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State:

## Underground Economy Measures Seen as National Trend: Top [2014-07-18]

A number of states are focusing their sights on the underground economy with the express purpose of bringing it to the surface and stomping on it.

Massachusetts, Tennessee and Virginia are among states that have recently stepped up or codified existing efforts to curb such practices as employer misclassification and failure to insure employees for workers' compensation.

"I think that employers and contractors particularly who are abiding by the law are starting to get enough momentum and incentive to try to fight back against people who aren't abiding by the law and playing fairly," said Scott Yarbrough, director of compliance for the Workers' Compensation Division of the Tennessee Department of Labor. "I think the level playing field is starting when the people recognize and understand. And I think when you get business behind something like that – this is really an across-the-aisle, across-the-spectrum problem."

Tennessee implemented measures based on recommendations from the Employee Misclassification Advisory Task Force, which the state's General Assembly created in 2010. In order to combat payroll fraud tactics, such as employee misclassification and paying workers under the table, the division established a referral process for criminal prosecution, hired three additional investigators and began the process of acquiring new fraud-detection software.

The division also launched a new website to provide the public with distinctions between employees and independent contractors and established a new online tip form for reporting suspected misclassification.

Those measures came after some eye-opening findings from the task force, which has released an annual report every year since 2012. The task force estimated that in 2006, Tennessee insurance carriers lost between \$52.1 million and \$91.6 million as a result of unpaid workers' compensation premiums in the residential construction industry. The state lost between \$2.1 million and \$3.7 million in uncollected premium taxes that year, according to the task force, and lost somewhere between \$8.4 million and \$14.9 million in unpaid unemployment premiums.

According to the task force's last report released in January, unemployment insurance audits related to misclassification turned up 1,930 misclassified workers in 2013, with net total wages of more than \$36 million. In 2012, audits found 2,510 misclassified workers with total wages of more than \$25 million.

Yarbrough said that in the past fiscal year ending June 30, the state's enforcement efforts have resulted in nearly \$400,000 in assessed penalties and \$85,000 in collected penalties. In May, the Department of Labor entered into a settlement that resulted in a penalty of more than \$300,000 against a contractor that understated its payroll to its insurance carrier, the largest-ever settlement for Tennessee's Misclassification Education and Enforcement Fund. Yarbrough identified the contractor as EJ Drywall.

"Having an increased focus on the problem and increased resources through our investigators has started to yield some results," Yarbrough said. "We think that the problem is big, and we believe we are going to see more results here this next year."

In Massachusetts, Senate Bill 2195, signed by Gov. Deval Patrick on June 26, legislatively established a 17-member council "to combat the underground economy and employee misclassification." Though the council is not referred to as a task force, the law effectively codifies the already-in-place Joint Task Force on the Underground Economy, which Patrick established in 2008 by executive order.

In announcing the signing of Senate Bill 2195, the governor's office said that the Joint Task Force had collected "millions

of dollars in tax obligations and fines from unscrupulous employers.” The Joint Task Force’s 2012 Annual Report previously revealed that in the 18-month period from July 2011 through December 2012, the task force had recovered more than \$21 million in wage restitution, state taxes and unemployment payments from employers, fines and penalties.

“With the signing of this bill,” the governor’s office release said, “the JTF will now become a permanent investigative unit to combat the underground economy.”

Virginia’s new and significantly heavier penalty on employers who fail to obtain workers’ compensation insurance went into effect on July 1 as a result of House Bill 458 in this year’s session. Previously, noncompliant employers – businesses who either didn’t obtain comp insurance, or didn’t provide evidence of compliance to the Workers’ Compensation Commission – were subject to a minimum civil penalty of \$500 and a maximum of \$5,000.

But House Delegate Terry Kilgore’s bill gave the maximum a dramatic spike, changing the legislation so that employers would be subject to a penalty of up to \$250 per day for noncompliance – and a total maximum of \$50,000.

“A lot of people are saying that’s a big bump,” Kilgore, R-Gate City, told WorkCompCentral in the spring. “But the finding was, and what the evidence was in the committee, was that folks were just paying that civil penalty because (the penalty range) was cheaper than to buy the insurance.”

Yarbrough believes recent efforts against the underground economy are part of a national trend. In fact, Massachusetts is among a number of states that have coordinated their underground economy-battling efforts with the U.S. Department of Labor in recent years. By early 2012, a dozen states had signed a memorandum of understanding to partner with the federal government to tackle misclassification issues together.

“Who’s going to stand up for people not reporting their employees properly?” Yarbrough asked rhetorically. “I think that you’ve got a lot of common cause between different interest groups that allow the enforcement efforts to be tightened up and more resources to be dedicated to it.”

Tennessee’s Employee Misclassification Advisory Task Force’s 2014 Annual Report can be viewed [here](#).