

**United Brotherhood of Carpenters and Joiners of America
101 Constitution Ave., NW
Washington, DC 20001**

Request for Proposal

Issued: August 27, 2019

Due Date for Proposal: September 28, 2019

Short Description of research: (1) Produce a uniform methodology that can be used for state specific studies that quantify losses caused by the misclassification of construction employees as independent contractors and the non-reporting of construction employee income. The due date for this section is October 28, 2019. (2) Quantify the federal and state revenue losses caused by the misclassification of construction employees as independent contractors and the non-reporting of income paid to construction employees. The due date for this part of the research is January 15, 2020.

Contact: Matthew F. Capece, Esq., Representative of the General President
Matthew.Capece@carpenters.org
203-231-0398

Introduction and Background

The United Brotherhood of Carpenters (UBC) is a labor union representing more than 500,000 carpenters, millwrights, pile drivers, floor coverers, factory workers and other workers in the United States and Canada.

We have seen a growing number of construction employees misclassified as independent contractors or being paid "off-the-books." There are many victims. Construction workers can go without workers' compensation protection, unemployment insurance and they suffer wage theft and non-payment of overtime. In addition, their employers are shifting their employment tax burdens onto them. These schemes also lead to losses in federal and state tax revenues. Insurers who do not receive full workers' compensation premiums pass along their losses to construction employers who do pay. Responsible construction employers also suffer. The construction industry is highly competitive, with work frequently awarded to the lowest bidders. As a result, those contractors that do abide by state and federal employment and tax laws are squeezed out of market places because they are underbid. Industry standards overall are also threatened. The erosion of labor standards makes it more difficult to recruit and retain skilled craftspeople.

The contractors engaged in irresponsible practices either directly misclassify workers or pay them off the books, or they do it indirectly through subcontract labor providers or labor brokers. These irresponsible employment practices are not isolated to single family or residential housing complexes. We are also finding them on high-rise residential work and industrial construction and on university, hospital, military bases, schools, retail and office building projects. We have even seen suspected illegal practices on the construction of an IRS building.

There are numerous state studies¹ with various methodologies, but an in-depth national study is lacking. A brief national study was done in January 2019 quantifying the federal and state income and FICA tax losses at a conservative \$2.6 billion a year. That study quantified the number of construction employees misclassified as independent contractors at 300,000 and the number unreported at 1.2 million. Studies in Michigan, New Jersey and California also showed non-reporting trumping misclassification.

Qualifications of proposer

The proposer needs to have sufficient academic, research, experience and writing capabilities that will produce a high quality, independent, accurate and credible product.

Product deliverables

Part 1

Produce a uniform methodology that can be used for state specific studies that quantify losses caused by the misclassification of construction employees as independent contractors and the non-reporting of construction employee income. The due date for this part is October 28, 2019.

The methodology needs to quantify:

The number and percentage of construction employees misclassified as independent contractors.

The number and percentage of construction employees whose pay is unreported and under-reported.

The bidding advantage realized by irresponsible construction employers.

The following losses:

- Federal income taxes

- Federal employment taxes (Social Security, Medicare, unemployment insurance contributions)

- State² income taxes

- State unemployment insurance contributions

- Workers' compensation premiums

- State workers' compensation premium assessments (used to fund state workers' compensation bureaus)

- State business income taxes

Other items that the proposer may suggest.

Part 2

Deliver a written, high quality report that quantifies the federal and state revenue losses caused by the misclassification of construction employees as independent contractors and the non-reporting of income paid to construction employees. The due date for this part is January 15, 2020.

The number and percentage of construction employees misclassified as independent contractors.

The number and percentage of construction employees whose pay is unreported and under-reported.

The bidding advantage realized by irresponsible construction employers.

The following losses:

¹ See the attached compilation. Many of the studies in the compilation and discussed here can be found under the reports tab at StopTaxFraud.net.

² For the state numbers, we are not requesting numbers for each state--we are requesting sum totals. If the proposer feels that they can produce individual state numbers within the schedule, that should be included in their proposal as a separate costs.

Federal income taxes
Federal employment taxes (Social Security, Medicare, unemployment insurance contributions)
State income taxes
State unemployment insurance contributions
Workers' compensation premiums
State workers' compensation premium assessments (used to fund state workers' compensation bureaus) and
State business income taxes.
Participate in press releases of findings drafted by the proposer or UBC and be available for media inquiries.
Other items that the proposer may suggest.

Schedule

August 27, 2019: UBC release of RFP.
September 14, 2019: Written confirmation of proposers' intent to bid and any questions.
September 14-21, 2019: UBC addressing questions.
September 28, 2019: Receipt of proposals.
September 28-30, 2019: UBC review and clarifications of proposals.
October 1, 2019: Target date of UBC selection of proposal.
October 15, 2019: Receipt of draft of Part 1.
October 28, 2019: Receipt of final draft of Part 1.
December 15, 2019: Receipt of draft of Part 2.
January 15, 2020: Receipt of final draft of Part 2.

Format of proposal

Submit pricing separately for Part 1 and Part 2.³
Contact persons with their contact information.
Identify any subcontractors that will be used.
Confirm elements of the research with the requested deliverables and ability to meet the schedule.
Names of persons primarily responsible for the research and writing, their contact information, institution affiliation (university or economic "think tank" association) and their curriculum vitae.

Selection

All of the above in format of proposal will be used to evaluate and select the proposal. Any questions and submissions should be sent to Matthew Capece at Matthew.Capece@carpenters.org.

³ See footnote 2 regarding state numbers.

