



UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

## **Size and Cost of Construction Industry Employer Tax Fraud: Survey of National and State Studies**

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Corrupt construction firms, even on large commercial projects, exploit their workers and steal work away from law-abiding employers through a practice commonly called misclassification. It can also be called “construction industry employer tax fraud” due to the intentional nature of the practice.

Employers commit tax fraud to avoid withholding income taxes, and paying employment taxes, and is accompanied by non-payment of 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 and don’t bother to report some or all of their workers.

In the construction industry, tax fraud gives irresponsible employers a 30 percent or more advantage in labor costs. 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, regional, state and, from Canada, provincial studies, as well as other research on the size and cost of construction employer tax fraud. Most are available at [StopTaxFraud.net](http://StopTaxFraud.net).

## United States

### National Studies

\*A 1984 study by the Internal Revenue Service found that 19.8 percent of construction employers misclassified their employees.<sup>1</sup> The rate for all industries was 15 percent.<sup>2</sup> The total income, unemployment and Social Security tax loss was \$1.6 billion.<sup>3</sup> 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.<sup>4</sup> A different estimate by the Government Accountability Office put the IRS' 1984 number in 2006 dollars for a tax loss of \$2.72 billion.<sup>5</sup>

\*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.<sup>6</sup>

\*A study released in 2000 for the US Department of Labor Employment and Training Administration by Planmantics, Inc. found an unemployment tax loss of \$198 million annually due to misclassification of employees as independent contractors.<sup>7</sup> Again, the construction industry was cited by sources as the most likely to offend.<sup>8</sup>

Unemployment tax audits in the following states found these percentages of employers with misclassified workers:<sup>9</sup>

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

\*Many studies do not include the extent of unreported pay in the underground economy.<sup>10</sup> 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."<sup>11</sup>

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<sup>1</sup>Described 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).

<sup>2</sup> *Ibid.*, p 1.

<sup>3</sup> *Ibid.* pp. 4-5.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Employment Arrangements: Improved Outreach could Help Ensure Proper Worker Classification*, GAO-06-565, p. 2 (July 2006).

<sup>6</sup> *Projection of the Loss in Federal Tax Revenues Due to Misclassification of Workers*, by Coopers & Lybrand, p. 3 (June 1994).

<sup>7</sup> *Independent Contractors: Prevalence and Implications for Unemployment Insurance Programs*, by Planmantics, Inc., pp. iv, 69 and 93 (2000).

<sup>8</sup> *Ibid.*, pp. 41-44.

<sup>9</sup> *Ibid.*, pp. 57.

<sup>10</sup> *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

**\*The Government Accountability Office (GAO) issued a 2009 report on misclassification.**<sup>12</sup> 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.”<sup>13</sup> The GAO made 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.<sup>14</sup> The IRS and DOL agreed with the recommendations.<sup>15</sup>

**\*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.<sup>16</sup>

**\*Voters in 67 of the most contentious congressional battleground districts were surveyed in 2021 on changes in employment.**<sup>17</sup> Hart Research Associates conducted a poll. A majority of Democrats, Republicans and independents are represented in the numbers. The results:

70 percent of voters do not support replacing permanent with temporary workers,<sup>18</sup>  
72 percent say a company should be legally responsible for the violations of its subcontractors,<sup>19</sup>  
54 percent think it is a bad change to replace employees with independent contractors (14 percent thought it was good—a 40-point spread),<sup>20</sup> and  
68 percent would support legislation making it more difficult to classify workers as independent contractors.<sup>21</sup>

**\*Voters were surveyed in 2016** by Hart Research Associates **on contracting out of work.**<sup>22</sup> The survey of registered voters focused on alternative work arrangement, such as temporary

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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).

<sup>11</sup> *The Underground Labor Force is Rising to the Surface*, Bear Stearns Asset Management, by Justich and Ng, p. 3 (January 3, 2005).

<sup>12</sup> *Employee Misclassification: Improved Coordination, Outreach, and Targeting Could Better Ensure Detection and Prevention* GAO-09-717 (August 2009).

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*, pp. 41-42.

<sup>15</sup> *Ibid.*, pp. 42-43.

<sup>16</sup> *Cost Shifting of Unemployment Insurance Premiums and Workers’ Compensation Premiums*, by Michael P. Kelsay, pp. 5-6 (September 12, 2010).

<sup>17</sup> *Support for Legislation on Contracting Out*, by Guy Molyneux and Gillian Pentheny, Hart Research Associates (June 2, 2021), available at, <https://s27147.pcdn.co/wp-content/uploads/ME-13143-NELP-Workplace-Changes-Polling-Memo.pdf>, last visited July 20, 2021.

<sup>18</sup> *Ibid.*, p. 1.

<sup>19</sup> *Ibid.*, p. 1.

<sup>20</sup> *Ibid.*, p. 2.

<sup>21</sup> *Ibid.*, p. 2.

<sup>22</sup> *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>.

work, on-call work, contract workers, independent contractors and freelancers.<sup>23</sup> Here are the key findings:

- Fifty-nine percent of voters (59 percent Democrat, 58 percent Republican, 61 percent independents) think that the increase in the number of companies that hire firms to supply them with labor is a negative trend.<sup>24</sup>
- Seventy-three percent do not think saving money by not providing employee benefits is a legitimate reason to use subcontract workers instead of employees. Seventy-two percent think the same if the motivation is saving money on wages or to make it easier to terminate workers.<sup>25</sup>
- Seventy percent said that the increase in use of subcontract labor is bad for workers.<sup>26</sup>
- Fifty-eight percent thought the shift toward subcontract labor was bad for the economy.<sup>27</sup>
- Sixty-two percent of voters said that the increase in use of independent contractors is a bad change.<sup>28</sup>
- Seventy-eight percent of voters believe that being an employee is better than being an independent contractor.<sup>29</sup>
- Sixty-seven percent 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.”<sup>30</sup>
- Eighty-four percent of voters believe that misclassifying employees as independent contractors is a serious problem.<sup>31</sup>
- Seventy-eight percent of voters (73 percent 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.”<sup>32</sup>
- Seventy-one percent of voters (67 percent 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.<sup>33</sup>

**\*A national study of fraud in the construction industry was completed in 2020 recommending a methodology and quantifying losses using 2017 public-resource data.<sup>34</sup> The study concluded that a yearly average of between 12.4 and 20.5 percent of construction workers, or 1.3 to 2.16 million, were misclassified as 1099 independent subcontractors or paid off the**

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<sup>23</sup> *Ibid.* p. 2.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.* p. 3.

<sup>26</sup> *Ibid.* p. 4.

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.* p. 5.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.* p. 6.

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.* p. 7.

<sup>33</sup> *Ibid.*

<sup>34</sup> *An Empirical Methodology to Estimate the Incidence and Costs of Payroll Fraud in the Construction Industry*, by Russell Ormiston, Dale Belman and Mark Erlich (2020).

books. That number increased in the peak month of August to between 13 and 21.6 percent, or 1.45 to 2.41 million workers.

Losses were calculated by the authors for three ranges of yearly wages of \$30,000, \$35,000 and \$40,000 for 1.3 million construction workers. Applying the \$35,000 metric, losses were:<sup>35</sup>

Workers' compensation premiums:	\$2.03 billion
Unemployment insurance contributions:	\$717 million
Social Security and Medicare:	\$5.84 billion
Federal income tax:	\$1.83 billion
State income tax:	\$730 million
Overtime & premium pay	\$946 million
Total UI, federal and state and tax losses (not including workers' compensation premiums):	\$8.4 billion.

Using the most aggressive assumptions, employers operating illegally reduce their labor costs by \$17.33 billion.<sup>36</sup>

Federal employment taxes that should have been paid by construction employers off-loaded onto their employees: \$3.48 billion.<sup>37</sup>

The authors wrote: "In developing the cost estimates outlined above, the authors have used conservative assumptions whenever possible. This includes, but is not limited to, considering only the most conservative number of workers directly affected (1.3 million) in the ranges presented above. However, the authors suspect—even if they cannot verify—that the social costs of payroll fraud may be substantially larger...."<sup>38</sup>

**\*A national report and selected state reports were completed in 2022 by UC Berkeley Labor Center on construction families enrolled in public safety net programs.**

#### National Report<sup>39</sup>

The researchers found that 39 percent of construction worker families are enrolled in one or more safety-net program, compared to 31 percent of all workers.<sup>40</sup> The programs include adult or child Medicaid, Temporary Aid to Needy Families, the Earned Income Tax Credit and the Supplemental Nutrition Assistance Program.<sup>41</sup> The cost to state and federal taxpayers is \$28 billion annually.<sup>42</sup> Additionally, 31 percent of construction workers have no health insurance

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<sup>35</sup>*Ibid.* p. 3-7.

<sup>36</sup> *Ibid.* p. 51.

<sup>37</sup> *Ibid.* p. 5.

<sup>38</sup> *Ibid.* p 6.

<sup>39</sup> *The Public Cost of Low-Wage Jobs in the US Construction Industry*, by Ken Jacobs, Kuichih Huang, Jenifer MacGillvary and Enrique Lopezlira, UC Berkeley Labor Center (January 2022), available at : <https://laborcenter.berkeley.edu/the-public-cost-of-low-wage-jobs-in-the-us-construction-industry/>.

<sup>40</sup> *Ibid.*, p. 1.

<sup>41</sup> *Ibid.*, p. 3.

