



## **COMMONWEALTH OF MASSACHUSETTS**

**Deval L. Patrick, Governor**

**Timothy P. Murray,  
Lieutenant Governor**

**Joanne F. Goldstein, Secretary  
Executive Office of Labor and  
Workforce Development**

### **Task Force Members**

Department of Labor

Division of  
Unemployment Assistance

Department of  
Industrial Accidents

Fair Labor Division,  
Massachusetts Attorney  
General's Office

Department of Revenue

Division of Occupational Safety

Division of Capital  
Asset Management

Alcoholic Beverages  
Control Commission

Division of Apprentice Training

Division of Professional Licensure

Department of Public Safety

Massachusetts Office of Refugees  
and Immigrants

Supplier Diversity Office

Insurance Fraud Bureau (Partner)

### **Report Submitted by:**

**George E. Noel**, Director  
Department of Labor,  
Chair of Joint Task Force

**Drew Cahill**, Director  
Joint Task Force

# **Joint Enforcement Task Force on the Underground Economy and Employee Misclassification**

---

## **2010 Annual Report**

**1-877-96-LABOR**  
**[www.mass.gov/dol/labortaskforce](http://www.mass.gov/dol/labortaskforce)**

# Joint Enforcement Task Force on the Underground Economy and Employee Misclassification Annual Report 2010



## THE COMMONWEALTH OF MASSACHUSETTS EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT JOINT ENFORCEMENT TASK FORCE ON THE UNDERGROUND ECONOMY AND EMPLOYEE MISCLASSIFICATION

DEVAL L. PATRICK  
GOVERNOR  
TIMOTHY P. MURRAY  
LT. GOVERNOR

JOANNE F. GOLDSTEIN  
SECRETARY

GEORGE E. NOEL  
DIRECTOR OF LABOR

DREW CAHILL  
DIRECTOR  
JOINT ENFORCEMENT  
TASK FORCE

October, 2010

Dear Governor Patrick:

On behalf of the Joint Enforcement Task Force on the Underground Economy and Employee Misclassification, we are pleased to present you with the Task Force's 2nd Annual Report. In March of 2008, you signed Executive Order #499, establishing the Commonwealth's Joint Enforcement Task Force on the Underground Economy and Employee Misclassification to address the issue of workplace fraud and misclassification. We are grateful for your leadership and vision in providing an opportunity for state agencies and constitutional offices to work in collaboration to ensure stronger compliance with the Commonwealth's labor, licensing and tax laws.

Now in our third year, the keys to the success of the Task Force remain a commitment to collaboration, the sharing of information, and the efficient use of member agency processes and resources to uproot the underground economy. Following these guiding principles, Task Force member agencies are now functioning together as a collective force, working smarter in the fight to combat workplace fraud and misclassification.

We would like to take this opportunity to thank the designated representatives to the Task Force from our executive branch member agencies, as well as the Office of the Attorney General's Fair Labor Division, the Office of the Treasurer's Alcoholic Beverages Control Commission, and the Insurance Fraud Bureau for their ongoing contributions. Working together, restoring fairness to our economy helps to level the playing field for legitimate employers, and to protect workers and the interests of taxpayers in the Commonwealth.

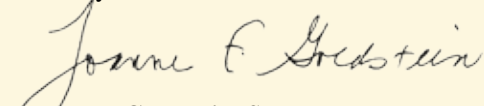
We are pleased to present you with this Annual Report, which details the works of the Task Force during its second year. Included is a chart highlighting information about the funds recovered through the Task Force, along with summaries of each member agency's participation in responding to Task Force referrals and taking on the underground economy. Other sections of the report describe important next steps being pursued to assist the member agencies in increasing the volume and impact of our enforcement, including the establishment of a Task Force Advisory Council, and the undertaking of a research study on the underground economy. Lastly, the report provides a synopsis describing multi-state and federal cooperative efforts addressing employee misclassification and other workplace fraud.

ONE ASHBURTON PLACE • 21<sup>st</sup> FLOOR • Attn: JTF • BOSTON, MA 02108  
TEL. 877-96 LABOR (877-965-2267)  
[www.mass.gov/dol/labortaskforce](http://www.mass.gov/dol/labortaskforce)

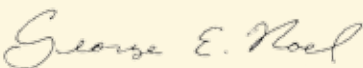
## Joint Enforcement Task Force on the Underground Economy and Employee Misclassification Annual Report 2010

While we have begun to scratch the surface of the problem, we know that there is a great deal of work ahead. Our agencies are committed to building on our efforts to date and continuing to combat the underground economy in every possible way.

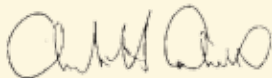
Sincerely,



**Joanne F. Goldstein**, Secretary  
Executive Office of Labor and Workforce Development

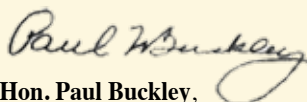


**George E. Noel**,  
Director, Department of Labor  
Chair, Joint Task Force



**Drew Cahill**,  
Director,  
Joint Task Force

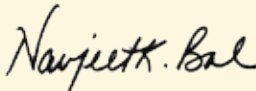
### Principal Members:



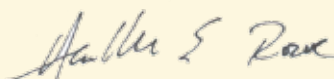
**Hon. Paul Buckley**,  
Commissioner,  
Department of Industrial Accidents



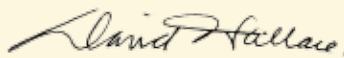
**Judith Cicatiello**,  
Director, Division of  
Unemployment Assistance



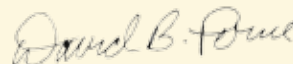
**Navjeet Bal**,  
Commissioner,  
Department of Revenue



**Heather Rowe**,  
Acting Commissioner,  
Division of Occupational Safety



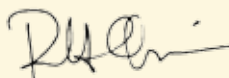
**David Wallace**,  
Director,  
Division of Apprentice Training



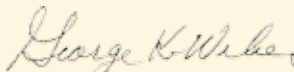
**David Perini**,  
Commissioner, Division  
of Capital Asset Management



**Jocelyn Jones**,  
Acting Chief, Fair Labor Division,  
Attorney General's Office



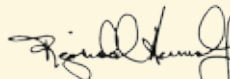
**Richard Chacon**,  
Director, Massachusetts Office  
of Refugees and Immigrants



**George K. Weber**,  
Director, Division  
of Professional Licensure



**Thomas Gatzunis**,  
Commissioner,  
Department of Public Safety



**Reggie Nunnally**,  
Executive Director,  
Supplier Diversity Office

# Table of Contents

Section 1: Executive Summary	Page 1
Section 2: Recovered Funds	Page 4
Section 3: Results of Referrals and Cooperative Oversight	Page 5
Section 4: 2010/2011 Goals and New Initiatives	Page 8
Section 5: Multi-State and Federal Cooperation	Page 11
Appendix A: Executive Order 499	Page 13
Appendix B: Member Agencies	Page 16
Appendix C: Other States	Page 20

# Executive Summary

In March of 2008, Governor Deval Patrick signed Executive Order #499 which formed the Joint Enforcement Task Force on the Underground Economy and Employee Misclassification (JTF or Task Force), in an effort to coordinate the Commonwealth's attempt to eliminate workplace fraud and employee misclassification. The Executive Order calls for the Task Force member agencies to address 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, and benefit rights of workers
- restore competitive equality for law-abiding businesses

The underground economy and employee misclassification present a serious threat to workers, legitimate employers, tax revenues, and the economic well-being of our Commonwealth. Our Task Force is approaching this challenge in cooperation with counterparts in many other states and federal enforcement agencies. An August 2009 report by the United States Government Accountability Office labeled employee misclassification a national problem and strongly urged the Internal Revenue Service (IRS) and the U.S. Department of Labor (U.S. DOL) to increase their collaboration with one another and the states in a focused effort to address the issue.<sup>1</sup> In May 2010 the U.S. DOL hosted an employee misclassification conference with more than a dozen states that have task forces similar to the MA JTF. The conference, attended by Massachusetts Secretary of Labor and Workforce Development, Joanne Goldstein, served as an exchange of ideas and as an opportunity for U.S. DOL to inform the states of the federal government's growing focus in the area of employee misclassification. The expectation is that federal and multi-state enforcement collaboration and supportive federal funding opportunities for state task forces will rise in the coming months and years. As a result of the JTF's multi-state cooperation, our state has been able to serve as a model for other states seeking to create a cross-agency tool to tackle the underground economy. Section 5 of this report on Page 11 includes further explanation of efforts taking place across the country to eliminate the underground economy, along with the JTF's multi-state collaboration to date.