**Size and Cost of Construction Industry Tax Fraud:
Survey of National, State and Province Studies**

August 19, 2019

**Compiled by:
Matthew F. Capece, Esq.
Representative of the General President
United Brotherhood of Carpenters and Joiners of America**

Corrupt construction firms, even on large projects, steal work away from law-abiding employers. That is done through a practice commonly called misclassification. It can be also be called “construction industry tax fraud” due to the intentional nature of the practice in the construction industry.

Employers commit tax fraud to avoid withholding income taxes, paying employment taxes, overtime and workers compensation premiums. fraud comes in two forms. First is the intentional reporting of employees as independent contractors to state and federal authorities or workers’ compensation carriers and issuing an IRS 1099 Misc. form at the close of the tax year. Second, and more common, are the construction employers who operate in the underground economy-they don’t bother to report all or a sizable portion of their workers. As will be seen, many studies of the problem do not quantify the degree or cost of the underground economy, which results in an underestimation of the true scope of the problem.

In the construction industry tax fraud gives irresponsible employers a 30 percent or more advantage in labor costs. And in a competitive industry like construction that means responsible employers who play by the rules (and their employees) lose work. Fraud in construction is more common than in other industries, because of competitiveness, mobility of employers and the workforce, the temporary nature of the work and the multiple layers of contractors and subcontractors.

Below are brief descriptions of numerous national and state studies and other research of the size and cost of tax fraud. Many are available at: StopTaxFraud.net.

US National Studies

*A **1984 study by the Internal Revenue Service** found that 19.8 percent of construction employers misclassified their employees.⁴ The rate for all industries was 15%.⁵ The total income, unemployment and Social Security tax loss was \$1.6 billion.⁶ Moreover, the IRS estimated that the loss of Social Security and unemployment taxes alone would be \$2.3 billion in 1987 and \$3.3 billion in 1992.⁷ A different estimate by the Government Accountability Office put the IRS' 1984 number in 2006 dollars for a tax loss of \$2.72 billion.⁸

*In **1994 Coopers & Lybrand** estimated that the federal government would lose \$3.3 billion in revenues in 1996 due to misclassification, and from 1996 to 2004 misclassification would cost the government \$34.7 billion.⁹

*A study released in **2000 for the US Department of Labor Employment and Training Administration by Planmatics, Inc.** found an unemployment tax loss of \$198 million annually due to misclassification of employees as independent contractors.¹⁰ Again, the construction industry was cited by sources as the most likely to offend.¹¹

Unemployment tax audits in the following states found these percentages of employers with misclassified workers:¹²

California 29%, Connecticut 42%, Maryland 19.9%, Minnesota 13.4%, Nebraska 10%, New Jersey 9.15 %, Wisconsin 23% and Washington 10.3%.

***Many studies do not include the extent of unreported pay** in the underground economy.¹³ A **Bear Stearns 2005** report estimated that the United States is losing \$35 billion a year due to the number of jobs that are now "off the books."¹⁴

⁴Described in *Tax Administration: Issues in Classifying Workers as Employees or Independent Contractors*, Statement of Natwar Gandhi, GAO/T-GGD-196-130, p. 13 (June 20, 1996).

⁵ *Ibid*, p 1.

⁶ *Ibid*. pp. 4-5.

⁷ *Ibid*.

⁸ *Employment Arrangements: Improved Outreach could Help Ensure Proper Worker Classification*, GAO-06-565, p. 2 (July 2006).

⁹ *Projection of the Loss in Federal Tax Revenues Due to Misclassification of Workers*, by Coopers & Lybrand, p. 3 (June 1994).

¹⁰ *Independent Contractors: Prevalence and Implications for Unemployment Insurance Programs*, by Planmatics, Inc., pp. iv, 69 and 93 (2000).

¹¹ *Ibid.*, pp. 41-44.

¹² *Ibid.*, pp. 57.

¹³ *The Social & Economic Cost of Employee Misclassification in Construction*, Construction Policy Research Center, Labor & Worklife Program, Harvard Law School & Harvard School of Public Health, by Bernhard and Herrick, p. 1 (December 2004) (Massachusetts Study), *The Social & Economic Cost of Employee Misclassification in the Maine Construction Industry*, Construction Policy Research Center, Labor & Worklife Program, Harvard Law School & Harvard School of Public Health, by Bernhard and Herrick, p. 1 (April 2005) (Maine Study), *Economic Costs of Employee Misclassification in the State of Illinois*, Dep. Of Economics, Univ. Missouri-Kansas City, by Kelsay, Sturgeon and Pinkham, p. 2 (December 2006) (Illinois Study) and *Misclassification of Employees as Independent Contractors*, Office of the Legislative Auditor, State of Minnesota, p. 15 (November 2007).

¹⁴ *The Underground Labor Force is Rising to the Surface*, Bear Stearns Asset Management, by Justich and Ng, p. 3 (January 3, 2005).

***The Government Accountability Office (GAO) issued a 2009 report on misclassification.**¹⁵ The report begins with: “The national extent of employee misclassification is unknown; however, earlier and more recent, though not as comprehensive, studies suggest that it could be a significant problem with adverse consequences.”¹⁶ The GAO had several recommendations to the executive branch to improve law enforcement including increasing referrals to other state and federal agencies and the formation of an interagency group including the IRS, DOL and other state and federal agencies to identify best practices and to improve efficiency of enforcement.¹⁷ The IRS and DOL agreed with the recommendations.¹⁸

A report on the unemployment tax and workers’ compensation premium losses shifted to law-abiding employers was done by Dr. Michael P. Kelsay of the Department of Economics at the University of Missouri-Kansas City. Using conservative estimates of misclassification, Dr. Kelsay found that \$831.4 million in unemployment taxes and \$2.54 billion in workers’ compensation premium losses are shifted annually to law-abiding employers.¹⁹

