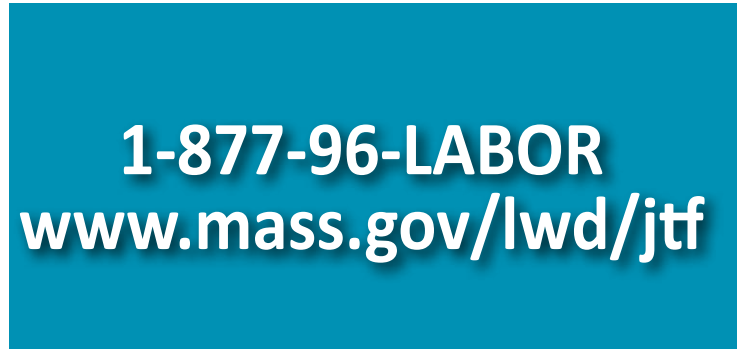


Joint Enforcement Task Force

on the Underground Economy and Employee Misclassification



COMMONWEALTH OF MASSACHUSETTS

Deval L. Patrick, Governor

Rachel Kaprielian, Secretary,

Executive Office of Labor and Workforce Development

Report Submitted by:

Heather Rowe,

Director, Joint Task Force

Joint Enforcement Task Force on the Underground Economy and Employee Misclassification

Annual Report 2013



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

RACHEL KAPRIELIAN
SECRETARY

HEATHER ROWE
DIRECTOR
JOINT ENFORCEMENT
TASK FORCE

July, 2014

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 2013 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 challenge of employer fraud and worker misclassification. We are grateful for your leadership and vision in providing an opportunity for state agencies and constitutional offices to work collaboratively to ensure full compliance with the Commonwealth's labor, licensing, and tax laws.

Now in our sixth year, the keys to the success of the Task Force remain agency cooperation, information and efficient use of resources to uncover and remediate violations as well as educate the public. Following these guiding principles, Task Force member agencies are now functioning as a collective force, working smarter in the fight to combat the underground economy.

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, Office of the Secretary of the Commonwealth, and the Insurance Fraud Bureau for their ongoing contributions. Through this partnership, we are helping to restore fairness in our economy by leveling the playing field for law-abiding employers and protecting workers and the interests of taxpayers in the Commonwealth.

This Annual Report details the works of the Task Force during 2013, including a breakdown of the funds recovered through the Task Force and summaries of each member agency's participation in addressing Task Force referrals and violations. The report also describes current initiatives to increase the volume and impact of our joint enforcement.

The Task Force is committed to building on our efforts to date to deliver greater enforcement and education, and we look forward to continued success.

Sincerely,

Rachael Kaprielian,
Secretary, Executive Office of Labor and
Workforce Development

Heather Rowe,
Director, Joint Enforcement Task Force
Director, Department of Labor Standards

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Definitions of Abbreviations

ABCC:	Alcoholic Beverages Control Commission
AGO-FLD:	Office of the Attorney General - Fair Labor Division
COMM CORP:	Commonwealth Corporation
DAS:	Division of Apprentice Standards
DCAMM:	Division of Capital Asset Management and Maintenance
DIA:	Department of Industrial Accidents
DLS:	Department of Labor Standards
DOB:	Division of Banks
DOR:	Department of Revenue
DPH:	Department of Public Health
DPL:	Division of Professional Licensure
DPS:	Department of Public Safety
DUA:	Department of Unemployment Assistance
EOLWD:	Executive Office of Labor and Workforce Development
FSC:	Fair Share Contribution
IFB:	Insurance Fraud Bureau
JTF:	Joint Enforcement Task Force on the Underground Economy and Employee Misclassification
MCAD:	Massachusetts Commission Against Discrimination
MOBD:	Massachusetts Office of Business Development
MORI:	Massachusetts Office for Refugees and Immigrants
NLRB:	National Labor Relations Board
OSBE:	Office of Small Business and Entrepreneurship
SDO:	Supplier Diversity Office
SOC:	Office of the Secretary of the Commonwealth
US DOL:	United States Department of Labor

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Executive Summary

In March of 2008, Governor Deval Patrick signed Executive Order #499 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 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, wage, and benefit rights of workers;
- restore competitive equality for law-abiding businesses; and
- preserve taxpayer dollars and insure proper payment of taxes.

The Issue in Massachusetts

The "underground economy" is a term that refers to those individuals and businesses that utilize schemes to conceal or misrepresent their employee population to avoid one or more of their employer responsibilities related to business laws and regulatory requirements. The underground economy encompasses other activities such as tax evasion, payroll fraud, "under-the-table" work, and wage theft. These activities may include but are not limited to: paying wages in cash, skimming some or all of the cash takings, not paying overtime, paying sub-minimum wages, charging individuals for transportation or supplies essential to the work, under-reporting employees, misclassifying employees as independent contractors, forcing employees to set up shell subcontractor entities, running a portion of normal business activities "off-the-books," and not registering a business to avoid tax obligations or to avoid obtaining the necessary licenses and insurance policies. Some unscrupulous employers methodically operate this way as part of their business model; other employers may be unaware of legal requirements prescribed by employment laws or feel the financial pressure or incentive to cut corners in their business operations. For those employers who knowingly break the laws, the lure of greater profits, lower costs, and less responsibility for workers often drives their decision-making.

Impact to Law-Abiding Businesses:

By reducing the amount of money expended in a host of categories like wages, insurance, payroll taxes, licenses, employee benefits, materials and transportation, safety equipment, and safety conditions, these employers can gain a competitive advantage over companies that comply with business and tax laws and regulations. This results in unfair competition in the marketplace because law-abiding businesses must pay greater direct costs to stay in business and subsidize public benefits like health care, unemployment compensation, and workers' compensation for those companies and individuals who do not play by the rules.

Impact to Workers:

Individuals who perform work for businesses that do not comply with these laws are often and significantly negatively affected. These workers are often paid sub-minimum wage, receive no overtime, and may face barriers to receiving workers' compensation and health care coverage, or be entirely ineligible for unemployment insurance (UI) or social security benefits. Their working conditions may not meet safety

requirements, often putting them in danger. Their value is diminished and their ability to economically sustain themselves and their families is put in peril. As a result, other employers and taxpayers are required to indirectly subsidize these liabilities, in the form of workers' compensation or UI coverage through employer funded trust funds, health care through MassHealth, and other state and federal subsidies.

Impact to the Commonwealth:

The underground economy also compromises the legitimate business community and the Massachusetts economy. Legitimate businesses are economically disadvantaged when competing with other companies who are able to charge less for their goods or services because they are not law abiding. Further, legitimate businesses subsidize those entities that do not follow the labor, licensing, and tax laws, as their tax dollars underwrite the systems that provide benefits to eligible workers when there is no employer of record to charge. Taxpayers are also unduly burdened as many workers who are misclassified, paid below minimum wage, or are without employer-provided benefits often utilize existing social safety nets. Finally, the sheer number of workers who now fall into the underground economy puts stress on the social safety net and the underlying societal norms that we share.

Massachusetts communities are also adversely impacted by the underground economy. Consumers drive the demand for labor, goods, and services, and may unwittingly be contributing to the underground economy through their buying choices. Without realizing it, consumers may be purchasing goods or contracting for services with entities that are part of the underground economy. In order to increase awareness and to limit the availability of goods and services produced without regard to the wage and hour laws and/or as part of the underground economy, the United States Department of Labor (US DOL) has begun to restrict the ability of businesses to sell these goods through interstate commerce, through what is known as the "Hot Goods" provision under the Fair Labor Standards Act (FLSA). Massachusetts has been supportive of the US DOL's efforts and was a major partner in their successful efforts to address this issue in the Commonwealth. A recent case involved a coordinated response among local, state, and federal agencies all utilizing their respective authority to address a multi-faceted exploitation of workers. DOL's consent judgment against the business was entered on April 3, 2013, and provided for a total of \$305,500 in back wages and liquidated damages to fourteen affected employees, as well as a civil penalty of \$10,267 to the employer. The judgment also includes a permanent injunction prohibiting future violations of the FLSA's minimum wage, overtime, record keeping, and hot goods provisions.

Collectively, the costs of the underground economy are high. Operating outside the law allows businesses to have an unfair advantage by illegitimately lowering costs, therefore undercutting their competitors. This takes business away from law-abiding companies and their employees who are trying to make an honest living. This race-to-the-bottom hurts the economy, legitimate businesses, and results in the erosion of the social fabric, economic stability, wage levels and working conditions in the Commonwealth.

JTF Results

During this reporting period, calendar year 2013, as a result of referrals and cooperative oversight, partner agencies recovered \$15,658,226 in wage restitution, state taxes, unemployment taxes, fines, and penalties.¹ Unless otherwise noted, all references to funds recovered represent recoveries through the cooperative efforts

¹ Prior JTF reports represented activities as follows:

2009 Annual Report: March 2008-March 2009

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 the 2013 Annual Report, activities will be reported on a calendar year cycle

of the JTF and represent monies above and beyond what the member agencies collected through their ordinary enforcement efforts.

In calendar year 2013, the JTF received 176 complaints through the JTF referral phone line and online referral service, along with hundreds of complaints made directly to partner agencies. The work of the JTF agencies resulted in over 18,500 compliance checks and investigations in the 12 month period.