## The Problem in Massachusetts

The majority of Massachusetts employers pay their applicable taxes, classify their workers legally, and contribute in a responsible manner as a part of our economy and as members of the community. Nevertheless, an underground economy exists in which unscrupulous employers compete unfairly by paying workers "off the books", paying sub-minimum wages, and illegally misclassifying their workers so as to avoid paying withholding taxes, and unemployment or workers' compensation insurance. These practices put a great strain on those businesses playing by the rules, workers attempting to earn an honest day's pay for an honest day's work, and community resources.

---

<sup>1</sup> United States Government Accountability Office, Employee Misclassification: Improved Coordination, Outreach and Targeting Could Better Ensure Detection and Prevention, Government Accountability Office (August 2009) (available at [www.gao.gov/products/GAO-09-717](http://www.gao.gov/products/GAO-09-717)).

# Joint Enforcement Task Force on the Underground Economy and Employee Misclassification

## Annual Report 2010

While education and outreach to business is needed and is a constant focus of the Task Force, it is important to acknowledge that a large portion of our enforcement deals with individuals and businesses that willfully and intentionally avoid labor, license and tax laws. Moreover, such activity goes largely unreported, making it difficult to fully measure the cost of the underground economy in actual dollars and cents. While our Task Force has made great gains in the past year, the member agencies understand that there is much work to be done moving ahead in continuing to address this state and national problem.

### Commonwealth Reaches Settlement with FedEx Ground

Furthering Massachusetts' role as a national leader in the fight against employee misclassification and the underground economy, Attorney General Martha Coakley, in harmony with the Task Force mission and in coordination with the Executive Office of Labor and Workforce Development (EOLWD) and the Department of Revenue (DOR), recently reached a groundbreaking \$3 million settlement with FedEx Ground to settle claims that the company misclassified drivers as independent contractors. The settlement monies recovered to the general fund include significant underpayments to DOR, the Division of Unemployment Assistance (DUA), and the Department of Industrial Accidents (DIA), accompanied by a payment to 13 FedEx drivers named in the Attorney General's original citation. This hard fought victory for the Commonwealth brings us closer to our common goals of protecting workers' rights and ensuring fairness for honest businesses.

### JTF Results

During the JTF's second-year of operations, as a result of referrals and cooperative oversight, member agencies have recovered \$6,489,549 (see chart, page 4), an increase of \$5,050,525 from last year's recoveries totaling \$1,439,024. Unless otherwise noted, all references in this report to funds recovered represent monies that have been recovered through the cooperative efforts of the JTF and represent monies above and beyond what the member agencies collect through their ordinary enforcement efforts.

From April 1, 2009 through March 31, 2010 the JTF received 413 complaints directly through the JTF referral phone line and on-line referral form along with hundreds of complaints made to our member agencies. The work of the JTF member agencies in investigating these complaints, conducting over 5,000 JTF based compliance cross-checks, and taking cross-agency action produced the following results from April 1, 2009 thru March 31, 2010:

- DUA recovered \$2,071,211 in new unemployment insurance (UI) taxes and \$188,788 in Fair Share contributions through compliance cross-checks with DCAM, DIA, ABCC, and DAT.
- DOR reviewed and closed 196 JTF cases for audit for suspected payroll, income, corporate, sales, or meals tax evasion and misclassification of employees, resulting in \$1,568,166 in overdue taxes collected. Seven cases are still pending.

### 2<sup>nd</sup> Year Highlights

- **DUA recovered \$2,071,211 in new unemployment insurance taxes and \$188,788 in Fair Share contributions through the JTF.**
- **DOR conducted 196 audit investigations resulting in \$1,568,166 in overdue taxes collected through the JTF.**
- **AGO, as a result of a two-year long JTF investigation, brought a criminal case in which a temporary employment agency out of Worcester, Massachusetts pled guilty to 65 criminal counts of violating the Massachusetts wage and hour laws, committing insurance and tax fraud. The company, and its owner, agreed to pay \$500,000 in restitution and penalties, and will serve 5 years probation. The following JTF member agencies participated in various stages of the investigation: AGO, DOS, DIA, DOR, DUA, and IFB.**
- **DIA has issued 3,676 stop work orders for lack of workers' compensation insurance resulting in \$1,867,394 in fines. DIA had 6,574 employers on the DIA Debarment List as of March 31, 2010.**
- **DCAM assisted in the DUA bringing 41 DCAM-certified contractors into compliance.**

# Joint Enforcement Task Force on the Underground Economy and Employee Misclassification

## Annual Report 2010

- The Attorney General's Office (AGO) investigated JTF referrals and misclassification complaints resulting in 70 civil citations and \$137,290 in restitution and \$189,050 in fines. AGO also conducted a major criminal investigation resulting from a JTF referral in which the defendant plead guilty to 65 criminal indictments and was ordered to pay \$500,000 in restitution and to serve 5 years probation. The following JTF member agencies participated in various stages of the investigation: AGO, DOS, DOR, DIA, DUA, and IFB.
- Based on the review and investigation of JTF referrals, DIA issued twelve stop work orders for lack of workers' compensation coverage. As a result 37 workers received workers' compensation coverage, and DIA recovered \$5,300 in fines. In a complimentary enforcement process, DIA conducted 47,227 compliance checks, 7,401 investigations, and issued 3,676 stop work orders for lack of workers' compensation insurance resulting in \$1,867,394 in fines and 10,089 workers brought under workers' compensation insurance coverage. As of March 31, 2010, DIA's Debarment List<sup>2</sup> included 6,574 employers.
- The Division of Occupational Safety (DOS) investigated 20 cases referred by the JTF alleging misconduct on the part of employment or temporary staffing agencies. Twelve of the cases were closed; 3 were referred to other enforcement agencies within the JTF and currently remain open; and 5 of the cases resulted in the licensing of unlicensed temporary staffing agencies.
- The Division of Capital Asset Management (DCAM) assisted the DUA in bringing 41 DCAM-certified contractors into compliance by sending letters notifying the applicants that they must settle their DUA obligation before they can be eligible for certification. Three contractors who did not comply were denied certification altogether.

### Information Sharing Legislation Enacted

In an effort to improve our joint enforcement capabilities, through collaborative work on the part of EOLWD, the Executive Office of Administration and Finance, the Executive Office of Housing and Economic Development, and DOR, the JTF was recently able to achieve legislative enactment of language allowing DOR to share worker classification information from tax filings with other JTF agencies. This is an important change that is expected to greatly assist our investigative sub-team in developing potential targets and is an example of the JTF serving as a tool for identifying and overcoming cross-agency enforcement impediments.

### New Initiatives

As the Task Force operates in its third year, a number of new initiatives are currently being undertaken to build on the work of the JTF's first two years, including: (1) the establishment of an advisory council consisting of a steering committee and 5 regional advisory groups to guide the Task Force's efforts; (2) the commissioning of a research study to show the current depth and scope of employee misclassification and the underground economy in Massachusetts; (3) the implementation of fraud detection technology to assist targeted enforcement by member agencies; (4) the reorganization of the Task Force's Investigative Sub-Team to streamline the investigative process; (5) the building of an education and outreach plan to further inform workers, businesses, and municipal decision-makers about the work of the Task Force and the state's employer compliance standards; and (6) the development of a Task Force informational handout and a new Task Force web page, both components of the Task Force's education and outreach strategy. These initiatives will be explained in greater detail in Section 4 of the report on Page 8.

With these developing initiatives and a committed investigative team, the Task Force is looking forward to another productive year.

