taxes (owed on workers misclassified as independent contractors) were estimated using the method employed in the DOL-requested study (Planmatics, 2000). We computed an average tax loss per worker due to misclassification of workers in the audit sample. We assumed, as before, that these workers could stand for all workers statewide misclassified as independent contractors (and that the distribution of wages was similar). The result was multiplied by the estimated number of workers misclassified statewide.

### *Calculating Losses in the State Income Tax*

To compute losses in state income tax revenue, we multiplied the estimated number of misclassified workers statewide (7,478) by an estimated average yearly income level for construction workers of \$35,000. We then made two estimates of "hidden income" using alternative assumptions about the amount of income unreported by these workers (50% and 30%). Multiplying each of these results by 5.3% (the state income tax rate) provided a range of estimated state income tax losses. We chose an average earnings level for construction workers of \$35,000 per year, a level much lower than median earnings for Massachusetts and, therefore, a conservative estimate. The level is higher than earnings culled from the audit database but we had concerns about the reliability of those data

for portraying the level of earnings in the state. For earnings across all industries, we used average annual earnings for workers across all industries at \$45,796, a simple average computed on the BLS-ES202 database for Massachusetts.

*Calculating Revenue Losses on Worker Compensation Insurance Premiums*

We assumed that all average WC premiums for workers, including construction workers, can be estimated by assuming \$15 per \$100 of payroll for workers compensation. We computed unreported wages from misclassifying employers as a percentage of total payroll from randomly audited firms, and assumed that this could represent the percentage of wages unreported from misclassifying employers statewide. Applying this to the actual total wages of UI-contributing employers statewide yielded an estimate of unreported wages for employers in all industries and construction employers. Taking 15% of these figures produced estimates of WC revenue losses. We also computed a lower estimate of premium losses by setting the WC rate at \$12 per \$100 of payroll.

## Appendix B - The Role of Audit Methods

The report commissioned by the US Department of Labor used Unemployment Insurance (UI) tax audit results from 9 states to obtain an estimate of misclassification (Planmatics 2000). Unemployment Insurance Tax audits seek to establish whether all workers supposed to be covered by unemployment insurance are in fact covered. Most often, when workers are not covered, it is because they were classified as independent contractors. When an audit finds workers not covered by UI who should be, they are reclassified as a "new worker" on the payroll subject to taxation. Therefore UI tax audits are a useful source of information about misclassification, one that has been relied upon by previous studies such as the DOL commissioned report.

UI tax audits are the best source of information on misclassification behavior available to researchers to date, and have been used by the US Department of Labor to gauge the prevalence and extent of misclassification. Using them to estimate misclassification, however, is not a straightforward matter. UI tax audit practices aim at redressing tax loss. The sampling of employers for audit purposes is not meant to be statistically random; it is meant to assist in UI tax collection. Some of the audit methods used are targeted; they aim to audit employers with a high likelihood of misclassification based on past UI tax record. Therefore these methods result in a relatively high observed rate of misclassification. Conversely, other audit methods are not targeted; they are conventionally called random audits. All state UI tax revenue departments practice a mix of methods. Therefore, audits are not a statistically perfect source of information; they allow for an estimation rather than an actual measure of the dimensions of misclassification.<sup>25</sup>

The Massachusetts Division of Unemployment Assistance (DUA) conducts random audits based on broad guidelines provided by US DOL for non-targeted audits. The Employer Sample (random audits) consists of audit candidates from the UI Tax employer database (Tax System) that fit limited, DOL recommended, criteria such as employment size, distribution of geographic location and industry. The results yielded by these audits provide a conservative estimate of the prevalence and extent of misclassification in the state as a whole.

The DUA performed 5,957 audits over the period 2001-03. Slightly over half (56%) of the audits were drawn from the "Employer Sample."<sup>26</sup> They are referred to here as "random" (sampled but prescreened on the basis of selected criteria), or "not targeted."<sup>27</sup>

The remainder of DUA audits were targeted audits based on contested unemployment claims and/or a determination that a worker is in fact an employee, or because of delinquent UI tax filings over the years. Their purpose is to locate cases of likely misclassification. Targeted audit methods include the following categories:

- 1) "Targeted Type 1" or Request Multiple (RM) audits: The employer has three quarters of filings delinquent within the last three years. (20 % of audits in 2001-03.)
- 2) "Targeted Type 2" or Request Delinquency (RD) audits: The employer has multiple delinquent quarters due to late registration, often related to UI claims made by workers. (7 % of audits in 2001-03.)
- 3) "Targeted Type 3" or Subjectivity Letter (SL) audits: The employer is either made subject of an audit as the result of a claim or determination has been made that an employer/employee relationship exists. (18% of audits in 2001-03.)

