

CUE

COUNCIL ON THE
**UNDERGROUND
ECONOMY**

2020 Annual Report



Council on the Underground Economy Annual Report 2020



Abbreviations

ABCC:	Alcoholic Beverages Control Commission
AGO-FLD:	Office of the Attorney General - Fair Labor Division
CUE:	Council on the Underground Economy
DCAMM:	Division of Capital Asset Management and Maintenance
DFML:	Department of Family and Medical Leave
DIA:	Department of Industrial Accidents
DLS:	Department of Labor Standards
DOB:	Division of Banks
DOR:	Department of Revenue
DPH:	Department of Public Health
DPL:	Department of Professional Licensure
DUA:	Department of Unemployment Assistance
EOLWD:	Executive Office of Labor and Workforce Development
IFB:	Insurance Fraud Bureau
JTF:	Joint Enforcement Task Force on the Underground Economy
MCAD:	Massachusetts Commission Against Discrimination
MOBD:	Massachusetts Office of Business Development
MORI:	Massachusetts Office for Refugees and Immigrants
NLRB:	National Labor Relations Board
OPSI:	Office of Public Safety and Inspections
OSD:	Operational Services Division
PFML:	Paid Family and Medical Leave
SOC:	Office of the Secretary of the Commonwealth
US DOL:	United States Department of Labor

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The Council on the Underground Economy (CUE)

The CUE serves the business owners and taxpayers of the Commonwealth, by engaging in coordinated enforcement actions and investigations between state and federal agencies. By pursuing tips and engaging in outreach, the goal is to bring businesses into compliance with Massachusetts laws and tax requirements. The CUE is dedicated to the fair treatment of all Massachusetts workers and to creating a level playing field for all businesses based in or operating in our state.

The “underground economy” is a term that refers to those individuals and businesses that conceal or misrepresent their employee populations to avoid one or more of their employer responsibilities related to wages, payroll taxes, insurance, licensing, safety, or other regulatory requirements.

In March of 2008, Executive Order #499 was signed, which created the Joint Enforcement Task Force on the Underground Economy and Employee Misclassification (JTF or Task Force), in order to coordinate the Commonwealth’s efforts to eliminate employer fraud and employee misclassification. The Executive Order ensured that member agencies addressed the underground economy cooperatively based on the following objectives:

- educate business owners and employees about applicable requirements;
- conduct joint, targeted investigations and enforcement actions;
- protect the health, safety, wages and benefit rights of workers;
- restore competitive equality for law-abiding businesses; and
- preserve taxpayer dollars and ensure proper payment of taxes.

Chapter 144 of the Acts of 2014—“An Act Restoring the Minimum Wage and Providing Unemployment Insurance Reforms”—in addition to increasing the state’s minimum wage, this legislation codified the JTF into law, making the structure a permanent fixture under the Executive Office of Labor and Workforce Development. The act also changed the name of the JTF to the Council on the Underground Economy (CUE). Chapter 144 became effective on March 24, 2015.

CUE: Definitions

The “underground economy” is a term that refers to businesses and individuals that utilize schemes to conceal or misrepresent their employee population to avoid reporting substantial parts of their businesses as employers.

Cash wages: It is illegal to pay employees in cash (or “under the table”) to avoid payroll expenses associated with taxes and insurance.

Child labor: Child labor is work performed by minors. Provisions regarding topics such as work hours and occupation restrictions are contained in Massachusetts and federal law and are meant to protect minors from harm.

Licensure: Fair and consistent enforcement of the licensing laws and regulations ensures that licensed, qualified individuals and businesses provide services to consumers.

Prevailing wage: The Massachusetts prevailing wage laws require that covered employees on public works projects be paid a minimum hourly rate set by the Department of Labor Standards (DLS). The prevailing wage laws apply to both union and non-union employers and employees. The Attorney General’s Office (AGO) enforces these laws.

Wage and/or hour violations: Includes statutes that regulate minimum wage, overtime, payment of wages, sick time, meal breaks, temporary work protections, domestic workers protections, record keeping, and more.