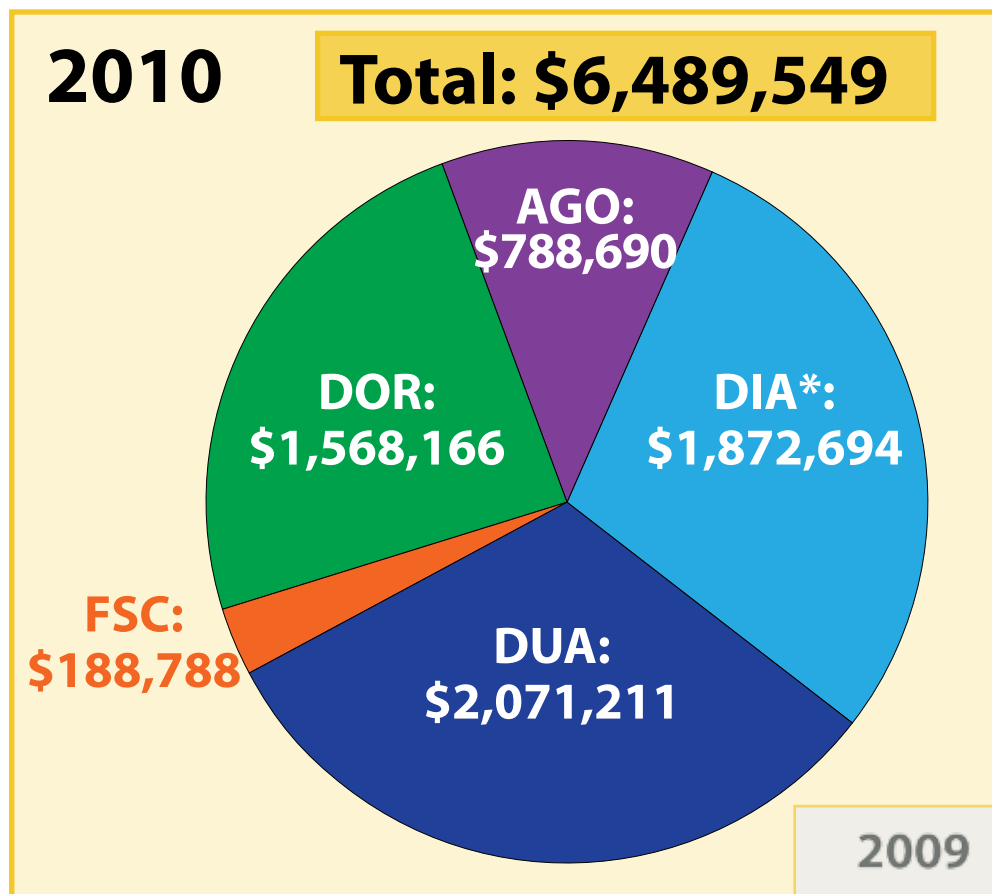
---

<sup>2</sup> Pursuant to M.G.L. Ch.152, Sec.25c, an employer who fails to provide workers' compensation insurance or self-insurance as required by this chapter or knowingly misclassifies employees to avoid higher premium rates, will be immediately debarred from bidding or participating in any state or municipal funded contracts for a period of three years.

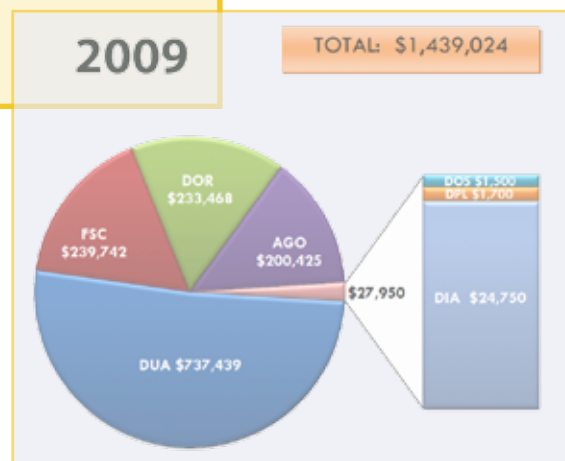


# Recovered Funds

## Revenue Generated Through the JTF



	Year 2	Year 1
DUA UI taxes:	\$2,071,211	\$737,439
DUA FSC:	\$188,788	\$239,742
DOR:	\$1,568,166	\$233,468
AGO:	\$788,690	\$200,425
DIA*:	\$1,872,694	\$24,750
<b>Total:</b>	<b>\$6,489,549</b>	<b>\$1,439,024**</b>



\* DIA has a complimentary enforcement operation, and \$1,867,394 of DIA recovered funds reported for the first time in Year 2 came as a result of that operation.

\*\* The Year 1 recoveries totaled here also include \$1,500 recovered by the Division of Occupational Safety, and \$1,700 recovered by the Division of Professional Licensure.



# Results of Referrals and Cooperative Oversight

## Reporting Suspected Cases of Fraud and Misclassification to the Task Force

The web site of the Joint Enforcement Task Force on the Underground Economy and Employee Misclassification, [www.mass.gov/dol/labortaskforce](http://www.mass.gov/dol/labortaskforce), provides information about the underground economy, and how to take action when it comes to getting help with suspected cases of workplace fraud and employee misclassification. The web page provides the public with a form that can be completed and submitted to the JTF for suspected cases of fraud and misclassification. The JTF anonymous referral telephone line, 1-877-96-LABOR, provides another avenue for individuals to provide information on the underground economy to JTF member agencies.

## JTF Referral Investigations

JTF member agencies that have enforcement authority over underground economy matters have tracked their activities with regard to JTF referrals and resulting investigations. From April 1, 2009 to March 31, 2010 JTF member agencies have reviewed 413 JTF referrals and opened agency investigations when appropriate. These investigations, conducted on top of the agencies' independent investigatory and enforcement work, ranged from single-agency audits to multi-agency actions, with results ranging from stop work orders issued, to owed monies received, to prosecution of persons for egregious infractions, to no violations found. It should be noted that since white collar crime investigations can require months of investigation and/or litigation, the results of many investigations may not be available until long after referrals are made. Those complaints that were not investigated either lacked sufficient information for follow-up or lacked relevance to the mission of the JTF. All information provided to the JTF is considered confidential and is not subject to public disclosure.

## JTF Compliance Cross-Checking

JTF member agencies' collaboration goes beyond the coordination of JTF referrals and investigations. The JTF has also facilitated the implementation of numerous cooperative oversight processes, resulting in over 5000 compliance checks amongst member agencies in the JTF's second year, to assist in enforcement against employers violating Massachusetts tax, labor and licensing laws. A compliance check occurs when a single Task Force member agency reviewing an employer's conduct for purposes of an ongoing investigation, license application, license renewal application, or procurement certification, inquires as to whether other Task Force member agencies are pursuing ongoing enforcement matters relative to that particular employer. Cooperative oversight in the form of JTF compliance checks has proven to be an important tool for the Commonwealth's licensing and procurement agencies, and tax and labor enforcement agencies.

## Member Agency Enforcement Activity

**The Division of Unemployment Assistance (DUA)** reviewed all relevant JTF referrals looking for Unemployment Insurance (UI) tax and Fair Share Contribution (FSC) violations such as failure to file, underreporting, failure to register, and/or failure to pay in full. DUA recovered \$2,071,211 in new unemployment insurance (UI) taxes and \$188,788 in Fair Share contributions through referrals and compliance cross-checks with DCAM, DIA, ABCC, and DAT.

**The Department of Industrial Accidents (DIA)** reviewed all relevant complaints received by the JTF and checked each for workers' compensation coverage. Based on the review and investigation of JTF referrals, DIA issued twelve stop work orders for lack of workers' compensation coverage. As a result 37 workers received workers' compensation coverage, and DIA recovered \$5,300 in fines. In a complimentary enforcement process, DIA conducted 47,227 compliance checks, 7,401 investigations, and issued 3,676 stop work orders for lack of workers' compensation insurance resulting in \$1,867,394 in fines and 10,089 workers brought under workers' compensation insurance coverage. As of March 31, 2010, DIA's Debarment List included 6,574 employers. Had any of those uncovered workers sustained an accident on the job, they would have turned to the state's workers' compensation insurance trust fund to cover their weekly benefits and medical expenses. Additionally, this represents an unfair dynamic for businesses that are dutifully paying their insurance premiums to operate in compliance with the state's workers' compensation laws.

**The Attorney General's Office (AGO)** reviewed all relevant complaints for potential violations of minimum wage and child labor laws; nonpayment of wages, prevailing wage violations; misclassification of employees<sup>3</sup>; overtime pay violations; payroll record keeping; workers' compensation and unemployment insurance fraud and launched investigations in many cases, resulting in 70 civil citations and \$137,290 in restitution and \$189,050 in fines. AGO also undertook a major criminal investigation based on a JTF referral that led to the prosecution of a temporary employment company and its owner. The company and its owner ultimately plead guilty to 65 criminal indictments and were ordered to pay \$500,000 in restitution and to serve 5 years probation. The following JTF member agencies participated in various stages of the investigation: DUA, DOS, DIA, DOR, and IFB.

**The Department of Revenue (DOR)** reviewed and closed 196 JTF referrals for audit for suspected payroll, income, corporate, sales, or meals tax evasion and misclassification of employees, resulting in \$1,568,166 in overdue taxes collected. Seven cases are still pending.