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<sup>25</sup> An actual measure would require a large scale random survey of workers and employers throughout the state.

<sup>26</sup> There were 919 construction audits, of which 428 were random audits.

<sup>27</sup> The "audit rate" or percent of audited employers in total employers was 3.1 percent across all industries, and 4.9 percent in construction. These rates represent declines from the period 1995-2000 when greater resources were available for auditing: 5 percent of employers across all industries were audited and 6 percent of construction employers were audited. Also random/Employer Sample audits amounted to over 80 % of audits in the earlier period 1995 to 2000. With declining resources for auditing, targeted audits are used with more frequency to aid in tax collection.

As can be seen below, more targeted audit methods find higher prevalence of misclassification, as expected. Among all audit methods, Subjectivity Letters and "Request Multiple" audits find misclassification most frequently. This is true for construction as well as for all industries. The prevalence rates obtained from these targeted methods provide an "upper bound" for an estimate of misclassification in the state.

**Rates of Misclassification by Detailed Audit Type: All Industries**

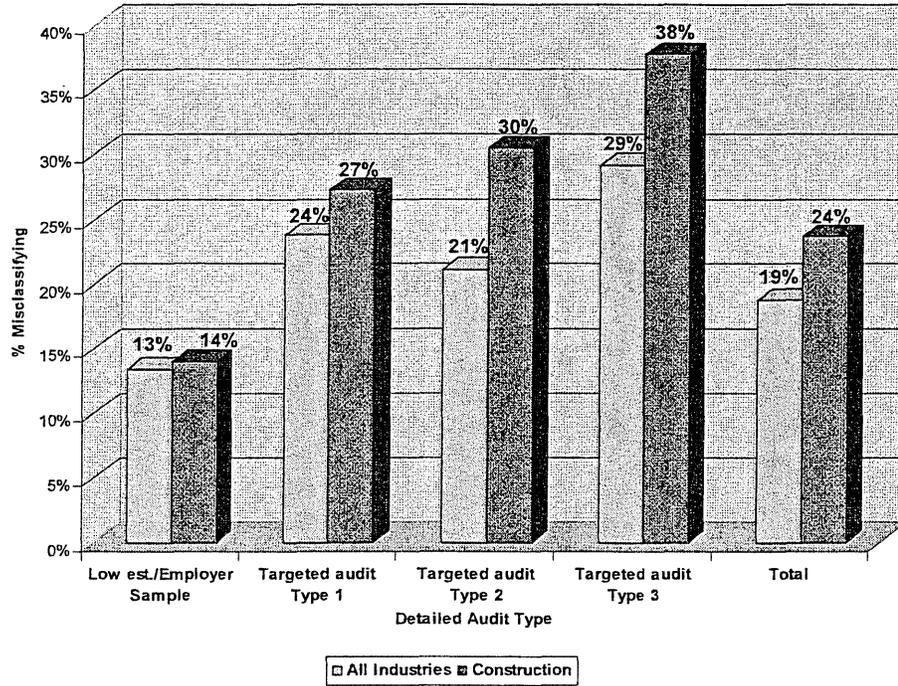
	Low estimate- (Employer Sample)	Targeted Type 1 (Request Multiple)	Targeted Type 2 (Request Delinquent)	Targeted Type 3 (Subjectivity letter)	Moderate estimate (All Audits)
Misclassifying Employers	448	278	83	310	1119
All Audited Employers	3335	1168	392	1062	5957
% Misclassifying	13%	24%	21%	29%	19%

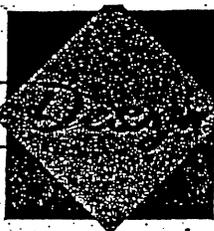
**Rates of Misclassification by Detailed Audit Type: Construction Employers**

	Low estimate- (Employer Sample)	Targeted Type 1 (Request Multiple)	Targeted Type 2 (Request Delinquent)	Targeted Type 2 (Request Delinquent)	Moderate estimate (All Audits)
Misclassifying Employers	60	56	25	77	218
All Audited Employers	428	205	82	204	919
% Misclassifying	14%	27%	30%	38%	24%

For our estimates of impacts, we have used results from random audits only (Employer Sample) as a base. This approach is more conservative than that taken in the US DOL commissioned study (Planmatics 2000). That study relied on results from both random and targeted audits (to the exclusion of very targeted audits) to generate the estimates used to project tax revenue losses.