Voters were surveyed in 2016 by Hart Research Associates **on contracting out of work.**²⁰ The survey of registered voters focused on alternative work arrangement, such as temporary work, on-call work, contract workers, independent contractors and freelancers.²¹ Here are the key findings:

59% of voters (59% Democrat, 58% Republican, 61% independents) think that the increase in the number of companies that hire firms to supply them with labor is a negative trend.²²

73% do not think saving money by not providing employee benefits is a legitimate reason to use subcontract workers instead of employees. 72% think the same if the motivation is saving money on wages or to make it easier to terminate workers.²³

70% said that the increase in use of subcontract labor is bad for workers.²⁴

58% thought the shift toward subcontract labor was bad for the economy.²⁵

62% of voters said that the increase in use of independent contractors is a bad change.²⁶

78% of voters believe that being an employee is better than being an independent contractor.²⁷

¹⁵ *Employee Misclassification: Improved Coordination, Outreach, and Targeting Could Better Ensure Detection and Prevention* GAO-09-717 (August 2009).

¹⁶ *Ibid.*

¹⁷ *Ibid.*, pp. 41-42.

¹⁸ *Ibid.*, pp. 42-43.

¹⁹ *Cost Shifting of Unemployment Insurance Premiums and Workers’ Compensation Premiums*, by Michael P. Kelsay, pp. 5-6 (September 12, 2010).

²⁰ *Contracted Out: Findings from a National Voter Survey*, by Hart Research Associates (October 19, 2016) available at <http://www.nelp.org/content/uploads/Contracted-Out-NELP-National-Voter-Survey-Findings.pdf>.

²¹ *Ibid.* p. 2.

²² *Ibid.*

²³ *Ibid.* p. 3.

²⁴ *Ibid.* p. 4.

²⁵ *Ibid.*

²⁶ *Ibid.* p. 5.

²⁷ *Ibid.*

67% of voters have heard about misclassification of workers as independent contractors, allowing companies “to avoid certain costs, such as paying the minimum wage, providing benefits and making Social Security or Medicare contributions.”²⁸

84% of voters believe that misclassifying employees as independent contractors is a serious problem.²⁹

78% of voters (73% Republican) would “favor a proposal that would make it harder for companies to classify workers as independent contractors and increase fines and penalties for misclassification.”³⁰

71% of voters (67% Republican) would support holding the client, or upper-tier, company liable for its subcontractor’s unpaid wages, unemployment insurance contributions, workers’ compensation and Social Security taxes.³¹

In **January 2019 Smart Cities Prevail** estimated \$2.6 billion in state and federal tax losses caused by the misclassification of construction employees as independent contractors and non-reporting of income.³² Their research found that 300,000 construction employees were misclassified as independent contractors and income for 1.2 million was not reported. The researchers calculated conservative income and FICA tax losses.

US Regional

Southern States

Researchers for the study *Build a Better South* interviewed 1,435 construction workers in Atlanta, Georgia, Charlotte, North Carolina, Dallas, Texas, Houston, Texas, Miami, Florida and Nashville, Tennessee.³³ They found that 32 percent of the workers were misclassified as independent subcontractors or failed to receive a 1099 tax form.³⁴ The rate of misclassification in Charlotte was 17 percent,³⁵ Houston 38 percent³⁶ and Miami 26 percent.³⁷ Injury rates in all six cities were “significantly higher” than the construction industry as a whole with the Nashville injury rate of 24 percent being the worst.³⁸ One in three construction workers who die on the job were killed in the five states in the study.³⁹ The amount of money workers lost in the six cities due to wage theft was \$29.8 million.⁴⁰

State Studies and Reports

²⁸*Ibid.* p. 6.

²⁹ *Ibid.*

³⁰ *Ibid.* p. 7.

³¹ *Ibid.*

³² *Estimating Tax Fraud in the USA's Construction Sector*, by Smart Cities Prevail (January 2019), available at, <http://stoptaxfraud.net/wp-content/uploads/2019/03/Estimating-the-Construction-Tax-Gap-SCP-2-19.pdf> .

³³ *Build a Better South*, by Dr. Nik Theodore, Bethany Boggess, Jack Cornejo and Emily Timm, p. ix (2017).

³⁴ *Ibid.*, pp. x, 14 and 14 fn c.

³⁵ *Ibid.* p. 28.

³⁶ *Ibid.*, p. 33.

³⁷ *Ibid.*, p. 37.

³⁸ *Ibid.*, p. 39.

³⁹ *Ibid.*, p. 4.

⁴⁰ *Ibid.*, p. x.

In 2017 the Economic Policy Institute released a study on wage theft.⁴¹ The report focuses on minimum wage theft-employees paid an hourly rate less than the minimum wage-in the ten most populous states: California, Florida, Georgia, Illinois, Michigan, New York, North Carolina, Ohio, Pennsylvania and Texas.⁴² Their study found that in those states 2.4 million workers, 17 percent of the low-wage workforce, was underpaid \$8 billion annually.⁴³ Using that figure as representative for the entire country puts nationwide minimum wage theft at \$15 billion.⁴⁴ At the end of the report are helpful tables that show the amount of wage theft in each of the studied states in numerous categories-age, citizenship status, education, industrial sector and others. For instance, in Florida 17,440 construction workers were paid less than the minimum wage, amounting to \$45 million in wage theft for that group.⁴⁵

*McClatchy news in 2014 ran a series called *Contract to Cheat*.⁴⁶ The series detailed fraud in a number of states. In three of those states, Florida, North Carolina and Texas, McClatchy calculated the degree of fraud in the construction industry. They reviewed certified payrolls from federal construction projects, interviewed workers, determined a misclassification rate and applied it statewide using US Census data.⁴⁷

<u>State</u>	<u>Rate of Misclassification</u>	<u>Lost State & Federal Revenue (millions)</u>
Florida	15.5 %	\$400 ⁴⁸
North Carolina	35.2%	\$134 state, \$333federal ⁴⁹
Texas	37.7%	\$1,200 ⁵⁰

*Interviews of over 300 construction workers in **Austin, TX in 2008 to 2009** found that 38 percent of them working on vertical construction projects were misclassified as independent

⁴¹ *Employers steal billions from workers' paychecks each year*, by David Cooper and Teresa Kroger, Economic Policy Institute (May 10, 2017).

