



THE UNDERGROUND ECONOMY AND MISCLASSIFICATION IN WORKERS' COMPENSATION

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WORKERS' COMPENSATION NEEDS TO BE CONSIDERED IN THIS PROCESS

The task force is charged with:

- Fostering voluntary compliance with the law by educating business owners and the workforce about properly classifying workers and applicable requirements;
- Protecting the health, safety and benefit rights of workers, and
- Restoring competitive equality for law-abiding businesses.



THE UNDERGROUND ECONOMY AND WORKERS' COMPENSATION



Impacts Every Element of Workers' Compensation



R.I.G.L. 28-36-1

(a) Every employer subject to or who has elected to become subject to chapters 29 – 38 of this title...shall secure in one of the following ways the compensation for which he or she is or may become liable under those chapters:

(1) By insuring and keeping insured against liability to pay the compensation in any stock or mutual company...;

(2)(i) By furnishing to the director of labor and training satisfactory proof of his or her financial ability to pay directly to injured employees or their dependents the compensation, and by furnishing security, indemnity, or a bond in kind and in amount satisfactory to the director.



WHO IS AN EMPLOYEE?

§ 28-29-2 Definitions. – In chapters 29 – 38 of this title, unless the context otherwise requires:

.....

(4) "Employee" means any person who has entered into the employment of or works under contract of service or apprenticeship with any employer...It does not include any partner, sole proprietor, independent contractor, or a person whose employment is of a casual nature, and who is employed otherwise than for the purpose of the employer's trade or business, or a person whose services are voluntary or who performs charitable acts, nor does it include the members of the regularly organized fire and police departments of any town or city.



WHAT IS AN EMPLOYER?

§ 28-29-6 Employers subject to law.

Every person, firm, and private corporation, including any public service corporation, including the state, that regularly employs employees in the same business or in or about the same establishment under any contract of hire, express or implied, and a city or town in this state that votes to accept the provisions of those chapters in the manner provided shall constitute an employer subject to the provisions of chapters 29 – 38 of this title.



WHAT IS AN INDEPENDENT CONTRACTOR?

§ 28-29-2 Definitions. – In chapters 29 – 38 of this title, unless the context otherwise requires:

.....

(11) "Independent contractor" means a person who has filed a notice of designation as independent contractor with the director pursuant to § 28-29-17.1 or as otherwise found by the workers' compensation court.



WORKERS' COMPENSATION FRAUD LAWS IN RHODE ISLAND ARE ROBUST

WORKERS' COMPENSATION FRAUD STATUTE

§ 28-33-17.3 Fraud and abuse. – (a) The workers' compensation court is authorized and directed to impose sanctions and penalties necessary to maintain the integrity of and to maintain the high standards of professional conduct in the workers' compensation system.



UNDERGROUND ECONOMY

NOT HAVING INSURANCE

§ 28-36-15 Penalty for failure to secure compensation – Personal liability of corporate officers.

(a) Any employer required to secure the payment of compensation [AND]...knowingly fails to secure that compensation shall be guilty of a felony and shall be subject to imprisonment for up to two (2) years. In addition to the foregoing, the employer shall be subject to a civil penalty punished by a fine not to exceed one thousand dollars (\$1,000) for each day of noncompliance with the requirements of this title.....



FRAUD ON THE EMPLOYEE IN THE UNDERGROUND ECONOMY

R. I.G. L. 28-33-17.3

.....

(b) It is unlawful to do any of the following:

(i) Make or cause to be made any knowingly false or fraudulent material statement or material representation for the purpose of obtaining or denying any compensation;

(ii) Present or cause to be presented any knowingly false or fraudulent written or oral material statement in support of, or in opposition to, any claim for compensation or petition regarding the continuation, termination, or modification of benefits;



(iii) Knowingly assist, aid and abet, solicit, or conspire with any person who engages in an unlawful act under this section;

(iv) Make or cause to be made any knowingly false or fraudulent statements with regard to entitlement to benefits with the intent to discourage an injured worker from claiming benefits or pursuing a claim;

(viii) Knowingly assist, aid and abet, solicit, or conspire to coerce an employee to willfully misrepresent an employee's status as a shareholder, director or officer of a corporation, or as a member or manager of a limited-liability company, or as a partner, in a general or, limited partnership, registered limited-liability partnership or registered limited-liability limited partnership, or as an independent for the purpose of avoiding the inclusion of that or other employees in a workers' compensation insurance application, renewal, or both.



