

TESTIMONY ON PENNSYLVANIA HB 2400 - EMPLOYEE MISCLASSIFICATION PREVENTION ACT

**Before the Pennsylvania General Assembly
Committee on Labor Relations
Ridley High School**

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Good morning Chairman Belfanti and members of the committee. I am Troy Singleton, Director of Policy and Planning for the Eastern Region of the United Brotherhood of Carpenters. Thank you for affording me the privilege to speak before you today to discuss HB 2400 – Employee Misclassification Prevention Act.

Why is this issue, of employee misclassification reform, so important? It is important because it affects every corner of our society in a tangible way. It causes higher taxes and insurance costs on honest citizens, in addition to broader societal costs that are hard to document, but just as far reaching. One, such example is in the medical field.

Hospitals are obligated to provide care for all who come through their doors. Workers without health insurance coverage, that they would otherwise enjoy if properly classified, might resort to publicly subsidized emergency medical care. The costs of these “uncompensated care pools” make their way into the costs of health and worker compensation insurance. Therefore, workers comp and health insurers must raise premiums to make up for uncovered injured workers. Also, workers who sustain injuries, and have inadequate worker compensation coverage, make use of public assistance when they are unable to work.

The issue of employee misclassification is a critical challenge facing both our region and nation. Unfortunately, it has become all too common for an unethical corporate behemoth or mom-and-pop shop to value its financial bottom line more than its responsibility to follow the law. Entities that misclassify workers as independent contractors have been shown to lower their labor costs, in some instances by 15-30%. This practice hurts their workers, the public, and they gain an unfair advantage in the marketplace.

In New Jersey, we were proud to stand with Governor Jon Corzine, as we crafted a similar proposal that sought to protect workers and root out the abuses of this underground economy. That proposal, signed into law in July of 2007, was critical to the recent filing of a class-action lawsuit against D.R. Horton by the New Jersey Regional Council of Carpenters. One of the five main points of that class action suit is that D.R. Horton is alleged to have violated the provisions of the New Jersey Construction Industry Independent Contractor Act, by employing and harboring undocumented workers. The case goes into great detail to show how D.R. Horton is alleged to have engaged in an

illegal hiring scheme to depress the wages of their workforce by knowingly hiring a large contingent of undocumented workers. This was done for the express purpose of depressing wages, managing costs, and avoiding the payment of benefits and taxes associated with lawful employment. As this case makes its way through the legal process, it is widely acknowledged that it would not have been possible if not for New Jersey's Construction Industry Independent Contractor Act.

Furthermore, as taxpayers, whether in my home state of New Jersey, or here in the Commonwealth of Pennsylvania, the eradication of this abhorrent fiscal practice should be paramount to us all, as we face a national recession and stagnant employment prospects. To illustrate this point further, in 2005, the New Jersey Department of Labor conducted an audit of 2.5% of New Jersey employers and revealed 26,000 employees were misclassified. Resulting in \$15 million in underpayments to the UI and Disability Insurance funds. Furthermore, in 2006, the United States Government Accountability Office (GAO) estimated that the federal government lost \$4.7 billion in income taxes alone in 2005 due to employers incorrectly classifying employees as independent contractors.

Employers that knowingly classify employees as independent contractors deprive these workers of proper Social Security contributions, worker's compensation insurance and other benefits, while also unfairly reducing employers' state and federal tax withholding, and related obligations. This practice disadvantages those businesses that bear higher costs in complying with the law. In this way, independent contractor misclassification undermines fair market competition.

No clearer example of this practice, than the case of what occurred at Slippery Rock University in 2006. Channel 4 Action News, from that area, ran a story in May 2006 on workers being paid as independent contractors on a new dormitory project. The story depicted how workers on the site, though not fluent in the ability to read or write the English language, were listed as owners of various "construction companies" and worked as independent subcontractors on the Slippery Rock University project. This unfortunately is an all too common practice in the construction industry. In 2000 the United States Department of Labor commissioned a report that found employee misclassification in the construction industry to be critical nationally. Allow me to quote the report, **"The construction industry was the industry frequently cited by interviewees as most likely to use independent contractors, contain the highest incidence of misclassification, or as one that lures employees into becoming independent contractors."** The report found that 30% of firms misclassify their employees as independent contractors.

Furthermore, the Pittsburgh Tribune News in July of 2006 reported on the Slippery Rock University situation and pointed out that workers were paid \$11-\$16.50 an hour, with no benefits or taxes deducted from their wages, instead of the prevailing wage rate of \$23.23 per hour. The story detailed a virtual roadmap as to how this practice hurts the existing state workforce, and shortchanges taxpayers.

That is why the Commonwealth needs HB 2400. The legislation that you have before you today is an aggressive attempt to combat this problem. It seeks to level the playing field and ensure that all business are playing by the same set of rules by doing the following:

1. Provide for a private right of action – This action could be brought by the aggrieved worker and the worker's reps, including unions or community groups. This will help supplement public sector enforcement by agencies that are short on resources.
2. Provide for anti-retaliation whistleblower protection - Create a rebuttable presumption that any adverse action taken against a complaining worker is retaliatory, if it occurs within 90 days of worker's complaint.
3. Provide for criminal penalties and civil damages per worker misclassified in an amount likely to deter future violations.
4. Provide for a ban on State contracts – Any act of willful or repeated employee misclassification on a public or private contract would result in a ban on receiving any State contracts for 3 years.
5. Provides for a stop-work order in instances where an employer is determined to have misclassified employees as independent contractors.

In closing, I strongly encourage you to work expeditiously to enact this legislation in Pennsylvania. It is long past the time to send a clear message to those unscrupulous employers who break the law.....ENOUGH IS ENOUGH.....TIME TO PAY YOUR FAIR SHARE. I thank you for the opportunity to testify and I welcome any questions that the committee may have.