### Misclassification by Detailed Audit Type: 2001-2003





CENTER

**BEFORE ANY CHECKS CAN BE ISSUED FOR SUB-CONTRACTOR INSTALLATIONS, WE MUST HAVE ON FILE THE FOLLOWING:**

1. W-9 (Request for TaxPayer ID #) you must show a Federal ID # (no social security #'s) and sign this form
2. Workers compensation status determination test with all nine conditions met and form signed.
3. Disclosure and Release- signature required.
4. Independent Contractors Agreement from [REDACTED]- signature required.
5. Certificate of Insurance- Issued to [REDACTED] 12216 [REDACTED] St. Michael, MN 55376  
You are required to carry both Liability & Workers Compensation
6. Our billing cycle runs from Thursday to Wednesday with a check being issued nine days after the end of the cycle. All bills must be turned in by the day after the end of the billing cycle.  
Example: work is done from Thurs 1/29/98 to Wed 2/4/98- bills must be turned in by Thurs 2/5/98 and check will be issued Friday 2/13/98.
7. Checks can be mailed to you. All checks are to be picked-up in our St. Michael location unless you have notified us to mail it.
8. ALL EXTRA CHARGES ON A JOB MUST BE CALLED IN AND O.K.'d BY OUR SCHEDULING DEPARTMENT OR THEY WILL NOT BE PAID.

# Workers' Compensation Status Determination Test

Under legislation enacted in 1996, an independent contractor doing commercial or residential building construction or improvements in the public or private sector shall be considered an employee of the general contractor for whom the independent contractor is performing services unless the independent contractor meets all of the following conditions.

Check each of the items for which your answer is yes?

- \_\_\_\_\_ 1. Do you maintain a separate business with your own office, equipment, and materials?
- \_\_\_\_\_ 2. Do you have or have you applied for a federal employer identification number?  
Fed. I.D. # \_\_\_\_\_
- \_\_\_\_\_ 3. Do you operate under contract to perform specific services or work for specific amounts of money and under which you control the means of performing the services or work?
- \_\_\_\_\_ 4. Do you incur the main expenses related to the service or work that you perform under contract?
- \_\_\_\_\_ 5. Are you responsible for the satisfactory completion of work or services that you have contracted to perform and are you liable for the failure to complete the work or service?
- \_\_\_\_\_ 6. Do you receive compensation for work or services performed under contract on a commission or per-job or competitive bid basis and not on any other basis?
- \_\_\_\_\_ 7. Will you realize a profit or suffer a loss under contracts to perform work or service?
- \_\_\_\_\_ 8. Do you have continuing or recurring business liabilities or obligations? and
- \_\_\_\_\_ 9. Does the success or failure of your business depend on the relationship of business receipts to expenditures?

Name \_\_\_\_\_ Date \_\_\_\_\_

Signature \_\_\_\_\_

**\* If you fail to meet any of the above criteria, you must be considered an employee for purposes of workers' compensation insurance coverage.**

# Disclosure and Release

I, business proprietor, attest that I meet the requirements of legal status determination as an independent contractor, that I have no employees and that I do not elect to cover myself under the Workers' Compensation Act.

**Notice to the independent contractor: Anyone working for you is considered to be an employee unless they comply with all 9 points of the status determination test.**

I will provide a certificate of insurance for workers' compensation for anyone not complying with the status determination test before performing work.

I will provide a certificate of insurance showing general liability insurance before performing any work.

Based on the above disclosures and representations, I hereby release the general contractor from any claim for damages for injuries based upon any theory of employment both for me and any other person or entity retained, hired, subcontracted, or employed by me.

---

By: \_\_\_\_\_

Date: \_\_\_\_\_

**Notice to the General Contractor: Your BEST procedure is to insist that all your subcontractors have workers' compensation insurance. Although the 1996 statute makes the independent contractor - employee status more clear you can still be questioned and be determined to have a financial obligation, by your insurance company, by the Minnesota Department of Labor and Industry and particularly by the courts.**

# Request for Taxpayer Identification Number and Certification

Give form to the requester. Do NOT send to the IRS.

Please print or type

Name (If a joint account or you changed your name, see Specific Instructions on page 2.)

Business name, if different from above. (See Specific Instructions on page 2.)