Workers’ compensation violations: Businesses are legally required to maintain workers’ compensation insurance coverage for their employees.

Worker health and safety violations: Workers have a right to a safe workplace. Violations may exist where workers are exposed to hazardous circumstances, conditions, practices, or operations.

CUE: Reporting Agencies

The following agencies report to the CUE monthly on the corresponding issues:

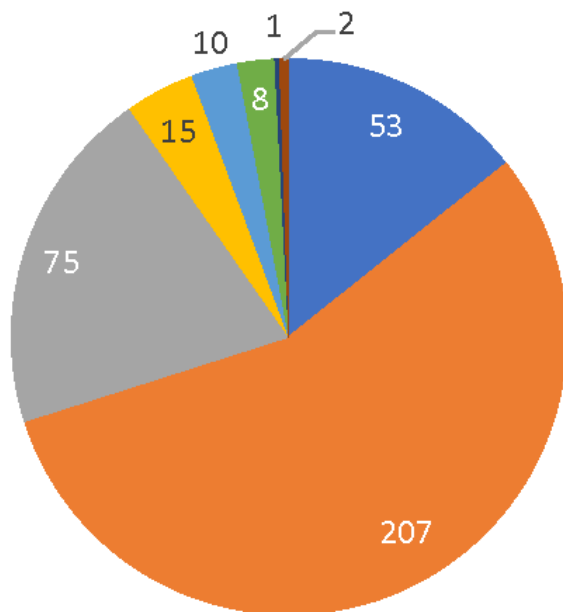
Members	AGO-FLD	DPL	ABCC	DUA	DLS	IFB	DOR	DIA	OSHA	US DOL W/H	EBSA	OPSI	DFML
Cash wages	X			X				X		X			X
Child labor	X				X					X			
Prevailing wage	X				X								
Wage and/or hour violations	X			X						X			
Licensure	X	X	X		X							X	
Misclassification	X			X	X	X		X					X
Tax evasion	X			X			X						X
Workers' compensation	X							X					
Workers' health and safety violations	X				X				X				
Benefits fraud											X		X

- Attorney General's Fair Labor Division (AGO-FLD)
- Division of Professional Licensure (DPL)
- Alcohol Beverage Control Commission (ABCC)
- Department of Unemployment Assistance (DUA)
- Department of Labor Standards (DLS)
- Insurance Fraud Bureau (IFB)
- Department of Revenue (DOR)
- Department of Industrial Accidents (DIA)
- Occupational Health and Safety Administration (OSHA)
- U.S. Department of Labor Wage and Hour (US DOL W/H)
- U.S. Department of Labor Employee Benefits Security Administration (EBSA)
- Office of Public Safety and Inspections (OPSI)
- Department of Family and Medical Leave (DFML)

CUE: Results

The Investigative Subcommittee of the CUE meets monthly to review tips from the CUE tip line, complaints and referrals, and then coordinates investigations. In 2020, the CUE directly received 149 tips.

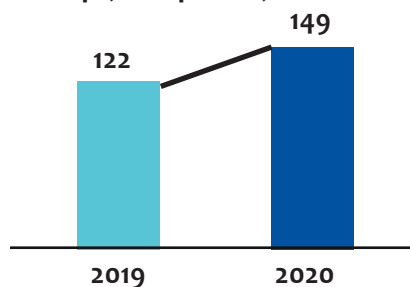
While we were still receiving tips, there was a period of 2020 during which that investigations for many departments were on pause due to COVID-19. While these investigations have proceeded, this may explain the drop in fines ordered or assessed. Additionally, business closures may have also affected the amounts ordered and assessed. In total, Massachusetts CUE operations have ordered/assessed ~\$62 million from non-compliant businesses between 2015 and 2020.



