

Testimony of: Matthew F. Capece, Esq.

Representative of the General President
United Brotherhood of Carpenters and Joiners of America
101 Constitution Ave., NW
Washington, DC 20001
Matthew.Capece@Carpenters.org
203-231-0398

Before: Labor and Public Employees Committee
Chair Senator Ron Latz

March 15, 2023

In support of: SF 1988

I serve as a representative of the General President of the United Brotherhood of Carpenters and Joiners of America. My duties focus on a nation-wide effort against the rampant fraud in our industry that victimizes workers, insurance companies, taxpayers and law-abiding employers who cannot compete against the scofflaws. I began this work in 1989 [and it has taken me across the country working on this problem in Connecticut where I am still a resident.](#)

There is growing lawlessness in the United States involving construction employers failing to pay wages, state and federal employment taxes, unemployment insurance and workers' compensation premiums. Malign construction employers have developed a lucrative and successful model to evade their obligations under the law that relies on layers of subcontractors and labor providers (who we call "labor brokers"). In the model [.....contractors rely on law-breaking subcontractors and labor brokers to lower labor costs to steal work away from law-abiding competitors, and to provide a shield against liability.](#)

The Wage Theft Responsibility bill before you cuts through the layers and makes upper-tier contractors responsible for the wage theft of subcontractors on their projects. This is an unfortunate necessity for an industry that has turned its back on self-policing.

Fraud and Wage Theft in the Construction Industry is Pervasive, has Many Victims and is Subsidized by Taxpayers

A national study of fraud in our industry released in 2020 found that 1.3 to 2.2 million construction workers were paid off the books or mischaracterized as independent contractors in 2017.¹ That is an astounding 12.4 to 20.5 percent of the construction workforce. Illegal practices resulted in a \$8.4 billion loss to federal and state taxpayers. Workers' compensation carriers lost \$2 billion, and

¹ Russell Ormiston, Dale Belman and Mark Erlich, *An Empirical Methodology to Estimate the Incidence and Costs of Payroll Fraud in the Construction Industry* (2020), available at, <https://stoptaxfraud.net/wp-content/uploads/2020/03/National-Carpenters-Study-Methodology-for-Wage-and-Tax-Fraud-Report-FINAL.pdf>.

construction workers had almost \$1 billion in overtime and other premium pay stolen from them. Moreover, unscrupulous construction employers off-loaded as much as \$3.5 billion of federal employment taxes they were obligated to pay onto the backs of their workers and their families.²

The pain does not end with lost revenue and income. The University of California Berkeley Labor Center issued a report in January 2022 on the number of construction worker families in the U.S. enrolled in safety net programs—adult Medicaid, children’s Medicaid, the earned income tax credit, Temporary Assistance for Needy Families and the Supplemental Nutrition Assistance Program.³ Shockingly, 39 percent of construction worker families are enrolled in at least one safety net program, leading to a federal and state taxpayer subsidy of \$28 billion a year.⁴ That compares to 31 percent of all working families.⁵ Additionally, 31 percent of construction workers do not have health insurance compared to 10 percent of all workers.⁶ The authors of the report attributed the high degree of reliance on public assistance to a number of factors. Chief among them were low pay, wage theft, misclassification as independent contractors, off-the-books payments and “payroll fraud.”⁷ Because undocumented immigrants are not eligible for those programs, they were not included in the report.⁸

Those are the national numbers.- [A 2021 study by the Midwest Economic Policy Institute estimates that 23% of Minnesota’s construction workforce is misclassified. This leads to a reduction in income of \\$29,700 per employee per year and a reduction in tax revenue of \\$136 million per year.](#)⁹ [The Advocates for Human Rights, immigrants’ rights and anti-trafficking organization recommended in its 2016 comprehensive report on curbing trafficking and exploitation in Minnesota workplaces to “Amend wage and hour laws to ensure that companies that employ subcontractors and independent contractors cannot shield themselves from responsibility for the treatment of their workers.”](#)¹⁰

~~There are Connecticut numbers as well. Thirty nine percent of construction worker families are enrolled in a safety net program in our state, compared to 29 percent of all families.¹¹ Twenty four percent of construction workers do not have health insurance coverage, compared to 7 percent of~~

² *Id* at 5.