<sup>42</sup> *Ibid.*, p.5.

coverage, compared to 10 percent of all workers.<sup>43</sup> The high rate of construction worker families receiving public assistance was attributed to low pay, wage theft, off-the-books employment and misclassification of workers as independent contractors.<sup>44</sup> The researchers wrote:

Construction was once an industry that could reliably provide family-supporting jobs to its blue-collar workforce. Conditions in the industry have deteriorated so much that construction workers are now more likely than the average worker to utilize public safety net programs. Importantly, the numbers provided in this analysis do not fully reflect the deprivation among this workforce. Undocumented immigrants currently comprise 13% of the construction workforce (compared to 5% of the overall US workforce), and with rare exceptions they are ineligible for state and federal assistance. Their working conditions, among the worst in the industry, are not reflected in this analysis.<sup>45</sup>

#### Arizona Report<sup>46</sup>

The researchers found:

Forty-five percent of construction worker families are enrolled in a safety net program, compared to 32 percent of all families.<sup>47</sup> The annual cost to Arizona and the federal government is \$700 million.<sup>48</sup> Thirty-six percent of construction workers do not have health insurance coverage, compared to 13 percent of all workers.<sup>49</sup>

#### Connecticut Report<sup>50</sup>

The researchers found:

Thirty-nine percent of construction worker families are enrolled in a safety net program, compared to 29 percent of all families.<sup>51</sup> The annual cost to Connecticut and the federal government is \$229 million.<sup>52</sup> Twenty-four percent of construction workers do not have health insurance coverage, compared to 7 percent of all workers.<sup>53</sup>

#### Georgia Report<sup>54</sup>

The researchers found:

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<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*, pp. 2-3.

<sup>45</sup> *Ibid.*, p. 6.

<sup>46</sup> *The Public Cost of Low-Wage Jobs in the Arizona Construction Industry*, by Ken Jacobs, Kuichih Huang, Jenifer MacGillvary and Enrique Lopezlira, UC Berkeley Labor Center (March 2022), <https://laborcenter.berkeley.edu/the-public-cost-of-low-wage-jobs-in-the-arizona-construction-industry/>

<sup>47</sup> *Ibid.*, p. 1.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

<sup>50</sup> *The Public Cost of Low-Wage Jobs in the Connecticut Construction Industry*, by Ken Jacobs, Kuichih Huang, Jenifer MacGillvary and Enrique Lopezlira, UC Berkeley Labor Center (January 2022), available at <https://laborcenter.berkeley.edu/the-public-cost-of-low-wage-jobs-in-the-connecticut-construction-industry/>

<sup>51</sup> *Ibid.*, p. 1.

<sup>52</sup> *Ibid.*, p. 3.

<sup>53</sup> *Ibid.*, p. 1.

<sup>54</sup> *The Public Cost of Low-Wage Jobs in the Georgia Construction Industry*, by Ken Jacobs, Kuichih Huang, Jenifer MacGillvary and Enrique Lopezlira, UC Berkeley Labor Center (March 2022), <https://laborcenter.berkeley.edu/the-public-cost-of-low-wage-jobs-in-the-georgia-construction-industry/>

Forty-four percent of construction worker families are enrolled in a safety net program, compared to 33 percent of all families.<sup>55</sup> The annual cost to Georgia and the federal government is \$400 million.<sup>56</sup> Forty-nine percent of construction workers do not have health insurance coverage, compared to 15 percent of all workers.<sup>57</sup>

#### Illinois Report<sup>58</sup>

The researchers found:

Thirty-four percent of construction worker families are enrolled in a safety net program, compared to 30 percent of all families.<sup>59</sup> The annual cost to Illinois and the federal government is \$518 million.<sup>60</sup> Twenty-one percent of construction workers do not have health insurance coverage, compared to eight percent of all workers.<sup>61</sup>

#### Michigan Report<sup>62</sup>

The researchers found:

Thirty-five percent of construction worker families are enrolled in a safety net program, compared to 30 percent of all families.<sup>63</sup> The annual cost to Michigan and the federal government is \$469 million.<sup>64</sup> Twenty percent of construction workers do not have health insurance coverage, compared to 7 percent of all workers.<sup>65</sup>

#### Nevada Report<sup>66</sup>

The researchers found:

Forty-two percent of construction worker families are enrolled in a safety net program, compared to 33 percent of all families.<sup>67</sup> The annual cost to Nevada and the federal government is \$279 million.<sup>68</sup> Thirty-five percent of construction workers do not have health insurance coverage, compared to 13 percent of all workers.<sup>69</sup>

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<sup>55</sup> *Ibid.*, p. 1.

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

<sup>58</sup> *The Public Cost of Low-Wage Jobs in the Illinois Construction Industry*, by Ken Jacobs, Kuichih Huang, Jenifer MacGillvary and Enrique Lopezlira, UC Berkeley Labor Center (January 2022), available at <https://laborcenter.berkeley.edu/the-public-cost-of-low-wage-jobs-in-the-illinois-construction-industry/>.

<sup>59</sup> *Ibid.*, p. 1.

<sup>60</sup> *Ibid.*, p. 3.

<sup>61</sup> *Ibid.*, p. 1.

<sup>62</sup> *The Public Cost of Low-Wage Jobs in the Michigan Construction Industry*, by Ken Jacobs, Kuichih Huang, Jenifer MacGillvary and Enrique Lopezlira, UC Berkeley Labor Center (March 2022), <https://laborcenter.berkeley.edu/the-public-cost-of-low-wage-jobs-in-the-michigan-construction-industry/>

<sup>63</sup> *Ibid.*, p. 1.

<sup>64</sup> *Ibid.*, p. 3.

<sup>65</sup> *Ibid.*, p. 1.

<sup>66</sup> *The Public Cost of Low-Wage Jobs in the Nevada Construction Industry*, by Ken Jacobs, Kuichih Huang, Jenifer MacGillvary and Enrique Lopezlira, UC Berkeley Labor Center (March 2022), <https://laborcenter.berkeley.edu/the-public-cost-of-low-wage-jobs-in-the-nevada-construction-industry/>

<sup>67</sup> *Ibid.*, p. 1.

<sup>68</sup> *Ibid.*, p. 3.

<sup>69</sup> *Ibid.*, p. 1.

### New Hampshire Report<sup>70</sup>

The researchers found:

Twenty-two percent of construction worker families are enrolled in a safety net program, compared to 19 percent of all families.<sup>71</sup> The annual cost to New Hampshire and the federal government is \$48 million.<sup>72</sup> Twenty-three percent of construction workers do not have health insurance coverage, compared to 8 percent of all workers.<sup>73</sup>

### New Jersey Report<sup>74</sup>

The researchers found:

Thirty-three percent of construction worker families are enrolled in a safety net program, compared to 26 percent of all families.<sup>75</sup> The annual cost to New Jersey and the federal government is \$325 million.<sup>76</sup> Thirty percent of construction workers do not have health insurance coverage, compared to 10 percent of all workers.<sup>77</sup>

### New York Report<sup>78</sup>

The researchers found:

Forty-one percent of construction worker families are enrolled in a safety net program, compared to 33 percent of all families.<sup>79</sup> The annual cost to New York and the federal government is \$2 billion.<sup>80</sup> Twenty-four percent of construction workers do not have health insurance coverage, compared to 7 percent of all workers.<sup>81</sup>

### Oregon Report<sup>82</sup>

The researchers found:

Forty-three percent of construction worker families are enrolled in a safety net program, compared to 37 percent of all families.<sup>83</sup> The annual cost to Oregon and the federal government

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<sup>70</sup> *The Public Cost of Low-Wage Jobs in the New Hampshire Construction Industry*, by Ken Jacobs, Kuichih Huang, Jenifer MacGillvary and Enrique Lopezlira, UC Berkeley Labor Center (March 2022), <https://laborcenter.berkeley.edu/the-public-cost-of-low-wage-jobs-in-the-new-hampshire-construction-industry/>

<sup>71</sup> *Ibid.*, p. 1.

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*

<sup>74</sup> *The Public Cost of Low-Wage Jobs in the New Jersey Construction Industry*, by Ken Jacobs, Kuichih Huang, Jenifer MacGillvary and Enrique Lopezlira, UC Berkeley Labor Center (March 2022), <https://laborcenter.berkeley.edu/the-public-cost-of-low-wage-jobs-in-the-new-jersey-construction-industry/>

<sup>75</sup> *Ibid.*, p. 1.

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*

<sup>78</sup> *The Public Cost of Low-Wage Jobs in the New York Construction Industry*, by Ken Jacobs, Kuichih Huang, Jenifer MacGillvary and Enrique Lopezlira, UC Berkeley Labor Center (March 2022), <https://laborcenter.berkeley.edu/the-public-cost-of-low-wage-jobs-in-the-new-york-construction-industry/>

<sup>79</sup> *Ibid.*, p. 1.

<sup>80</sup> *Ibid.*

<sup>81</sup> *Ibid.*

<sup>82</sup> *The Public Cost of Low-Wage Jobs in the Oregon Construction Industry*, by Ken Jacobs, Kuichih Huang, Jenifer MacGillvary and Enrique Lopezlira, UC Berkeley Labor Center (March 2022), <https://laborcenter.berkeley.edu/the-public-cost-of-low-wage-jobs-in-the-oregon-construction-industry/>

<sup>83</sup> *Ibid.*, p. 1.



is \$710 million.<sup>84</sup> Twenty-two percent of construction workers do not have health insurance coverage, compared to 9 percent of all workers.<sup>85</sup>

#### Pennsylvania Report<sup>86</sup>

The researchers found:

Twenty-eight percent of construction worker families are enrolled in a safety net program, compared to 29 percent of all families.<sup>87</sup> The annual cost to Pennsylvania and the federal government is \$428 million.<sup>88</sup> Sixteen percent of construction workers do not have health insurance coverage, compared to seven percent of all workers.<sup>89</sup>

#### Texas Report<sup>90</sup>

The researchers found:

Forty-six percent of construction worker families are enrolled in a safety net program, compared to 31 percent of all families.<sup>91</sup> The annual cost to Texas and the federal government is \$1.96 billion.<sup>92</sup> Fifty-five percent of construction workers do not have health insurance coverage, compared to 20 percent of all workers.<sup>93</sup>

#### Washington Report<sup>94</sup>

The researchers found:

Thirty-eight percent of construction worker families are enrolled in a safety net program, compared to 32 percent of all families.<sup>95</sup> The annual cost to Washington and the federal government is \$554 million.<sup>96</sup> Twenty-two percent of construction workers do not have health insurance coverage, compared to eight percent of all workers.<sup>97</sup>

#### Wisconsin Report<sup>98</sup>

The researchers found:

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<sup>84</sup> *Ibid.*

<sup>85</sup> *Ibid.*

<sup>86</sup> *The Public Cost of Low-Wage Jobs in the Pennsylvania Construction Industry*, by Ken Jacobs, Kuichih Huang, Jenifer MacGillvary and Enrique Lopezlira, UC Berkeley Labor Center (January 2022), available at <https://laborcenter.berkeley.edu/the-public-cost-of-low-wage-jobs-in-the-pennsylvania-construction-industry/>.