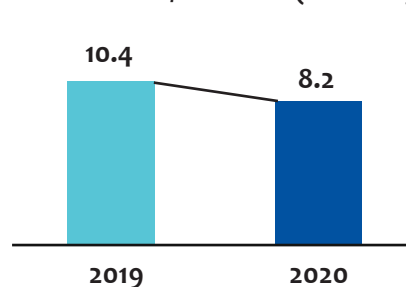
Cases by Corresponding Issue

- Misclassification
- Tax Evasion
- Wage & Hour Violation
- Worker's Comp
- Licensure
- Worker Safety
- Prevailing Wage
- Child Labor

Total tips, complaints, and referrals



Total ordered/assessed (Millions)



2020 total ordered/assessed: \$8,218,924.91

Council on the Underground Economy

to-date ordered/assessed: \$138,470,945 (March 2008 - December 2020)

2020 CUE Ordered/Assessed Funds by Department

Agency	Financial Impact
Attorney General's Fair Labor Division	\$291,807.00
Department of Unemployment Assistance	\$6,118,666.64
Alcohol Beverages Control Commission	\$1,565,313.27
Department of Revenue	\$207,338.00
Department of Labor Standards	\$35,800.00
Grand Total:	\$8,218,924.91

When workers are paid under the table, they miss out on many components available to other workers:

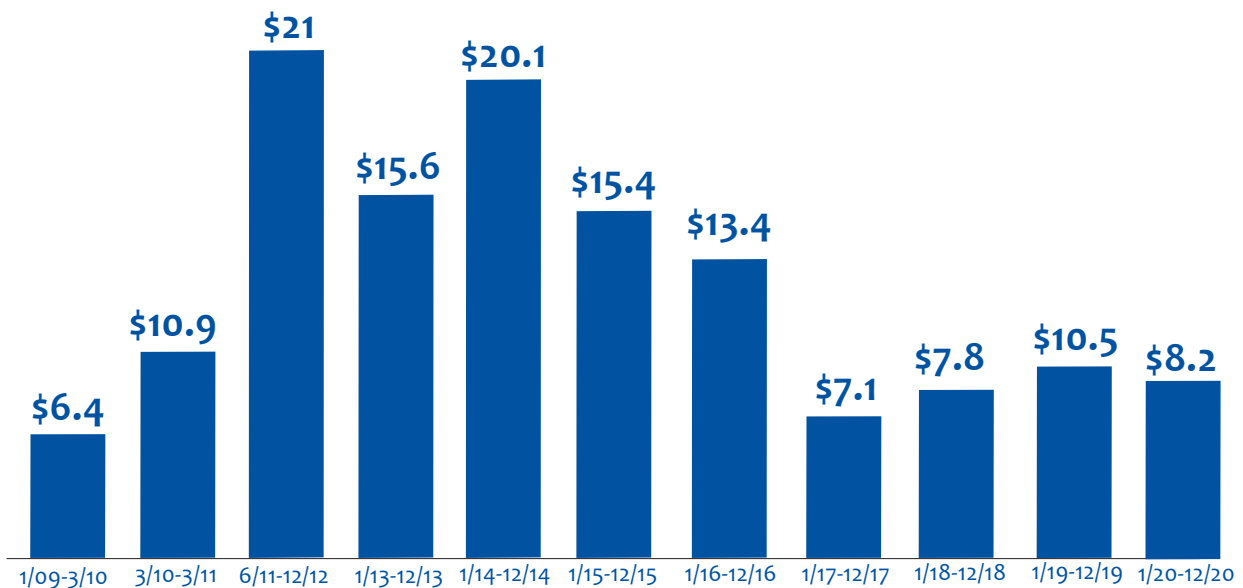


CUE Revenue 2009-2020

In total Massachusetts CUE operations have assessed/ordered nearly \$138 million from non-compliant businesses between 2009 and 2020. These collections are the result of tips, complaints, and referrals given to the CUE investigative subcommittee.

Progression of recoveries for the CUE (millions)

Amounts include restitution, state taxes, unemployment contributions, fines, and penalties collected through CUE efforts.



¹Prior CUE/JTF reports represented activities as follows:

- 2010 Annual Report: April 2009-March 2010
- 2011 Annual Report: April 2010-March 2011 and April 2011-June 2011
- 2012 Annual Report: July 2011-December 2011 and January 2012-December 2012
- Beginning with 2013, activities began to be reported on a yearly cycle
- 2015 includes activities as the JTF and CUE

Appendix A: Massachusetts General Laws

Chapter 23 Section 25 – Council on the Underground Economy

Section 25. (a) There is hereby established a council on the underground economy.