---

3 M.G.L. c. 149, s. 148B, provides a three-part independent contractor test which requires that all three elements (commonly referred to as prongs one, two and three or the A, B, C test) must exist in order for an individual to be classified other than as an employee. The three prongs are: Freedom from Control, Service Outside the Employers Usual Course of Business, and, Independent Trade, Occupation, Profession or Business. The burden of proof is on the employer, and the inability of an employer to prove any one of the prongs is sufficient to conclude that the individual in question is an employee. See *Scalli v. Citizens Financial Group*, 2006 WL 1581625, \*14 (D. Mass. 2006); *Rainbow Development, LLC v. Com., Dept. of Industrial Accidents*, 2005 WL 3543770, \*2 (Mass. Sup. Ct. 2005). The Commissioner of Revenue is charged with administering the Massachusetts wage withholding laws under M.G.L. c. 62B, which provides a different definition of employee than M.G.L. c. 149, s. 148B, for purposes of Massachusetts income tax withholding. See Department of Revenue TIR 05-11: Effect of New Employee Classification under M.G.L. c. 149, s. 148B on Withholding of Tax on Wages under M.G.L. c. 62B. In addition, a definition similar but not identical to M.G.L. c. 149, s. 148B, exists for unemployment insurance purposes. M.G.L. c. 151A, s. 2. The Massachusetts Workers' Compensation Law also provides a different definition of employee. M.G.L. c. 152, s. 1(4).

## Joint Enforcement Task Force on the Underground Economy and Employee Misclassification Annual Report 2010

**The Division of Occupational Safety (DOS)** investigated 20 complaints referred by the JTF alleging misconduct on the part of employment or temporary staffing agencies. Twelve of the cases were closed; three were referred to other enforcement agencies within the JTF and currently remain open; and five of the cases resulted in the licensing of unlicensed temporary staffing agencies.

**The Division of Capital Asset Management (DCAM)** investigated 118 referrals involving contractors that were referred to the JTF for potential underground economy activities. These 118 contractor names were cross-referenced with DCAM's list of certified contractors who are eligible to bid on Chapter 149 public building construction contracts. Of the 118 names, 13 were DCAM certified. As a result, 1 firm was decertified and 1 was debarred. Also, DCAM has committed that when the AGO or other state agency debars a contractor that is currently certified with DCAM, DCAM will follow that action by decertifying the contractor's existing Certificate of Eligibility, rendering it null and void. DCAM continues to cross-check the DIA's Stop Work Order Database, The Supplier Diversity Office's (SDO) Decertification and Withdrawal listings, DUA's listing of contractors with outstanding liabilities, and the AG's list of debarred contractors as part of the regular certification application process. Additionally, each contractor application is checked against DCAM's internal JTF case tracking database prior to issuing a Certificate of Eligibility.

**The Division of Apprentice Training (DAT)** investigated 22 referrals in which businesses about whom a complaint was lodged were registered sponsors of apprentices. DAT reviewed these cases for potential violations of apprentice ratios and wages as well as required Occupational Safety & Health Administration (OSHA) training. These investigations resulted in over \$80,000 in Division of Unemployment Assistance (DUA) collections.

**The Division of Professional Licensure (DPL)** investigated all relevant JTF referrals involving unlicensed individuals or businesses performing services that require professional licensure by the Commonwealth of Massachusetts. Results included successful criminal prosecutions against individuals operating as plumbers on charges of practicing with a revoked license and practicing with a suspended license. In collaboration with DIA, the DPL issued a Cease and Desist order with administrative penalties against an alarm installation company operating without workers' compensation insurance. The DPL has also taken action against temporary employment agencies providing electrical and plumbing licensees in the Commonwealth without having the requisite master licensee on staff.

**The Department of Public Safety (DPS)** reviewed all relevant referrals involving unlicensed individuals or businesses performing services that require professional licensure by the Commonwealth of Massachusetts. The DPS has provided background and specific information for investigations on the various license classifications which they oversee.

**The Insurance Fraud Bureau (IFB)** received a total of eight referrals involving criminal violations of workers' compensation laws. One has been indicted, three were reviewed and referred for prosecution recommending the employers be charged with premium avoidance. There are four cases currently under investigation.

# 2010/2011 Goals and New Initiatives

In its third year, the Task Force is focused on increasing the volume and impact of cross-agency enforcement. This will be accomplished by building on the existing processes by which member agencies conduct cooperative investigations and raising awareness and increasing education in the general public, the business community, and within government about the work of the Task Force agencies against the underground economy and the responsibilities facing employers in the Commonwealth.

There are a number of key, new initiatives being undertaken by the Task Force in furtherance of these goals.

## Joint Task Force Advisory Council

The JTF is currently establishing an Advisory Council consisting of a steering committee, to be chaired by Secretary Goldstein, and 5 regional advisory groups (Western, Central, Northeast, Southeast, and Greater Boston). The Advisory Council will expand on the existing dialogue between the Task Force and its stakeholders regarding the growing problem of the underground economy and employee misclassification in Massachusetts. Particular attention will be given by the Advisory Council to the following:

- Public policy related to JTF enforcement capabilities and potential improvements to Massachusetts General Laws in the area of underground economy enforcement
- Education of employees, businesses, community-based organizations, and community leaders on the problem of the underground economy and employee misclassification
- Information regarding specific, ongoing violations of employment law that may be identifiable in various communities throughout the Commonwealth.

The Advisory Council steering committee and the 5 regional advisory groups will be comprised of all interested union representatives, workers' rights and immigrant advocates, business and business association representatives, state legislators, and municipal officials. The Advisory Council's function will be to provide guidance and feedback to the Task Force regarding its work against the underground economy, including input on policy matters and Task Force priorities.

## **Research Study on Employee Misclassification and the Underground Economy in Massachusetts**

The Joint Task Force is commissioning a research study in an effort to determine and analyze the current state of the underground economy in Massachusetts, including, but not limited to the following factors: the current issues, statistics, policy considerations, lost revenues, and the impact on legitimate businesses that play by the rules, individual workers, and various business sectors. The need for hard data to better clarify and illustrate the problem is clear and the process of designing and commissioning a study is underway.

The last such study, *The Social and Economic Costs of Employee Misclassification in Construction*, was performed in 2004 by researchers from the University of Massachusetts-Boston and Harvard University (report may be found at: <http://www.law.harvard.edu/programs/lwp/Misclassification%20Report%20Mass.pdf>). Moderate estimates in the 2004 study included the following: 19% of all MA employers misclassified workers as independent contractors, close to 250,000 MA workers were being misclassified as independent contractors across all economic sectors, the Commonwealth was losing out on \$152 million in income tax revenue and \$35 million in unemployment taxes annually, and \$91 million in workers' compensation premiums were going unpaid resulting in higher rates for those paying the proper benefits. While a valuable tool at the time, the scope of the 2004 study was limited and the results are outdated.

Since the time of the 2004 study, our country has gone through a difficult recession and the closing or downsizing of some businesses across all sectors. We need to reassess the problem of the underground economy in Massachusetts in light of our current economic climate. Our state's continued economic recovery and growth depends, in large part, on government's ability to ensure a level playing field for honest businesses. A current study on misclassification and the underground economy will assist member agencies, executive branch leadership, the General Court, and our Congressional delegation in meeting this challenge on behalf of the citizens of the Commonwealth.

## **Investigative Sub-Team Working Groups**

The Joint Task Force recently reorganized its Investigative Sub-Team into three working groups:

1) Construction, 2) Temporary Employment Agencies, and 3) Hospitalities and Services. This structure streamlines member agency resources in terms of JTF participation and allows investigators to focus on identified matters in these specific areas of concern. Of course, when referrals are received outside of these three areas, the JTF is able to respond with special working groups to address them. Each of the three permanent working groups meets approximately once every 4 to 6 weeks to discuss an agenda of recent referrals and to plan collaborative approaches to investigations being pursued by member agencies. Referrals and investigatory developments are shared by member agencies through agency investigators and the Task Force Director.

## **Education and Outreach**

The Task Force is carrying out an education and outreach plan that involves the following multi-faceted approach:

- 1) In an effort to capitalize on all potential forums available for presenting the collaborative work of the JTF member agencies and the legal requirements facing employers in the Commonwealth, the Task Force is gathering information from state agencies and stakeholders to develop a list of speaking and publishing opportunities. Member agencies are committed to presenting in these various settings and carrying out an education and outreach plan.
- 2) In the coming months, the Task Force will design, publish, and distribute a basic information pamphlet describing the JTF's work and mission, and employer responsibilities in the Commonwealth. After it is finalized, the information pamphlet will be translated into multiple languages. The information pamphlet will be available on our web page.
- 3) The JTF is planning a new web page with the goal of improving access to information about the JTF and the work of its member agencies.

## **Cross-Agency Training**

The Task Force member agencies are also committed to a cross-agency education and training plan that will ensure that our investigative agencies are familiar with each other's processes and enforcement authority. The intention is for this initiative to assist agencies in operating in as efficient and coordinated a manner as possible by providing opportunities for agencies to identify potential cooperative methods. Cross-agency training will help to increase investigators' awareness of the requirements placed on employers by their fellow agencies and encourage inter-agency referrals. The contents of the cross-agency training will be updated as the agencies' statutes change and will be provided on a regular basis to keep all member agency investigators informed of related laws and referral opportunities.