⁴² *Ibid.* p. 1-2.

⁴³ *Ibid.* p. 2.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.* p. 45.

⁴⁶ *Contract to Cheat*, McClatchy (September 4, 2014), available at:

<http://media.mcclatchydc.com/static/features/Contract-to-cheat/?brand=nao>

⁴⁷ *Contract to Cheat: How the Reporting was Done*, by Mandy Locke, News & Observer, McClatchy (September 4, 2014), available at: <http://media.mcclatchydc.com/static/features/Contract-to-cheat/Investigation-built-on-payroll-records.html?brand=nao>

⁴⁸ *Taxpayers and Workers Gouged by Labor-Law Dodge*, by Mandy Locke and Franco Ordonez (September 4, 2014) available at: <http://media.mcclatchydc.com/static/features/Contract-to-cheat/Labor-law-dodge-hurts-taxpayers-and-workers.html?brand=nao>

⁴⁹ *NC's \$467 million problem: Abuse of Workers, Failure to Collect Taxes*, by Mandy Locke, David Raynor, Rich Rothacker and Franco Ordonez, McClatchy (September 4, 2014) available at:

<http://media.mcclatchydc.com/static/features/Contract-to-cheat/467-million-dollar-problem.html?brand=nao>

⁵⁰ *Tax Cheats are Widespread in Texas Construction Industry*, by Yamil Berard, , Star-Telegram, McClatchy (September 4, 2014) available at: <http://media.mcclatchydc.com/static/features/Contract-to-cheat/Tax-cheats-hit-hard-in-Texas-construction.html?brand=nao>

contractors or paid unreported compensation, costing \$8.6 million in lost federal and unemployment taxes.⁵¹

***A 2007 study done for the California Commission on Health and Safety and Workers' Compensation** disclosed that employers in all industries failed to report up to 23 percent of their payroll to workers' compensation carriers, resulting in \$100 billion in underreporting.⁵² Because carriers shift costs to customers that do pay what they should, responsible employers who have workers in dangerous occupations are paying eight times more than they should be paying.⁵³

***Wrongful classification of employees as an independent contractors and unreported compensation in the California construction industry grew 400 percent from 1972 to 2012.**⁵⁴ The total number of construction workers in 2011 that were wrongly classified or who received unreported compensation was 143,900 or 17 percent of the state's construction workforce.⁵⁵ Of that number, 104,100 received unreported compensation and 39,800 were wrongly classified.⁵⁶ The construction industry is divided into three sectors; construction of buildings, heavy and civil engineering and specialty trades, like drywall installers.⁵⁷ The sector with the most workers is specialty trades, and the degree of wrongful classification and non-reporting was 25 percent of that workforce.⁵⁸ Unreported-construction employees earn 52 cents for every dollar that a payroll employee is paid, and a wrongly classified 64 cents.⁵⁹ If they were paid at the same rate as payroll employees, they would have earned an additional \$1.2 billion.⁶⁰ The low wages of those workers leaves less of them in the middle class and harms the ability of the construction industry to recruit and retain skilled labor.⁶¹ Losses in federal and state revenues and workers' compensation premiums totaled over \$774 million in 2011.⁶²

Program	Losses ⁶³
Social Security	\$234,906,767
Medicare	54,937,873
Federal Unemployment	12,042,574
State Unemployment	62,219,966

⁵¹ *Building Austin, Building Injustice: Working Conditions in Austin's Construction Industry*, by the Workers Defense Project, pp. 49-50 (2009).

⁵² *Up to One Fifth of California Payroll Not Reported*, WorkCompCentral, by Jim Sams (April 30, 2007). This study was of all employers, and not just construction. *Fraud in Workers' Compensation Payroll Reporting: How Much Employer Fraud Exists and How are Honest Employers Impacted: Report for the Commission on Health and Safety and Workers' Compensation*, by Frank Neuhauser and Colleen Donovan, University of California, Berkeley (August 2007).

⁵³ *How Much Employer Fraud Exists*, pp. 1-3.

⁵⁴ *Sinking Underground; The Growing Informal Economy in California Construction*, by Yvonne Yen Liu, Daniel Flaming and Patrick Burns, Economic Roundtable, pp. 2, 7. (2014).

⁵⁵ *Ibid.*, pp1, 7

⁵⁶ *Ibid.*, pp1, 2.

⁵⁷ *Ibid.*, p. 12.

⁵⁸ *Ibid.*, pp 2, 12, 13.

⁵⁹ *Ibid.* pp. 2, 11, 12.

⁶⁰ *Ibid.*, p. 2.

⁶¹ *Ibid.*, p. 2, 17, 18.

⁶² *Ibid.*, p. 2.

⁶³ *Ibid.*, p. 31.