<sup>87</sup> *Ibid.*, p. 1 and 3.

<sup>88</sup> *Ibid.*, p. 1.

<sup>89</sup> *Ibid.*

<sup>90</sup> *The Public Cost of Low-Wage Jobs in the Texas Construction Industry*, by Ken Jacobs, Kuichih Huang, Jenifer MacGillvary and Enrique Lopezlira, UC Berkeley Labor Center (January 2022), available at <https://laborcenter.berkeley.edu/the-public-cost-of-low-wage-jobs-in-the-texas-construction-industry/>.

<sup>91</sup> *Ibid.*, p. 1.

<sup>92</sup> *Ibid.*, p. 3.

<sup>93</sup> *Ibid.*, p. 1.

<sup>94</sup> *The Public Cost of Low-Wage Jobs in the Washington Construction Industry*, by Ken Jacobs, Kuichih Huang, Jenifer MacGillvary and Enrique Lopezlira, UC Berkeley Labor Center (January 2022), available at <https://laborcenter.berkeley.edu/release-the-public-cost-of-low-wage-jobs-in-the-washington-construction-industry/>.

<sup>95</sup> *Ibid.*, p. 1.

<sup>96</sup> *Ibid.*, p. 3.

<sup>97</sup> *Ibid.*, p. 1.

<sup>98</sup> *The Public Cost of Low-Wage Jobs in the Wisconsin Construction Industry*, by Ken Jacobs, Kuichih Huang, Jenifer MacGillvary and Enrique Lopezlira, UC Berkeley Labor Center (March 2022), <https://laborcenter.berkeley.edu/the-public-cost-of-low-wage-jobs-in-the-wisconsin-construction-industry/>

Twenty-eight percent of construction worker families are enrolled in a safety net program, compared to 26 percent of all families.<sup>99</sup> The annual cost to Wisconsin and the federal government is \$207 million.<sup>100</sup> Fifteen percent of construction workers do not have health insurance coverage, compared to 7 percent of all workers.<sup>101</sup>

#### **\*National Cost of Worker Misclassification 2023<sup>102</sup>**

Researchers quantified the losses to 11 commonly misclassified occupations.<sup>103</sup> Compared to an employee, a construction worker classified as an independent subcontractor loses “as much as \$16,729 per year in income and job benefits.”<sup>104</sup> Other occupations with a significant amount of misclassification include “[l]andscapers, truck drivers, home health aides, janitors, and nail salon workers.”<sup>105</sup> A construction worker classified as an employee earned in 2021 \$48,210.<sup>106</sup> When health insurance, retirement, unemployment insurance, workers’ compensation, Social Security and Medicare are added in, the value of the construction employee’s employment rises to \$52,398 per year.<sup>107</sup> When a construction employee is misclassified as an independent contractor, the value of employment is between \$35,670 and \$42,221 per year.<sup>108</sup> Thus, the cost of being misclassified as an independent contractor is between \$10,177 and \$16,729,<sup>109</sup> or 19.4 to 31.9 percent.<sup>110</sup> Those estimates are conservative.<sup>111</sup> Misclassification shifts the burden of paying social insurance to the worker.<sup>112</sup> This leads to a decline of social insurance (Social Security, Medicare, workers’ compensation, and federal and state unemployment insurance) revenues coming from construction workers of between \$1,781 and \$2,964<sup>113</sup>, or 18.9 to 31.5 percent.<sup>114</sup>

#### **\*National and 50 State Construction Workforce Misclassification Report 2023<sup>115</sup>**

The economists used the methodology outlined in *An Empirical Methodology to Estimate the Incidence and Costs of Payroll Fraud in the Construction Industry*, by Russell Ormiston, Dale Belman and Mark Erlich (2020).<sup>116</sup> The report relied on 2021 data.<sup>117</sup>

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<sup>99</sup> *Ibid.*, p. 1.

<sup>100</sup> *Ibid.*

<sup>101</sup> *Ibid.*

<sup>102</sup> *The Economic Cost of Worker Misclassification*, by John Schmitt, Heidi Shierholz, Margaret Pydock and Samantha Sanders, Economic Policy Institute (January 25, 2021), available at, <https://files.epi.org/uploads/The-economic-costs-of-worker-misclassification-1.pdf> .

<sup>103</sup> *Ibid.*, p. 1.

<sup>104</sup> *Ibid.*

<sup>105</sup> *Ibid.*

<sup>106</sup> *Ibid.* p. 2.

<sup>107</sup> *Ibid.*

<sup>108</sup> *Ibid.*

<sup>109</sup> *Ibid.*

<sup>110</sup> *Ibid.* p. 5.

<sup>111</sup> *Ibid.* p. 2.

<sup>112</sup> *Ibid.*

<sup>113</sup> *Ibid.* p. 7.

<sup>114</sup> *Ibid.* p. 6.

<sup>115</sup> *Up to 2.1 Million U.S. Construction Workers are Illegally Misclassified or Paid off the Books*, by Laura Gutierrez, Russel Ormiston, Dale Belman and Jody Calemine, The Century Foundation (November 12, 2023), available at <https://tcf.org/content/report/up-to-2-1-million-u-s-construction-workers-are-illegally-misclassified-or-paid-off-the-books/>.

<sup>116</sup> *Ibid.* p. 6.

The report finds, nationally, that 1.1 to 2.1 million, or 10 to 19 percent, construction workers are misclassified or paid off-the-books in 2021.<sup>118</sup> By misclassifying employees as independent contractors or paying them off-the-books, bad employers shave a total of \$12 billion a year from their labor costs, resulting in a state and federal tax revenue shortfall of \$5 billion to \$10 billion a year.<sup>119</sup> Social Security and Medicare tax losses range from \$3.3 billion to \$6.6 billion.<sup>120</sup> State unemployment trust funds lose \$791 million.<sup>121</sup> Federal income tax losses are \$1.3 to \$2.5 billion a year and state lose \$486 to \$973 million a year.<sup>122</sup> Construction workers lose \$1.9 billion a year in overtime pay.<sup>123</sup> Workers' compensation insurers lose \$5 billion a year in workers' compensation premiums.<sup>124</sup> Unscrupulous employers offload onto their workers the Social Security, Medicare and FUTA employment taxes they should pay to the tune of \$5.1 billion.<sup>125</sup>

Underneath the second map in the report is a link to a spreadsheet of misclassification and the losses in all fifty states. The rates of misclassification are highest in the South and Northeast. The authors attribute the high rates in the South to weak labor policies “and higher volumes of vulnerable workers on construction sites.”<sup>126</sup> The high rates in the Northeast are caused by “greater urban density” and higher workers' compensation premiums.<sup>127</sup>

The authors emphasize that their findings “possibly—if not likely—*undercount* the extent of worker misclassification in the construction industry.”<sup>128</sup> Regarding the variations in misclassification rates in the state-by-state data, misclassification rates can be “unexpectedly high” in less populated states, because of the smaller sample size.<sup>129</sup> Additionally, the American Community Survey, a primary-data source for the report, may undercount immigrants, “especially from Central American and Cuba.”<sup>130</sup> Finally, the data requires estimates to be based in the states where the employers are headquartered, so it does not count the jobsites where the work is actually performed.<sup>131</sup>

The authors address the construction industry's violation model, writing:

Decades of reporting from across the country suggest that the U.S. construction sector is awash in worker misclassification. But the problem goes even deeper that the decision on whether to hire workers as independent contractors rather than employees. Instead, a substantial portion of the construction workforce now operates in the underground

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<sup>117</sup> *Ibid.* p. 9.

<sup>118</sup> *Ibid.* p. 6.

<sup>119</sup> *Ibid.*

<sup>120</sup> *Ibid.* p. 9.

<sup>121</sup> *Ibid.*

<sup>122</sup> *Ibid.*

<sup>123</sup> *Ibid.*

<sup>124</sup> *Ibid.*

<sup>125</sup> *Ibid.*

<sup>126</sup> *Ibid.* p. 7.

<sup>127</sup> *Ibid.*

<sup>128</sup> *Ibid.* p. 2 and 7.

<sup>129</sup> *Ibid.* p. 8.

<sup>130</sup> *Ibid.*

<sup>131</sup> *Ibid.*

economy, with many employers hiring them through cash-only, off-the-books employment relationships that cast aside any pretense of the formality (or documentation) or traditional independent contracting. This process of misclassification and off-the-books payments is aided by the presence of “labor brokers,” who are effectively unregistered middlemen capable of recruiting and employing legions of construction workers on a jobsite on short notice and who operate in the world of cash payments and check-cashing services.<sup>132</sup>

Additionally, the report recognizes that:

law-abiding businesses often find it difficult to compete with unscrupulous employers that reduce their labor costs substantially via illegal means, and taxpayers are out millions of dollars due to what is essentially an implicit subsidy of public money to employers that knowingly violate the law.<sup>133</sup>

The report concludes by citing progress, proposals and recommendations countering misclassification and off-the-books payments, including:

the U.S. Department of Labor’s proposed rule on employee and independent contractor status under the Fair Labor Standards Act,<sup>134</sup>

the Protecting the Right to Organize Act, which contains the “ABC” independent contractor test,<sup>135</sup>

eliminating the Internal Revenue Code’s Section 530 safe harbors,<sup>136</sup>

having misclassification as a stand-alone violation,<sup>137</sup>

sufficient funding for the IRS, U.S. Attorney’s offices, the U.S. Department of Labor’s Wage and Hour Division, state enforcement agencies and district attorney’s offices,<sup>138</sup>

expanding joint-employer, especially in the states, and joint-and-several liability, protection of undocumented workers who come forward with complaints or assist investigations,<sup>139</sup> and

the Department of Homeland Security’s deferred action program for undocumented workers in labor disputes,<sup>140</sup>

**A poll on misclassification by Morning Consult accompanied the release of The Century Foundation report.**<sup>141</sup> The key takeaways:

Employers should not replace employees with independent contractors to mitigate labor costs. Respondents cite the unfairness to workers....