## **Fraud Detection Technology**

The Task Force will soon implement fraud detection technology to assist member agencies in targeting major violators across all industries. This new tool, operating out of DUA as part of its related systems, involves strategic analyses of employer information across multiple state data sources. This process will compliment the current tips and referrals provided to Task Force member agencies through the JTF referral phone line and referral email. The JTF will utilize the fraud detection technology to increase the number of impact cases developed through cross-agency enforcement activity.

# **Multi-State and Federal Cooperation**

With the federal government's growing focus on employee misclassification enforcement, evidenced both by the United States Government Accountability Office's August 2009 report on the issue and by recent initiatives undertaken by U.S. DOL and the IRS, we have been in frequent contact with officials at the federal level in discussing potential collaborative enforcement opportunities and federal funding support for state JTFs. Many of our member agencies, such as DOL, DOR, AGO, DUA, DIA, DOS, and IFB have strong, working relationships with federal authorities. We are focused on building on these existing channels of cooperation and maximizing any potential for federal assistance addressing the underground economy. Also, we have developed relationships with Task Force counterparts in other states to share new ideas involving methods of cross-agency enforcement, and to open potential avenues for multi-state enforcement initiatives.

## **The New England States Regional Summit on the Underground Economy and Employee Misclassification**

As the JTF entered our second year, our members met with and spoke to senior officials from New York, New Hampshire, Vermont, Maine, Rhode Island and Connecticut Departments of Labor to discuss the effects of the underground economy and employee misclassification, and our JTF's collaborative work against the problem in the Commonwealth. It was encouraging to learn that these states, along with others, are in various stages of forming their own Task Forces. For instance, Task Force Chair and Director of Labor, George Noel, was invited to provide testimony about our JTF to a committee of the Vermont state legislature considering possible methods for addressing their state's need for underground economy enforcement. Subsequently, the Vermont legislature established a Joint Task Force to develop policy recommendations on changes to state law that would improve cross-agency enforcement.

Efforts in other states underscore the fact that the underground economy presents serious and troubling trends nationally, depressing the quality of life for all workers and depriving state treasuries of millions of dollars in lost revenue.

In response to strong interest from other states, the New York and Massachusetts JTFs sponsored a New England States Regional Summit on the Underground Economy and Employee Misclassification at Holyoke Community College on October 2, 2009. The goal of this summit was to provide senior labor, tax, and licensing officials and their staffs from participating states with information about getting started, recommended best practices and other vital technical assistance in relation to JTF activities.



## Joint Enforcement Task Force on the Underground Economy and Employee Misclassification

### Annual Report 2010

Massachusetts Director of Labor George Noel and New York Commissioner of Labor M. Patricia Smith, at the time chairs of their respective Joint Task Forces (M. Patricia Smith is now the Solicitor General of the U.S. DOL), welcomed representatives from the US Department of Labor, six New England states, New York, New Jersey and Maryland. The summit delegates received an inspiring video message from US Secretary of Labor Hilda Solis. After informative reports from each state, the delegates listened to panel discussions about enforcement and investigative strategies and perspectives on data sharing.

At the close of the summit, the delegates agreed on the importance of maintaining this level of multi-state cooperation and building on the work already being done in these states. We have a monthly conference call to continue our coordination efforts for the sake of best practices and the potential for cooperative enforcement, and also to help maintain federal awareness of the problem and the states' role in the solution. Since our first call, our group has expanded to include JTFs from Iowa and the Ontario Labor Ministry. We look forward to our next Summit and continuing to work with our colleagues in other states against the challenge of surfacing the underground economy.

Appendix C of this report provides descriptions of underground economy enforcement activities in other states.

# Appendix A: Executive Order 499

By His Excellency

DEVAL L. PATRICK, GOVERNOR  
EXECUTIVE ORDER NO. 499

## Establishing a Joint Enforcement Task Force on the Underground Economy and Employee Misclassification

WHEREAS, the health of the Commonwealth's economy, its workers and its businesses is harmed by the existence of an illegal underground economy in which individuals and businesses conceal their activities from government licensing, regulatory and taxing authorities;

WHEREAS, individuals and businesses that operate in the underground economy do so in violation of labor, employment, tax, insurance and occupational safety laws, by failing to pay required wages, carry workers' compensation insurance, comply with health, safety and licensing requirements, or pay income taxes and payroll taxes that fund unemployment insurance, disability insurance, and Medicare and Social Security benefits;

WHEREAS, certain businesses also improperly classify their employees as "independent contractors" (referred to as "employee misclassification") and hire undocumented workers to avoid compliance with labor, employment, tax, insurance and regulatory requirements;

WHEREAS, the underground economy and, in particular, the practice of employee misclassification: (1) exploits vulnerable workers and deprives them of legal benefits and protections; (2) gives unlawful businesses an unfair competitive advantage over lawful businesses by illegally driving down violators' taxes, wages, and other overhead costs; (3) defrauds the government of substantial tax revenues; and (4) harms consumers who suffer at the hands of unlicensed businesses that fail to maintain minimum levels of skills and knowledge;

WHEREAS, a recent study based on audits of Massachusetts unemployment records for construction employers between 2002 and 2005 found that up to 14% of the employees covered by the audits were estimated to have been misclassified by employers;

WHEREAS, efforts to combat the underground economy and employee misclassification historically have been divided among various agencies, diminishing the timeliness, efficiency and effectiveness of such efforts; and

WHEREAS, the creation of joint task forces has proven to be an effective mechanism for enhancing interagency cooperation, information sharing, and the prosecution of violators;

NOW, THEREFORE, I, Deval L. Patrick, Governor of the Commonwealth of Massachusetts, by virtue of the authority vested in me by the Constitution, Part 2, c. 2, § 1, Art. I, do hereby order as follows:

## Joint Enforcement Task Force on the Underground Economy and Employee Misclassification

### Annual Report 2010

**Section 1.** There is hereby established the Joint Enforcement Task Force on the Underground Economy and Employee Misclassification (the “Task Force”).

**Section 2.** The Task Force shall consist of the following members or their designees: the Director of Labor, the Commissioner of Revenue, the Commissioner of the Department of Industrial Accidents, the Chief of the Attorney General’s Fair Labor Division, the Commissioner of the Division of Occupational Safety, the Commissioner of the Department of Public Safety, the Director of the Division of Professional Licensure, the Director of Apprenticeship Training and the Director of the Division of Unemployment Assistance. The Director of Labor shall chair the Task Force.

**Section 3.** The Task Force shall coordinate joint efforts to combat the underground economy and employee misclassification, including efforts to: (a) foster compliance with the law by educating business owners and employees about applicable requirements;

(b) conduct joint, targeted investigations and enforcement actions against violators; (c) protect the health, safety and benefit rights of workers; and (d) restore competitive equality for law-abiding businesses.

In fulfilling its mission, the Task Force shall:

- a. Facilitate timely information sharing between and among Task Force members, including through the establishment of protocols by which participating agencies will advise or refer to other agencies matters of potential investigative interest;
- b. Identify those industries and sectors where the underground economy and employee misclassification are most prevalent and target Task Force members’ investigative and enforcement resources against those sectors, including through the formation of joint investigative and enforcement teams;
- c. Assess existing investigative and enforcement methods, both in Massachusetts and in other jurisdictions, and develop and recommend strategies to improve those methods;
- d. 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;
- e. 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;
- f. 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;
- g. Work cooperatively with federal, commonwealth, 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;
- h. 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
- i. Consult with representatives of business and organized labor, members of the General Court, community groups and other agencies concerning the activities of the Task Force and its members and ways of improving its effectiveness, including consideration of whether to establish an advisory panel under the secretary of labor and workforce development.

## Joint Enforcement Task Force on the Underground Economy and Employee Misclassification Annual Report 2010

**Section 4.** The Task Force shall transmit an annual report to the Governor summarizing the Task Force's activities during the preceding year. The report shall, without limitation: (a) describe the Task Force's efforts and accomplishments during the year; (b) identify any administrative or legal barriers impeding the more effective operation of the Task Force, including any barriers to information sharing or joint action; (c) propose, after consultation with representatives of business and organized labor, members of the legislature and other agencies, appropriate administrative, legislative, or regulatory changes to strengthen the Task Force's operations and enforcement efforts and reduce or eliminate any barriers to those efforts; and (d) identify successful preventative mechanisms for reducing the extent of the underground economy and employee misclassification, thereby reducing the need for greater enforcement. The Task Force also shall take appropriate steps to publicize its activities.