FRAUD ON THE INSURANCE COMPANY IN THE UNDERGROUND ECONOMY

§ 28-33-17.3 Fraud and abuse. –

.....

(b) It is unlawful to do any of the following:

(i) Make or cause to be made any knowingly false or fraudulent material statement or material representation for the purpose of obtaining or denying any compensation;

(iii) Knowingly assist, aid and abet, solicit, or conspire with any person who engages in an unlawful act under this section;

(iv) Make or cause to be made any knowingly false or fraudulent statements with regard to entitlement to benefits with the intent to discourage an injured worker from claiming benefits or pursuing a claim;



(v) Willfully misrepresent or fail to disclose any material fact in order to obtain workers' compensation insurance at less than the proper rate for the insurance including, but not limited to, intentionally misleading or failing to disclose information to an insurer regarding the appropriate rate classification of an employee; or

(vii) Willfully fail to report or provide false or misleading information regarding ownership changes as required by an approved experience rating plan or regulations promulgated by the insurance commissioner.



(viii) Knowingly assist, aid and abet, solicit, or conspire to coerce an employee to willfully misrepresent an employee's status as a shareholder, director or officer of a corporation, or as a member or manager of a limited-liability company, or as a partner, in a general or, limited partnership, registered limited-liability partnership or registered limited-liability limited partnership, or as an independent for the purpose of avoiding the inclusion of that or other employees in a workers' compensation insurance application, renewal, or both.



MISCLASSIFICATION IN WORKERS' COMPENSATION

§ 28-33-17.3 Fraud and abuse. –

.....

(b) It is unlawful to do any of the following:

.....

v) Willfully misrepresent or fail to disclose any material fact in order to obtain workers' compensation insurance at less than the proper rate for the insurance including, but not limited to, intentionally misleading or failing to disclose information to an insurer regarding the appropriate rate classification of an employee; or



(vii) Willfully fail to report or provide false or misleading information regarding ownership changes as required by an approved experience rating plan or regulations promulgated by the insurance commissioner.

(viii) Knowingly assist, aid and abet, solicit, or conspire to coerce an employee to willfully misrepresent an employee's status as a shareholder, director or officer of a corporation, or as a member or manager of a limited-liability company, or as a partner, in a general or, limited partnership, registered limited-liability partnership or registered limited-liability limited partnership, or as an independent for the purpose of avoiding the inclusion of that or other employees in a workers' compensation insurance application, renewal, or both.



FRAUD ON THE WORKERS' COMPENSATION INSURER

TITLE 27

Insurance

CHAPTER 27-7.1

Workers' Compensation Insurance

SECTION 27-7.1-1

§ 27-7.1-1 Applicability.

The provisions set forth in this chapter shall apply to approval of insurance policies and rates by the director of the department of business regulation, referred to in this chapter as "the director."



PREMIUMS AND RATES

§ 27-7.1-13.1 False or misleading information.

No person, firm, corporation, association, or organization shall willfully withhold information that will affect the rates or premiums chargeable under this chapter or knowingly give false or misleading information to the director, any statistical agency or advisory organization designed by the director or any insurer.



EVERYONE A VICTIM IN WORKERS' COMPENSATION MISCLASSIFICATION FRAUD

- WORKERS' COMPENSATION ASSESSMENT
- ALL INSURED EMPLOYERS
- INSURANCE COMPANY
- COMPETITORS OF THE INSURED
- EMPLOYEES OF THE FRAUDULENT INSURED
- STATE AS A REVENUE AGENT



ENFORCEMENT?

§ 42-16.1-12 Fraud prevention unit – Appointment – Duties – Qualifications.

(a) The director of the department of labor and training shall maintain within the workers' compensation unit of the department of labor and training, a workers' compensation fraud prevention unit whose members shall be in the unclassified service and whose responsibility it shall be to formulate an integrated state plan to reduce and prevent fraud arising out of claims made pursuant to the workers' compensation laws of this state and to conduct investigations as authorized by the director. The plan shall include a fraud prevention telephone hotline.....



AT WHOSE EXPENSE?

§ 42-16.1-19 Cost of legal and audit fees.