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<sup>132</sup> *Ibid.* p. 3.

<sup>133</sup> *Ibid.*

<sup>134</sup> *Ibid.* p. 11.

<sup>135</sup> *Ibid.* p. 12.

<sup>136</sup> *Ibid.* p. 12.

<sup>137</sup> *Ibid.* p. 12.

<sup>138</sup> *Ibid.* p. 13.

<sup>139</sup> *Ibid.* p. 13.

<sup>140</sup> *Ibid.* p. 13.

<sup>141</sup> *Worker Misclassification in the Untied States*, Morning Consult on behalf of The Century Foundation (September 2023), available at <https://drive.google.com/file/d/10cWv9ITtr1pLCwvHsDOF9F09W6VcIb9E/view>

Three-in-five Americans, including 75% of independent contractors surveyed, agree contractors are generally undercompensated for their work.... Respondents also believe the practice impacts workplace diversity and employees' personal wellbeing....

Americans find outcomes associate with worker misclassification concerning. Employers who engage in misclassification not paying their fair share of taxes (including those that fund Medicare and Social Security), unfairly underbidding law-abiding businesses, and using misclassification as a means of skirting legal protections for employees.

Championing workers' rights through reforms addressing misclassification is politically popular among voters on both sides of the aisle. Majorities of Republicans (56%) Democrats (56%), as well as half (50%) of political independents, believe *more action is needed* from U.S. policymakers to address worker misclassification issues in the labor force. Fifty-four percent of Americans would be more inclined to vote for a candidate with a plan to address worker misclassification (69% D, 48% I, 56% R).<sup>142</sup>

## **Regional**

### **\*Southern States 2017**

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.<sup>143</sup> They found that 32 percent of the workers were misclassified as independent subcontractors or failed to receive a 1099 tax form.<sup>144</sup> The rate of misclassification in Charlotte was 17 percent,<sup>145</sup> Houston 38 percent<sup>146</sup> and Miami 26 percent.<sup>147</sup> 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.<sup>148</sup> One in three construction workers who die on the job were killed in the five states in the study.<sup>149</sup> The amount of money workers lost in the six cities due to wage theft was \$29.8 million.<sup>150</sup>

### **\*Upper Midwest 2021**

Researchers used 2018 data to study the degree of fraud in Illinois, Minnesota and Wisconsin (upper Midwest or region).<sup>151</sup> Researchers followed the methodology established by Ormiston, Belman and Erlich in their study of fraud in the national construction industry.<sup>152</sup> Across the upper Midwest during peak construction months the authors found that 123,716 or 21 percent of

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<sup>142</sup> *Ibid.* p. 2.

<sup>143</sup> *Build a Better South*, by Dr. Nik Theodore, Bethany Boggess, Jack Cornejo and Emily Timm, p. ix (2017).

<sup>144</sup> *Ibid.*, pp. x, 14 and 14 fn c.

<sup>145</sup> *Ibid.* p. 28.

<sup>146</sup> *Ibid.*, p. 33.

<sup>147</sup> *Ibid.*, p. 37.

<sup>148</sup> *Ibid.*, p. 39.

<sup>149</sup> *Ibid.*, p. 4.

<sup>150</sup> *Ibid.*, p. x.

<sup>151</sup> *The Costs of Wage Theft and Payroll Fraud in the Construction Industries of Wisconsin, Minnesota, and Illinois: Impacts on Workers and Taxpayers*, by Nathaniel Goodell and Frank Manzo IV, p. 5 (January 14, 2021).

<sup>152</sup> *Ibid.*, p. 2, 4 and 6.

construction workers were either misclassified as independent contractors or paid off the books.<sup>153</sup>

Using data for the entire year, researchers found the following regarding the number of construction workers misclassified as independent contractors and paid off the books and the impact:<sup>154</sup>

#### Region

Workers misclassified & paid off-the-books: 97,320 workers or 18 percent.

Yearly pay differential with W-2 employee construction workers: 18 percent less.

#### Wisconsin

Workers misclassified & paid off-the-books: 14,500 workers or 10 percent.

Yearly pay differential with W-2 employee construction workers: 16 percent less.

Income tax losses: \$8.3 million.

Unemployment contribution losses: \$5.7 million.

Lost workers' compensation premiums: \$25.6 million.

#### Minnesota

Workers misclassified & paid off-the-books: 30,100 workers or 23 percent.

Yearly pay differential with W-2 employee construction workers: 13 percent less.

Income tax losses: \$65 million.

Unemployment contribution losses: \$12.8 million.

Lost workers' compensation premiums: \$57.7 million.

#### Illinois

Workers misclassified & paid off-the-books: 52,300 workers or 20 percent.

Yearly pay differential with W-2 employee construction workers: 22 percent less.

Income tax losses: \$59.9 million.

Unemployment contribution losses: \$23 million.

Lost workers' compensation premiums: \$103.3 million.

### **State Studies and Reports**

\*In 2017 the Economic Policy Institute released a study on wage theft.<sup>155</sup> The report focuses on minimum wage theft, or 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.<sup>156</sup> Their study found that in those states 2.4 million workers, or 17 percent of the low-wage workforce, was underpaid \$8 billion annually.<sup>157</sup> Using

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<sup>153</sup> *Ibid.*, p. 7.

<sup>154</sup> *Ibid.*, p. i., 8, 9 and 13-15.

<sup>155</sup> *Employers steal billions from workers' paychecks each year*, by David Cooper and Teresa Kroger, Economic Policy Institute (May 10, 2017).

<sup>156</sup> *Ibid.* p. 1-2.

<sup>157</sup> *Ibid.* p. 2.

that figure as representative for the entire country puts nationwide minimum wage theft at \$15 billion.<sup>158</sup> 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.<sup>159</sup>

**\*McClatchy news in 2014** ran a series called *Contract to Cheat*.<sup>160</sup> 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.<sup>161</sup>

<u>State</u>	<u>Rate of Misclassification</u>	<u>Lost State &amp; Federal Revenue (millions)</u>
Florida	15.5 %	\$400 <sup>162</sup>
North Carolina	35.2%	\$134 state, \$333 federal <sup>163</sup>
Texas	37.7%	\$1,200 <sup>164</sup>

\*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 contractors or paid unreported compensation, costing \$8.6 million in lost federal and unemployment taxes.<sup>165</sup>

**\*UC Berkeley Labor Center issued a report in 2021 on the cost to taxpayers of low-wage construction jobs in California.**<sup>166</sup> The California construction industry accounted for \$107 billion in personal income in 2021.<sup>167</sup> Forty-eight percent of construction worker families are

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<sup>158</sup> *Ibid.*

<sup>159</sup> *Ibid.* p. 45.

<sup>160</sup> *Contract to Cheat*, McClatchy (September 4, 2014), available at:

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

<sup>161</sup> *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>

<sup>162</sup> *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>

<sup>163</sup> *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>

<sup>164</sup> *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>

<sup>165</sup> *Building Austin, Building Injustice: Working Conditions in Austin's Construction Industry*, by the Workers Defense Project, pp. 49-50 (2009).

<sup>166</sup> *The Public Cost of Low-Wage Jobs in California's Construction Industry*, by Ken Jacobs and Kuochih Huang, UC Berkeley Labor Center (June 2021), available at, <https://laborcenter.berkeley.edu/the-public-cost-of-low-wage-jobs-in-californias-construction-industry/> , last visited, September 7, 2021.

<sup>167</sup> *Ibid.*, p. 1.

enrolled in a safety net program, such as the earned income tax credit, Temporary Assistance to Needy Families, Adult Medicaid, Children’s Medicaid/CHIP or Supplemental Nutrition Assistance Program.<sup>168</sup> Construction worker families comprise 36 percent of all families in a safety-net program.<sup>169</sup> The taxpayer cost for construction worker families on these programs is \$3 billion.<sup>170</sup> The authors attributed the high degree of construction worker reliance on safety net programs to low wages and illegal working conditions, primarily the prevalence of misclassification as independent contractors, especially in the residential construction industry.<sup>171</sup> Also, the authors note that 26 percent of construction workers have no health insurance coverage, compared to 10 percent of all workers in the state. The Kaiser Family Foundation reported that from 2015 to 2017, “uncompensated health care costs for the uninsured nationwide averaged \$42.4 billion per year, with the public picking up around 80%” of the cost.<sup>172</sup>

**\*A 2007 study 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.<sup>173</sup> 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.<sup>174</sup>

**\*Wrongful classification of employees as independent contractors and unreported compensation in the California construction industry grew 400 percent from 1972 to 2012.**<sup>175</sup> 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.<sup>176</sup> Of that number, 104,100 received unreported compensation and 39,800 were wrongly classified.<sup>177</sup> The construction industry is divided into three sectors; construction of buildings, heavy and civil engineering and specialty trades, like drywall installers.<sup>178</sup> The sector with the most workers is specialty trades, and the degree of wrongful classification and non-reporting was 25 percent of that workforce.<sup>179</sup> Unreported-construction employees earn 52 cents

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<sup>168</sup> *Ibid.*, p. 4.

<sup>169</sup> *Ibid.*

<sup>170</sup> *Ibid.*, p. 1.