The council shall coordinate joint efforts to combat the underground economy and employee misclassification, including efforts to: (1) foster compliance with the law by educating business owners and employees about applicable requirements; (2) conduct targeted investigations and enforcement actions against violators; (3) protect the health, safety and benefit rights of workers; and (4) restore competitive equality for law-abiding businesses. For the purposes of this section, the term “underground economy” shall mean any individual or business that deals in cash or uses other means to conceal its true tax liability from government licensing, regulatory and taxing agencies, including, but not limited to, tax evasion or fraud, misclassification of employees, wage theft or the unreported payment of wages.

(b) The council shall consist of 17 members including: the secretary of labor and workforce development, or a designee, who shall serve as the chair; the director of the department of unemployment assistance, or a designee; the director of the department of industrial accidents, or a designee; the director of labor standards, or a designee; the commissioner of revenue, or a designee; the chief of the attorney general’s fair labor division, or a designee; the commissioner of public safety, or a designee; the director of professional licensure, or a designee; the executive director of the insurance fraud bureau, or a designee; and 8 persons appointed by the governor who represent government agencies. The council may create and appoint members to a subcommittee made up of members representing business, organized labor, not-for-profit organizations, government, the legislature, and any political subdivision thereof including municipal governments, to solicit input.

(c) The council shall:

- (1) facilitate timely information sharing among state agencies in order to advise or refer matters of potential investigative interest;
- (2) identify those industries and sectors where the underground economy and employee misclassification are most prevalent and target council members’ investigative and enforcement resources against those sectors, including through the formation of joint investigative and enforcement teams;
- (3) assess existing investigative and enforcement methods, both in the commonwealth and in other jurisdictions, and develop and recommend strategies to improve those methods;
- (4) encourage businesses and individuals to identify violators by soliciting information from the public, facilitating the filing of complaints and enhancing the available mechanisms by which workers can report suspected violations;

- (5) solicit the cooperation and participation of district attorneys and other relevant enforcement agencies, including the insurance fraud bureau, and establish procedures for referring cases to prosecuting authorities as appropriate;
 - (6) work cooperatively with employers, labor and community groups to diminish the size of the underground economy and reduce the number of employee misclassifications by, among other means, disseminating educational materials regarding the applicable laws, including the legal distinctions between independent contractors and employees, and increasing public awareness of the harm caused by the underground economy and employee misclassification;
 - (7) work cooperatively with federal, state, and local social services agencies to provide assistance to vulnerable populations that have been exploited by the underground economy and employee misclassification, including, but not limited, to immigrant workers;
 - (8) identify potential regulatory or statutory changes that would strengthen enforcement efforts, including any changes needed to resolve existing legal ambiguities or inconsistencies, as well as potential legal procedures for facilitating individual enforcement efforts; and
 - (9) consult with representatives of business and organized labor, members of the general court, community groups, and other agencies to discuss the activities of the council and its members and ways of improving its effectiveness.
- (d) The council shall file an annual report with the governor and the clerks of the house of representatives and senate summarizing the council's activities during the preceding year. The report shall, without limitation:
- (1) describe the council's efforts and accomplishments during the year;
 - (2) identify any administrative or legal barriers impeding the more effective operation of the council, including any barriers to information sharing or joint action;
 - (3) propose, after consultation with representatives of business and organized labor, members of the general court and other agencies, appropriate administrative, legislative, or regulatory changes to strengthen the council's operations and enforcement efforts and reduce or eliminate any barriers to those efforts; and
 - (4) identify successful preventative mechanisms for reducing the extent of the underground economy and employee misclassification, thereby reducing the need for greater enforcement. Reports of the council shall be made available on the web page of the Executive Office of Labor and Workforce Development.