Check appropriate box:  Individual/Sole proprietor  Corporation  Partnership  Other ▶

Address (number, street, and apt. or suite no.)

Requester's name and address (optional)

City, state, and ZIP code

## Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. For individuals, this is your social security number (SSN). However, if you are a resident alien OR a sole proprietor, see the instructions on page 2. For other entities, it is your employer identification number (EIN). If you do not have a number, see How to get a TIN on page 2.

Social security number								

OR

Employer identification number								

Note: If the account is in more than one name, see the chart on page 2 for guidelines on whose number to enter.

**Part II** For Payees Exempt From Backup Withholding (See the instructions on page 2.)

List account number(s) here (optional)

## Part III Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 2.)

Sign Here

Signature ▶

Date ▶

**Purpose of form.** A person who is required to file an information return with the IRS must get your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9, if you are a U.S. person (including a resident alien), to give your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify the TIN you are giving is correct (or you are waiting for a number to be issued).
- Certify you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are an exempt payee.

If you are a foreign person, IRS prefers you use a Form W-8 (certificate of foreign status). After December 31, 2000, foreign persons must use an appropriate Form W-8.

Note: If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**What is backup withholding?** Persons making certain payments to you must withhold and pay to the IRS 31% of such payments under certain conditions. This is called "backup withholding." Payments that may be subject to backup withholding include interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

If you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return, payments you receive will not be subject to backup withholding. Payments you receive will be subject to backup withholding if:

- You do not furnish your TIN to the requester, or
- You do not certify your TIN when required (see the Part III instructions on page 2 for details), or
- The IRS tells the requester that you furnished an incorrect TIN, or
- The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 3 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the Part II instructions and the separate Instructions for the Requester of Form W-9.

### Penalties

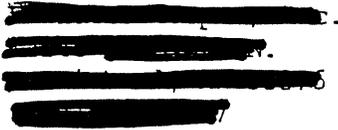
**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of Federal law, the requester may be subject to civil and criminal penalties.

INDEPENDENT CONTRACTOR'S AGREEMENT

CONTRACTOR : 

Subcontractor Information : (must be completed in full)

Complete Company Name:

\_\_\_\_\_

Contact Person:

\_\_\_\_\_

Address:

\_\_\_\_\_

\_\_\_\_\_

Telephone Numbers:

Office: \_\_\_\_\_

Home: \_\_\_\_\_

Mobile: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Voice Pager: \_\_\_\_\_

Dig. Pager: \_\_\_\_\_

Business Organization: (circle one)

Corporation

Partnership

Sole Proprietor

SSN or Federal Tax I.D. Number: \_\_\_\_\_

## CONTRACT TERMS AND PROVISIONS

1. Purpose. The provisions of this Independent Contractor's Agreement shall govern the business relationship between [REDACTED], Inc., and the undersigned subcontractor. All bids, proposals, and agreements between [REDACTED], Inc., and the undersigned subcontractor regarding any work performed by the subcontractor on individual [REDACTED], Inc., projects are expressly made subject to the terms and provisions hereof.

2. Relationship. The relationship between [REDACTED], Inc., and the undersigned subcontractor shall be an independent contractor relationship, and not an employer/employee relationship. The undersigned subcontractor acknowledges that it will not be treated as an employee by Builders Carpet, Inc., for any purpose. By executing this agreement, [REDACTED], Inc., makes no promise of a continuing contractual relationship between [REDACTED], Inc., and the undersigned subcontractor.

3. Withholding. All payments made by [REDACTED], Inc., to the undersigned subcontractor pursuant to any bid, proposal or agreement shall not be subject to any withholding by [REDACTED], Inc., for payment of any federal taxes, Social Security or Medicare taxes, state income taxes or any other employee taxes, employee benefits, or insurance payments. The undersigned subcontractor understands and acknowledges that it shall be solely responsible for payment for payment of all federal and state taxes, including without limitation, self-employment taxes, and shall also be solely responsible for payment of all insurance coverages, including worker's compensation insurance. The undersigned subcontractor also acknowledges having been advised that [REDACTED], Inc., will annually prepare and forward a Form 1099 reflecting the total amount paid by [REDACTED], Inc., to the subcontractor during each calendar year. The information will also be forwarded by [REDACTED], Inc., to the applicable federal and state tax authorities.