<sup>171</sup> *Ibid.*, pp. 1-2.

<sup>172</sup> *Ibid.*, p. 5, citing Teresa A. Coughlin, Haley Samuel-Jakubos, and 2021, “Sources of Payment for Uncompensated Care for the Uninsured” (Kaiser Family Foundation, April 6, 2021), <https://www.kff.org/uninsured/issue-brief/sources-of-payment-for-uncompensated-care-for-the-uninsured/>.

<sup>173</sup> *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).

<sup>174</sup> *How Much Employer Fraud Exists*, pp. 1-3.

<sup>175</sup> *Sinking Underground; The Growing Informal Economy in California Construction*, by Yvonne Yen Liu, Daniel Flaming and Patrick Burns, Economic Roundtable, pp. 2, 7. (2014).

<sup>176</sup> *Ibid.*, pp1, 7

<sup>177</sup> *Ibid.*, pp1, 2.

<sup>178</sup> *Ibid.*, p. 12.

<sup>179</sup> *Ibid.*, pp 2, 12, 13.



for every dollar that a payroll employee is paid, and a wrongly classified 64 cents.<sup>180</sup> If they were paid at the same rate as payroll employees, they would have earned an additional \$1.2 billion.<sup>181</sup> 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.<sup>182</sup> Losses in federal and state revenues and workers' compensation premiums totaled over \$774 million in 2011.<sup>183</sup>

Program	Losses <sup>184</sup>
Social Security	\$234,906,767
Medicare	54,937,873
Federal Unemployment	12,042,574
State Unemployment	62,219,966
State Employment Training	1,003,548
State Disability Insurance	145,709,411
Workers' Compensation Premiums	264,080,672
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.<sup>185</sup> Audits done from June 2009 through December 2010 found 14.2 percent of the Colorado workforce was misclassified as independent contractors.<sup>186</sup> As a result, state losses were \$167 million in income tax revenues and \$744,359 in unemployment contributions.<sup>187</sup> 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.<sup>188</sup> 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.<sup>189</sup>

\***The Catholic Labor Network studied the degree of fraud and wage theft in the District of Columbia's construction industry in 2021.**<sup>190</sup> Researchers interviewed 79 construction workers in various trades working on 24 large commercial construction sites.<sup>191</sup> Forty-seven percent of the workers were either misclassified as independent contractors or paid off the books.<sup>192</sup> All of the workers on publicly funded construction projects or represented by labor unions were

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<sup>180</sup> *Ibid.* pp. 2, 11, 12.

<sup>181</sup> *Ibid.*, p. 2.

<sup>182</sup> *Ibid.*, p. 2, 17, 18.

<sup>183</sup> *Ibid.*, p. 2.

<sup>184</sup> *Ibid.*, p. 31.

<sup>185</sup> *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).

<sup>186</sup> *Ibid.* pp 3 and 9.

<sup>187</sup> *Ibid.*

<sup>188</sup> *Ibid.*, p. 7.

<sup>189</sup> *Ibid.*, Exhibit A.

<sup>190</sup> *The Underground Economy and Wage Theft in Washington DC's Commercial Construction Sector*, by Clayton Sinyai and Ernesto Galeas, the Catholic Labor Network (March 2021).

<sup>191</sup> *Ibid.*, p. 3.

<sup>192</sup> *Ibid.*

properly classified as employees.<sup>193</sup> Ten percent of the workers were paid less than the minimum wage and 97 percent of the workers misclassified or paid off the books did not receive overtime premium pay.<sup>194</sup> The District has a “well-developed” system of labor brokers who supply immigrant labor to specialty contractors.<sup>195</sup>

**\*The Attorney General's Office of the District of Columbia** issued a 2019 report on the advantage contractors in the District realize when they break the law.<sup>196</sup> Contractors that break the law gain a bidding advantage over law-abiding contractors of 16.7 to 48.1 percent when workers are misclassified as independent contractors.<sup>197</sup> Those cost savings can be passed along to general contractors and developers.<sup>198</sup> The report also discusses how misclassification shifts the employer's payroll tax obligations onto its workers.<sup>199</sup>

**\*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.<sup>200</sup> 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.<sup>201</sup> 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.<sup>202</sup>

**\*Illinois 2006:**<sup>203</sup>

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<sup>193</sup> *Ibid.*

<sup>194</sup> *Ibid.*

<sup>195</sup> *Ibid.*

<sup>196</sup> *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 (May 22, 2019).

<sup>197</sup> *Ibid.*, pp. 1, 2, 15.

<sup>198</sup> *Ibid.*, pp. 9, 13 and 14.

<sup>199</sup> *Ibid.*, p. 5

<sup>200</sup> *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).

<sup>201</sup> *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).

<sup>202</sup> *Ibid.* p. 14

<sup>203</sup> *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 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

	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.<sup>204</sup>

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.<sup>205</sup>

**\*Indiana 2010:**<sup>206</sup>

From 2007-2008 the annual numbers are:<sup>207</sup>

	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.<sup>208</sup>

\*A study was completed in **2023 on misclassification and wage theft in the Kansas construction industry.**<sup>209</sup> The researcher concluded that in 2020 33,512 construction workers, or 36 percent of the construction workforce, were either misclassified as independent contractors or paid off-the-books.<sup>210</sup> Losses were calculated using a yearly income range for the workers of \$30,000 and \$50,000.<sup>211</sup> Using this range, the losses were as follows:<sup>212</sup>

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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.

<sup>204</sup> Illinois Study, p. 2.

<sup>205</sup> *Ibid.*, fn. 1, p. 2.

<sup>206</sup> *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).

<sup>207</sup> *Ibid.*, pp. 3-5.

<sup>208</sup> *Ibid.*, p. 3.

<sup>209</sup> *Worker Misclassification and Wage Theft in the Construction Industry in Kansas*, Michael Kelsay (March 2023).

<sup>210</sup> *Ibid.*, p. 4.

<sup>211</sup> *Ibid.*, p. 5.

<sup>212</sup> *Ibid.*

Unpaid overtime:	\$20.9 to \$34.9 million
Unpaid workers comp. premiums	\$44.8 to \$74.7 million
Unemployment insurance contributions	\$18.1 to \$30.2 million
Employer share of FICA transferred to workers	\$76.9 to \$128.2 million
Federal income taxes	\$13.8 to \$ 50 million

Construction employers that engaged in fraud “paid \$1.6 billion for labor that should have cost \$2.1 billion if that had been hired and paid legally.”<sup>213</sup>

\*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.<sup>214</sup>

\*In **2008 research was done in Kentucky of people with workplace injuries seeking emergency treatment.**<sup>215</sup> Twenty percent did not have workers compensation coverage, and 92 percent of them also did not have any health insurance.<sup>216</sup> Within that number of the uninsured, 54.2 percent were in the construction industry.<sup>217</sup> 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.<sup>218</sup>

\***Maine study 2005:**<sup>219</sup>

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.<sup>220</sup>

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<sup>213</sup> *Ibid.*, p. 24.

<sup>214</sup> H.B. 256, §1(b), 2015 Reg. Sess. (Ky. 2015)

<sup>215</sup> *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).

<sup>216</sup> *Ibid.*, pp. 2-3.

<sup>217</sup> *Ibid.* p. 3.

<sup>218</sup> *Ibid.* p. 4.

<sup>219</sup> *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)

<sup>220</sup> Maine Study, p. 1.

**\*Maine Unemployment Audits 2004-2007:**<sup>221</sup>

A review of Maine Department of labor unemployment audits for all industries showed that 29 percent of employers misclassified employees as independent contractors in 2004, 39 percent in 2005, 43 percent in 2006 and 41 percent 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 percentage of employers who fail to properly classify workers at 20 percent for all industries, to as high as 25 percent in some industries.<sup>222</sup> The cost to the state is an annual \$22 million loss to the unemployment trust fund and \$81 million in unpaid state income taxes.

**\*Massachusetts residential construction study 2021:**<sup>223</sup>

Researchers gathered data from interviews and the Massachusetts Department of Revenue (DOR), the Department of Unemployment Assistance (DUA) and the Department of Industrial Accidents.<sup>224</sup> The state's construction industry is a \$22 billion sector directly employing 174,489 workers.<sup>225</sup> Audits conducted by the DUA between 2017 and 2019 found that 16.8 to 17.9 percent of all construction employers in the state misclassified workers as independent contractors, but<sup>226</sup> 19.7 percent of residential firms misclassified workers.<sup>227</sup> In 2019, 22,146 to 36,719 construction workers, or 9.5 percent to 15.8 percent, were impacted by wage theft and tax fraud.<sup>228</sup> Of all contractors that perform drywall, finish carpentry and painting (finishing work), 26.6 percent of the firms audited by the DUA misclassified workers between 2017 and 2019.<sup>229</sup> DOR records showed contractors doing finishing work spent \$189 for contract labor for every \$100 on employee wages in 2019.<sup>230</sup> As a comparison, for electrical contractors the ratio was \$13 for contract labor for every \$100 for employees.<sup>231</sup> The construction industry, while only having 9.4 percent of workers' compensation claims among law-abiding employers, account for 47.3 percent of the cases involving uninsured employers.<sup>232</sup>

Losses due to misclassification and fraud in the construction industry:

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<sup>221</sup> Exec. Order No. 23 FY 08/09, Office of the Governor ME (January 14, 2009)

<sup>222</sup> 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).

<sup>223</sup> *The Social & Economic Costs of Illegal Misclassification, Wage Theft and Tax Fraud in Residential Construction in Massachusetts*, Tom Juravich, Russell Ormiston and Dale Belman, UMass Amherst Labor Center, Institute for Construction Economic Research (2021), available at, <https://www.umass.edu/lrrc/sites/default/files/Juravich%20Wage%20Theft%206%2028%2021.pdf>

<sup>224</sup> *Ibid.* p. i.

<sup>225</sup> *Ibid.* p. iv.

<sup>226</sup> *Ibid.* p. ii.