State Employment Training	1,003,548
State Disability Insurance	145,709,411
<u>Workers' Compensation Premiums</u>	<u>264,080,672</u>
Total	\$774,900,810

The **Colorado** Department of Labor And Employment's annual report to the legislature in 2011 detailed its survey of misclassification in the state.⁶⁴ Audits done from June 2009 through December 2010 found 14.2 percent of the Colorado workforce was misclassified as independent contractors.⁶⁵ As a result, state losses were \$167 million in income tax revenues and \$744,359 in unemployment contributions.⁶⁶ When performing targeted audits, the Colorado Department of Labor found that 63.5 percent of the employers had misclassified workers resulting in \$13,382,671 in underreported unemployment premiums.⁶⁷ Construction was in the top five of the least compliant industries with 53.3 percent of employers misclassifying 20.1 percent of the total construction workforce.⁶⁸

*A **2001 Florida study** reported that in 1997 \$912 million in workers compensation premiums were paid by construction industry employers, and that an additional \$1.3 billion was lost due to employer premium fraud and the state's exemption policies.⁶⁹ Reforms were enacted in 2003 to reduce costs and toughen enforcement.

*A **2008 Florida Grand Jury report on fraud and check cashing businesses** cited a fraud scheme by ten contractors that resulted in **\$1 billion of unreported cash** being paid to construction workers over three years.⁷⁰ The report concluded its discussion on money laundering by check cashing businesses engaged in workers compensation premium fraud by writing:

In the short term, it may be prudent for the legislature to inquire of the [construction] industry, when considering this Grand Jury's recommendations, why they have apparently decided over the last few years to move increasingly to an all cash payroll.⁷¹

***Illinois 2006:**⁷²

⁶⁴ *House Bill 09-1310 Misclassification of Employees as Independent Contractors Annual Compliance Report, Colorado Revised Statutes Title 8, Article 72*, by Staff of the Colorado Department of Labor and Employment (June 2, 2011).

⁶⁵ *Ibid.* pp 3 and 9.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*, p. 7.

⁶⁸ *Ibid.*, Exhibit A.

⁶⁹ *A Study on the Magnitude of Loss of Workers' Compensation Premiums in 1997 due to Employer Fraud and Exemptions in the Florida Construction Industry*, by Construction Concepts, Coble Ph.D, Hinze Ph.D. P.E., pp. 27-28 (March 2001).

⁷⁰ *Eighteenth Statewide Grand Jury Case No. SC 07-1128, Second Interim Report of the Statewide Grand Jury: Check Cashers: A Call for Enforcement*, p. 13. (West Palm Beach, Florida, March 2008).

⁷¹ *Ibid.* p. 14

⁷² *Economic Costs of Employee Misclassification in the State of Illinois*, Dept. Of Economics, Univ. Missouri-Kansas City, by Michael Kelsay, James Sturgeon and Pinkham, pp. 4 to 8 and 15 (December 2006) (Illinois Study). The rate of misclassification in construction used here is the rate of misclassification for all industries. The Illinois study was

	All Industries	Construction
Degree employers who misclassify	17.8%	17.8% est
Unemployment taxes lost	\$ 53.7 million	\$ 2.5 million
State income taxes	248.4 million	17.3 million
Workers comp prem.	<u>97.9 million</u>	<u>34.8 million</u>
Total	\$400 million	\$54.6 million

This study does not include the degree of unreported pay in the underground economy.⁷³

The report further states that the **nationwide rate of misclassification** in all industries has not been static; it grew by 42 percent from 2001 to 2002.⁷⁴

***Indiana 2010:**⁷⁵

From 2007-2008 the annual numbers are:⁷⁶

	All Industries	Construction
Degree employers who misclassify	47.5%	not quantified
Number of employers who misclassify	72,999	8,200
Number of employees misclassified	418,086	24,891
Unemployment taxes lost	\$ 36.7 million	\$ 2.2 million
State income taxes	245.8 million	17.7 million
Local income taxes	99.8 million	7.2 million
Workers comp prem.	<u>24.1 million</u>	<u>8.4 million</u>
Total of losses	\$406.4 million	\$35.5 million

Data for the study came from state unemployment-tax audits. The authors note that their study does not capture the underground economy, or workers paid in unreported-cash, thus their results may underestimate the true scope of the problem.⁷⁷

A bill was filed in the **Kentucky General Assembly in 2015** that referenced a study of misclassification using statistics from the state unemployment insurance audits. The analysis found that 26.4 percent of construction employers had misclassified workers as independent contractors.⁷⁸

unable to quantify exactly the construction rate, because the state did not provide industry specific audit data. It is fair to assume that construction rate is at a minimum the same as the overall rate, and that it is probably higher, because the Illinois data is based only on random audits, and the data from the other states shows a greater incidence of misclassification in construction.

⁷³ Illinois Study, p. 2.

⁷⁴ *Ibid.*, fn. 1, p. 2.

⁷⁵ *The Economic Costs of Employee Misclassification in the State of Indiana*, Dept. of Economics, University of Missouri-Kansas City, by James Sturgeon and Michael Kelsay (2010).

⁷⁶ *Ibid.*, pp. 3-5.

⁷⁷ *Ibid.*, p. 3.

⁷⁸ H.B. 256, §1(b), 2015 Reg. Sess. (Ky. 2015)

In 2008 research was done in Kentucky of people with work-place injuries seeking emergency treatment.⁷⁹ Twenty percent did not have workers compensation coverage, and 92 percent of them also did not have any health insurance.⁸⁰ Within that number of the uninsured, 54.2 percent were in the construction industry.⁸¹ The authors conclude:

Hiring practices that allow employers to avoid paying for both WC and health insurance have the effect of shifting the cost of injured workers' care to taxpayer-funded programs such as Medicaid's disproportionate share [sic] hospital funding.⁸²

***Maine study 2005:**⁸³

	All Industries	Construction
Degree employers who misclassify	11%	14%
Unemployment taxes lost	not quantified	\$ 0.3 million
State income taxes	nq	4.3 million
Workers comp prem.	nq	6.5 million
FICA	nq	<u>10.3 million</u>
Total		\$21.4 million

This study does not include the degree of unreported pay in the underground economy.⁸⁴

***Maine Unemployment Audits 2004-2007:**⁸⁵

A review of Main Department of labor unemployment audits for all industries showed that 29% of employers misclassified employees as independent contractors in 2004, 39% in 2005, 43% in 2006 and 41% in 2007. Most of the misclassification in 2006 was by construction employers.