4. Worker's Compensation Insurance. The undersigned subcontractor acknowledges that [REDACTED], Inc., willingness to subcontract work to the undersigned is expressly contingent upon the undersigned subcontractor's maintaining in force required insurance coverages. The undersigned subcontractor expressly agrees to maintain at least minimum limits worker's compensation insurance policy and to provide [REDACTED], Inc., a certificate of insurance showing compliance with the Minnesota Worker's Compensation Law, and other required coverages according to state and federal laws, and that [REDACTED], Inc., will be shown as a certificate holder on such policies. The undersigned subcontractor further understands that it is the subcontractor's responsibility to see that all necessary certificates of insurance are reissued upon expiration and that all necessary documentation relating to insurance coverages are forwarded to [REDACTED], Inc., by the undersigned subcontractor's insurance agent or agency.

5. Other Insurance In addition to required insurance coverages referenced in Paragraph 4, the undersigned subcontractor agrees to obtain and maintain in force at all times a policy of comprehensive general liability insurance identifying the undersigned subcontractor and its agents and employees as insureds thereunder in limits not less than \$500,000 per occurrence and \$500,000 aggregate. Written evidence that such liability coverage is in force shall be provided to [REDACTED], Inc., by the undersigned subcontractor's insurance agent or agency.

6. Additional Subcontractors. [REDACTED], Inc., and the undersigned subcontractor agree that in the event the undersigned subcontractor sublets any work under contract to [REDACTED], Inc., to any other person or entity, that the undersigned subcontractor will furnish a certificate of insurance as proof that worker's compensation insurance is in force as to any such entity with whom the undersigned subcontractor contracts and will also submit proof that such entity also maintains in force the insurance coverage identified in Paragraph 5 above.

7. Compensation/Craftsmanship. The compensation for work performed by the undersigned subcontractor shall be as set forth in any bid, proposal, or agreement reached between [REDACTED], Inc., and the undersigned subcontractor. All work done by the undersigned subcontractor, however, shall be done in a good workmanlike fashion consistent with the quality standards of [REDACTED], Inc. Any damage caused by the undersigned subcontractor will be charged to the undersigned subcontractor, and any prior damage observed by the undersigned subcontractor shall be reported immediately to [REDACTED], Inc. The undersigned subcontractor acknowledges responsibility for corrections and call-backs regarding work performed by the undersigned subcontractor in accordance with the policy of [REDACTED], Inc. In this regard, call-back notices will be sent in writing from [REDACTED], Inc., including the homeowner's name, address, home telephone number and any applicable work telephone numbers, along with a description of the general nature of the problem. The undersigned subcontractor is required to call the homeowner within 7 days of receipt of any call-back notice and schedule an appointment with the homeowner. All correction work will be completed in a professional and workmanlike manner within 21 days of receipt of any call-back notice from [REDACTED], Inc. In the event that any corrections or call-back work is completed by [REDACTED], Inc., by reason of the undersigned subcontractor's failure to observe the call-back policy such work shall be billed to the undersigned subcontractor at the rate of \$100 per hour and deducted from any outstanding amounts owing to the undersigned subcontractor should the undersigned subcontractor fail to reimburse [REDACTED], Inc.

8. Subcontractor's Employees. The undersigned subcontractor assumes full and complete responsibility for all employees employed by the subcontractor in the performance of all duties and obligations under this agreement, and agrees to indemnify and hold [REDACTED], Inc., harmless from any claim by any employee, additional subcontractor, or any other helper or worker used by the undersigned subcontractor for any demand, action, or cause of action against Builders Carpet, Inc., arising from any death or personal injury of any kind and

9. Invoicing. Written invoices for work performed by the undersigned subcontractor shall be submitted week to week to [REDACTED], Inc.

[REDACTED]

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Subcontractor:

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

# Technology strengthens state tax enforcement

PRIL 6th  
2003

By Terry Fiedler  
Star Tribune Staff Writer

The state caught on to a tax scam by a group of Northwest pilots the old-fashioned way: through a tip.

State officials were told to check the pilots' parking lots for clues that some were falsely claiming to be residents of lower-tax states. Sure enough, a scan in December 2001 found 34 cars bearing South Dakota plates, 22 cars with Texas license plates, 15 with Florida plates, 15 bearing Washington state plates, five with New Hampshire plates and three with Alaska plates. None of those places has a state income tax.