Appendix B: Common Interest Agreement

RENEWAL AND AMENDMENT OF COMMON INTEREST AGREEMENT

BETWEEN

PARTICIPATING AGENCIES OF THE U.S. DEPARTMENT OF LABOR

AND

THE COMMONWEALTH OF MASSACHUSETTS EXECUTIVE OFFICE OF LABOR AND
WORKFORCE DEVELOPMENT, COUNCIL ON THE UNDERGROUND ECONOMY

Pursuant to the Period of Agreement section of the November 17, 2014 Common Interest Agreement made and entered into by and between participating agencies of the United States Department of Labor, specifically, the Wage and Hour Division, the Employee Benefits Security Administration, the Office of Federal Contract Compliance Programs, and the Occupational Safety and Health Administration (all represented by the Office of the Solicitor and hereinafter collectively referred to as the "Department"), and the Commonwealth of Massachusetts, Council on the Underground Economy through the Secretary of the Executive Office of Labor and Workforce Development (hereinafter referred to as "the Commonwealth"), is hereby renewed and will expire three (3) years from the renewal date below, subject to the following changes to the November 17, 2014 Agreement. The Department and the Commonwealth are collectively referred to as "the parties."

1. The first bulleted term in the Exchange of Information Section is hereby revised to read as follows:
 - To the extent permitted by law, the parties understand that in order to effectuate the purposes and provisions of this Agreement, it may be necessary, from time to time, to exchange information, some of which may be considered confidential. It is the policy of each of the parties to cooperate with other government agencies to the fullest extent possible under the law, subject to the general limitation that any such cooperation must be consistent with its own statutory obligations and enforcement efforts. It is the view of the parties that an exchange of information in which both entities are proceeding with a common legal interest is to their mutual benefit. The parties to this Agreement recognize the importance of being able to provide information to other law enforcement bodies without waiving the privilege of otherwise protected material or making a public disclosure.

2. The fourth bulleted term in the Exchange of Information Section is hereby revised to read as follows:

- Confidential information means information that may be privileged or otherwise exempt from disclosure to the public or other unauthorized persons under state and federal statutes or law. Confidential information includes: the identity of persons who have given information to the parties in confidence or under circumstances in which confidentiality can be implied; any employee statements in enforcement files that were obtained under these conditions; internal opinions, policy statements, memoranda, and recommendations of federal or state employees, including (but not limited to) any records that would otherwise not be subject to disclosure under law as non-final, intra- or inter-agency documents; information or records covered by the attorney-client privilege and the attorney-work-product privilege; personal information on living persons; individually identifiable health information; and confidential business information and trade secrets.

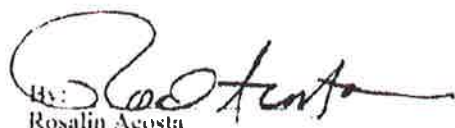
All other terms and conditions remain the same.

The November 17, 2014 Common Interest Agreement is renewed effective as of the day of February 5th, 2018.

United States Department of Labor
Wage and Hour Division

By: 
Bryan Jarrett
Deputy Administrator

The Commonwealth of Massachusetts, Council
on the Underground Economy

By: 
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Secretary, Executive Office of Labor and
Workforce Development
Chair, Council on the Underground Economy


By: 
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Regional Administrator

United States Department of Labor
Occupational Safety and Health Administration


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Appendix C: 2020 CUE Partner Agencies

Alcoholic Beverages Control Commission (ABCC) - Office of the Treasurer

The Alcoholic Beverages Control Commission regulates the alcoholic beverages industry in Massachusetts, directly licensing the statewide activities of liquor manufacturers, transporters, wholesalers and brokers. The ABCC also regulates interstate and international alcoholic beverage businesses by issuing certificates of compliance. The ABCC investigates applications for licenses, prosecutes violations of pertinent statutes and regulations and adjudicates disputes among members of the industry. **For more information, visit mass.gov/abcc.**