***Maryland study 2009:**

Written testimony from the Maryland Governor's Office puts the number of employers who fail to properly classify at 20 percent for all industries to as high as 25 percent in some industries.⁸⁶ The cost to the state is a \$22 million a year loss to the unemployment trust fund and \$81 million in unpaid state income taxes.

⁷⁹ *Disparities in Work-Related Injuries Associated With Worker Compensation Coverage Status*, Valerie, J. Nicholson, et. al. *American Journal of Industrial Medicine* (Author Proof document) (May 2008).

⁸⁰ *Ibid.*, pp. 2-3.

⁸¹ *Ibid.* p. 3.

⁸² *Ibid.* p. 4.

⁸³ *The Social & Economic Cost of Employee Misclassification in the Maine Construction Industry*, Construction Policy Research Center, Labor & Worklife Program, Harvard Law School & Harvard School of Public Health, by Bernhard and Herrick, pp. 1-2 (April 2005) (Maine Study)

⁸⁴ Maine Study, p. 1.

⁸⁵ Exec. Order No. 23 FY 08/09, Office of the Governor ME (January 14, 2009)

⁸⁶ Testimony of Carolyn Quattrocki, Deputy Legislative Officer, Thomas Perez, Secretary of labor, Licensing and Regulation, Vicki Schultz, Senior Advisor for Consumer Protection, Labor Licensing and Regulation on House Bill 819, Workplace Fraud Act of 200; House Economic Matters Committee, p. 2, (March 3, 2009).

***Massachusetts study 2004:**⁸⁷

	All Industries	Construction
Degree employers who misclassify	up to 19%	up to 24%
Unemployment taxes lost	\$ 35 million	\$ 3.9 million
State income taxes	152 million	6.9 million
Workers comp prem.	<u>91 million</u>	<u>7 million</u>
Total	\$278 million	\$17.8 million

This study does not include the degree of unreported pay in the underground economy.⁸⁸

***Michigan 2008 study:**⁸⁹

30 percent of employers underreport their employee payroll by misclassifying employees as self employed or underreporting payroll. 8 percent of Michigan employees are misclassified as self-employed or receive undeclared income from their employers, resulting in \$1.5 billion in unreported payroll to state unemployment insurance annually.⁹⁰ 26 percent of construction employers misclassify employees or pay unreported payroll, 24% of trucking employers and 56% of security-guard firms.⁹¹ **Construction employers, though, were much more likely to engage in fraud** by paying workers off the books rather than routine misclassification as an independent contractor.⁹²

	All Industries ⁹³	Construction ⁹⁴
Degree employers who misclassify	30%	26%
Unemployment taxes lost	\$ 17 million	\$2.5 million
State income taxes	\$20-33 million	\$2.2-3.7 million
Social Security	\$34-57 million	nq
Fed. Income Tax	<u>\$58-96 million</u>	<u>nq</u>
Total	\$129-203 million	

***Minnesota 2007 study:**⁹⁵

	All Industries	Construction
Degree of employers who misclassify	14%	15%

⁸⁷ *The Social & Economic Cost of Employee Misclassification in Construction*, Construction Policy Research Center, Labor & Worklife Program, Harvard Law School & Harvard School of Public Health, by Bernhard and Herrick, p. 1 (December 2004) (Massachusetts Study).

⁸⁸ Massachusetts Study, p. 1.

⁸⁹ *The Social and Economic Costs of Employee Misclassification in the Michigan Construction Industry*, Dale L. Belman and Richard Block, School of Labor and Industrial Relations, Michigan State University (2008) (Michigan Study).

⁹⁰ Michigan Study, p. 5.

⁹¹ *Ibid.*, p. 7

⁹² Of those who run afoul of the law, 38% misclassified and 62% didn't report payroll at all. *Ibid.*, p. 9.

⁹³ *Ibid.*, p. 5 and 10.

⁹⁴ *Ibid.*, p. 9-10.

⁹⁵ *Misclassification of Employees as Independent Contractors*, Office of the Legislative Auditor, State of Minnesota, pp 15 and 18 (November 2007).

Within construction, the study found that 31% of drywall employers misclassify their employees as independent contractors.⁹⁶

This study does not include the degree of unreported pay in the underground economy.⁹⁷

***New Jersey 2016 study**

The study used 2014 statistics.⁹⁸

The estimated of the **size of underground construction economy averaged at \$645 million and could be as high as \$1.2 billion.**⁹⁹ The construction underground economy is made up of **23,000 workers paid off-the-books and 11,600 wrongly classified** as 1099 independent contractors.¹⁰⁰ As much as \$528 million was paid in wages to those two groups.¹⁰¹ The **lost state personal income taxes resulting from off-the-books payments and misclassification could be as high as \$19.6 million.**¹⁰² **\$3.1 million to \$6.7 million in unemployment taxes** were also unpaid.¹⁰³

***New Jersey 2007**

In testimony before Congress, New Jersey's Labor & Workforce Development Commissioner David J. Socolow reported that a sample audit of 2.2% of employers uncovered **42%, in all industries, misclassifying employees as independent contractors** or paying them cash "off the books."¹⁰⁴ Those 2006 audits found 25,000 misclassified workers and **\$565 million in unreported wages.**

***New York state study 2007:**¹⁰⁵

	All Industries	Construction
Degree employees misclassified	10.3%	14.8%
Unemployment taxes lost	\$176 million	nq

*A sense of **the size of unreported-cash pay in the underground economy** can be found in the **Fiscal Policy Institute's study of the residential construction market in New York City.** They compared residential building permits and FW Dodge construction activity data to

⁹⁶ *Ibid.*, p. 20.