**Section 5.** To the extent permitted by law, every agency within the Executive Branch shall make all reasonable efforts to cooperate with the Task Force and to furnish such information and assistance as the Task Force reasonably deems necessary to accomplish its purposes.

**Section 6.** Nothing in this Executive Order shall be construed to require action inconsistent with any applicable state or federal law.

**Section 7.** This Executive Order shall continue in effect until amended, superseded, or revoked by subsequent Executive Order.

Given at the Executive Chamber in Boston this 12th day of March in the year of our Lord two thousand and eight and of the Independence of the United States, two hundred and thirty-two.

DEVAL L. PATRICK  
GOVERNOR  
Commonwealth of Massachusetts

WILLIAM FRANCIS GALVIN  
Secretary of the Commonwealth

GOD SAVE THE COMMONWEALTH OF MASSACHUSETTS

# Appendix B: Member Agencies

## Executive Office of Labor and Workforce Development

### Division of Apprenticeship Training (DAT)

The Division of Apprenticeship Training is the office of record for the registered apprentices in the Commonwealth of Massachusetts. DAT develops materials and conducts public awareness programs to secure the adoption of training in skilled occupations and related training policies and practices used by employers, unions, and other organizations. Another goal of the DAT is to develop policies and plans that increase minority and female participation in skilled training as well as coordinate the effective use of federal government, organized labor, and other resources to create a clear training-to-employment corridor for customers of the workforce development system.

For more information visit: <http://www.mass.gov/dat>

### Department of Industrial Accidents (DIA)

The Department of Industrial Accidents administers the law related to the Massachusetts workers' compensation system. This law balances the provision of prompt and fair compensation to workers with occupational injuries and illness arising out of and in the course of employment, with the needs of employers to manage workers' compensation insurance costs. The Department also administers the Workers' Compensation Trust Fund, which provides benefits to injured workers when their employer fails to properly insure or provide these benefits.

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: <http://www.mass.gov/dia>

### Division of Occupational Safety (DOS)

The mission of the Division of Occupational Safety is to promote and protect workers' safety and health, wages, and working conditions. In collaboration with public and private entities, DOS protects workers by means of education and training, workplace safety and health consultation and assessment, occupational injury and illness data collection and analysis, as well as consistent and responsible administration and enforcement of its statutes and regulations. DOS carries out its objectives in a manner that supports employers and strengthens the Commonwealth's communities and economy. DOS administers state laws and regulations related to asbestos and lead abatement, the operation of employment agencies, determining prevailing wage rates, and interpreting minimum wage law. As the agency that regulates employment and staffing agencies in the Commonwealth, DOS has assumed a vibrant role in the work of the JTF given the ubiquitous element of temporary staffing agency activity in the underground economy.

For more information visit: <http://www.mass.gov/dos>

### **Division of Unemployment Assistance (DUA)**

The Division 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. 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, progress is being made in preventing, detecting, investigating and prosecuting those who defraud or attempt to defraud the unemployment insurance system. This includes employers that evade paying their fair share of unemployment insurance costs by intentionally misclassifying their employees as independent contractors.

For more information visit: <http://www.mass.gov/dua>

## **Office of the Attorney General**

### **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. The Attorney General aims to set a level playing field for employers and employees throughout the State. The Attorney General's specific jurisdiction to enforce the Commonwealth's wage and hour laws, both criminally and civilly, as well as its general jurisdiction to enforce criminal laws, including insurance and tax laws, larceny and embezzlement, allows it to take a holistic approach to prosecuting cases involving the underground economy. Its broad jurisdiction enables it to work in partnership with fellow member agencies on the JTF in order to effectively investigate and prosecute cases, as warranted.

For more information visit: <http://www.mass.gov/ago>

## **Executive Office of Administration and Finance**

### **Division of Capital Asset Management (DCAM)**

The Division of Capital Asset Management is charged with providing professional and comprehensive services to state agencies in the field of public-building design, construction, maintenance and real estate. DCAM's scope of services includes planning, design, construction, capital repairs and improvements, asset management, contractor certification and compliance, leasing, acquisition and disposition, and maintenance.

DCAM serves the JTF by reaching out to DCAM-certified contractors who have become non-compliant with other state agencies in an effort to bring the contractors back into compliance with state laws. DCAM utilizes contractor information obtained from various agencies of the JTF as part of their certification process and final determination on whether or not the contractor meets the qualifications to be certified to perform public work.

For more information visit: <http://www.mass.gov/dcam>

## Joint Enforcement Task Force on the Underground Economy and Employee Misclassification

### Annual Report 2010

#### 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: <http://www.mass.gov/dor>

#### Supplier Diversity Office (SDO)

SOD creates opportunities for minority and women owned business by growing the number of state and federally certified businesses and offering business insurance and advocacy programs.

For more information visit: <http://www.somwba.state.ma.us/default.aspx>

## Executive Office of Public Safety and Security

#### Department of Public Safety (DPS)

The Department of Public Safety 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 DPS licenses individuals in many areas, including elevator mechanics, construction supervisor licenses, fireman and engineering licenses, as well as licenses for sprinklerfitters, pipefitters and refrigeration technicians and hoisting operators. In order to ensure compliance with the laws of the Commonwealth, the Department is committed to sharing its resources in a cooperative effort with other state agencies to ensure that workers in these industries are not exploited by business owners through misclassification or other means of skirting labor, tax and occupational safety laws.

For more information visit: <http://www.mass.gov/dps>

## Executive Office of Health and Human Services

#### Massachusetts Office for Refugees and Immigrants (MORI)

The statutory purpose of the Massachusetts Office for Refugees and Immigrants (MORI) is to promote the full participation of refugees and immigrants as self sufficient individuals and families in the economic, social and civic life of the Commonwealth. The primary responsibility of the office is to administer the federally funded refugee resettlement program in Massachusetts, which provides assistance to refugees, such as case management, employment services (including English language training), transitional cash and medical assistance, health screening, and foster care for unaccompanied minors. MORI also administers a state funded citizenship assistance program to assist legal permanent residents in Massachusetts to become naturalized U.S. citizens. MORI serves the Task Force in an advisory capacity, providing information on understanding cultural issues, identifying immigrant community groups to facilitate Task Force outreach, as well as identifying translation resources.

For more information visit: <http://www.mass.gov/ori>



## Executive Office of Housing and Economic Development

### Division of Professional Licensure (DPL)

The Division of Professional Licensure, under the Office of Consumer Affairs and Business Regulation, oversees the state's 29 Boards of Registration, and regulates more than 40 trades and professions and over 330,000 individuals, corporations and partnerships. Its mission is to protect the public health, safety and welfare by licensing qualified individuals who provide services to consumers and by fair enforcements of statutes and regulations of the boards of registration. Each board can revoke or suspend a license after investigation of serious complaints. An Office of Investigations and an Office of Prosecutions are charged with handling consumer complaints. The DPL seeks to aggressively pursue unlicensed practices, working with participating Joint Task Force agencies and Courts throughout the Commonwealth.

For more information visit: <http://www.mass.gov/dpl>

## Office of the Treasurer

### Alcoholic Beverages Control Commission (ABCC)

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: <http://www.mass.gov/abcc>

## Other Partners

### 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 \$41 million. Referrals can be made through the IFB web site at [www.ifb.org](http://www.ifb.org) or via the IFB hotline, **1-800-32-FRAUD**.

For more information visit: <http://www.ifb.org>

## Appendix C: Other States

Brief summaries of underground economy and employee misclassification enforcement activities in those other states which also have organized initiatives are included below.

### California

#### The Division of Labor Standards Enforcement

California recognized problems with employee misclassification in the early 1990s and was one the first states to have responded to the issue. The California Division of Labor Standards (DLS) plays a large role in the enforcement of Labor Code, overseeing the implementation of a range of laws including wage, hour, break, prevailing wage, and employee misclassification. The DLS's Bureau of Field Enforcement receives complaints regarding many of these issues, and carries out investigations and audits of employers suspected of violations. The DLS operates out of eighteen offices located throughout the state. Claims are handled directly by these regional offices. California also has several special programs and commissions that target the underground economy and fraud in select businesses. One of these programs Economic and Employment Enforcement Coalition (EEEC) investigates low wage industries or trades that historically have harbored an underground economy. In the past few years it has sought to root out illegal activity in the racing, agricultural, textile, janitorial, and construction trades. The EEEEC is an interagency enforcement effort comprised of the Department of Occupational Safety and Health, Contractor's State Licensing Board, Economic Development Department (which administers the unemployment benefit system), U.S. Department of Labor, and the Division of Labor Standards Enforcement. Targeted Unlawfully Insured Employer Enforcement Program is another specialized unit in California. It is responsible for identifying and investigating suspected violators of workers' compensation insurance statutes.