Office of the Attorney General's Fair Labor Division

The Office of Attorney General's Fair Labor Division enforces various laws that protect workers, including the prevailing wage, minimum wage, payment of wages, overtime, payroll record keeping, employee misclassification, tip pooling, child labor, Sunday and holiday premium pay laws. The Fair Labor Division also investigates allegations of violation of the State's public bidding laws in order to protect the integrity of the process of awarding public works construction contracts. In addition to prosecuting employers who fail to follow the Commonwealth's wage and hour laws, the Fair Labor Division works to protect employees from being exploited by an employer by educating both employers and employees about the law and employees' rights. **For more information, visit mass.gov/ago.**

Department of Industrial Accidents (DIA)

DIA's investigative unit works to ensure that businesses and industries are in compliance with the workers' compensation statute. One enforcement tool employed by the DIA is the issuance of immediate Stop Work Orders to violators, who are subject to fines and prosecution for failing to provide their employees with workers' compensation benefits. **For more information, visit mass.gov/dia.**

Department of Labor Standards (DLS)

The Department of Labor Standards (DLS) is responsible for the promotion and protection of workers' safety and health, wages and working conditions, and to support employers and workers in the utilization of apprenticeship as a workforce development tool. DLS protects workers through education and training, workplace safety and health consultation and assessment, occupational injury and illness data collection and analysis, and consistent and responsible administration of its statutes and regulations. DLS operates the following programs: Division of Apprentice Standards, Prevailing Wage Program, Minimum Wage Program, Employment, Placement, and Staffing Agency Program, On-site Consultation Program, Asbestos Safety Program, Deleading and Lead Safety Program, Occupational Lead Poisoning Registry, Massachusetts Workplace Safety and Health for Public Sector Program, Occupational Safety and Health Statistics Program, and Mine Safety and Health Program. **For more information, visit mass.gov/dols.**

Office of Public Safety and Inspections (OPSI)

The Office of Public Safety and Inspections is a licensing and regulatory agency whose mission is to reduce the risk to life and property by promoting safety in the design, construction, installation, inspection, operation, repair and alteration of boilers, pressure vessels, elevators, and buildings. The Office of Public Safety and Inspections licenses individuals in many areas, including elevator mechanics, construction supervisor licenses, fireman and engineering licenses, as well as licenses for sprinkler fitters, pipefitters, refrigeration technicians, and hoisting operators. **For more information, visit mass.gov/orgs/office-of-public-safety-and-inspections.**

Department of Revenue (DOR)

The mission of the Massachusetts Department of Revenue is to achieve maximum compliance with the tax, child support and municipal finance laws of the Commonwealth. The Department is dedicated to enforcing these laws in a fair, impartial and consistent manner by providing professional and courteous service to all its customers. The Department is also committed to the objectives of the Underground Economy Task Force to enforce employee classification laws through increased public awareness and enforcement. Misclassification of employees by employers has resulted in millions of dollars in lost tax revenue. Both with the Task Force and independently, DOR will be assigning more resources to employee misclassification and other withholding audits. **For more information, visit mass.gov/dor.**

Department of Unemployment Assistance (DUA)

The Department of Unemployment Assistance administers the unemployment insurance program in Massachusetts, providing temporary financial assistance to workers who lose their jobs through no fault of their own. Funding for unemployment insurance benefits comes from contributions paid by the state's employers; no deductions are made from workers' salaries and no taxpayer monies are utilized for this benefit. Employers pay quarterly contributions to the Massachusetts DUA. Protecting the integrity of the unemployment insurance program is a responsibility taken seriously by the DUA. Working with Joint Task Force partners, DUA continues to prevent, detect, investigate, and prosecute those who defraud or attempt to defraud the unemployment insurance system. This includes employers that evade paying unemployment insurance premiums by misclassifying their employees, either as independent contractors or without regard to any legal structure. With passage of the Federal Coronavirus Aid, Relief, and Economic Security (CARES) Act, DUA implemented and oversaw three new programs: Federal Pandemic Unemployment Compensation (FPUC), Pandemic Unemployment Assistance (PUA), and Pandemic Emergency Unemployment Compensation (PEUC). The Continuing Assistance to Unemployed Workers Act extended benefits to March 14, 2021, and added a new program, Mixed Earner Unemployment Compensation. The American Rescue Plan Act of 2021 (ARPA) extended benefits under the CARES Act through September 4, 2021. Federal UI benefits, including FPUC, PUA, PEUC, and MEUC ended September 4, 2021. In addition to the implementation and rollout of these programs, DUA identified and recovered benefits that were overpaid through these additional benefit programs. **For more information, visit mass.gov/dua.**