⁹⁷ Minnesota Study, p. 15.

⁹⁸ *The Underground Construction Economy in New Jersey*, by Oliver Cooke, Deborah Figart and John Foonjian, Stockton University William J. Huges Center for Public Policy, p. 8 (June 2016).

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*, p. 9. If compared to the number of construction workers in the residential sector, the 35,000 workers misclassified and paid off the books represent 14 percent of the residential construction workforce.

¹⁰¹ *Ibid.*, p. 3.

¹⁰² *Ibid.*, p 9.

¹⁰³ *Ibid.*, p 3.

¹⁰⁴ *Congressional Probe Look sat Misclassified Workers*, by Michael Whiteley, [Workcompcentral](#) (August 1, 2007).

¹⁰⁵ *The Cost of Worker Misclassification in New York State*, Cornell Univ., ILR School, by Donahue, p. 2 (February 2007) (New York Study).

construction employment from 2000 to 2005.¹⁰⁶ Conservatively, New York City had 82,000 residential construction workers in 2005. 30,000 of those construction workers were employed illegally.¹⁰⁷ (13,000 may have been misclassified and the other 17,000 were completely off the books.¹⁰⁸) That means that a minimum of 21 percent of New York City residential construction workers received unreported pay. The numbers were worse in the city-funded affordable-housing construction market, where up to two thirds of the 13,350 construction workers were employed illegally.¹⁰⁹

***The Fiscal Policy Institute also released a study in December 2007 on illegal employment practices in the entire New York City construction market.**¹¹⁰ Like the study of the residential market, this study captures workers who are improperly misclassified as well as those paid unreported compensation.¹¹¹ The study made the following findings of losses in 2005:¹¹²

Total number of construction workers:	200,000
Number misclassified or paid off the books:	50,000
Health care cost shifting:	\$148 million
Fed income tax lost:	43.5
Fed employment tax/comp. premium lost:	271.6
New York state income tax lost:	15.2
New York City income tax lost:	<u>11.0</u>
Total cost:	\$489.3 million

FPI further estimates that fraud in New York City will cost the \$557 million in 2008.

***The Fiscal Policy Institute updated its 2007 New York City fraud report in June of 2013.**¹¹³ The report found that 70,300 construction workers, or 46 percent of the total New York City construction workforce of 152,700, were misclassified as independent contractors or paid off the books,¹¹⁴ resulting in the following losses:¹¹⁵

Workers comp. premiums:	\$235.0 million
Unemployment contribution:	44.5
FICA:*	141.6
NY State disability:*	2.0
Health care cost shifting:	165.4
Fed personal income tax lost:	57.0

¹⁰⁶ *The Underground Economy in the New York City Affordable Housing Construction Industry*, Fiscal Policy Institute (New York City Housing), p. 1, 9. (April 2007).

¹⁰⁷ New York City Housing, pp. 1, 10-12.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*, pp. 1, 8-9.

¹¹⁰ *Building Up New York, Tearing Down Job Quality: Taxpayer Impact of Worsening Employment Practices in New York City's Construction Industry*, Fiscal Policy Institute (New York City Construction) (December 2007).

¹¹¹ New York City Construction, p. 1.

¹¹² *Ibid.*, pp. 1, 20-21.

¹¹³ *The Economic and Fiscal Cost of Employer Fraud in the New York City Construction Industry*, Fiscal Policy Institute (June 2013).

¹¹⁴ *Ibid.*, p. 3.

¹¹⁵ *Ibid.*, pp. 6-9 and 11.

New York state personal income tax lost:	24.7
New York City personal income tax lost:	<u>17.1</u>
Total losses:	\$687.3 million

*These numbers calculated from the Appendix.

***Ohio 2009 study:**

The Ohio Attorney General’s office did a study on the size and cost of misclassification based on 2005 unemployment-tax audits and findings in other state studies.¹¹⁶

Number of misclassified employees:	459,000 ¹¹⁷
State Unemployment taxes lost:	\$100 million
Workers comp. premiums	\$510 million
State income taxes	\$180 million
<u>Local income taxes</u>	<u>\$100 million</u>
Total annual loss	\$890 million

In addition, they estimated that the lost federal Social Security and Medicare taxes are \$500 to 600 million and federal income taxes are \$500 million.¹¹⁸

***Pennsylvania 2008 study**

9 percent, 580,000, workers are misclassified as independent subcontractors annually, costing the unemployment compensation trust fund over \$200 million a year in lost revenue.¹¹⁹ The cost to the worker’s compensation system is \$81 million in lost premiums.¹²⁰

This study does not include the degree of unreported pay in the underground economy.¹²¹

***Tennessee 2010 study**

Researchers found that up to 38,680 construction workers, 21 percent of the construction workforce, were misclassified as independent contractors or paid unreported compensation in

¹¹⁶ *Report of the Ohio Attorney General on the Economic Impact of Misclassified Workers for State and Local Governments in Ohio* (February 18, 2009)

¹¹⁷ *Ibid.*, p. 19.

¹¹⁸ *Ibid.*, p. 22.