California's DLS Enforcement and special programs use a variety of method of enforcement. The use of focused enforcement, targeting individual industries that are notoriously non-compliant with a dedicated unit of investigators, has been central to California's strategy since the early 1990s. The Bureau of Field Enforcement and specialized units use industry wide sweeps and audits, as well as a coordinated enforcement approach in addressing the underground economy, employee misclassification, and Labor Code violations.

For more information visit: <http://www.dir.ca.gov/dlse/dlse.html>

## **Connecticut**

### **Joint Enforcement Commission for Worker Misclassification**

In 2008, the Connecticut General Assembly passed an act establishing the Joint Enforcement Commission for Worker Misclassification as an interagency enforcement effort against employee misclassification. It also established the Employee Misclassification Advisory Board, a six member group comprised of labor and management leaders, to provide guidance and resources to the Commission. The Commission is comprised of members from the Connecticut Department of Labor and its component division, the Workers' Compensation Commission, the Office of the Attorney General, the Department of Revenue Services, and Office of the Chief State's Attorney. It serves to coordinate investigations and joint responses on employee misclassification cases, facilitate data sharing between agencies, and provide education and outreach to the public. Connecticut, uses both multi-factor and "ABC" tests in the determination of worker classification. The Connecticut multifactor test examines a set of 20 criteria, such as degree of instruction, scheduling, and payment situation, along with any case specific aspects to establish a worker's classification. The Connecticut ABC test is similar to the ABC test under Massachusetts General Laws Chapter 149, Section 148B.

The Joint Enforcement Commission uses a coordinated enforcement approach to employee misclassification enforcement. Referrals are made directly to the Commission and its constituent agencies by concerned individuals or groups as well as by other government departments. Investigations are carried out by units within the Commission's member agencies, such as the Department of Revenue Service's Business and Employment Tax Audit Unit, Unemployment Insurance Tax Division Auditors, or the Workers' Compensation Commission's Second Injury Fund Investigative Unit. Employers found in violation are subject to prosecution by the Attorney General and Office of the Chief State's Attorney. The Joint Enforcement Commission, during its first year, performed a successful Joint Enforcement Sweep of a construction site where multiple citations were issued.

For more information visit: <http://www.ctdol.state.ct.us/wgwkstnd/JEC/JEC.htm>

## **Iowa**

### **The Worker Misclassification Unit**

The Iowa Worker Misclassification Unit is the result of the recommendations of the 2008 Worker Misclassification Task Force. The Task Force was an interagency research and analysis group charged with determining the scope of employee misclassification in Iowa and developing a means of combating misclassification. The Misclassification Unit is not an interagency enforcement entity but instead a dedicated part of the Unemployment Insurance Services Division. As a result, Iowa focuses on unemployment insurance contributions in its misclassification investigations. When determining whether a worker is classified as an independent contractor or as an employee Iowa, like New York, uses a "common-law" test. This test determines independent contractor status based on factors developed by the Iowa Department of Revenue and the Internal Revenue Service along with case law.

The Worker Misclassification Unit uses a tip based enforcement approach in dealing with misclassification. The Unit receives tips from various sources such as tip line callers, online complaints, community groups, and other governmental agencies. These tips and referrals are followed up on by investigators. Evidence of violations is determined by field inspections of a business and its records as well as by unemployment insurance audits. While the Unit does not investigate companies for workers' compensation or wage and hour violations, it does send cases that further investigation in these areas to the appropriate agencies. In addition to the coordinated enforcement of the Misclassification Unit, the Unemployment Insurance Services Division also audits 2% of Iowa employers each year to ensure program integrity.

For more information visit: <http://www.iowaworkforce.org/misclassification/>

## **Kansas**

### **Department of Labor and Department of Revenue**

The Kansas Legislature began to address employee misclassification in 2006. They passed a bill that strengthened the penalties for intentional misclassification and the ability of the Department of Labor and Department of Revenue to jointly address cases of misclassification. These agencies established a referral web site and tip line so that the public could report instances of misclassification and fraud. The Department of Labor is responsible for the investigation of unemployment insurance and workers' compensation fraud by employers, while the Department of Revenue is responsible for the integrity of withholding and payroll tax system. Since all of these issues are related to employee misclassification, the Departments and their investigative units share data and carry out joint investigations of employers suspected of worker misclassification. Kansas defines employee-employer and independent contractor relationships through the use of a multi-factor test. The Kansas multifactor test is founded on employer and independent contractor definitions established by the Internal Revenue Service and factors established by its own Department of Revenue. The greatest factor considered in their test is which party, the employer or worker, maintains the right of control.

For more information visit: <http://www.dol.ks.gov/index.html>

## **Maine**

### **Joint Enforcement Task Force on Employee Misclassification**

Maine's Joint Enforcement Task Force on Employee Misclassification was established under a 2009 executive order as an interagency enforcement body. The Task Force is comprised of representatives from the Department of Labor, the Workers' Compensation Board, the Office of the Attorney General, the Department of Administrative and Financial Services, and the Department of Professional and Financial Regulation. Staff from each of these Departments makes up the three subcommittees that comprise the Task Force. The Targeting, Enforcement, and Monitoring Subcommittee is responsible for developing enforcement strategies and evaluating the enforcement methods of both the Maine Task Force and models adopted by other states. The Legal and Interagency Information Subcommittee serves as a legal advisory for the task force, but also ensures effective means of communication between the constituent agencies of the Task Force. The Communications and Outreach Subcommittee handles the Task Force's public relations needs, as well as educates the businesses, labor organizations, and other public groups on employee misclassification. Presently Maine operates under a coordinated enforcement model. Tips are received by email and telephone, and referrals are sent out to each of the constituent agencies of the unit. Tips are reviewed by Task Force supervisors, who, if violations are suspected, then coordinate investigations. Maine uses both the "ABC" test and a 12 part workers' compensation test to determine worker classification. The workers' compensation test is similar in function to the multi-factor tests utilized by many other states

For more information visit: <http://www.maine.gov/labor/misclass/index.shtml>

## **Maryland**

### **Joint Enforcement Task Force on Workplace Fraud**

The Maryland Joint Enforcement Task Force on Workplace Fraud was established in 2009 by Executive Order 01.01.2009.09 for the purpose of addressing employee misclassification. The Task Force is an interagency effort consisting of members from the Department of Labor, Licensing and Regulation, the Attorney General's Office, the Comptroller's Office, Maryland Insurance Administration, and Workers' Compensation Commission. Members of the Task Force are divided into three workgroups in the areas of Collective Enforcement, Data Sharing, and Education and Outreach. The Collective Enforcement workgroup reviews complaints made or referred to the Task Force, coordinating the investigation of employers suspected of worker misclassification by its member agencies and their investigative units. The Data Sharing workgroup facilitates the transfer of information between Task Force agencies and establishes means by which the public can report claims. The Education and Outreach workgroup functions in a public relations and advocacy role, informing the public on the problem of employee misclassification and laws that concern the issue. When determining the status of a worker as either an employee or independent contractor, Maryland workers' compensation law provides for use of a multi-factor test, while its unemployment insurance and labor standards laws provide for the use of the "ABC" test.

For more information visit: <http://www.dllr.state.md.us/workplacefraudtaskforce/>

## **Michigan**

### **Interagency Task Force on Employee Misclassification**

Michigan's Interagency Task Force on Employee Misclassification was founded in 2008 by Executive Order 2008-1 to confront the problems of misclassification and workplace fraud. It was charged with gathering information on the extent of the underground economy and misclassification in Michigan, establishing a method of enforcing against the problem, and providing education and outreach to employers and the public. The Task Force is comprised of members from the Department of Labor and Economic Growth, Department of Management and Budget, and Department of the Treasury. Between these departments workers' compensation, unemployment, wage, hour, prevailing wage, and payroll tax laws are administered. Michigan's Task Force is divided into four subcommittees in the areas of Enforcement, Legal, Education/Communications, and Research. In 2008 and 2009, the Task Force held a series of public hearings on employee misclassification to gather information on public opinion and also to spread awareness of the issue. It also began coordinated enforcement efforts with the establishment of a tip line. As of 2009, Michigan was still in the process of improving data sharing and joint enforcement efforts between agencies. It concluded that interagency communication channels had not yet been established, even though there were no statutory impediments (such as privacy laws and regulations) to information sharing. Furthermore, it recommended the creation of central lines of communication between the Task Force and the public to facilitate enforcement. When defining an employee, Michigan uses a "common-law" or "multifactor" determination system as well as precedents established by judicial decisions.