Division of Capital Asset Management and Maintenance (DCAMM)

DCAMM serves the CUE by identifying DCAMM-certified contractors who have become non-compliant with other state agencies' regulations or requirements in an effort to bring the contractors back into compliance with state law or to decertify or debar such contractors when appropriate. DCAMM utilizes information obtained from various partner agencies as part of the certification process in order to make a final determination on whether the contractor meets the qualifications to be certified to perform public work. **For more information, visit mass.gov/dcam.**

Division of Professional Licensure (DPL)

The Division of Professional Licensure, under the Office of Consumer Affairs and Business Regulation, oversees 31 boards of registration that license and regulate more than 360,000 licensees in some 50 trades and professions. DPL also oversees the State Racing Commission. DPL's mission is to protect the public health, safety, and welfare by licensing qualified individuals who provide services to consumers, and by fair enforcement of the statutes and regulations of the boards. Boards can revoke or suspend a license after investigation of serious complaints. DPL seeks to aggressively pursue unlicensed practices, working with participating Joint Task Force agencies and courts throughout the Commonwealth. **For more information, visit mass.gov/dpl.**

Insurance Fraud Bureau (IFB)

The Insurance Fraud Bureau of Massachusetts (IFB) was authorized by Massachusetts statute in 1990 to criminally investigate suspected fraudulent insurance transactions. The IFB became operational in 1991. The jurisdiction of the IFB was expanded effective January 1, 1992 to specifically include the criminal investigation of workers' compensation fraud, workers' compensation claim fraud, and workers' compensation premium evasion cases presented by misclassification of employees—schemes to affect experience modification or unreported or underreported payroll. Under existing law, anyone who is licensed under Massachusetts General Law (M.G.L.) Chapter 175, exempt from the licensing requirements of M.G.L. c. 175, or otherwise engaged in the business of insurance, and who becomes aware of suspected insurance fraud, is required to report it to the IFB. In addition to incarceration, the restitution orders on workers' compensation premium evasion cases total over \$63 million. Referrals can be made through the IFB web site at www.ifb.org or via the IFB hotline, 1-800-32-FRAUD. **For more information, visit [ifb.org](https://www.ifb.org).**

Occupational Health and Safety Administration (OSHA), U.S. Department of Labor

Congress created the Occupational Safety and Health Administration (OSHA) to assure safe and healthful working conditions for working men and women by setting and enforcing standards and by providing training, outreach, education and assistance. OSHA is part of the United States Department of Labor. The administrator for OSHA is the Assistant Secretary of Labor for Occupational Safety and Health. OSHA's administrator answers to the Secretary of Labor, who is a member of the cabinet of the President of the United States. The OSH Act covers most private sector employers and their workers, in addition to some public sector employers and workers in the 50 states and certain territories and jurisdictions under federal authority. Those jurisdictions include the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Northern Mariana Islands, Wake Island, Johnston Island, and the Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act. **For more information, visit [osha.gov](https://www.osha.gov).**

United States Department of Labor Wage and Hour (US DOL W/H)

The Wage and Hour Division (WHD) enforces federal minimum wage, overtime pay, recordkeeping, and child labor requirements of the Fair Labor Standards Act. WHD also enforces the Migrant and Seasonal Agricultural Worker Protection Act, the Employee Polygraph Protection Act, the Family and Medical Leave Act, wage garnishment provisions of the Consumer Credit Protection Act, and a number of employment standards and worker protections as provided in several immigration related statutes. Additionally, WHD administers and enforces the prevailing wage requirements of the Davis-Bacon and Related Acts and the Service Contract Act and other statutes applicable to federal contracts for construction and for the provision of goods and services. **For more information [dol.gov/agencies/whd](https://www.dol.gov/agencies/whd).**

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