"It was pretty unlikely that they were commuting every day," said Jerry McClure, director of the individual income tax division of the Minnesota Depart-

## Tax cheating: He said, she said

- Nearly a third of both men and women said it was OK to cheat "a little here and there" on income taxes.
- 18 percent of men and 9 percent of women said it was OK to cheat "as much as possible."
- 49 percent of men and 59 percent of women responded that it is not acceptable to cheat on income taxes.
- 40 percent of women believed that millions of wealthy people pay no federal taxes at all. 26 percent of men surveyed believed that is true.
- 43 percent of women surveyed believed that businesses don't pay their fair share of income taxes; 31 percent of men surveyed thought that was true.

Source: Clarion University and Slippery Rock University poll.

ment of Revenue.

This tax season, technology is allowing the state to take compliance efforts to a new level. Armed with a new system

that allows the department to store, retrieve and compare data far more efficiently than ever before, investigators are taking a harder look at whole cate-

gories of individuals who may be underpaying taxes or not paying at all.

Chief among those groups are the self-employed, such as roofers, carpet layers and electrical contractors.

"This is a fairly dramatic step up in our capabilities," McClure said. "Auditors can spend their time auditing instead of screening returns."

The department also appears to be in line to get 62 auditors and collectors in the next two years as part of a \$5.4 million increase in its budget. In return, the department is projecting that it will bring an additional \$32.4 million in tax revenue in that time.

## TAXES continues on D4:

—The system handles more than 3 million state tax forms that bring in about \$5 billion a year.

## TAXES from D1

### System handles more than 3 million state tax forms

The potential is vast. The state estimates that underreporting of income and failure to file returns costs the state as much as \$700 million a year.

McClure said the timing of stepped-up efforts is good not only because of the state budget crunch but also because times of economic stress generally lead to more tax cheating.

The department's so-called data warehouse, which started up in January, was one of the last pieces of an \$18.6 million computer system overhaul that began in 1999. The system now handles more than 3 million state income- and property-tax forms that bring in about \$5 billion in receipts each year.

McClure said the depart-

ment can identify how many people own Minnesota-based businesses that gross more than \$100,000 a year but aren't paying any personal state income tax.

The answer: 27.

Or it can match the number of people who have homesteaded house values of \$250,000 or more and haven't filed state income tax returns. About 200 are in that group.

And it has gotten the department focused on categories of people that the data suggest should be examined.

## Roofers

The department randomly

checks roofers vs. what roofers themselves reported as their income in the 1999 tax year.

The result got the department's attention: The company reported \$8 million paid to workers, but the workers reported only \$2 million in income to the state.

McClure said none of the businesses connected to the workers claimed to be the employer — the roofers were considered independent contractors — so none of the workers had state taxes withheld from their paychecks. The state hopes to change that situation.

The lack of withholding, coupled with the fact that many roofing workers were illegal aliens, McClure said, meant that many workers simply collected their pay and left the state without paying any taxes.

Jim Bigham, spokesman for the Twin Cities Roofing Contractors Association, which represents about 60 firms that use their own union employees

and employ independent contractors, but many of those roofers also are not covered by workers' compensation insurance. That could put homeowners at risk in the event of an injury, and creates a non-level playing field for firms that are following state rules, he added.

## Carpet and floor layers

Several test audits showed what McClure called "some significant underreporting" of income to the state, with many people claiming expenses representing more than 50 percent of their gross receipts.

The department is auditing 80 people in this category.

McClure said that many routine living expenses — from food to parts of mortgage payments — are being written off in part or in whole even though they may have nothing to do with business.

test audits in this area. According to the IRS, contractors in general nationwide are considered to be among the least tax-compliant group among the self-employed, on average paying 40 percent of the taxes they should be.

McClure said there isn't strong evidence of underreporting of income, though in general the group normally represents a "problem area."

## Temporary workers

The department is looking at the relationship between the compensation of temporary workers and temporary firms. Clients pay the temp firms, which in turn pay the temp workers, McClure said, but there's a difference between what the client pays and what the temp firms reportedly pay to workers that doesn't seem to be getting reported to the state.

The department's particular

Andrew Schmitz, an executive of Jeane Thorne Inc., a staffing firm in St. Paul and public relations director for the Staffing Association of Minnesota, said his firm treats its temp workers as employees.

"It's pretty straightforward," Schmitz said. "We pay their taxes and, unfortunately, we pay a lot of taxes just like everyone else."

He said it would be atypical for temp-firm employees to be considered self-employed, although there may be some "mavericks" operating that way.

In total, the department not only wants to go after the egregious cases, it wants to create greater enforcement presence.

"It's the highway patrol syndrome," McClure said. "You slow down if you see them on the highway. If you never see the tax man, you might push it more."