

## Misclassification of Construction Workers as Independent Contractors

### Construction Employers of America's (CEA) Position:

The Construction Employers of America (CEA) advocates for policies that ensure a level playing field and fair competition for honest contractors who create family-sustaining jobs with healthcare and retirement benefits, fund worker training, and safeguard social safety net programs by paying unemployment, workers' compensation, and other required taxes. It is imperative that Congress understand that misclassification of construction workers as independent contractors allows unscrupulous contractors to gain an unfair cost advantage of as much as 40% over honest competitors. Contractors misclassifying their workforce avoid the cost of overtime, unemployment, workers' compensation, and expenses CEA members pay. Misclassification also shifts to taxpayers the burden of paying for underfunded social safety net programs. Curbing the growth of misclassification in construction is critical to safeguarding honest job creators, American taxpayers, and the future of the construction industry as a source of family-sustaining employment.

### The Issue:

Misclassification of employees is rampant in the construction industry. Recent academic research found that in an average month in 2017, between 12.4% and 20.5% of the construction industry workforce were either misclassified as independent contractors or "working off the books." Put another way, as many as 2.16 million construction workers were misclassified or working in cash-only arrangements in an average month of 2017. And the problem has only gotten worse.

The Economic Policy Institute recently quantified the impact on workers in eleven occupations when they are misclassified as independent contractors. Construction workers lost between \$10,177 and \$16,729 annually when they were misclassified—the second most of any occupation.

Employee misclassification also victimizes American taxpayers. Based on conservative estimates, misclassification of construction workers results in \$9 billion in lost tax revenue. This includes shortfalls of \$717 million in unemployment insurance contributions, \$5.814 billion in Social Security and Medicare taxes, \$1.83 billion in federal income taxes, and \$730 million in state income taxes.

*National Legislative Conference Sponsored by*



### CEA Supports:

- Regulatory efforts by the U.S. Department of Labor to return to the six-factor economic realities test for determining when a worker is an employee or an independent contractor through its proposed rule on independent contractor status issued on October 13, 2022;
- The confirmation of Jessica Looman to be the Administrator of the U.S. Department of Labor's Wage & Hour Division. Ms. Looman understands the nature and scope of misclassification in construction and other industries in which it is most prevalent;
- Increased funding for the U.S. Department of Labor's Wage & Hour Division for dedicated enforcement resources to pursue misclassification of workers in construction and other industries in which DOL has acknowledged widespread abuse of the independent contractor classification;
- Continued and expanded collaboration between federal agencies and federal and state officials to address the impact that misclassification has on honest employers, workers, and taxpayers; and
- Analysis to quantify the extent to which the misclassification of construction workers is contributing to the tax gap and causing shortfalls for federal and state social safety net programs.

### CEA Opposes:

- Legislative efforts to make it easier for employers to misclassify their workers as independent contractors, or to escape liability for doing so, including:
  - **S. 1261/H.R. 2826 , (118<sup>th</sup> Congress), the "Save Local Business Act,"** legislation that would amend the National Labor Relations Act and the Fair Labor Standards Act to substantially curtail the instances in which a company may be deemed a joint employer in relation to the employees of another entity, like a subcontractor. The bill would make it almost impossible for a higher-tier subcontractor to face liability for a subcontractor's willful misclassification of construction workers as independent contractors or other serious violations of federal employment laws, such as not paying overtime; and
  - **H.R. 8442, (117<sup>th</sup> Congress), the "Worker Flexibility and Choice Act,"** legislation that would create "worker flexibility arrangements" that would allow businesses to continue treating their workers as independent contractors and absolve them of past liabilities for misclassification.

*National Legislative Conference Sponsored by*