2013 Accomplishments

During 2013, the JTF had several noteworthy accomplishments:

- Expanded partnerships with state, federal, and non-governmental stakeholder groups;
- Invoked the “Hot Goods” provision through a local, state, and federal investigation of an exploitative agricultural employer;
- Exposed misclassification, non-payment of prevailing wages, and workplace violations on public construction jobs resulting in numerous fines;
- Exceeded DUA’s calendar year 2012 recoveries;
- Participated in awareness efforts regarding labor trafficking in Massachusetts;
- Issued more than 60 enforcement actions by the Department of Industrial Accidents (DIA) and the Division of Professional Licensure (DPL) as a result of a JTF operation focused on the massage/bodywork industry;
- Promoted the work of the JTF by participating in over 15 presentations and sharing of ideas with national and in-state stakeholders;
- Addressed complaints about unlicensed practice perpetuated by staffing agencies operating outside the law through a coordinated effort between DLS and DPL;
- Reaped over \$10 million of recovered funds from applicants seeking liquor licenses through licensing compliance checks between ABCC and DUA;
- Instituted cross-agency training for partner investigative agencies for the purpose of increasing efficiency and promoting best practices; and
- Promoted employer compliance through JTF-sponsored outreach activities.

2014 Goals and Initiatives

During 2014, the JTF looks forward to continued success by focusing on the following goals:

- Implementing objectives to achieve the Strategic Goals set by EOLWD to meet Governor Patrick’s initiative for a more transparent government under the MassResults plan;
- Releasing the results of the research study on employee misclassification and the underground economy in Massachusetts;
- Creating education and outreach material for businesses and workers;
- Continuing and expanding cross-agency training opportunities;
- Expanding JTF partnerships outside the Executive Branch Agencies; and
- Enhancing multi-state and federal cooperation channels to maximize future engagements.

Recovered Funds

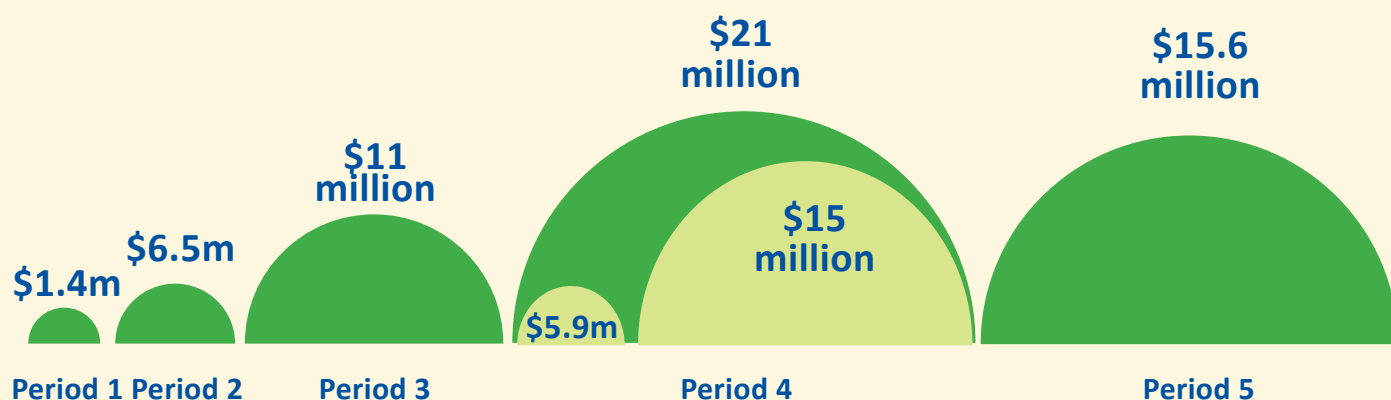
Revenue Generated Through the JTF 2013

Period 5 total recoveries: \$15,658,226

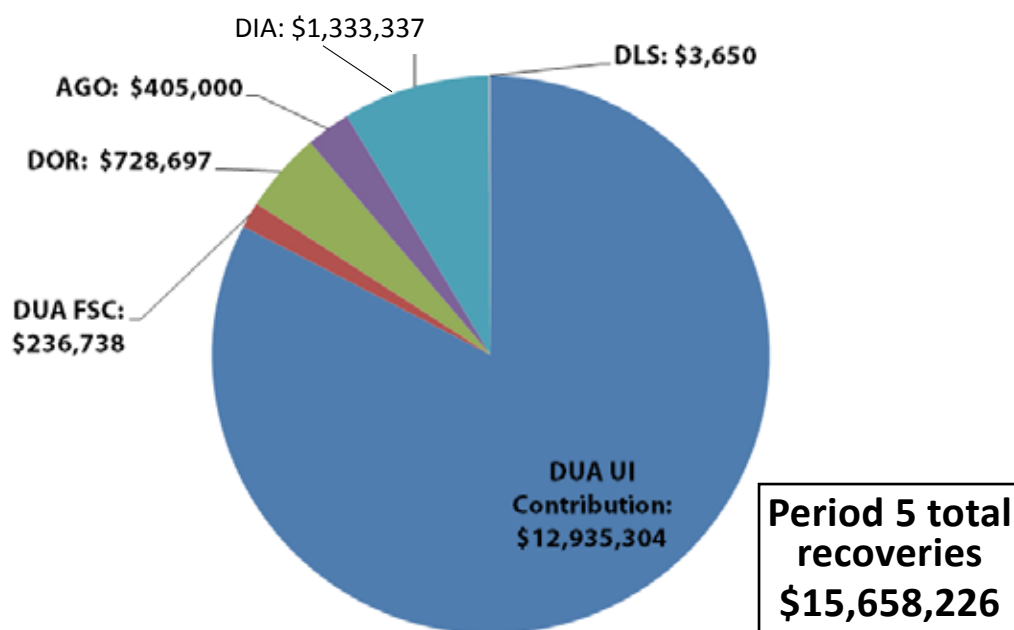
To-Date Recoveries: \$55,911,384

For further details of each partner agencies' participation, please see the "Partner Agency Enforcement Activity" section on pages 9 – 11.

Progression of recoveries for the JTF



Period 5 January 2013 - December 2013



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	Period 5	Period 4		Period 3	Period 2	Period 1
	January 2013 - December 2013	January 2012 - December 2012	July 2011 - 12/1/2011	April 2010 - June 2011	April 2009 - March 2010	March 2008 - March 2009
DUA UI Contribution:	\$12,935,304	\$12,712,702	\$4,287,848	\$2,365,237	\$2,071,211	\$737,439
DUA FSC¹:	\$236,738	\$276,439	\$16,830	Number not Reported	\$188,788	\$239,742
DOR:	\$728,697	\$327,869	\$835,178	\$3,665,097	\$1,568,166	\$233,468
AGO:	\$405,000	\$593,398	\$272,567	\$3,033,148	\$788,690	\$200,425
DIA²:	1,333,337	\$1,433,371	\$537,450	\$2,167,311	\$1,872,694	\$24,750
IFB³:		\$100,000				
DLS	\$3,650					
DPL	\$15,500					
Sub Total:		\$15,443,779	\$5,949,873			
Total:	\$15,658,226	\$21,393,652		\$10,930,933	\$6,489,549	\$1,439,024

- 1 DUA Fair Share Contribution (FSC) Program, part of the state health insurance legislation (Chapter 58 of the Acts of 2006) enacted in April of 2006, contains obligations for Massachusetts' employers who employ eleven (11) or more full-time equivalent (FTE) employees. Employers meeting this minimum employment threshold must file an FSC report. Employers with eleven (11) or more FTE employees who do not make a "fair and reasonable contribution" to their employees' health insurance, as defined in Division of Health Care Finance and Policy (DHCFP) (now Center for Health Information and Analysis) regulation (114.5 CMR 16.00), are required to pay a per-employee FSC to the Commonwealth Care Fund, payable to the Department of Unemployment Assistance (DUA). Recoveries listed are payments made on delinquent accounts prior to the dissolution. This Program was repealed in July of 2013.
- 2 DIA has a complementary enforcement operation, and certain DIA recovered funds reported in Years 2, 3, 4, and 5 came as a result of that operation. The DIA Office of Investigations, which works with the JTF investigative team, is responsible for ensuring that all employers operating in the Commonwealth carry workers' compensation insurance at all times, pursuant to M.G.L. c. 152, §25A and §25C. Any employer that is found to be in violation of the statute is served with a Stop Work Order (SWO). The SWO requires the business to close immediately upon service of the SWO and carries a fine of \$100 per day until the employer presents proof of a valid policy and pays the fine. The employer may also appeal the SWO, which carries a fine of \$250 a day and the opportunity to continue business activities until the hearing. The DIA has assigned investigators to cover cities and towns in the Commonwealth. These investigators examine businesses and organizations of every size and industry to ensure compliance with the law.
- 3 IFB opened 10 workers compensation premium avoidance cases in 2013 as a result of JTF referrals and has additional ongoing cases from previous years. Because of the nature of the cases and the length of time it takes to prosecute there are no reportable recoveries in 2013.

Noteworthy Accomplishments

2013 Accomplishments

JTF Expands Partnerships with State, Federal, and Stakeholder Groups

In 2013 The JTF developed new relationships with four additional state agencies, a federal agency, and an additional non-governmental stakeholder group.

State Agencies:

- Secretary of the Commonwealth's Office, Corporations Division (SOC)
- Operational Services Division (OSD)
- Massachusetts Office of Business Development (MOBD)
- Department of Public Health (DPH)

Federal Agency:

- National Labor Relations Board (NLRB)

Stakeholder Group:

- Community Labor United (CLU)

As part of the expansion of the JTF partner groups, the JTF expanded its compliance check process to include:

- Wellness Tax Credit Program within the Department of Public Health;
- DIA Safety Grants;
- Commonwealth Corporation's Workforce Competitiveness Trust Fund Grants;
- Department of Career Services and Commonwealth Corporations' Workforce Training Funds Grants; and
- Massachusetts Office of Business Development's Economic Development Incentive Program.

Bringing additional partners into the JTF could mean additional revenue recovery to the Commonwealth and more illegal business practices being thwarted. Additional partners may be helpful to enforcement, as it is not uncommon for an unscrupulous business to have multiple compliance issues with multiple government agencies. The more avenues of communication and coordination available, the more likely we may be to curb illegal activity.

Local, State, and Federal Investigation of Exploitative Agricultural Employer— Successful Use of the “Hot Goods” Provision

In the summer of 2011 when the investigation began, the Department of Career Services (DCS), under EOLWD, investigated a complaint regarding an injured worker at a farm in Western Massachusetts. DCS's investigation led to the involvement of the Massachusetts Department of Public Health, local health officials, and the US DOL bringing actions against the employer, Chang and Sons Enterprise, Inc., who operates two farms in Whately and South Deerfield. State and local health departments condemned and closed two farm labor camps, where 22 workers and their families were living, for failure to meet minimum safety and health standards and housing code regulations. In addition, five other farm labor camps owned and operated by the employer were inspected,

citations were issued, and immediate corrective action was attained. As a result of an earlier referral from DCS, the US DOL had previously cited the same employer for violating the labor laws under the Fair Labor Standards Act (FLSA), specifically, for failure to pay the federal minimum wage.

The US DOL has credited DCS's involvement in this case – especially because of its assistance in fostering the trust and cooperation of the affected workers – as a major contributor to its ability to obtain a very favorable resolution for the workers. After the US DOL learned of the violations, it was prepared to seek an injunction against the employer to restrain the shipment of its vegetables to restaurant and retail establishments throughout New England, New York, and New Jersey, under the “hot goods” provision on the FLSA. That provision prohibits the shipment, offer for shipment, or sale in interstate commerce, of any goods produced in violation of the minimum wage, overtime pay, child labor or special minimum wage provisions. A preliminary injunction was not required, however, because the farm immediately came into compliance with the law when the DOL made its demand.

This case involved a coordinated response among local, state, and federal agencies all utilizing their respective authority to address a multi-faceted exploitation of workers. DOL's consent judgment was entered on April 3, 2013, and provided for a total of \$305,500 in back wages and liquidated damages to fourteen affected employees, as well as a civil penalty of \$10,267 to the employer. The judgment also includes a permanent injunction prohibiting future violations of the FLSA's minimum wage, overtime, record keeping, and hot goods provisions.

Misclassification, Non-Payment of Prevailing Wages, and Workplace Violations Revealed on Public Jobs

The Massachusetts prevailing wage and record-keeping laws apply to all construction work performed on public works projects in Massachusetts. The prevailing wage laws allow all contractors bidding on public works projects to enjoy a “level playing field” by standardizing the rate of pay the workers will earn. The record-keeping law allows state agencies to monitor the spending of taxpayer monies on public construction projects. A company's failure to pay its employees the state prevailing wage for work performed at a public construction site or to abide by the record keeping requirements can result in both civil and criminal penalties against the company and its owners.

The AGO-FLD initiated an investigation on S.O.M. Construction Enterprises, Inc., of Dudley, Massachusetts, and its President, Wesley Mroczka after receiving a referral from the JTF and a local trade union that S.O.M. was violating the prevailing wage laws. The investigation revealed that S.O.M., which worked on 21 public works projects during the period of June 2009 through March 2013, failed to pay some of its workers the proper prevailing wage rate, failed to submit true and accurate certified payroll records to the awarding authorities for the various construction projects, failed to keep true and accurate payroll records and failed to furnish its employees with a suitable pay stub. The investigation further revealed the company misclassified 18 of its workers as independent contractors and paid the workers with company checks.

S.O.M. and Mroczka, were cited for violating the state prevailing wage law and the obligation to maintain payroll records with regard to public works projects throughout Massachusetts. To settle the allegations the company agreed to pay over \$78,000 in fines and restitution. S.O.M. cooperated fully with the Attorney General's investigation by agreeing to pay \$15,000 in restitution to 10 employees and pay a civil penalty of \$63,200 to the Commonwealth.

In addition, as a result of this tip, DLS investigated an asbestos worksite at a southeastern Massachusetts high school in which subpar work practices and workplace violations were identified. DLS issued \$1,200 in fines to S.O.M. Construction.

Prevailing Wage Investigation Unveils Misclassification and Sub-Rate Pay over 18 Public Construction Projects

M.D.M. Engineering, Inc., of Dudley, Massachusetts, and its President, Zbigniew Mroczka, agreed to pay \$35,520.16 in restitution and penalties to settle allegations they violated the state's prevailing wage laws.

In October 2011, the AGO-FLD initiated an investigation after receiving complaints through the JTF alleging that M.D.M. Engineering, Inc. was violating the prevailing wage laws. The investigation revealed that while performing work on 18 public construction projects, M.D.M. misclassified some of its roofing employees as laborers and consequently failed to pay these employees the proper prevailing wage rate. The investigation further revealed that M.D.M. failed to submit true and accurate certified payroll records to the awarding authorities, misclassified two employees as independent contractors, failed to furnish suitable pay stubs to its employees and, on various occasions, failed to make timely payment of wages. M.D.M. fully cooperated with the Attorney General's investigation and agreed to pay \$20,520.16 in restitution to 11 employees and pay a civil penalty of \$15,000 to the Commonwealth.

DUA Calendar Year 2013 Recoveries Exceeded Calendar Year 2012 Results

The revenue audit team at DUA, working in conjunction with the Alcohol Beverages Control Commission (ABCC), Division of Capital Asset Management and Maintenance (DCAMM), Department of Career Services (DCS), DIA and Department of Labor Standards (DLS) through a JTF effort, recovered \$13,172,042 from employers in unpaid unemployment and fair share contributions in calendar year 2013. As part of their roles with the JTF, investigators and staff among these five agencies conducted almost 19,000 cross-agency compliance checks. As a result of these checks, a number of businesses were found to be in violation of state law and were required to pay unemployment taxes owed in order to be considered for a state license or certification. The following is a description of DUA's 2013 recoveries for previously unpaid UI Trust Fund contributions working with each of the agencies listed below:

- ABCC compliance checks recovered \$10,697,731
- DCAMM compliance checks recovered \$1,007,377
- EOLWD compliance checks recovered \$365,560
- DCS compliance checks recovered \$326,499
- DLS compliance checks recovered \$129,789

JTF Taking a Lead Role in Raising Awareness of Labor Trafficking in Massachusetts

On November 21, 2011, Governor Patrick signed "An Act Relative to the Commercial Exploitation of People," into law. The law went into effect February 19, 2012.

As part of this anti-human trafficking law, the Legislature created an interagency task force to address all aspects of human trafficking through policy changes. The task force is charged with addressing Human Trafficking through service development, demand reduction, system change, public awareness, and training. The task force is chaired by the Attorney General and includes individuals representing victim services, academia, law enforcement, public policy, and state government.

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In 2013, JTF Director and Director of the Department of Labor Standards, Heather Rowe, was appointed Chair of the Labor Trafficking Implementation Committee, an advisory group to the Attorney General, to further identify issues specifically relating to the forced labor aspect of human trafficking in the Commonwealth. The Labor Trafficking Implementation Committee is a collaboration among individuals representing public and private entities. The group is working to produce recommendations that address labor trafficking specifically in terms of:

- Determining what legislative, regulatory, or policy changes may be necessary;
- Identifying necessary victim services;
- Specifying additional training needs for first responders, law enforcement, and others; and
- Specifying public awareness campaigns that should be undertaken and by whom.

The Labor Trafficking Implementation Committee will have 18 months from January 2014, to draft recommendations for the Attorney General who may choose to issue an addendum to the August 2013 report of the Findings and Recommendations of the Massachusetts Interagency Human Trafficking Policy Task Force.

Joint Task Force Operation: Bodywork Industry and Resulting Enforcement

Joint Task Force investigators from the Department of Industrial Accidents (DIA) and the Division of Professional Licensure (DPL) initiated joint operations focusing on the massage/bodywork industry. This industry was selected because of the particular risks and vulnerabilities to human trafficking present with this type of work. Most of these operations were conducted in conjunction with local law enforcement from numerous cities and towns.

The operations proved successful in identifying noncompliance and egregious business practices among particular businesses. Sixty (60) employers were issued Stop Work Orders by DIA investigators, ten (10) businesses were closed, and four (4) businesses were referred to the DIA's Civil Litigation Unit for failure to resolve their fines. Moreover, DIA collected \$28,400 in fines and approximately 100 employees were newly-covered by workers' compensation policies. Additional civil actions and criminal penalties are currently being pursued.

Investigators from the Division of Professional Licensure, in conjunction with DIA, inspected approximately 20 massage establishments in the Greater Boston area in the months of February and March. As a result, over 40 individuals were checked for professional licenses and \$15,500 in fines were issued for the unlicensed practice of massage or failure to license a massage establishment.

The initiative is ongoing, and has resulted in three separate human tracking investigations in partnership with the Attorney General's Office, the United States Diplomatic Security Service, and several local police departments.

JTF on the Map—Presentations and Sharing of Ideas with Stakeholders

The work of the JTF has not gone unnoticed. In 2013, the JTF was asked to speak about best practices at a number of events both in-state and nationally. Below is a list of some of the 2013 JTF presentations:

- 01/08/13 – Massachusetts Bar Association and Labor and Employment Section Council Roundtable, Boston, MA
- 03/13/13 – National Consumers League Senate Staff Briefing, Washington, DC – The JTF Director spoke at a Senate staff briefing to examine the state of payroll fraud in the United States as a guest of the National Consumers League

- 04/23/13 – Boston Bar Association– Discussion of employee misclassification and the effects on the Commonwealth, Boston, MA
- 04/24/13 – Local access cable television show featuring a discussion about the underground economy, Billerica, MA
- 07/15/13 – NH Joint Task Force on the Misclassification of NH Workers – best practices, Concord, NH
- 07/30/13 – National Association of Government Labor Officials (NAGLO) Conference, Boston, MA
- 09/05/13 – WBUR radio program, the costs of the underground economy, Boston, MA
- 09/27/13 – Interstate Labor Standards Association (ILSA) Annual Conference, Salt Lake City, UT
- 10/17/13 – Tennessee Employment Relations Research association (TERRA) 2013 Conference – presentation on what Massachusetts is doing to combat employer fraud, Arnold Air Force Base, TN
- 10/15/13 – Multi- Agency Investigators Meeting, Boston, MA
- 10/10/13 – Massachusetts AFL-CIO Annual Meeting, Plymouth, MA

Response to Complaints about Unlicensed Practice Perpetuated by Staffing Agencies Operating Outside the Law

As a result of several complaints to the JTF about unlicensed practice within both the electrical and plumbing industries, DLS issued two separate advisories to staffing agencies regarding the placement of plumbers and electricians with various worksite employers. Counsel for the DPL, under whose agency the Electrical and Plumbing Boards reside, reviewed and approved of the two communications. The act of sending licensed plumbers and electricians to perform plumbing and electrical work on job sites constitutes engaging in the business of a master plumber or master electrician. Performing such acts without a valid license is a violation of state law, and DLS advised staffing agencies what certifications they would need in order to lawfully place these licensed tradespersons. Additionally, staffing agencies were reminded about laws related to the dispatching of apprentices and that promising apprentices On the Job Training (OJT) hours for placement in various jobs was not only misleading to apprentices but a violation of state law in most cases. Having addressed these specific issues where the JTF received complaints about unlicensed and misleading practices by employers, DLS also took the opportunity to remind staffing agencies about their obligations under the state's Temporary Workers Right to Know Law, which became effective on January 31, 2013.

ABCC Licensing Compliance Checks Reap over \$10M in Recovered Funds from Applicants Seeking Liquor Licenses

The state's unemployment insurance department recovered \$10,697,731 during calendar year 2013 through efforts by the ABCC to hold initial and renewal applications for liquor licenses, until applicants paid outstanding unemployment taxes due to the Commonwealth. Through this interagency collaboration, ABCC has truly leveled the playing field for businesses with liquor licenses, ensuring these businesses pay their fair share and do not gain a competitive advantage by illegally reducing their expenses.

Cross-Agency Training

The Task Force partner agencies remain committed to cross agency education and training to ensure that our investigative agencies are familiar with each other's processes and enforcement authority. In 2013, DOR continued to offer its employee training and development programs to the Joint Task Force investigative team when training slots were available. This very successful partnership allowed JTF partners to take courses that may not have otherwise been available to them.

In October, the JTF held an all-agency investigator meeting where over 45 investigators from JTF partner agencies came together to discuss best practices and successful initiatives among state agencies. This meeting generated thoughtful discussion and awareness of other agencies' authority and objectives. As a result of this meeting, a list of basic investigator questions was compiled through feedback from the different partner agencies that attended the meeting. This information was subsequently shared with all the investigative staff. The helpful questions list makes it easier to identify what information partner agencies may need for effective and quality referrals.

In December, Scott Burson, Deputy Regional Attorney for the National Labor Relations Board (NLRB), Region 1, spoke to the JTF investigative team regarding the agency's authority and objectives, as well as how the JTF can work with the NLRB in the future. NLRB is working toward increasing visibility to agencies participating in the JTF and to better understand the missions of JTF participating agencies. This relationship will mutually enhance our ability to achieve our respective missions, protect worker rights, and support law-abiding employers. Federal and state partnerships are essential in enforcing labor laws efficiently and effectively.

Cross-training and awareness initiatives assist JTF agencies in operating in an efficient and coordinated manner by providing opportunities for agencies to identify potential cooperative methods. Cross-agency training helps to increase investigators' awareness of the requirements placed on employers by their sister agencies and encourage inter-agency referrals.

Promoting Employer Compliance through Outreach Activities

In 2013 the JTF increased education and outreach efforts with a few new initiatives. Early in 2013, the JTF assisted partner agencies in creating outreach materials that are distributed by DOR to newly-established businesses in the Commonwealth. These outreach materials, distributed by outreach workers from DOR, explain workers' compensation and unemployment insurance contribution requirements under Massachusetts General Law and were combined with other materials from DOR welcoming new businesses to Massachusetts and educating them on basic employer responsibilities.

In addition, Massachusetts is host to a variety of special events, carnivals, fairs and festivals that occur throughout the year all over the state. These cherished events boost the local economy, provide a great outlet for local vendors and merchants, and offer delightful recreational opportunities for residents of every age group. After a referral to the JTF regarding allegations of wage violations by an out-of-state employer at one of the festivals, the JTF took a proactive approach to future seasonal venues to promote compliance with applicable employment and tax laws. Compliance assistance materials specifically designed for temporary business operations were created and distributed in order to provide a quick reference for festival vendors about important employer responsibilities required under Massachusetts Law. This proactive outreach is designed to welcome seasonal business opportunities to our Commonwealth which do not undercut law-abiding businesses that may be more familiar with our state's labor, licensing, and tax laws. It also puts businesses on notice that Massachusetts is serious about combating employer fraud.

Results of Referrals and Cooperative Oversight

Reporting Suspected Cases of Fraud and Misclassification to the Task Force

The website of the Joint Enforcement Task Force on the Underground Economy and Employee Misclassification, www.mass.gov/lwd/jtf, 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 website 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 partner agencies.

The existence of the JTF makes reporting suspect business practices easier for the public. To report employer fraud, an individual may have previously needed to call up to 10 different tip lines. With the JTF, an individual can report an employer paying wages in cash, safety concerns, wage and hour violations, insurance premium avoidance, and non-licensure, all in one place. The information is then dispatched to the agency that handles the non-compliance allegation for further investigation.

JTF Compliance Checks

JTF partner 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 18,500 compliance checks amongst agencies in 2013, to assist in enforcement against employers violating Massachusetts tax, employment, and licensing laws. A compliance check occurs when a single JTF partner agency reviewing an employer's conduct for purposes of an ongoing investigation, license application, license renewal, procurement certification, credential, grant, or other benefit, inquires as to whether other JTF partner agencies have noncompliance matters relative to that particular employer. Cooperative oversight in the form of JTF compliance checks has proven to be an important tool for many of the Commonwealth's agencies.

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DUA Recoveries – Agency Compliance Checks		
January 2013 – December 2013		
Agency sending Compliance Check:	Amount Assessed	Number of Compliance Checks Completed
ABCC	\$4,315,322	3,318
ABCC (Renewals)	\$6,382,409	10,426
COMM. CORP	\$408,348	1,038
DCAMM	\$1,007,377	1,315
DCS	\$326,499	613
DLS	\$365,560	1,494
EOLWD - JTF	\$365,317	500
DUA - Section 30 (training opportunities program)	\$0	105
FSC	\$236,738	
Total Amount Assessed for Period 5:	\$13,172,042	
Total number of Compliance Checks Completed for Period 5:	18,809	

JTF Referral Investigations

JTF partner agencies that have enforcement authority over underground economy matters have tracked their activities with regard to JTF referrals and resulting investigations. During 2013, JTF reviewed 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 recovered, 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.

In addition to the monetary recoveries, the JTF has opened the doors for agency collaboration that, in many ways, is unprecedented. This has allowed agencies to have quality tips provided, share resources, and reduce duplicative efforts. While each participating agency has the ability to recoup revenue on its own, our collective efforts provide greater enforcement and compliance; yields significantly more in revenue for the Commonwealth; and delivers better outcomes for both employees and employers in the state. The JTF continues to successfully work together to confront fraud and abuse among employers, to provide an equal playing field for businesses to compete, and to protect workers.

Partner Agency Enforcement Activity

Alcoholic Beverages Control Commission (ABCC), which investigates applications for liquor licenses, prosecutes violations of pertinent statutes and regulations, and adjudicates disputes among members of the industry, participated in the recovery of over \$10 million for the state's UI Trust Fund, and assisted JTF agencies in reviewing investigations relative to employers maintaining or applying for a liquor license in the Commonwealth.

Attorney General's Office - Fair Labor Division (AGO-FLD) reviewed all relevant JTF complaints for potential violations of minimum wage and child labor laws; nonpayment of wages, prevailing wage violations; misclassification of employees; overtime pay violations; payroll record keeping; workers' compensation, and unemployment insurance fraud. The AGO-FLD undertook numerous investigations that originated from JTF referrals and employee misclassification complaints, yielding both civil and criminal enforcement actions. Included amongst these efforts, the AGO-FLD issued 32 civil citations with restitution and penalty orders totaling nearly \$250,000. Additionally, the AGO-FLD successfully obtained a guilty finding stemming from a 52-count criminal indictment against a fraudulent non-profit charity that began with employee complaints regarding misclassification, overtime and related wage violations, and led to the discovery of embezzlement and gross fraud, among other things. Together, fines and restitution for all charges totaled over \$155,000 and the owner was sentenced to 4-5 years in prison.

Department of Industrial Accidents (DIA) reviewed all relevant complaints received by the JTF and checked each referred employer for workers' compensation insurance coverage. Based upon the review and investigation of all JTF referrals in calendar year 2013, DIA issued 103 Stop Work Orders for lack of workers' compensation coverage. As a result, 288 workers were newly covered by workers' compensation policies and DIA received \$52,300 in fines. In its complementary enforcement actions by DIA investigators during calendar year 2013, DIA conducted 82,964 compliance checks, 5,694 investigations, and issued 2,541 Stop Work Orders for lack of workers' compensation insurance, which resulted in \$1,333,337 in fines and 6,288 workers brought under insurance coverage. 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; 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.

Department of Labor Standards (DLS) assisted DUA in recovering just under \$365,560 in unpaid unemployment insurance obligations through a joint operation during 2013. DLS also investigated complaints referred by the JTF alleging misconduct on the part of employment or temporary staffing agencies, temporary workers right to know law violations, asbestos and lead paint related licensing, and apprentice training programs. The DLS investigated 17 employment and placement agencies as a result of JTF referrals. Of the 17, six were not in compliance with the state's Employment Agencies Law. As a result, \$1,250 in fines were assessed and written warnings were sent to the noncompliant entities. DLS also investigated seven renovation/painting contractors as a result of JTF referrals in 2013. One of those firms was not in compliance with the state's Deleading and Lead-Safe Renovation regulation. The company was cited for a Lead-Safe Renovation violation and assessed a \$1,200 civil penalty. DLS provided guidance to other JTF agencies in cases involving employers in each of these areas. Finally, DLS cited an asbestos contractor that was part of a JTF investigation from 2012 because of asbestos violations. A civil penalty was assessed in the amount of \$1,200. The company did not pay the civil penalty, a cessation order was issued, and the company was referred to a debt collection agency.

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Department of Revenue (DOR) reviewed and closed 101 cases that were referred from the JTF that resulted in the assessment \$728,697 of additional tax, interest, and penalties in 2013. There are also eight JTF cases totaling \$50,742 that should be assessed within the first quarter of 2014 and 23 more cases still in progress at the end of the calendar year. Since the inception of the JTF, DOR has closed 630 cases from JTF referrals, totaling \$7,185,707 in recoveries.

Department of Unemployment Assistance (DUA) reviewed all relevant JTF referrals looking for Unemployment Insurance (UI) Trust Fund and Fair Share Contribution (FSC) violations such as failure to file, underreporting, failure to register, and/or failure to pay in full. DUA recovered \$13,172,042 in unpaid employer contributions to the Unemployment Insurance Trust Fund and FSC through referrals and compliance cross-checks with the Alcoholic Beverages Control Commission (ABCC), Commonwealth Corporation (COMM. CORP), Department of Labor Standards (DLS), Division of Capital Asset Management and Maintenance (DCAMM), Department of Industrial Accidents (DIA), and Executive Office of Labor and Workforce Development (EOLWD).

Division of Capital Asset Management and Maintenance (DCAMM), in 2013, assisted the Commonwealth in recovering \$1,010,225 and bringing 158 contractors into compliance with outstanding DUA liabilities. This was accomplished by sending notices to applicants that they must settle their DUA obligation before they can be eligible for DCAMM certification to bid on Chapter 149 public building construction contracts. DCAMM halts the certification process for any contractors that have not brought themselves into compliance with DUA obligations and denies these applications from certification. The increase in 2013 in the number of contractors brought into DUA compliance in part reflects DCAMM's attention to assuring that non-Massachusetts contractors fulfill their legal obligation of registering with DUA.

During 2013, DCAMM denied certification to three applicants for various reasons, including excessive prevailing wage violations, poor performance and supervision, non-compliance, and mistreatment of subcontractors. Additionally, in fewer than 10 cases, application files were closed and certification withheld, often due to non-compliance issues. This record of achievement for these low numbers is attributable to DCAMM's insistence, as a condition to certification, that applicants strictly comply with internal certification requirements, and to interagency enforcement with DUA and other JTF-participating agencies. DCAMM's practice of requiring that applications for renewal of certification be submitted at least three months prior to expiration of the applicant's current certificate also provides ample time for assuring such compliance and/or correction of non-compliance.

DCAMM's Certification Unit continues to cross-check the DIA's debarment list, the Supplier Diversity Office's (SDO) Decertification and Withdrawal Listing, DUA's listing of contractors with outstanding unemployment assistance liabilities, the Occupational Safety and Health Administration (OSHA) website, the Worker's Compensation Rating Insurance Bureau (WCRIB) website, the Attorney General's list of debarred contractors, the Secretary of the Commonwealth, Corporation Division website, the Department of Public Safety License verification website, and the Division of Professional Licensure as part of DCAMM's standard certification application process. Additionally, each contractor's application is checked against DCAMM's internal JTF case tracking database, and on a weekly basis, a list of all contractor applicants received is sent to all JTF partner agencies to inquire whether any other agency is working on any matters relating to the applicant.

Division of Professional Licensure (DPL) investigated all JTF referrals involving unlicensed individuals or businesses performing services that require professional licensure by the Commonwealth. In addition, DPL continued to operate its Health Care Fraud Tip Line, providing consumers with a confidential outlet to alert the agency's Health Care Fraud Unit of excessive or false billing practices by DPL licensed health professionals. Investigators from the DPL, in conjunction with DIA, inspected approximately twenty (20) massage establishments in the Greater Boston area in the months of February and March. As a result, over forty (40) individuals were checked for professional licenses and \$15,500 in fines were issued for the unlicensed practice of massage or failure to license a massage establishment.

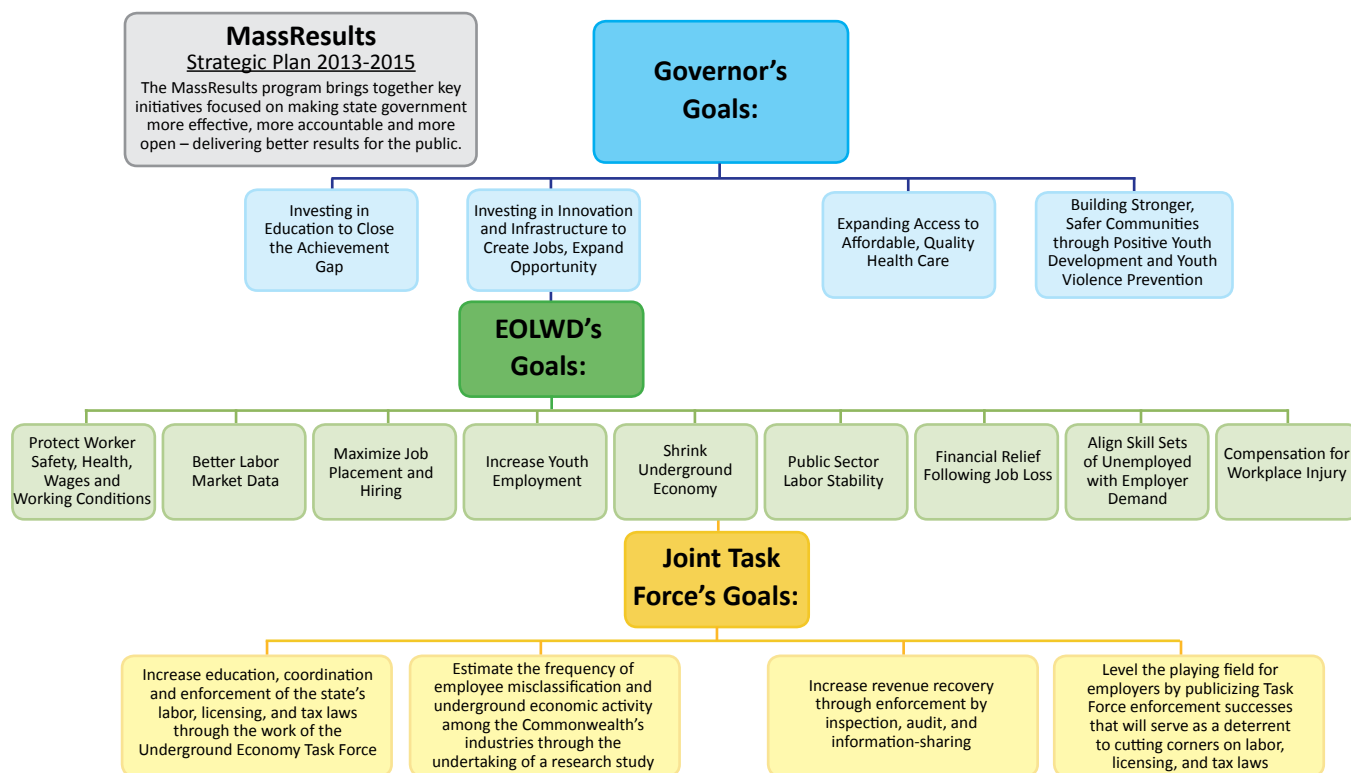
2014 Goals and Initiatives

Now in its sixth year, the JTF remains focused on increasing the volume and impact of cross-agency enforcement. This will be accomplished by building on the existing processes by which partner agencies conduct cooperative investigations. These efforts raise awareness in the general public, the business community, and within government, about the work of the JTF agencies to combat the underground economy and the responsibilities of employers in the Commonwealth. There are a number of key initiatives being undertaken by the JTF in furtherance of these goals.

Strategic Goals

In accordance with Executive Order 540, *"Improving the performance of state government by implementing a comprehensive strategic planning and performance management framework in the Executive departments,"* the JTF set out its 2013 – 2015 strategic goals to the Governor:

- Increasing education, coordination and enforcement of the state's labor, licensing, and tax laws through the work of the Underground Economy Task Force;
- Increasing revenue recovery through enforcement by inspection, audit, and information-sharing;
- Leveling the playing field for employers by publicizing JTF enforcement successes that will serve as a deterrent to cutting corners on labor, licensing, and tax laws; and
- Estimating the frequency of employee misclassification and underground economic activity among the Commonwealth's industries through the undertaking of a research study.



Research Study on Employee Misclassification and the Underground Economy in Massachusetts

A research study to determine and analyze the current state of the underground economy in Massachusetts was underway during 2013, through a partnership among DOR, DUA, and the JTF. The JTF hopes that the results of the study will inform future policy considerations based upon what the study reveals about issues, statistics, lost revenues, and other impacts on businesses and individual workers. The need for concrete data that clarifies and illustrates this problem is critical for making informed policy decisions. The study's purpose was to estimate the frequency, scale, and consequences of misclassification and the underground economy on the Commonwealth. Revenue Solutions, Inc. (RSI) was selected by DOR as a partner of the JTF, to undertake the analysis and write a report of their findings. The RSI report provides a detailed description of the specific aims and analyses it undertook. The JTF also created a Technical Advisory Board (TAB) to work with the RSI team during its analysis. Because of the confidentiality of the data, the TAB could not, and did not, participate in the creation of the data set or the analysis of the data. It did provide, through a series of meetings with the JTF and RSI throughout the study period, responses and suggestions regarding the analysis. The TAB was also charged with writing an independent assessment of the study findings based on RSI's final report to the JTF. The study results will be released in 2014.

Education and Outreach

The JTF will continue an education and outreach plan that involves the following multi-faceted approach:

- 1) Create educational material for workers and employers to bring awareness to the ongoing issues of the underground economy. Worker cards will have brief descriptions of signs of underground economy activity and how to report it. Business outreach will include a brochure focused on educating business owners of the adverse effects of contributing to the underground economy or misclassifying employees. The material will also have contact information to report fraudulent work practices.
- 2) Utilize its statewide Advisory Council to assist in educating workers and businesses, identify potential problem areas, and develop policy recommendations around specific legislative proposals.
- 3) Continue to enhance its web page with the goal of improving access to information about the underground economy and the work of the Joint Task Force.
- 4) Accept invitations from stakeholders to share information about the JTF, discuss best practices, opportunities, and challenges faced by employers, employees, regulators, and advocates.

Cross-Agency Training

The JTF partner agencies remain committed to a cross-agency education and training plan to ensure that our investigative agencies are familiar with various processes and enforcement authority. Cross-training ensures efficiency, coordination and encourages interagency referrals. During 2014, the JTF will make training opportunities available for partner agency investigators.

Expanding Additional Partnerships

The JTF has seen tremendous success as a result of compliance checks among our partner agencies. Monetary recoveries have increased dramatically as a result of cross-agency communication to increase compliance with multiple state agencies' requirements. This coordinated review helps to level the playing field for businesses as they are being required to pay all outstanding UI Trust Fund contributions and have a valid workers' compensation policy (if one is required) before being granted authorization to lawfully conduct a regulated activity. If a business chooses not to become compliant, it could potentially lose a license or forgo opportunities to bid on a state-funded project. Bringing additional partners into the JTF could mean additional revenue recovery to the Commonwealth and more businesses coming out of the shadows. Moreover, additional partners may be helpful to enforcement, as it is not uncommon for an unscrupulous business to have multiple compliance issues with multiple government agencies. The more avenues of enforcement available, the more likely we may be to curb illegal behaviors.

Multi-State and Federal Cooperation

Many JTF agencies and partners, such as DUA, DIA, DLS, DOR, AGO-FLD, and the IFB have strong, working relationships with federal authorities. The JTF is focused on building on these existing channels of cooperation and maximizing any potential assistance that can be provided in addressing the underground economy in Massachusetts. Also, the JTF has developed relationships with its counterparts in other states to share new ideas involving methods of cross-agency enforcement, and to open potential avenues for multi-state enforcement initiatives.

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:

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

Joint Enforcement Task Force on the Underground Economy and Employee Misclassification

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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

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- 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.

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

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: www.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 by means of 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 Training, Prevailing Wage Program, Minimum Wage Program, Employment Agency Program, On-site Consultation Program, Asbestos Program, Lead Program, Occupational Lead Poisoning Registry, Massachusetts Workplace Safety and Health Program, Occupational Safety and Health Statistics Program, and Industrial Hygiene Laboratory. **For more information, visit: www.mass.gov/dols**

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. 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: 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.

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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: www.mass.gov/ago**

Executive Office of Administration and Finance

Division of Capital Asset Management and Maintenance (DCAMM)

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

DCAMM serves the JTF 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: www.mass.gov/dcam**

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: www.mass.gov/dor

Supplier Diversity Office (SDO)

SDO 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: www.mass.gov/sdo**

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: www.mass.gov/eopss

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 United States citizens. MORI serves the Task Force in an advisory capacity, attending Task Force meetings upon invitation; and providing information on understanding cultural issues, identifying immigrant community groups to facilitate Task Force outreach, as well as identifying translation resources, upon request. **For more information, visit: www.mass.gov/ori**

Massachusetts Department of Public Health

The mission of the Massachusetts Department of Public Health is to prevent illness, injury, and premature death, to assure access to high-quality public health and health care services, and to promote wellness and health equity for all people in the Commonwealth. DPH envisions a Commonwealth in which all people enjoy optimal health. DPH provides programs to address specific diseases and conditions and offer services to address the needs of vulnerable populations. DPH also develops, implements, promotes, and enforces policies to assure that the conditions under which people live are most conducive to health and enable people to make healthy choices for themselves and their families. **For more information, visit: www.mass.gov/dph**

Executive Office of Housing and Economic Development

Division of Banks (DOB)

The Division of Banks (DOB) is responsible for ensuring a sound, competitive, and accessible banking and financial services environment in the Commonwealth. DOB is committed to providing effective financial and consumer protection supervision over regulated entities through intra- and inter-agency coordination. Under statute, the DOB is tasked with chartering, licensing, and examining State Chartered Banks, Credit Unions, Trust Companies, Mortgage Brokers, Mortgage Lenders, Mortgage Loan Originators, Check Cashers, Check Sellers, Debt Collectors, Foreign Transmittal Agencies, Insurance Premium Finance Agencies, Motor Vehicle Sales Finance Companies, Retail Installment Finance Companies, and Small Loan Companies. **For more information, visit: www.mass.gov/dob**

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 370,000 licensees in some 50 trades and professions. DPL also oversees private occupational schools. DPL's mission is to protect the public health, safety, and welfare by licensing qualified individuals and businesses 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 and adjudication of complaints, and DPL works with participating Joint Task Force agencies to prosecute unlicensed practice cases on behalf of its boards. **For more information, visit: www.mass.gov/dpl**

Office of Small Business and Entrepreneurship (OSBE)

The Office of Small Business and Entrepreneurship's mission is to create policies and programs to support small businesses and entrepreneurs across the Commonwealth. OSBE is the most valuable resource for Small Business Community, and utilizes the following business development tools: Small Business Assistance Advisory Council, Technical Assistance Grants and Office, and Small Business Development Centers. OSBE is dedicated to understanding small business needs, providing appropriate programs, and advocating policy to enable growth and job creation.

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: www.mass.gov/abcc**

Office of the Secretary of the Commonwealth

Corporations Division

The Corporations Division of the Secretary of the Commonwealth William Francis Galvin's Office is the repository for the public records of approximately 200,000 profit and nonprofit corporations and approximately 140,000 limited liability entities organized or registered to transact business in the Commonwealth.

All corporations and certain other business entities transacting business in the Commonwealth and organized under the laws of a different state or country are required to file a registration with the Corporations Division. Those foreign corporations or other business entities transacting business in the Commonwealth without filing a registration with the Corporations are subject to several penalties pursuant to Massachusetts General Laws Chapter 156D, Section 15.02.

In 2013 the Corporations Division joined the JTF. Since that time the Division has assisted the Task Force by pursuing entities organized under the laws of other states or countries that fail to comply with the laws of the Commonwealth regarding transacting business within Massachusetts.

Independent

Massachusetts Commission Against Discrimination (MCAD)

The Massachusetts Commission Against Discrimination (MCAD) is responsible for enforcement of Massachusetts' anti-discrimination laws, including the Fair Employment, Fair Education and Fair Housing Practices Acts, as well as the Maternity Leave and Public Accommodations laws, on behalf of the public. The Legislature has afforded the Commission with significant and comprehensive power and authority to investigate, conciliate, prosecute and adjudicate claims of discrimination, incident to our primary mandate of protecting, preserving, and enhancing the civil rights of our citizens. **For more information, visit: www.mass.gov/mcad**

Federal Partners

United States Department of Labor (USDOL)

The mission of the U.S. Department of Labor and its agencies is to foster, promote, and develop the welfare of the wage earners, job seekers, and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights. Several of its agencies are JTF partners:

- The Wage and Hour Division enforces Federal minimum wage, overtime pay, recordkeeping, and child labor requirements of the Fair Labor Standards Act. It also enforces the Migrant and Seasonal Agricultural Worker Protection Act, the Family and Medical Leave 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 Act 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, visit: www.dol.gov/whd.**

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- Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA's role is to ensure these conditions for America's working men and women by setting and enforcing standards, and providing training, education and assistance, as well as ensuring protections for whistleblowers under OSHA and several other statutes. **For more information, visit: www.osha.gov.**
- The Office of the Solicitor's mission is to meet the legal service demands of the entire Department of Labor. It fulfills its mission by representing the Secretary of Labor and USDOL agencies in all necessary litigation, including both enforcement actions and defensive litigation, and in alternative dispute resolution activities; by assisting in the development of regulations, standards and legislative proposals; and by providing legal opinions and advice concerning all the Department's activities. The Regional Solicitor's Office for Region 1 is located in Boston, and covers the six New England states. **For more information, visit: www.dol.gov/sol.**
- The mission of the Employee Benefits Security Administration is to assure the security of the retirement, health and other workplace related benefits of America's workers and their families. It accomplishes this mission by developing effective regulations; assisting and educating workers, plan sponsors, fiduciaries and service providers; and vigorously enforcing the law. **For more information, visit: www.dol.gov/ebsa.**
- The purpose of the Office of Federal Contract Compliance Programs (OFCCP) is to enforce, for the benefit of job seekers and wage earners, the contractual promise of affirmative action and equal employment opportunity required of those who do business with the Federal government. **For more information, visit: www.dol.gov/ofccp.**

National Labor Relations Board (NLRB)

The National Labor Relations Board is the federal agency that enforces the National Labor Relations Act, a law that applies to most private sector employers. Federal law protects the right of employees to engage in or refrain from protected, concerted activities with other employees in dealing with their employers with respect to wage, benefits, and other terms and conditions of employment. The Agency is most commonly associated with the protection of union activity and enforcing the requirement that where employees have chosen to be represented by a union, that unions and employers engage in good faith collective-bargaining, but the protection of concerted employee action is not limited to union situations. The Act gives substantive legal protection for group employee action seeking to engage employers with respect to their wages, benefits, and other terms and conditions of employment; therefore, it provides important protections to employees engaged in self-help efforts with respect to their employment. Through its intake and public information activities, NLRB personnel frequently encounter individuals who have substantive rights protected by one or more member agencies of the JTF. **For more information, visit: www.nlr.gov**

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 \$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: www.ifb.org

Appendix C: Common Interest Agreement

COMMON INTEREST AGREEMENT BETWEEN PARTICIPATING AGENCIES OF THE U.S. DEPARTMENT OF LABOR AND PARTICIPATING AGENCIES OF THE COMMONWEALTH OF MASSACHUSETTS

This Agreement is 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 participating agencies of the Commonwealth of Massachusetts, specifically, the Executive Office of Labor and Workforce Development, the Office of the Attorney General, the Department of Revenue, the Department of Unemployment Assistance, the Department of Industrial Accidents, the Department of Labor Standards, the Massachusetts Commission Against Discrimination, the Alcoholic Beverages Control Commission, the Division of Banks, the Department of Public Safety, the Division of Capital Asset Management, and the Division of Professional Licensure (hereinafter collectively referred to as “The Commonwealth”). The Department and the Commonwealth are collectively referred to as “the parties.”

With the specific and mutual goals of providing clear, accurate, and easy-to-access compliance information to employers, employees, and other stakeholders, and of sharing resources and enhancing enforcement by, as appropriate, conducting coordinated enforcement actions and sharing information consistent with applicable law, the parties agree to enter into this Agreement.

THEREFORE, IT IS MUTUALLY AGREED THAT:

Purpose

The parties recognize the value of establishing a collaborative relationship to promote compliance with laws of common concern in the Commonwealth of Massachusetts. The parties enter into this Agreement to more effectively and efficiently communicate and cooperate on areas of common interest. This includes, but is not limited to the following: sharing of training materials; providing employers and employees with compliance assistance information; and conducting coordinated law enforcement investigations and sharing information, where appropriate and to the extent allowed by law, to protect the wages, retirement income security, equal employment opportunity, unemployment benefits, workers’ compensation entitlements, safety, and health of America’s workforce, and to ensure a level playing field for law-abiding businesses, and proper compliance with applicable tax and licensing laws.

Agency Responsibilities

The Department is responsible for administering and enforcing a wide range of federal labor laws, including the Fair Labor Standards Act, the Family and Medical Leave Act, the Migrant and Seasonal Agricultural Worker Protection Act, worker protections provided in several temporary visa programs, the prevailing wage requirements of the Davis-Bacon and Related Acts, the Service Contract Act, the Employee Retirement Income Security Act, the Occupational Safety and Health Act, numerous whistleblower provisions of federal statutes, Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and the Vietnam Era Veterans’ Readjustment Assistance Act of 1974. Nothing in this agreement limits the Department’s enforcement of these and other laws.

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The Commonwealth is responsible for:

Executive Office of Labor and Workforce Development (EOLWD)/Joint Enforcement Task Force on the Underground Economy and Employee Misclassification (JTF)

- EOLWD is responsible for directing and overseeing the work of the Department of Unemployment Assistance, the Department of Industrial Accidents, the Department of Labor Standards, and the Department of Career Services. The Secretary of Labor and Workforce Development serves as the chair of JTF according to Massachusetts Executive Order 499 (E.O. 499).
- According to E.O. 499, JTF coordinates 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.
- According to E.O. 499, in fulfilling its mission, JTF:
 - o Facilitates 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;
 - o Identifies 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;
 - o Assesses existing investigative and enforcement methods, both in Massachusetts and in other jurisdictions, and develops and recommends strategies to improve those methods;
 - o Encourages 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;
 - o Solicits the cooperation and participation of district attorneys and other relevant enforcement agencies, including the Insurance Fraud Bureau, and establishes procedures for referring cases to prosecuting authorities as appropriate;
 - o Works 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;
 - o Works 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;
 - o Identifies 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
 - o Consults 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.

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Attorney General's Office, Fair Labor Division (AGO-FLD)

- The AGO-FLD enforces the Commonwealth's wage and hour laws, both criminally and civilly, 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 AGO-FLD 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, AGO-FLD works to protect employees from being exploited by an employer by educating both employers and employees about the law and employees' rights.

Department of Unemployment Assistance (DUA)

- The DUA 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.

Department of Industrial Accidents (DIA)

- Pursuant to M.G.L. Chapter 152, the mission of the DIA is to administer the Commonwealth's Workers' Compensation system and provide prompt and fair compensation to victims of occupational injuries and illness, and to see that medical treatment to injured workers is provided in a timely manner while balancing the needs of employers to contain workers' compensation insurance costs. Additionally, DIA provides dispute resolution of workers' compensation cases through due process and adjudication and administers the Special, Private and Public Trust Funds.

Department of Revenue (DOR)

- The mission of DOR is to achieve maximum compliance with the tax, child support, and municipal finance laws of the Commonwealth. DOR is dedicated to enforcing these laws in a fair, impartial and consistent manner by providing professional and courteous service to all its customers. DOR is also committed to the objectives of JTF to enforce employee classification laws through increased public awareness and enforcement.

Division of Banks (DOB)

- The mission of DOB is to ensure a sound, competitive, and accessible banking and financial services environment. DOB is committed to providing effective financial and consumer protection supervision over regulated entities through intra- and inter-agency coordination. Under statute, the DOB is tasked with chartering, licensing, and examining State Chartered Banks, Credit Unions, Trust Companies, Mortgage Brokers, Mortgage Lenders, Mortgage Loan Originators, Check Cashers, Check Sellers, Debt Collectors, Foreign Transmittal Agencies, Insurance Premium Finance Agencies, Motor Vehicle Sales Finance Companies, Retail Installment Finance Companies, and Small Loan Companies.

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Department of Labor Standards (DLS)

- 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 by means of 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:
 - o Division of Apprentice Training
 - o Prevailing Wage Program
 - o Minimum Wage Program
 - o Employment Agency Program
 - o On-site Consultation Program
 - o Asbestos Program
 - o Lead Program
 - o Occupational Lead Poisoning Registry
 - o Massachusetts Workplace Safety and Health Program
 - o Occupational Safety and Health Statistics Program
 - o Industrial Hygiene Laboratory
 - o Mine Safety and Health Program

Division of Capital Asset Management (DCAM)

- DCAM 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.

Alcoholic Beverages Control Commission (ABCC)

- ABCC regulates the alcoholic beverages industry in Massachusetts, directly licensing the statewide activities of liquor manufacturers, transporters, wholesalers, and brokers. 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.

Massachusetts Commission Against Discrimination (MCAD)

- MCAD is responsible for enforcing Massachusetts' anti-discrimination laws, including the Fair Employment, Fair Education and Fair Housing Practices Acts, as well as the Maternity Leave and Public Accommodations laws, on behalf of the public.
- The Legislature has afforded MCAD with significant and comprehensive power and authority to investigate, conciliate, prosecute and adjudicate claims of discrimination, incident to our primary mandate of protecting, preserving, and enhancing the civil rights of our citizens.

Division of Professional Licensure (DPL)

- DPL, under the Office of Consumer Affairs and Business Regulation (OCABR), oversees the state's 29 Boards of Registration, and regulates more than 40 trades and professions.
- 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.

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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, refrigeration technicians, and hoisting operators.

Contacts

- Each participating agency will designate a contact person responsible for coordinating activities covered under this Agreement.
- Each participating agency will designate a representative to meet annually to review areas of mutual concern and the terms and conditions of this Agreement.

Enforcement

Where appropriate and to the extent allowable under law,

- Any or all of the participating agencies may conduct coordinated investigations of common interest periodically in the Commonwealth of Massachusetts, as mutually agreed upon.
- The participating agencies will make reasonable efforts to coordinate their respective enforcement activities and assist each other with enforcement, to the extent practicable.
- The participating agencies will make referrals of potential violations of each other's laws.

Effect of Agreement

- This Agreement does not authorize the expenditure or reimbursement of any funds. Nothing in this Agreement obligates any participating agency to expend appropriations, enter into any other contract, or incur other obligations.
- By entering into this Agreement, the parties do not imply an endorsement or promotion of the policies, programs, or services of the other.
- Nothing in this Agreement is intended to diminish or otherwise affect the authority of any participating agency to implement its respective statutory functions.
- This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or be binding upon the parties. This agreement is not intended to confer any right upon any private person or other third party.
- Nothing in this Agreement will be interpreted as limiting or superseding the participating agencies' normal operations. This agreement also does not limit or restrict the participating agencies from participating in similar activities or arrangements with other entities.
- This agreement will be executed in full compliance with the Privacy Act of 1974, and any other applicable federal laws and laws of the Commonwealth.

Exchange of Information

- The Department and the Commonwealth endeavor to cooperate with other government agencies to the fullest extent possible under the law, subject to the general limitations that any such cooperation must be consistent with each party's own statutory obligations and enforcement efforts. It is the parties' view that sharing of information — including certain documents, factual materials, mental impressions, memoranda, interview reports, research, and other information, some of which may be privileged — in cases of common interest is to the parties' mutual benefit.

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- Exchange of such information pursuant to this Agreement is not a public disclosure under the Freedom of Information Act, 5 U.S.C. 552.
- Information that is otherwise discoverable and not privileged shall not become privileged simply because it was shared between any participating agency of the Department and any participating agency of the Commonwealth.
- Privileged information means information that may be exempt from disclosure to the public or other unauthorized persons under state and/or federal laws, or otherwise may properly be withheld from disclosure. Such information may include but is not limited to: the identities of persons who have given information to the parties in confidence or under circumstances in which confidentiality can be implied; any employee statements in any of the participating agencies' enforcement files that were obtained under these conditions; information concerning investigative techniques or procedures that if disclosed could lessen investigative effectiveness; internal opinions and recommendations of federal or state personnel, including (but not limited to) investigators and supervisors; information or records covered by the attorney-client privilege and/or the attorney work-product privilege; personal information on living persons; tax and child support information; individually identifiable health information; and confidential business information and trade secrets. Any physical material or other document containing such information should be clearly marked "privileged" before it is provided pursuant to this Agreement.
- Confidential Unemployment Compensation (UC) information, as defined in 20 CFR 603.2(b), means any unemployment compensation information, as defined in 20 CFR 603.2(j), required to be kept confidential under 20 CFR 603.4 or its successor law or regulation.
- Acknowledging that privileges and protections (including without limitation the investigative files privilege, informant's privilege, attorney-client privilege, work product doctrine, deliberative process privilege, and confidentiality agreements or orders) may apply to certain shared information, the parties wish to pursue their common but separate interests without waiving any privilege or protection that may apply to that shared information.
- When privileged information is shared it shall be used and accessed only by authorized individuals and only for the limited purposes of carrying out activities pursuant to this Agreement as described herein. The information shall not be duplicated or further disclosed without the written authorization of the party that provided it, unless the information becomes public without violation of this Agreement or unless the information is required to be disclosed by Court order or other legal authority. The parties shall instruct all such authorized individuals about the confidentiality requirements under both applicable state and federal law and the Common Interest Agreement itself, and about the potential sanctions for unauthorized use, browsing, or disclosure of privileged information.
- In the event that there is a public proceeding, such as a trial, in which privileged information may be used or testimony of either party's employees sought, prompt notice shall be given to the other party to enable it to take such action, if any, that it deems appropriate under the circumstances.
- Subject to applicable requirements of law, the participating agencies shall adhere to the limitations placed on them in any requested dissemination of CJIS/NCIC data to non-criminal justice agencies.
- Should either party receive a request or subpoena that would, fairly construed, seek production of privileged information that it received pursuant to this Agreement, the party receiving such a request or subpoena shall take reasonable measures, including but not limited to asserting the common interest privilege, to preclude or restrict the production of such information, and shall promptly notify the party providing such information that such a request or subpoena has been received, so that the party providing such information may file any appropriate objections or motions, or take any other appropriate steps, to preclude or condition the production of such information.

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- Neither party shall have authority to waive any applicable privilege or doctrine on behalf of the other party, nor shall any waiver of an applicable privilege or doctrine by the conduct of one party be construed to apply to the other party.
- The requirements of this Agreement, as applied to all privileged information, shall survive all of the following: (a) withdrawal by any participating agency party from this Agreement; (b) termination of this Agreement, (c) final disposition of claims or actions whether by judgment, settlement or other means of disposition.
- In addition to the requirements above, confidential unemployment compensation information may be exchanged only subject to the confidentiality requirements of 20 CFR 603.4, and any other applicable laws. In addition to the requirements above, the types of confidential information referenced in Appendix A may be exchanged only subject to the corresponding confidentiality requirements included in Appendix A.

Subject to the foregoing constraints:

- The participating agencies agree to exchange information on laws and regulations of common concern to the other participating agencies, as requested and to the extent practicable and allowable by law and policy.
- The participating agencies will establish a methodology for exchanging investigative leads, complaints, and referrals of possible violations, to the extent feasible and allowable by law and policy.
- The participating agencies will exchange information (statistical data) on incidence of violations in specific industries and geographic areas, as requested and to the extent practicable and allowable by law and policy.

Resolution of Disagreements

- Disputes arising under this Agreement will be resolved informally by discussions between participating agency Points of Contact, or other officials designated by a participating agency.

Period of Agreement

- This Agreement becomes effective upon the signing by all participating agencies, and will expire 3 years from the effective date. This Agreement may be modified in writing by mutual consent of all participating agencies. Any participating agency may withdraw from participation in this Agreement by giving thirty (30) days advance written notice prior to the date of intended withdrawal. Renewal of the Agreement may be accomplished by written agreement of all participating agencies.

Appendix A (of Common Interest Agreement)

- In accordance with M.G.L. c. 14, § 6 and DOR's Tax Confidentiality Statutes, M.G.L. c. 62C, §§ 21 and 21B:
 - o Confidential tax information must be safeguarded in accordance with the best practices contained in the National Institute of Standards and Technology (NIST) Special Publication 800-53 Revision 2, "Security Controls for Federal Information Systems", Annex 2, "Moderate-Impact Baseline" (NIST 800-53 (Moderate Level)) (this document can be found at: <http://csrc.nist.gov/publications/PubsSPs.html>) regarding the physical and technical security of the DOR Information.
 - o of this Agreement or until termination of this Agreement. The best practices contained in the NIST 800-88 Standard regarding the destruction of electronic or paper media and magnetic tapes; applicable state and federal statutes and regulations, including G.L. c. 931; and the Massachusetts Statewide Records Retention Schedule must be followed.
 - o Any person having access to the tax information must be informed of DOR's confidentiality requirements and the sanctions for unauthorized disclosure and sign DOR's confidentiality acknowledgement.
 - o Access to confidential information may not be released to any third party without DOR's written approval.

- o DOR reserves the right to periodically review the use of the confidential tax information, including on-site audits and inspections, to reasonably determine and verify that the confidentiality of the DOR Information is maintained in accordance with the terms of this Agreement, and that the information is used only for authorized purposes.
- o DOR may discontinue or suspend the provision of the tax information immediately if it determines that any term of this Agreement has been violated.
- In accordance with M.G.L. c.151:
 - o Privileged unemployment tax information shall be stored in a place physically secure from access by unauthorized persons.
 - o Privileged unemployment tax information maintained in electronic format must be stored so that unauthorized persons cannot obtain the information by any means.
 - o Privileged unemployment tax information shall be returned to the agency providing the information when no longer needed for the purposes of this Agreement or upon termination of this Agreement.
 - o Prior to accessing privileged unemployment tax information, parties shall agree to: (1) instruct all personnel having access to the privileged unemployment tax information about confidentiality requirements and the sanctions for unauthorized disclosure, (2) sign an acknowledgement that all personnel having access to the privileged unemployment tax information have been so instructed, and (3) allow with reasonable notice on-site inspections by the party providing the privileged unemployment tax information.
- In accordance with M.G.L. c.93H, agencies shall safeguard personal information of residents of the Commonwealth.

This agreement is executed as of the 19th day of September, 2011.

For further information please contact:

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1-877-96-LABOR
www.mass.gov/lwd/jtf

COMMONWEALTH OF MASSACHUSETTS

Deval L. Patrick, Governor

Rachel Kaprielian, Secretary,
Executive Office of Labor and Workforce Development

Report Submitted by:

Heather Rowe,
Director, Joint Task Force