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Eastern Atlantic States
REGIONAL COUNCIL OF CARPENTERS

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Senate Democratic Policy Committee

Hearing on Worker Misclassification and the Future of Work

Testimony of James Hocker
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Dear Senate Democratic Policy Committee,

I'd like to start with thanking the Chair and the members of the committee for inviting the Carpenters to testify and be a part of such an important discussion. As a Senior Council Representative for the Eastern Atlantic States Regional Council of Carpenters, I assist in the representation of over 20,000 highly skilled union carpenters in the Commonwealth of Pennsylvania. Our union represents carpenters on and off the jobsite and advocate for workers' rights issues including the all-too-common issues of worker misclassification and wage theft in the construction industry. These tactics are used by unscrupulous contractors in the industry with the objective of gaining more profits off the backs of workers and local taxpayers. These actions are illegal and those unscrupulous employers who misclassify their employees as "independent contractors" and steal their wages - while also avoiding paying federal, state, and local taxes — should be held accountable.

Wage theft happens when workers aren't paid all or a part of the wages they've earned. Another form of wage theft is not paying the legally mandated time-and-a-half overtime premium for hours worked in excess of 40 hours in a week. It is wage theft when any worker, documented or otherwise, isn't paid their full and complete wages. Generally, wage theft is also accompanied by tax and insurance fraud and other crimes. Wage theft isn't accidental — it's part of a concerted business model used by thousands of construction companies to shield themselves from tax liability and avoid prosecution for wage theft. Now they are being held accountable — and being prosecuted.

According to a recent study by the Institute for Construction Economic Research (ICER), there are an estimated 2.16 million construction workers in the United States who are misclassified as "independent contractors" and paid under the table - or off the books. It is also stated in that study that more and more contractors are paying their workers under the table, resulting in an estimated \$8.4 billion annual loss in revenue to federal, state and local governments treasuries. Studies have also showed that it is estimated that the Commonwealth of Pennsylvania loses \$200 million a year. Additionally, it is reported that \$2.98 Billion is lost in Social Security and Medicare Coverage across the country, \$1.74 billion estimated shortfalls in Workers Compensation, \$811.1 Million in unpaid overtime \$725.1 million shortfalls in unemployment insurance payments.

Leaders in Harrisburg have taken positive steps in defending workers and combatting wage theft and misclassification in our Commonwealth. The passage and implementation of Act 72 in 2011 was a major step in defending the victims of wage theft and worker misclassification by narrowing the definition of an "independent contractor". It has not been until recently that the enforcement aspect of Act 72 has taken shape. The Pennsylvania Attorney General's Office as well as local District Attorneys have taken these cases seriously. Case in point is a recent joint-indictment by Attorney General Josh Shapiro and Delaware County District Attorney Jack Stollsteimer — of a Delaware County construction company for misclassification and other related violations under Act 72. One of the employees victimized by wage theft was 27-year-old husband and father of a two-year-old from Northern Ireland who was also subjected to unsafe working conditions and killed on one of their job sites.



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More workers must be protected and revisions to Act 72 need to be passed to truly send a message to bad actors in the construction industry that these tactics are not tolerated and come with consequences. First, workers must be more provided the peace of mind that they come forward and fight for the wages stolen from them. Too many times workers will not report their stolen wages due to fear of retaliation. To prevent this private right to action and stronger anti-retaliation protections for workers must be included in revisions to Act 72. The most vulnerable workers among us are often subjected to wage theft and afraid to come forward in fear of loss in more wages, their safety, or immigration status used against them. These changes can help more stories of worker misclassification and wage theft come to the light and help prosecute those who commit these crimes.

Additionally, Act 72 needs to be strengthened to provide increased penalties and cut the red tape that prevents the Attorney General's Office from acting on behalf of workers sooner rather than later. There is also the sad fact that the penalties in place now for bad actors are deemed to just be "part of doing business" in the construction industry. Fines and penalties are not hurting the bottom line of these unscrupulous contractors and the savings they gain off the backs of workers is still worth it. Higher penalties must be added to deter further wage theft and misclassification in our Commonwealth.

Our union also believes the introduction of Senate Bill 879 to the Pennsylvania General Assembly would do a lot of good in the Commonwealth if passed into law. As you may know, Senate Bill 879 would create General Contractor Responsibility. This will provide equal responsibility across the board for general contractors in addition to the sub-contractors they use to commit wage theft and misclassification. General Contractors should have liability for their hiring methods that can possibly lead to fraud.

Another great tool that should be considered by our leaders in Harrisburg is providing the Secretary of Labor immediate stop work order power. Stop work orders are in place to ensure an unsafe or irresponsible jobsite can no longer harm workers. Under current procedures red tape prevents action from being taken right away, allowing unscrupulous contractors to continue stealing from workers and finishing a job on their schedule. An immediate stop work order would create another deterrence.

Our union is committed to exposing and fighting this fraud on American taxpayers - regardless of the state or jurisdiction. We are pressing forward and doing our due diligence and presenting our evidence to local law enforcement. We believe workers and taxpayers must be protected from these unscrupulous labor brokers and construction industry contractors.

Sincerely,

James Hocker
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Representing members in Delaware, Maryland, New Jersey, Pennsylvania, Virginia, West Virginia,
The District of Columbia and the Territory of Puerto Rico.