For more information visit: [http://www.michigan.gov/documents/dleg/R08\\_07\\_01Rrt\\_to\\_the\\_Gov\\_240789\\_7.pdf](http://www.michigan.gov/documents/dleg/R08_07_01Rrt_to_the_Gov_240789_7.pdf)

## **Nevada**

### **Legislative Commission's Subcommittee to Study Employee Misclassification**

The Nevada Legislative Commission's Subcommittee to Study Employee Misclassification was founded in 2010 for the purpose of studying and providing recommendations on how to prevent employee misclassification. The Subcommittee has met several times throughout the year and has already proposed six bills for the 2011 legislative session. In these proposals it has recommended the creation of a Task Force on Employee Misclassification, stronger definitions of employees and independent contractors, and increased penalties for misclassification violations.

For more information visit: <http://leg.state.nv.us/Interim/75th2009/Minutes/EmpMisclass//IM-EmpMisclass-012210-10352.pdf>

## **New Hampshire**

### **Task Force for the Misclassification of New Hampshire Workers**

The Task Force for the Misclassification of New Hampshire Workers was established in 2008 for the purpose of studying and developing possible solutions to the problem of employee misclassification. The Task Force is made up of representatives from the New Hampshire Departments of Labor, Employment Security, Revenue, and Insurance, as well as legislative appointees, business representatives, and organized labor leaders. After a year of research and analysis, the Task Force began to implement means of addressing employee misclassification. In 2009, the Task Force created a tip reporting system to take claims from the public on possible instances of misclassification. This line of communication refers tips directly to the constituent Departments of the Task Force. By October 2009, the Task Force issued a report with a commitment to continuing its research and analysis of misclassification, but also suggesting remedies to statutory roadblocks to effective enforcement. For instance, the Task Force sought to address confusion as to whether the Department of Labor could penalize employers for workers' compensation violations.

For more information visit: <http://www.nh.gov/nhworkers/>

## **New York**

### **Joint Enforcement Task Force on Employee Misclassification**

The New York Joint Enforcement Task Force on Employee Misclassification was formed in September 2007 as a means to increasing interagency enforcement and data sharing on worker misclassification issues. The Task Force is composed of six units in the following areas: Research and Analysis, Sweeps, Investigations, Legal, Communications, and Reporting. Each subcommittee draws staff or investigators from the New York Department of Labor, Workers' compensation Board, Department of Taxation and Finance, Office of the Attorney General, and New York City Comptroller's Office. The Task Force's investigative and enforcement actions are handled by collaborative efforts of the Research, Sweeps, and Investigative Units. Since these units are composed of staff from multiple agencies, each of which enforces a different area of labor law, Task Force sweeps and investigations are able to identify violations effectively. When determining whether an employee is misclassified, New York uses a "common law test", which looks at a variety of factors to establish whether a worker is under the supervision and control of a company, and is therefore an employee.

## Joint Enforcement Task Force on the Underground Economy and Employee Misclassification

### Annual Report 2010

New York's Task Force utilizes several methods of investigation when handling the enforcement of employee misclassification law. Two of these methods are sweep based, meaning that investigative teams are placed in the field to perform inspections of businesses for non compliance. Sweeps can be issued at random or in response to leads uncovered by the Task Force. The Joint Enforcement Sweep targets certain industries, most notably the construction trades, within a town or city. Many of the businesses within a targeted trade are inspected and those that are suspected of misclassification or labor violations are followed up on by the Investigations and Audits Unit. A second kind of sweep, the Main Street Sweep, is used to seek out non compliance in an area's commercial and retail sector. New York also uses coordinated enforcement methods in its response to employee misclassification. Coordinated enforcement cases are initiated through tips referred to the Task Force by concerned individuals, community groups, and other agencies. Investigations from such tips generally involve single companies that are suspected of misclassification or fraud.

For more information visit: <http://www.labor.ny.gov/ui/MisclassificationofWorkers.shtm>

## Rhode Island

### Special Joint Commission to Study the Underground Economy and Employee Misclassification

The Rhode Island Special Joint Commission to Study the Underground Economy and Employee Misclassification was founded in 2008 to research misclassification and workplace fraud issues. The Commission is comprised of representatives from the legislature, state agencies, labor organizations, and businesses. In 2009, the Commission put out a series of recommendations to the legislature. It proposed that the state adopt stronger independent contractor registration laws, create a uniform definition and test to determine independent contractor classification, and that the Commission be extended another year to continue its research and begin to promote interagency cooperation. In the past year, the Rhode Island General Assembly has adopted most of these recommendations, such as making uniform definitions and tests to determine worker classification.

For more information visit: [http://sos.ri.gov/boards/index.php?page=board\\_detail&board\\_id=5601](http://sos.ri.gov/boards/index.php?page=board_detail&board_id=5601)

## Vermont

### Workers' Compensation Employee Classification, Coding, and Fraud Enforcement Task Force

In 2008, Vermont's General Assembly enacted Act 208 which established the Workers' compensation Employee Classification, Coding, and Fraud Enforcement Task Force for the purpose of researching and analyzing employee misclassification in Vermont. The Task Force is comprised of representatives from the Vermont General Assembly, labor organizations, businesses, the Attorney General's Office, and several other departments within the state government. Due to its research, the Task Force has been able to make a list of recommendations to the Vermont General Assembly. It identified that the Department of Labor and the Department of Banking, Insurance, Securities, and the Health Care Administration need better lines of communication with the public to improve enforcement. Furthermore the Task Force recommended toughening penalties and enforcement practices associated with employee misclassification. In May 2010, some of these recommendations were enacted into law by House Bill 647. This bill increased fines and penalties for misclassification violations and granted greater protection to whistleblowers.

For more information visit: <http://www.leg.state.vt.us/reports/09Reports/243987.pdf>



## Washington

### Joint Legislative Task Force on the Underground Economy

The Joint Legislative Task Force on the Underground Economy was initiated in 2007 to research the extent of underground economy and employee misclassification in Washington, as well as to provide recommendations on how to address these issues. It was comprised of members from both houses of Washington's legislature, as well as business, labor, city, and county representatives. In 2008 and 2009, many of the Task Force recommendations were enacted into law through SHB 1555, SSB 5904, and SSB 5613. These bills strengthened Washington's contractor registration system, increased penalties for workers' compensation and unemployment insurance contribution violations, allowed for stop work orders in the event of workers' compensation non compliance, and dismantled some statutory roadblocks that impeded enforcement. In their final report, the Task Force made several other recommendations for the legislature's consideration in 2010. Washington is presently considering other models to research and enforce against employee misclassification. Washington's Department of Labor and Industries, Employment Security Department, and Department of Revenue currently are responsible for investigating employee misclassification. The state is looking to increase interagency cooperation and data sharing when handling underground economy and misclassification cases.

For more information visit: <http://www.leg.wa.gov/jointcommittees/UECI/Pages/default.aspx>

## Other

There are several states that have not created interagency task forces or other dedicated enforcement bodies against employee misclassification, but instead have passed legislation relating to the issue. Examples of some of these changes can be seen below:

- In an attempt to prevent employee misclassification in the construction industry, Colorado has strengthened its laws regarding workers' compensation. Under its statutes, workers' compensation insurance is required for all workers on a jobsite. Violations of this statute are punished by civil penalties.
- Tennessee has made proof of workers' compensation insurance a requirement for individuals and businesses seeking licensure in regulated trades.
- Comprehensive legislation in Illinois empowered the Labor Department to use stop work orders, collection of denied or lost wages, criminal and civil penalties, debarment and extra penalties for willful violations as enforcement means against misclassification. Although legislation did not establish an interagency task force in the state, it did mandate increased cooperation and data-sharing between agencies when dealing with misclassification cases.

In addition, many states have chosen to address employee misclassification without the creation of a task force, but instead use developed resources that agencies already have available to them. For instance, Ohio's Attorney General has recently promoted increased interagency collaboration to curb employee misclassification. In total, over thirty states have started to take action against the problem of employee misclassification

## **For Further Information Please Contact:**

**Drew Cahill, Director, Joint Task Force,**  
**Tel: 617-626-7171,**  
**[Drew.Cahill@state.ma.us](mailto:Drew.Cahill@state.ma.us)**

## **Media Contact:**

**Alison Harris, Director of Communications, EOLWD,**  
**Tel: 617-626-7121,**  
**[Alison.Harris@state.ma.us](mailto:Alison.Harris@state.ma.us)**

# **Joint Enforcement Task Force on the Underground Economy and Employee Misclassification**

## **Annual Report 2010**



**COMMONWEALTH OF MASSACHUSETTS**

**Deval L. Patrick, Governor**

**Timothy P. Murray, Lieutenant Governor**

**Joanne F. Goldstein, Secretary**

**Executive Office of Labor and Workforce Development**