<sup>227</sup> *Ibid.* p. 24.

<sup>228</sup> *Ibid.* p. ii.

<sup>229</sup> *Ibid.* p. iii and 24.

<sup>230</sup> *Ibid.*

<sup>231</sup> *Ibid.*

<sup>232</sup> *Ibid.*

Unemployment insurance fund	\$25.5 to 40.6 million <sup>233</sup>
Workers' compensation premiums	\$37 to \$78.3 million <sup>234</sup>
Overtime wages	\$19.3 to \$40.8 million <sup>235</sup>
Income taxes	\$6.7 to \$41.3 million <sup>236</sup>

The authors wrote: “Our baseline estimates suggest that worker misclassification and off-the-books employment allowed Massachusetts construction employers to reduce labor costs by at least \$140.4 million in 2019. This likely undercounts the true social harm to workers and taxpayers. In addition to using conservative assumptions in building our models, our analysis is restricted to areas in which there is sufficient empirical data to defensibly quantify the issue. Given that data availability is limited when studying the underground economy, our total does not include statewide estimates of direct wage theft (explicit non-payment for work), business tax revenue shortfalls attributable to non-filing by labor brokers, medical costs on unreported workplace injuries, and a host of other direct and indirect effects that were reported in our interviews. As a result, the true social and economic costs of worker misclassification are likely an unknown multiple of the totals offered in this study.”<sup>237</sup>

**\*Massachusetts study 2004.**<sup>238</sup>

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.<sup>239</sup>

**\*Michigan 2008 study.**<sup>240</sup>

Thirty percent of employers underreport their employee payroll by misclassifying employees as self employed or underreporting payroll. Eight 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.<sup>241</sup> Twenty-six percent of construction employers misclassify employees or pay unreported payroll, 24 percent of trucking

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<sup>233</sup> *Ibid.*

<sup>234</sup> *Ibid.*

<sup>235</sup> *Ibid.*

<sup>236</sup> *Ibid.*

<sup>237</sup> *Ibid.* p. iii-iv.

<sup>238</sup> *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).

<sup>239</sup> Massachusetts Study, p. 1.

<sup>240</sup> *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).

<sup>241</sup> Michigan Study, p. 5.

employers and 56 percent of security-guard firms.<sup>242</sup> **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.<sup>243</sup>

	All Industries <sup>244</sup>	Construction <sup>245</sup>
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:**<sup>246</sup>

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

Within construction, the study found that 31 percent of drywall employers misclassify their employees as independent contractors.<sup>247</sup>

This study does not include the degree of unreported pay in the underground economy.<sup>248</sup>

\*A study was completed in **2023 on misclassification and wage theft in the Missouri construction industry.**<sup>249</sup> The researcher concluded that in 2020 30,905 construction workers, or 21 percent of the construction workforce, were either misclassified as independent contractors or paid off-the-books.<sup>250</sup> Losses were calculated using a yearly income range for the workers o \$30,000 and \$50,000.<sup>251</sup> Using this range, the losses were as follows:<sup>252</sup>

Unpaid overtime:	\$19.3 to \$32.1 million
Unpaid workers comp. premiums	\$41.3 to \$68.9 million
Unemployment insurance contributions	\$16.7 to \$27.8 million
Employer share of FICA transferred to workers	\$70.9 to \$118.2 million
Federal income taxes	\$33.2 to \$104.1 million

<sup>242</sup> *Ibid.*, p. 7

<sup>243</sup> Of those who run afoul of the law, 38% misclassified and 62% didn't report payroll at all. *Ibid.*, p. 9.

<sup>244</sup> *Ibid.*, p. 5 and 10.

<sup>245</sup> *Ibid.*, p. 9-10.

<sup>246</sup> *Misclassification of Employees as Independent Contractors*, Office of the Legislative Auditor, State of Minnesota, pp 15 and 18 (November 2007).

<sup>247</sup> *Ibid.*, p. 20.

<sup>248</sup> Minnesota Study, p. 15.

<sup>249</sup> *Worker Misclassification and Wage Theft in the Construction Industry in Missouri*, Michael Kelsay (March 2023).

<sup>250</sup> *Ibid.*, p. 4.

<sup>251</sup> *Ibid.*, p. 5.

<sup>252</sup> *Ibid.*

Assuming wages of \$50,000, construction employers that engaged in fraud “paid \$1.5 billion for labor that should have cost \$2.0 billion if that had been hired and paid legally.”<sup>253</sup>

**\*New Jersey 2016 study**

The study used 2014 statistics.<sup>254</sup>

The estimated of the **size of underground construction economy averaged at \$645 million and could be as high as \$1.2 billion.**<sup>255</sup> The construction underground economy is made up of **23,000 workers paid off-the-books and 11,600 wrongly classified** as 1099 independent contractors.<sup>256</sup> As much as \$528 million was paid in wages to those two groups.<sup>257</sup> **The lost state personal income taxes resulting from off-the-books payments and misclassification could be as high as \$19.6 million.**<sup>258</sup> **\$3.1 million to \$6.7 million in unemployment taxes** were also unpaid.<sup>259</sup>

**\*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 percent of employers uncovered **42 percent, in all industries, misclassifying employees as independent contractors** or paying them cash “off the books.”<sup>260</sup> Those 2006 audits found 25,000 misclassified workers and **\$565 million in unreported wages.**

**\*New York state study 2007:**<sup>261</sup>

	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 construction employment from 2000 to 2005.<sup>262</sup> Conservatively, New York City had 82,000 residential construction workers in 2005. Thirty thousand of those construction workers were

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<sup>253</sup> *Ibid.*, p. 24.

<sup>254</sup> *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).

<sup>255</sup> *Ibid.*

<sup>256</sup> *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.

<sup>257</sup> *Ibid.*, p. 3.

<sup>258</sup> *Ibid.*, p 9.

<sup>259</sup> *Ibid.*, p 3.

<sup>260</sup> *Congressional Probe Look sat Misclassified Workers*, by Michael Whiteley, Workcompcentral (August 1, 2007).

<sup>261</sup> *The Cost of Worker Misclassification in New York State*, Cornell Univ., ILR School, by Donahue, p. 2 (February 2007) (New York Study).

<sup>262</sup> *The Underground Economy in the New York City Affordable Housing Construction Industry*, Fiscal Policy Institute (New York City Housing), p. 1, 9. (April 2007).



employed illegally.<sup>263</sup> (13,000 may have been misclassified and the other 17,000 were completely off the books.<sup>264</sup>) 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.<sup>265</sup>

**\*The Fiscal Policy Institute also released a study in December 2007 on illegal employment practices in the entire New York City construction market.**<sup>266</sup> Like the study of the residential market, this study captures workers who are improperly misclassified as well as those paid unreported compensation.<sup>267</sup> The study made the following findings of losses in 2005:<sup>268</sup>

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 million
Fed employment tax/comp. premium lost:	\$ 271.6 million
New York state income tax lost:	\$ 15.2 million
New York City income tax lost:	<u>\$ 11.0 million</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.**<sup>269</sup> 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,<sup>270</sup> resulting in the following losses:<sup>271</sup>

Workers comp. premiums:	\$ 235.0 million
Unemployment contribution:	\$ 44.5 million
FICA:*	\$ 141.6 million
NY State disability:*	\$ 2.0 million
Health care cost shifting:	\$ 165.4 million
Fed personal income tax lost:	\$ 57.0 million
New York state personal income tax lost:	\$ 24.7 million
New York City personal income tax lost:	<u>\$ 17.1 million</u>
Total losses:	\$ 687.3 million

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<sup>263</sup> New York City Housing, pp. 1, 10-12.

<sup>264</sup> *Ibid.*

<sup>265</sup> *Ibid.*, pp. 1, 8-9.

<sup>266</sup> *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).

<sup>267</sup> New York City Construction, p. 1.

<sup>268</sup> *Ibid.*, pp. 1, 20-21.

<sup>269</sup> *The Economic and Fiscal Cost of Employer Fraud in the New York City Construction Industry*, Fiscal Policy Institute (June 2013).

<sup>270</sup> *Ibid.*, p. 3.

<sup>271</sup> *Ibid.*, pp. 6-9 and 11.

\*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.<sup>272</sup>

Number of misclassified employees:	459,000 <sup>273</sup>
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.<sup>274</sup>

**\*Pennsylvania 2022**

In March 2022 a task force on misclassification issue a report an recommendations for legislation.<sup>275</sup> The task force is composed of representatives from the state labor department, revenue, attorney general’s office and stakeholders appointed by the leadership in the legislature.<sup>276</sup> Using information from the Office of Unemployment Tax Services (OUCTS), the report found:<sup>277</sup>

The average number of misclassified workers per OUCTS audit is 7.9,  
In 2020 11,670 workers are estimated to have suffered a workplace injury or illness and were denied workers’ compensation benefits,  
Annually, 49,266 employers in the state misclassify at least one worker,  
389,000 employees are misclassified as independent contractors annually,  
In 2020, the Uninsured Employers Guarantee Fund lost \$440,781 due to misclassification,  
The unemployment benefit trust fund suffers an annual loss of \$131 million,  
The general fund lost \$6.4 to 124.5 million in revenue in 2019 and  
In 2020, misclassified workers who were injured or suffered an illness at work lost \$176,312,344.

Misclassification in the construction industry is cited in the report as common.<sup>278</sup> The task force writes in the report,

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<sup>272</sup> *Report of the Ohio Attorney General on the Economic Impact of Misclassified Workers for State and Local Governments in Ohio* (February 18, 2009)

<sup>273</sup> *Ibid.*, p. 19.

<sup>274</sup> *Ibid.*, p. 22.

<sup>275</sup> *Act 85 of 2020 Joint Task Force on Misclassification of Employees* (March 1, 2022).

<sup>276</sup> *Ibid.*, p. 9.

<sup>277</sup> *Ibid.*, p. 5.

<sup>278</sup> *Ibid.*, p 6.