The director is hereby authorized, and may in his or her discretion, recover the reasonable cost of legal services and audit fees for services provided by in-house attorneys and/or other personnel of the department of labor and training or outside auditors and incurred by the department in matters pertaining to fraud investigations and examinations. Nothing in this section shall limit the power of the director to retain legal counsel to recover the costs of such legal counsel and auditors pursuant to other provisions of the general laws.



WHAT THE SYSTEM NEEDS

- 1. AGGRESSIVE PROSECUTION OF ALL FORMS OF WORKERS' COMPENSATION FRAUD—USE STATUTORY POWER!
- 2. COINCIDENTAL INVESTIGATION AND PROSECUTION OF WORKERS' COMPENSATION FRAUD IN WAGE AND HOUR MATTERS
- 3. FINES AND PENALTIES SOUGHT AND IMPOSED AT MAXIMUM LEVELS
- 4. BROAD PUBLICITY OF INVESTIGATIONS, PROSECUTIONS AND CONVICTIONS
- 5. MORE EDUCATION ON THE PERILS AND PITFALLS OF WORKERS' COMPENSATION FRAUD



CONSEQUENCES OF INACTION

- Continued and expanding non-compliance with the law by business owners and the workforce in failing to properly classify workers;
- The health, safety and benefit rights of workers will continue to be compromised;
- Continued competitive inequality for law-abiding businesses will increase the cost of doing business.



Penalties need to be strictly enforced

- Any employer, or ..officers of the corporation; [ETC],.. shall be guilty of a felony for failure to secure and maintain compensation, and upon conviction, shall be subject to imprisonment of up to two (2) years, a fine not exceeding ten thousand dollars (\$10,000), or both....
- (a) Any employer required to secure the payment of compensation ...shall be subject to a civil penalty punished by a fine not to exceed one thousand dollars (\$1,000) for each day of noncompliance with the requirements of this title... Each day shall constitute a separate and distinct offense for calculation of the penalty.



RHODE ISLAND/NATION

Worker compensation cheats given June to clean up act

By WILLIAM J. DONOVAN
Journal-Bulletin Staff Writer

Thieves, cheats and liars, come home, your governor is giving you a second chance. June is officially Workers' Compensation Fraud Cleanup Month.

To Joe, the guy who's working to become a bodybuilding champ while collecting benefits for a "back injury," this is your opportunity to come clean.

To the boss at Acme Skyscraping Roofers who keeps his insurance bills low by listing his employees as "clerical help," now is the time to 'fess up.

Governor Sundlun's declaration yesterday of Workers' Compensation Fraud Cleanup Month stems from the new workers' compensation insurance law he signed last month, which includes an amnesty period until July 1 that allows people who have been bilking the system to comply with the law.

Anytime before July 1, employees or businesses can contact their employers or insurance companies and correct illegal situations. If a disabled worker has been illegally working at a side job, he can now admit that income and have his compensation benefits adjusted without penalty.

If an employer has been underreporting the size of his work force to keep his premiums low, he can reveal the real number without facing a fine.

After July 1, however, a new fraud unit will begin investigating. Anyone found guilty of defrauding the system will face fines of up to \$50,000 and jail terms of up to five years.

"This amnesty provides the opportunity to employees who are either collecting benefits illegally or have another job or source of income they haven't reported, to come in and adjust their benefits with no penalty for noncompliance," said Sheldon Whitehouse, Sundlun's policy director. "No questions asked."

As for employers, Whitehouse said the most likely examples of fraud are when companies underreport their payroll or misrepresent the risk classification of their employees.

No hard numbers exist, but fraud by both employees and employers is considered to be part of the reason why Rhode Island's workers' compensation system has more than \$200 million in excess expenses.

The idea for an amnesty period came during the deliberations of Sundlun's workers' compensation

task force last fall. Many members of the committee noted how successful tax amnesties had been in other states in raising delinquent tax revenues.

The task force also knew there would be a delay of roughly a month between the time Sundlun signed the compensation bill into law and the start-up of the fraud unit. To put that time to good use, they came up with the amnesty idea.

Although violators will not be susceptible to laws and penalties under the new law during the amnesty period, they could still end up in trouble for something else. The Internal Revenue Service or the state tax division may be interested in unreported income, for example.

"I suspect someone will have to make their own judgment about not reporting and then being caught and being subject to the penalties of the new (workers' compensation) legislation," Whitehouse said. "I would think in every case they'd be better off coming in and getting things straightened out."

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