³ Ken Jacobs, Kuichih Huang, Jenifer MacGillvary and Enrique Lopezlira, *The Public Cost of Low-Wage Jobs in the US Construction Industry*, UC Berkeley Labor Center (January 2022), available at, <https://laborcenter.berkeley.edu/the-public-cost-of-low-wage-jobs-in-the-us-construction-industry/>.

⁴ *Id* at 1.

⁵ *Id*.

⁶ *Id*.

⁷ *Id* at 1, 2-3 and 6.

⁸ *Id* at 6.

⁹ Nathaniel Goodell and Frank Manzo IV, *The Costs of Wage Theft and Payroll Fraud in the Construction Industries of Wisconsin, Minnesota, and Illinois*, by the Midwest Economic Policy Institute (January 2021).

¹⁰ Madeline Lohman, Michele Garnet McKenzie et. al., *Asking the Right Questions*, by the Advocates for Human Rights (January 2016).

¹¹ ~~Ken Jacobs, Kuichih Huang, Jenifer MacGillvary and Enrique Lopezlira, *The Public Cost of Low-Wage Jobs in the Connecticut Construction Industry*, by, UC Berkeley Labor Center (January 2022), available at <https://laborcenter.berkeley.edu/the-public-cost-of-low-wage-jobs-in-the-connecticut-construction-industry/>.~~

all workers.¹² The cost to taxpayers in Connecticut is a \$229 million yearly subsidy of the malign employment practices of irresponsible construction employers.¹³

~~The violations we see are not isolated to small job sites. We have seen them on military bases, airports, state legislative office buildings, jails, schools, universities, large retail stores, malls, convention centers, office buildings, luxury condominium towers and even on an Internal Revenue Service office building. Many of these job sites are managed by some of the largest general contractors and construction managers in the industry, including contractors that operate regularly in Connecticut.~~ Shamefully, the abuse we see in the construction industry reflects systemic racism and bigotry. The vast majority of the exploited are immigrants and people of color.¹⁴

These violations of statutory requirements allow irresponsible contractors to underbid their law-abiding competition. As one contractor testified before Congress:

In my industry, misclassification is not about making tough calls applying complicated laws to ambiguous facts. Rather, it is a choice simply to disregard wage and hour laws, workers' compensation laws, unemployment insurance regulations and other basic responsibilities of being an employer. This is done for the purpose of gaining an advantage against law-abiding competitors, realizing tremendous profits, and avoiding the financial risks that honest entrepreneurs must accept. Business owners using the misclassification model do not bear the risk of unanticipated overtime, bad planning, or poor execution. Instead, this racket transfers the risks onto workers and taxpayer.¹⁵

Layering: The Model for Fraud and Wage Theft in the Construction Industry

The growing model scheme of contractors is to pick crooked subcontractors that use law-breaking labor brokers.¹⁶ Irresponsible contractors profit from the model in two ways. First, they have lower labor costs because wage, overtime, tax and other obligations are evaded. A study by the Office of

¹² *Ibid.*, p. 1.

¹³ *Ibid.*, p. 3.

¹⁴ See, The New Mexico Advisory Committee to the U.S. Commission on Civil Rights, *Advisory Memorandum, Wage theft & Subminimum Wages*, 12 and 13 (March 2021), available at <https://www.usccr.gov/files/2021/04-15-NM-Advisory-Memorandum-Wages.pdf>. The memorandum recommends joint and several liability for upper-tier construction contractors to curb wage theft. *Id* at 19 and 20.

¹⁵ *Hearing on Misclassification of Employees: Examining the Costs to Workers, Businesses, and the Economy: Before the Workforce Protections Subcommittee, House Education and Labor Committee, 116th Congress* (2019) (Statement of Matt Townsend, President of the Signatory Wall and Ceiling Contractors Alliance), 1, available at, <https://edlabor.house.gov/imo/media/doc/TownsendTestimony092619.pdf>.

¹⁶ See, Tom Juravich, Russell Ormiston and Dale Belman, *The Social & Economic Costs of Illegal Misclassification, Wage Theft and Tax Fraud in Residential Construction in Massachusetts*, UMass Amherst Labor Center, Institute for Construction Economic Research, 3 (2021), available at, <https://www.umass.edu/lrrc/sites/default/files/Juravich%20Wage%20Theft%206%2028%2021.pdf>

the Attorney General for the District of Columbia put the “savings” at 16.7 to 48.1 percent.¹⁷ As a result, the scofflaws underbid law-abiding employers and capture markets, putting good businesses in the predicament of joining the dark side, being isolated in niche markets or being slowly squeezed out of the industry. Second, contractors hide behind the subcontract relationship as a shield against liability. When lawsuits are filed or law enforcement investigates, the labor brokers are the low-hanging fruit on a tree budding with violators. Contractors need only pick another.

Construction Industry Wage Theft Responsibility

The proposal before the Committee is based on similar legislation recently enacted in New York.¹⁸ The legislation cuts through the layers and defensive shields used to evade responsibility by making contractors that hold building agreements with owners individually and severally liable for the wage theft of subcontractors at any tier. Individual and several liability for subcontractors, without a requirement to prove knowledge or joint-employer status, is not a novel concept to contractors. Similar liability exists under federal and state prevailing-rate laws. That is why the legislation is focused on ~~private~~ construction without prevailing wage requirements, because such liability already exists on ~~publicly funded~~prevailing wage projects. Additionally, contractors are familiar with their responsibility for the safety violations of subcontractors under the Occupational Safety and Health Act’s general duty clause.¹⁹

We are familiar with arguments against the legislation before the Committee. Some of the most common are listed below followed by our response:

- Bonding premiums will increase because of the additional liability.
That has not happened in states where similar legislation exists.
- Owners, including homeowners, will be liable under the law.
Not according to the language before the committee.
- Minority contractors will get less work.
That has not happened anywhere where similar legislation exists. This flawed argument by opponents rests on an improper assumption that minority contractors are the primary offenders.
- There will be less residential construction.

¹⁷ *Illegal Worker Misclassification: Payroll Fraud in the District's Construction Industry*, by Karl A Racine, Attorney General for the District of Columbia, economic analysis by Dale Belman and Aaron Sojourner, 1, 2, 15 (May 22, 2019), available at <https://oag.dc.gov/sites/default/files/2019-09/OAG-Illegal-Worker-Misclassification-Report.pdf>.

¹⁸ N.Y. Lab. Law §198-E (2022). Similar laws exist in California, the District of Columbia, Illinois, Maryland, Nevada, New Jersey and Virginia.

¹⁹ 29 U.S.C. §654(a) (2022).

That has not happened anywhere where similar legislation exists, but we understand the concern of residential building contractors, because that industry segment has the worst offenders in the industry.²⁰

- The cost of housing will increase.
This curious criticism is an admission that wage theft is built into residential construction and sale pricing. Also, it says stealing construction worker wages is acceptable.
- Contractors will end up paying twice--once to the subcontractors and then the workers.
Violations of the law are built into the bidding process, so it is speculative at best to contend that there is a double payment. Additionally, the legislation provides contractors with a means to monitor subcontractors' payments of wages. Moreover, the legislation provides contractors with an avenue for recovery from an offending subcontractor.

Without Upper-Tier Contractor Responsibility, Wage Theft Will Only Get Worse

The construction industry has adopted a successful model for violating basic employment and tax laws. The cure and purpose of the legislation is to encourage self-policing by putting a cost on contractors for awarding work to irresponsible subcontractors and labor brokers. We, in the UBC, are not the only ones who see that the legislation will encourage better choices. Indeed, the contractor community in New York is reacting to the legislation by recognizing that they now need to police their subcontractors' payment practices as they do with other performance measures required by law and their contracts.²¹ Reports from union representatives in the District of Columbia, where joint and several liability has been in place since 2014, report that contractors are taking more care in choosing law-abiding subcontractors.

A positive change of direction will not happen overnight, but his legislation can work for everyone. The proposal before the Committee protects workers, employers and taxpayers, and we respectfully urge your support.

²⁰ See, Juravich, *supra* note 14.

²¹ See, Julie Strupp, *The Dotted Line: What to Know About New York's New Construction Wage Theft Law*, Construction Dive, February 22, 2022, <https://www.constructiondive.com/news/the-dotted-line-what-to-know-about-new-yorks-new-construction-wage-theft/619129/>