Undeniably, worker misclassification has serious costs to the financial and physical health of workers, to the economic competitiveness and fairness for law-abiding businesses, and to the fiscal health of critical public programs.<sup>279</sup>

### **\*Pennsylvania 2019**

Researchers applied rates of misclassification and off-the-books employment in the construction industry from other state studies to Pennsylvania.<sup>280</sup> Using such assumptions they concluded that the annual losses are:

Unemployment insurance contributions:	\$10 million
State income taxes:	\$15 to 45 million
Workers' compensation premiums:	\$83 million
Federal income taxes	\$200 million. <sup>281</sup>

### **\*Pennsylvania 2008 study**

Nine percent, or 580,000 workers are misclassified as independent subcontractors annually, costing the unemployment compensation trust fund over \$200 million a year in lost revenue.<sup>282</sup> The cost to the worker's compensation system is \$81 million in lost premiums.<sup>283</sup>

This study does not include the degree of unreported pay in the underground economy.<sup>284</sup>

### **\*Rhode Island 2022 study:**

This report issued in 2022 relied on data between 2016 and 2021 from The Rhode Island Department of Labor and Training (DLT) and the Wage and Hour and Workers' Compensation Divisions.<sup>285</sup> The research disclosed that 9.3 percent of employers in the state illegally misclassify employees as independent contractors.<sup>286</sup> In 2009, 6 percent of employers misclassified at least one worker.<sup>287</sup> 19,359, or 4.4 percent of the state's workforce, is misclassified.<sup>288</sup> Misclassification is especially severe in the construction industry where 11.7

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<sup>279</sup> *Ibid.*, p. 8.

<sup>280</sup> *Illegal Labor Practices in the Philadelphia Region Construction Industry: An Assessment and Action Plan*, by Steven Herzenberg and Russell Ormiston, Keystone Research Center, p. 1 (January 2019), available at <https://www.keystoneresearch.org/sites/default/files/KRC%20Illegal%20Labor%20Con%20Final.pdf> .

<sup>281</sup> *Ibid.*

<sup>282</sup> 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*).

<sup>283</sup> 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).

<sup>284</sup> *Beaty*, p. 3.

<sup>285</sup> *Worker Misclassification and Wage Theft in Rhode Island*, Russell Ormiston and Tom Juravich, Univ. of Massachusetts Amherst Labor Center and the Institute for Construction Economic Research, pp. 2-3 (February 2022), available at <https://www.umass.edu/lrrc/sites/default/files/ICERES-RI%20Worker%20Misclassification%20Report%20%28003%29%20Final.pdf>

<sup>286</sup> *Ibid.*, p. 2.

<sup>287</sup> *Ibid.*, p. 13.

<sup>288</sup> *Ibid.* p. 2 and 11.

percent of construction employers misclassify workers, impacting 8.4 percent of the construction workforce.<sup>289</sup> A further examination showed residential contractors and janitorial firms misclassified 30 percent of their workers as independent contractors.<sup>290</sup> The construction industry accounted for 70 percent of wage theft cases.<sup>291</sup> When caught and fined, construction employers only pay 35 percent of the fines assessed, far less than other industries.<sup>292</sup> Employers that misclassify workers, and those that do not, that is 20.3 percent of employers, failed to report \$185.3 million in wages to DLT’s unemployment insurance division.<sup>293</sup> The researchers wrote that these numbers are conservative, because they come from unemployment division audits, the data does not disclose the true depth of underground, off-the-books cash payments.<sup>294</sup>

<u>Losses 2019:</u>	<u>Low estimate</u> <sup>295</sup>	<u>High estimate</u> <sup>296</sup>
Income Taxes	\$2.2 million	\$22 million
Unemployment Ins.	\$7 million	\$20.6 million
Temp Disability	\$2 million	\$10.1 million
Job Development	\$389,068	\$1.7 million
Workers’ Comp. Premiums	\$1.3 million	\$6.7 million
Employer FICA Offloaded onto workers	\$14 million	\$70 million
Unpaid Overtime	\$5.9 million	\$41.9 million

Employers illegally shave \$27 to \$119 million off their labor costs.<sup>297</sup>

The authors of the report wrote:

This study and others across the country have made clear that the current regulatory structure does not provide sufficient penalties to employers who engage in intentional, egregious, and repeated misclassification of workers. In addition to establishing greater disincentive for workers’ direct employers, policymakers should also consider the establishment of joint liability for wage and hour violations. The extraordinary rise in subcontracting—from construction sites to cleaning companies—has given rise to an employment structure in which principals, developers and general contractors knowingly hire subcontractors whose business models are predicated on low costs generated by misclassifying workers and wage theft. Until these larger firms are held responsible for the behavior of their subcontractors, payroll fraud will continue to be standard practice in many industries.<sup>298</sup>

**\*Tennessee 2010 study**

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<sup>289</sup> *Ibid.*, p. 2 and 8-9.

<sup>290</sup> *Ibid.*, p. 2.

<sup>291</sup> *Ibid.*, p. 3.

<sup>292</sup> *Ibid.*, p. 9.

<sup>293</sup> *Ibid.*, p. 2 and 11.

<sup>294</sup> *Ibid.*, p. 2 and 12.

<sup>295</sup> *Ibid.*, p. 19.

<sup>296</sup> *Ibid.*, p. 21.

<sup>297</sup> *Ibid.*, p. 19 and 21.

<sup>298</sup> *Ibid.*, p. 3.

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 2006.<sup>299</sup> 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.<sup>300</sup>

**\*Texas 2013 study**

Construction companies and workers were interviewed by researchers in Austin, Dallas, Houston, San Antonio and El Paso.<sup>301</sup> 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,<sup>302</sup> costing the state an estimated \$54.5 million in lost unemployment contributions.<sup>303</sup> The resulting federal income tax loss is \$1.06 billion.<sup>304</sup>

**\*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 online 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.<sup>305</sup> Most of the answers came from a survey of the top nine workers' compensation insurers in the state.<sup>306</sup> They concluded that it is feasible to have an online proof-of-coverage database open to the public.<sup>307</sup> Also, they found that insurance companies don't believe that class-code misclassification is a serious problem.<sup>308</sup> They do believe that independent contractor misclassification is a problem and that it is a particular problem in the construction industry.<sup>309</sup> The insurers say that misclassification of class codes and especially employees as independent contractors raises premium costs.<sup>310</sup> Regarding current statutes, the Department of Labor recommends a uniform definition of independent contractor for its unemployment and workers compensation codes.<sup>311</sup>

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<sup>299</sup> *Misclassified Construction Employees in Tennessee*, Dr. William Canak and Dr. Randal Adams, pp. iv and vi (January 15, 2010).

<sup>300</sup> *Ibid.*, p. v.

<sup>301</sup> *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).

<sup>302</sup> *Ibid.*, p. ii, 13.

<sup>303</sup> *Ibid.* pp. iii. 40, 45, 46 and 56.

<sup>304</sup> *Ibid.*, p. 46.

<sup>305</sup> *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).

<sup>306</sup> *Ibid.* p. 21.

<sup>307</sup> *Ibid.* at p. 3.

<sup>308</sup> *Ibid.* at pp. 3 and 15.

<sup>309</sup> *Ibid.* at pp. 4 and 15-16

<sup>310</sup> *Ibid.* at p. 15.

<sup>311</sup> *Ibid.* at pp. 4-5 and 9-10

**\*Washington 2023 study**

The Washington state legislature had the Washington State Institute for Public Policy study the underground construction economy in the state.<sup>312</sup> The study uses data ranging from 2011 to 2021.<sup>313</sup> They define “construction underground” activity as misclassifying employees as independent contractors, non-reporting of workers and their income, businesses that underreport their activity or are not registered, and legitimate independent contractors underreporting their income.<sup>314</sup> The researchers found that on average from 2011 to 2021 14.2 percent of construction workers were “not properly reported to payroll and tax authorities per year.”<sup>315</sup> They estimated that independent contractors underreport a low of 23.3 percent of their income at a middle estimate of 43.65 percent and a high of 64 percent.<sup>316</sup> Misclassified employees lost \$142.6 million on average between 2011 and 2021.<sup>317</sup> In 2021 workers lost up to \$291.679 million in overtime, leave, health insurance and retirement benefits.<sup>318</sup> The state lost up to \$87.883 million in unemployment insurance contributions (\$26.950) and workers’ compensation premiums (\$60.933).<sup>319</sup> Federal Social Security, Medicare losses were \$386 million and \$179.242 million in federal income taxes were lost.<sup>320</sup>

**\*Washington 2019 study<sup>321</sup>**

The study was of all industries using 2017 data. Construction is cited as a major culprit.<sup>322</sup>

Findings:

The percentage of employers that misclassified employees as independent contractors increased from five percent in 2008 to 14.4 percent in 2017.<sup>323</sup> The violations are more severe. The average number of employees misclassified by an offending employer increased from 10 percent in 2008 to 25 percent in 2017.<sup>324</sup> A conservative estimate is 1.3 percent, or 44,492 workers were misclassified each year between 2013 and 2017.<sup>325</sup>

Annual losses in millions:<sup>326</sup>

State unemployment	\$30.4
Workers' comp. premiums	53.6
Federal income taxes	76.8
Federal payroll taxes	59.8

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<sup>312</sup> *The Underground Construction Economy of Washington State: Size, Cost, and Government Enforcement Efforts*, by Washington State Institute for Public Policy, (September 2023), available at [https://www.wsipp.wa.gov/ReportFile/1774/Wsipp\\_The-Underground-Construction-Economy-of-Washington-State-Size-Cost-and-Government-Enforcement-Efforts\\_Report.pdf](https://www.wsipp.wa.gov/ReportFile/1774/Wsipp_The-Underground-Construction-Economy-of-Washington-State-Size-Cost-and-Government-Enforcement-Efforts_Report.pdf).

<sup>313</sup> *Ibid.*, p. 1.

<sup>314</sup> *Ibid.*, p. 4.

<sup>315</sup> *Ibid.*, p. 1 and 14.

<sup>316</sup> *Ibid.*, p. 17.

<sup>317</sup> *Ibid.*, p. 19.

<sup>318</sup> *Ibid.*, p. 20

<sup>319</sup> *Ibid.*

<sup>320</sup> *Ibid.*

<sup>321</sup> *Economic Consequences of Misclassification in the State of Washington*, Harvard Worklife Program, by Lisa Xu and Mark Erlich (December 2019).

<sup>322</sup> *Ibid.* at 5.

<sup>323</sup> *Ibid.*

<sup>324</sup> *Ibid.*

<sup>325</sup> *Ibid.*

<sup>326</sup> *Ibid.*

Federal unemployment \_\_\_\_\_ 1.8  
Total \$222.4  
(Washington does not have an income tax).

**\*Washington 2007 study**<sup>327</sup>

In-state and out-of-state businesses 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 in 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 or state. Construction is cited as a focus for enforcement.

**\*A report released by the Wisconsin Misclassification Task Force** disclosed that 44 percent of workers of companies audited by unemployment tax were reclassified as employees.<sup>328</sup>

**\*West Virginia 2020**

The West Virginia legislative auditor studied the state's unemployment insurance division collections because it received a failing grade from the U.S. Department of Labor from 2014 to 2018.<sup>329</sup> From 2014 to 2019, the number of full-time auditors decreased from seven to one.<sup>330</sup> The starting salary for an unemployment auditor is only \$27,729, and for an auditor in Tax and Revenue it is \$31,146.<sup>331</sup> The auditor found that the decrease in the number of unemployment auditors lead to a decrease in audits from 1,006 in 2014 to 210 in 2018.<sup>332</sup>

<sup>327</sup> *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).

<sup>328</sup> *Report of the Worker Misclassification Task Force Submitted to Secretary Roberta Gassman, Department of Workforce Development*, pp. 6-7 (2009).

<sup>329</sup> *Post Audit Division, WorkForce West Virginia-Worker Misclassification*, Joint Committee on Government and Finance, West Virginia Office of the Legislative Auditor, p. 2 (2020).

<sup>330</sup> *Ibid.*, p. 10.

<sup>331</sup> *Ibid.*

<sup>332</sup> *Ibid.* p. 11.

The auditor estimates the following losses for the state because of misclassification of employees as independent contractors, based upon \$27.4 million in underreported wages from 2014 to 2018 found by the unemployment auditor(s):

State income taxes: \$824,000 to \$1.1 million  
Unemployment contributions \$410,000.<sup>333</sup>

Furthermore, the auditor noted that the state law has no penalties for misclassification or the failure of employers to cooperate with investigations, and there no data sharing arrangements between the unemployment division and other agencies.<sup>334</sup> The auditor recommends that be corrected.<sup>335</sup>

#### **\*Wisconsin 2020**

The state's task force issued an annual report.<sup>336</sup> The task force was created in April 2019 by an executive order signed by Gov. Evers.<sup>337</sup> Losses to the state of Wisconsin caused by misclassification and payroll fraud in 2019:<sup>338</sup>

Unemployment contributions: \$56 million all industries  
Personal income tax: \$91.2 million all industries  
Business tax: \$50.7 million from the construction industry.

In addition, over the previous ten years the \$2.6 million per year of workers' compensation benefits were paid for injuries to workers who were not properly classified as employees.<sup>339</sup> Construction led other industries with the most injuries.<sup>340</sup>

## **Canada**

#### **\*Canada 2020**

**Statistics Canada** released statistics for 2018 showing that the underground economy nationwide reached \$61.2 billion, or 2.7 percent of total GDP.<sup>341</sup> The underground economy decreased 0.8 percent from 2017.<sup>342</sup> Residential construction accounted for the greatest share of

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<sup>333</sup> *Ibid.* p. 11-12.

<sup>334</sup> *Ibid.* p. 13-17.

<sup>335</sup> *Ibid.*

<sup>336</sup> *Task Force on Payroll Fraud and Worker Misclassification Report*, State of Wisconsin Department of Workforce Development (2020), available at <https://dwd.wisconsin.gov/misclassification/pdf/2019-2020-misclassification-task-force-report.pdf> (Accessed October 30, 2020).

<sup>337</sup> *Ibid.*, p. 2.

<sup>338</sup> *Ibid.*, p. 2 and 4-8.

<sup>339</sup> *Ibid.*, p. 2 and 6.

<sup>340</sup> *Ibid.* Appendix 3, Chart 2, p. 19.

<sup>341</sup> *Residential construction remained the top contributor to underground activity in 2018*, Statistics Canada, available at, <https://www150.statcan.gc.ca/n1/daily-quotidien/201023/dq201023a-eng.htm>.

<sup>342</sup> *Ibid.*



all industries, clocking in at 26.2 percent of underground economic activity.<sup>343</sup> The next highest industry was retail trade at 12.3 percent.<sup>344</sup>

The greatest underground activity in dollar amounts was found in the following provinces:<sup>345</sup>

Ontario: \$22.8 billion,  
Quebec: \$14.2 billion,  
British Columbia: \$10.8 billion and  
Alberta: \$6.2 billion.

The greatest proportion of underground activity to nationwide GDP was found in:<sup>346</sup>

British Columbia: 3.7 percent,  
Prince Edward Island: 3.3 percent and  
Quebec: 3.2 percent.

### **\*Canada 2018**

According to **Statistics Canada** the underground economy in Canada accounted for \$45.6 billion of economic activity in 2013.<sup>347</sup> The largest slice of that activity came from the residential construction industry, amounting to 27.8 percent of the total, or \$12.7 billion, of the underground economy.<sup>348</sup>

### **Provincial Studies and Reports**

#### **\*Ontario 2019**

A **2019** study for the Ontario Construction Secretariat by **Prism Economics and Analysis** of the Ontario underground construction economy found the following losses, in millions:<sup>349</sup>

	Low	High
WSIB Premiums	\$308	340
Income tax	573	1,148
HST-Federal	192	320
HST-Provincial	307	512
CPP	341	656
EI	62	119
EHT	12	18

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<sup>343</sup> *Ibid.*

<sup>344</sup> *Ibid.*

<sup>345</sup> *Ibid.*

<sup>346</sup> *Ibid.*

<sup>347</sup> *The Underground Economy in Canada, 2013*, Statistics Canada, available at, <https://www150.statcan.gc.ca/n1/daily-quotidien/160620/dq160620b-eng.htm> (Accessed November 12, 2019).

<sup>348</sup> *Ibid.*

<sup>349</sup> *The Underground Economy in Ontario's Construction Industry: Estimates of the Revenue Losses to Governments*, Prism Economics and Analysis, p. 4 (2019).

TOTAL                                 \$1,795             \$3,113

The underground economy encompasses about 15 percent cash transactions. Most comes from workers being improperly styled as independent operators.<sup>350</sup>

**\*A report from the British Columbia Building Trades** in 2018 concluded that “[u]p to 40% of contractor/worker income in the BC residential renovation/repair market is undeclared.”<sup>351</sup>

**\*British Columbia 2021**

Prism Economics and Analysis issued a report estimating the size of the underground construction economy in British Columbia.<sup>352</sup> In 2001 a study was done of 400 job sites in British Columbia by the Joint Compliance team, established by the BC Ministry of Skill Development and Labour, the federal Department of Human Resources Development and the Canada Customs and Revenue Agency.<sup>353</sup> They found misclassification of workers as independent operators on 29 percent of the sites.<sup>354</sup> Using that 29 percent number, the Prism analysts concluded that in 2019, 5.6 percent of the construction workforce, or 48,200 workers, were misclassified as independent operators.<sup>355</sup> Contractors that misclassify in British Columbia realize an illegal savings of 20 percent on labor costs.<sup>356</sup> The losses to specific programs are as follows:<sup>357</sup>

Employer health tax	\$12,110,354
WorkSafeBC	\$24,531,405
Income tax, CPP, EI	
All independent operators	\$271,607,000
(this number includes properly classified independent operators who under-report their income)	
Misclassified IOs	\$78,766,030
<b>Totals: All IOs</b>	<b>\$308,248,761</b>
Misclassified IOs	\$115,407,791

The report cites a study published by the Bank of Canada estimating that 30 to 50 percent of the self-employed under-report their income.<sup>358</sup> The analysts use a finding in a study by the US Federal Reserve System that the self-employed under-report their income by 30 percent.<sup>359</sup>

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<sup>350</sup> *Ibid.*, p. 6.

<sup>351</sup> *Underground Economy*, by BC Building Trades (2018).

<sup>352</sup> *Estimating the Size of the Underground Economy in the British Columbia Construction Industry*, by Prism Economics and Analysis (November 2021).

(This study is also contained in: *The Underground Economy in British Columbia’s Construction Industry: Assessing the Impact*, BC Building Trades (2022)).

<sup>353</sup> *Ibid.*, pp. 1 and 14

<sup>354</sup> *Ibid.*

<sup>355</sup> *Ibid.*, p. 1.

<sup>356</sup> *Ibid.*

<sup>357</sup> *Ibid.*, p. 2.

<sup>358</sup> *Ibid.*, p. 6.

<sup>359</sup> *Ibid.*, pp. 6 and 20.

**\*Quebec 2022**

Revenu Quebec reports on their 2022 web page that \$1.5 billion in revenue losses due to tax evasion occur yearly in the construction industry.<sup>360</sup> Tax evasion includes “the failure of individuals and business to report certain economic activities in order to avoid paying all the income tax they owe.”<sup>361</sup>

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<sup>360</sup> *Tax Evasion in the Construction Sector*, Revenu Quebec, <https://www.revenuquebec.ca/en/one-mission-concrete-actions/ensuring-tax-compliance/tax-evasion/construction-sector/> (last visited January 31, 2022).

<sup>361</sup> *Ibid.*