¹¹⁹ Testimony of Patrick T. Beaty, Deputy Secretary for Unemployment Compensation Programs, Pennsylvania Department of Labor and Industry, before the House of Representatives Commonwealth of Pennsylvania, Labor Relations Committee on HB 2400, The Employee Misclassification Prevention Act, p. 3 (April 23, 2008) (hereinafter *Beaty*).

¹²⁰ Testimony of Timothy L. Wisecarver and Bruce Decker, Pennsylvania Compensation Rating Bureau, Summary of Testimony before the House of Representatives Commonwealth of Pennsylvania, Labor Relations Committee on HB 2400, The Employee Misclassification Prevention Act, p. 3 (April 23, 2008).

¹²¹ *Beaty*, p. 3.

2006.¹²² The losses were \$14 million to the state unemployment trust fund in 2006, \$91.6 million in workers' compensation premiums and \$115.4 million in federal income and employment taxes.¹²³

***Texas 2013 study**

Construction companies and workers were interviewed by researchers in Austin, Dallas, Houston, San Antonio and El Paso.¹²⁴ Research data was also consulted. The report concluded that 41 percent of the construction workforce, or over 300,000 construction workers, in Texas are either paid unreported compensation or wrongly classified as independent contractors,¹²⁵ costing the state an estimated \$54.5 million in lost unemployment contributions.¹²⁶ The resulting federal income tax loss is \$1.06 billion.¹²⁷

***Vermont 2007 study**

The Vermont Department of Labor, assisted by the Department of Banking, Insurance, Securities & Health Administration studied (1) the feasibility of having an on-line proof of coverage database through the National Council of Compensation Insurance (2) the extent and nature of class code and independent contractor misclassification and (3) the effectiveness of current Vermont law to counter misclassification.¹²⁸ Most of the answers came from a survey of the top 9 workers' compensation insurers in the state.¹²⁹ They concluded that it is feasible to have an on-line proof-of-coverage open to the public.¹³⁰ Also, they found that insurance companies don't believe that class-code misclassification is a serious problem.¹³¹ They do believe that independent contractor misclassification is a problem and that it is a particular problem in the construction industry.¹³² The insurers say that misclassification of class codes and especially employees as independent contractors raises premium costs.¹³³ Regarding current statutes, the Department of Labor recommends a uniform definition of independent contractor for its unemployment and workers compensation codes.¹³⁴

¹²² *Misclassified Construction Employees in Tennessee*, Dr. William Canak and Dr. Randal Adams, pp. iv and vi (January 15, 2010).

¹²³ *Ibid.*, p. v.

¹²⁴ *Build a Better Texas: Construction Working Conditions in the Lone Star State*, Workers Defense Project and Community Engagement at University of Texas at Austin, p. I (2013).

¹²⁵ *Ibid.*, p. ii, 13.

¹²⁶ *Ibid.* pp. iii. 40, 45, 46 and 56.

¹²⁷ *Ibid.*, p. 46.

¹²⁸ *Vermont Department of Labor Study Required by Act 57 (S 196) 2007 Legislative Session: The Misclassification of Workers in Vermont's Workers' Compensation System*, p. 3 (December 2007).

¹²⁹ *Ibid.* p. 21.

¹³⁰ *Ibid.* at p. 3.

¹³¹ *Ibid.* at pp. 3 and 15.

¹³² *Ibid.* at pp. 4 and 15-16

¹³³ *Ibid.* at. p. 15.

¹³⁴ *Ibid* at pp. 4-5 and 9-10

***Washington 2007 study:**¹³⁵

In-state and out-of-state business registered with the IRS but not with Washington in 2004 cost the state \$274 million in unpaid taxes (that includes taxes for workers compensation coverage). Unpaid taxes for Washington employers are \$101.3 million. Industry breakdowns for these employers are available.

In 2001, an additional \$183 million of unpaid taxes can be added for business that are neither registered with the IRS and Washington. Industry breakdowns for these employers are not available.

Breakdown in millions:

	In&Out of State All Industries	In-State All Ind.	In-State Construction
State income tax	225.0	52.0	1.0
State unemplmnt	14.8	14.8	3.4
workers comp.	34.5	34.5	8.7
Total	\$274.3	\$101.3	\$13.1

The study cites construction as an area where the number is probably higher, because they don't have an industry breakdown of the employers who aren't registered (don't pay taxes) to either the federal and state. Construction is cited as a focus for enforcement.

A report released by the Wisconsin Misclassification Task Force disclosed that 44% of workers of companies audited by unemployment tax were reclassified as employees.¹³⁶

Ontario, Canada

A study was released in May 2019 by the Ontario Construction Secretariat of the losses to federal and provincial governments resulting from the underground construction industry.¹³⁷

Average yearly annual losses in millions 2013-2017 up to:

Worker Safety & Insurance Board:	\$ 340
Income tax:	1,148
Harmonized Sales Tax Federal:	320
Harmonized Sales Tax Provincial:	512
Canada Pension Plan:	656
Employment Insurance:	119
Employer Health Tax:	18

¹³⁵ *Unregistered Business Study: Joint Report of the Washington State Dept. of Revenue, Washington State Dept. of Labor and Industries and the Washington State Employment Security Dept.*, pp. 2, 3-7, 11-17 and 19 (November 2007).

¹³⁶ *Report of the Worker Misclassification Task Force Submitted to Secretary Roberta Gassman, Department of Workforce Development*, pp. 6-7 (2009).

¹³⁷ *The Underground Economy in Ontario's Construction Industry: Estimates of the Revenue Losses to Governments*, by Prism Economics and Analysis for the Ontario Construction Secretariat, p. 4 (May, 2019).

Total: