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INDEPENDENT CONTRACTOR BILL • CHAIRMAN EMERITUS ED SMITH • 10TH ANNUAL NAFC CONFERENCE

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ON THE COVER:

I-35W St. Anthony Falls Bridge reconstruction Minneapolis, Minnesota. Photo used with permission of Minn. DOT

Since 1990, the National Alliance for Fair Contracting (NAFC) has been providing a forum in the construction industry for those interested in fair, competitive contracting.

NAFC is a labor-management organization that promotes a "level playing field" through compliance with all applicable laws in public construction.

When responsible contractors bid and perform public construction projects, the taxpayer gets a high quality project performed by contractors who comply with the laws of the land.

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New Leadership: Filling Ed's Shoes

Someone asked me the other day how I felt about filling Ed Smith's Shoes with the National Alliance for Fair Contracting. What does that mean?

Both Ed and I are pretty big guys so I will assume that he does not have petite feet but I am somewhat bemused by this American saying that has been around for a very long time.

If the questioner meant to inquire if I felt confident to carry on the professional leadership of this very professional organization the answer is an inequitably yes.

Ed Smith and I have been close working partners and friends for a very long time. And while our styles of leadership may be a little different, the foundations of our core values are not.

Both of us believe in hard work and are dedicated to the hard working men and women in this country that have made America the great nation it is today. Both of us are dedicated to honest and open government and a process in construction that is all about fairness in competing for the work.

One in which the foundation is a level playing field for all that are involved, including the labor force that will construct the buildings, roadways, bridges and tunnels. So that at the end of the day, not only will the entire community feel comfortable with the process but will be proud to claim ownership as well.

I began my professional career as a Senior Field Investigator with the

I am very thankful for the confidence the Board has instilled in me by electing me Chairman of the Board and I promise you that like Ed Smith 'We will indeed persevere.'

Center of Contract Compliance (CCC) out in California from 1988 through 1995 working on a daily basis to see that Labor laws were effectively and efficiently enforced so that responsible contractors and their employees could share in the American dream. That battle is being carried forward today by the same organization only now it is under the leadership of Jim Reed one of NAFC's Board of Directors. Needless to say, I am extremely proud of my past and current association with the CCC and personally know how much the organiza-



Rocco Davis, Chairman

tion and its staff contributes to our national effort as well.

NAFC has set as its number one goal to correct the abuse of Independent Contractor status and the misclassification of employees. While the battle has not been won, the National Alliance for Fair Contracting and its many members are effectively educating federal, state and local government leaders to the issue and the amount of tax revenue lost in a declining economy. To date our efforts are being recognized in that over thirty states have either begun to address the issue by executive order, regulation or by passing legislation. There are two current bills in the United States House of Representatives and one in the United States Senate that will go a long way towards correcting the problem. NAFC is currently a long way down the road to assisting the government in narrowing the extremely large "Income Tax Gap" and creating an atmosphere of "fair contracting" for responsible contractors and their employees throughout the country.

As Ed Smith is quoted in the spring issue of Prevailing Times, "The National Alliance for Fair Contracting is in this very important battle for the long haul and for all the right reasons. We will persevere."

Independent Contractor

The Employee Misclassification Prevention Act of 2008 (H.R. 6111) (“EMPA”) has been introduced in the U.S. House of Representatives to stop employers who “cheat to compete” by improperly classifying workers as independent contractors. The bill amends the Fair Labor Standards Act to increase penalties on employers who misclassify workers as independent contractors and also steps up enforcement efforts to catch employers who break the law.

Co-sponsor Rep. Lynn Woolsey (D-CA), chair of the Subcommittee on Workforce Protections, stated: “Employers who misclassify their employees as independent contractors rob workers of needed pay and benefits and cost government at

all levels substantial uncollected revenues. Despite this enormous problem, the Department of Labor has failed not only to crack down on this practice by enforcing current laws, but has failed to coordinate with other agencies to address the issue.”

Other co-sponsors described H.R. 6111 as “pro-employee, pro-employer and pro-taxpayer. The bill will protect employee benefits, remove incentives for employers to misclassify their workers, and ensure that bad employers don’t line their own pockets with unpaid payroll taxes.”

Hearings before Rep. Woolsey’s subcommittee and before the Subcommittee on Health, Employment, Labor and Pensions documented the scope of the problem of worker misclassification, particularly in the construction industry. The legislators heard from construction industry experts who presented to both subcommittees evidence documented by NAFC and others that misclassification is on the rise.

The lawmakers pointed to the NAFC-sponsored study *The Economic Costs of Employee Misclassification in Illinois* as establishing that misclassification has increased by 55 percent between 2001 and 2005 in Illinois alone.

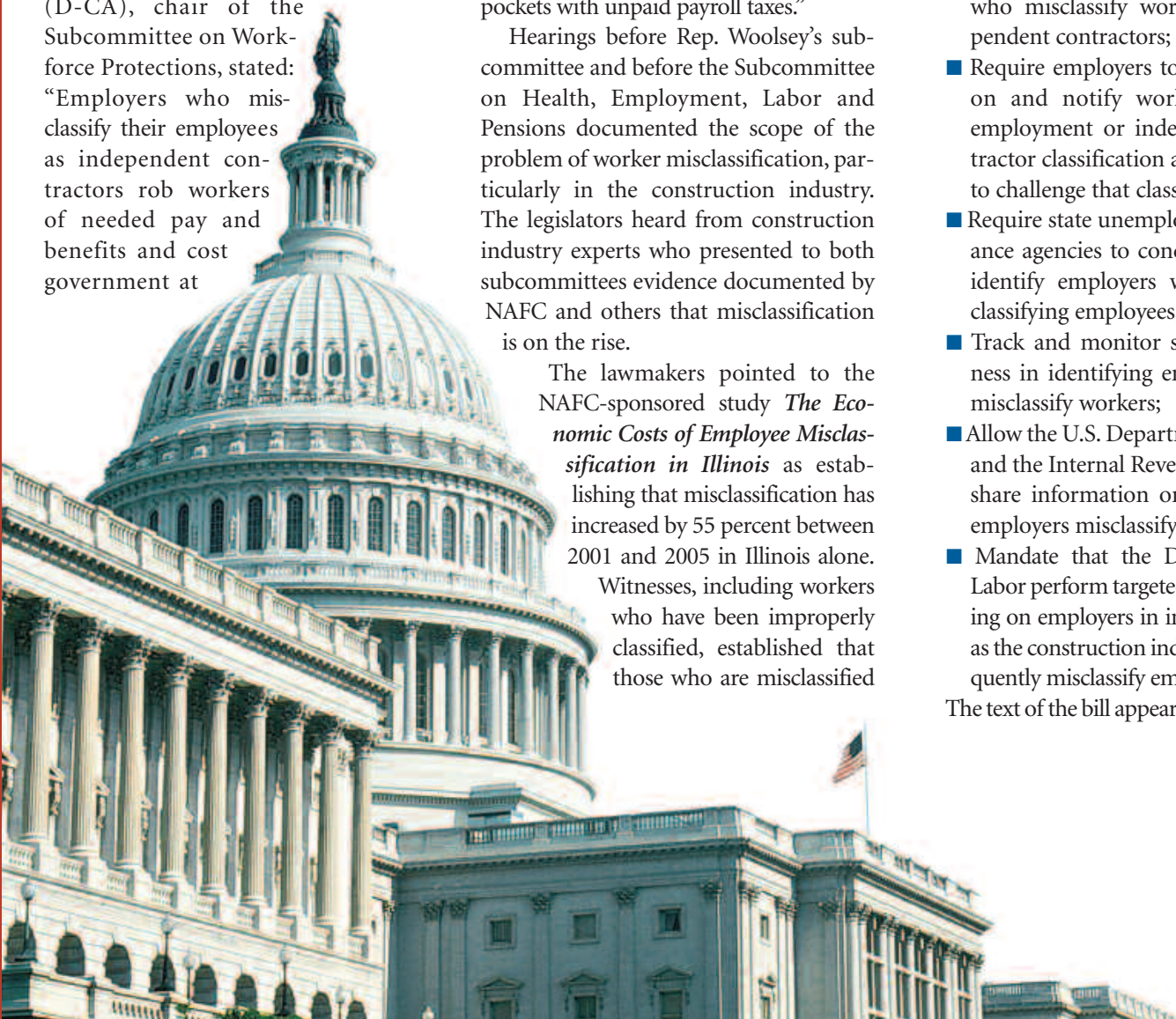
Witnesses, including workers who have been improperly classified, established that those who are misclassified

as independent contractors lose important rights, including workers’ compensation coverage, minimum wage and overtime protections, family and medical leave, and the right to organize and collectively bargain

The Employee Misclassification Prevention Act of 2008 will:

- Create a new “prohibited act” under FLSA for an employer who fails to properly classify an individual as an “employee”;
- Impose new penalties on employers who misclassify workers as independent contractors;
- Require employers to keep records on and notify workers of their employment or independent contractor classification and their right to challenge that classification;
- Require state unemployment insurance agencies to conduct audits to identify employers who are misclassifying employees;
- Track and monitor state effectiveness in identifying employers who misclassify workers;
- Allow the U.S. Department of Labor and the Internal Revenue Service to share information on cases where employers misclassify workers; and
- Mandate that the Department of Labor perform targeted audits focusing on employers in industries, such as the construction industry, that frequently misclassify employees.

The text of the bill appears on next page.



Bill Introduced in House

HR 6111

SEC. 2. CLASSIFICATION OF EMPLOYEES AND NON-EMPLOYEES

(a) Record-Keeping and Notice Requirements- Section 11(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(c)) is amended--
... (4) by inserting at the end the following:

(2) All records under this subsection shall contain an accurate classification of the status of each individual described in paragraph (1) as either an employee of the employer (within the meaning of section 3(g)) or a non-employee engaged by the employer for the performance of labor or services.

(3)(A) Every employer subject to any provision of this Act or any order issued under this Act shall provide the notice described in subparagraph (C) to each employee of the employer and each individual classified under paragraph (2) as a non-employee engaged by the employer for the performance of labor or services.

(B) Such notice shall be provided, at minimum, not later than 6 months after the date of enactment of the Employee Misclassification Prevention Act, and thereafter for new employees, upon employment, and for non-employees engaged for the performance of labor or services, upon commencement of the services subject to such contract. Every employer shall also provide such notice to any individual upon changing such individual's status as an employee or non-employee under paragraph (2).

(C) The notice required under this paragraph shall be in writing and shall--
(i) inform the individual of the employer's classification of the individual as an employee or a non-employee under paragraph (2);

(ii) include a statement directing such individual to a Department of Labor website established for the purpose of providing further information about the rights of employees under the law;

(iii) include the address and telephone number for the applicable local office of the Federal Department of Labor;

(iv) include for those individuals classified by the employer as a non-employee under paragraph (2), the following statement: 'Your rights to wage, hour, and other labor protections depend upon your proper classification as an employee or non-employee. If you have any questions or concerns about how you have been classified or suspect that you may have been misclassified, contact the U.S. Department of Labor.'; and

(v) include such additional information as the Secretary shall prescribe by regulation.'

(b) **Special Prohibited Act-** Section 15(a) of such Act is amended by adding at the end the following:

(6) to fail to accurately classify an individual in accordance with section 11(c).'

(c) **Special Penalty for Certain Record-Keeping and Notice Violations-** Section 16 of the Fair Labor Standards Act of 1938 (29 U.S.C. 216) is amended--

(1) in subsection (b) ...

(B) by inserting after the first sentence the following: 'Such liquidated damages are doubled (subject to section 11 of the Portal-to-Portal Pay Act of 1947 (29 U.S.C. 260)) where, in addition to violating the provisions of section 6 or 7, the employer has violated the provisions of section 15(a)(6) with respect to such employee or employees.'; and

(2) in subsection (e), after the first sentence in the matter preceding paragraph (1), by inserting the following: 'Any person who repeatedly or willfully violates section 15(a)(6) shall be subject to a civil penalty of not to exceed \$10,000 for each such violation.'

(d) **Employee Rights Website-** Not later than 90 days after the date of enactment of this Act, the Secretary of Labor shall establish, for purposes of section 11(c)(3)(C)(ii) of the Fair Labor Standards Act of 1938 (as added by this Act), a single web page on the Department of Labor website that summarizes in plain language the rights of employees under the Fair Labor Standards Act and other Federal laws. Such web page shall contain appropriate links to additional information on the

Department of Labor website or other Federal agency websites, including wage and hour complaint forms, along with a statement explaining that employees may have additional or greater rights under State or local laws and how employees may obtain additional information about their rights under State or local laws. Such web page shall be made available in English and any other languages which the Secretary determines to be prevalent among individuals likely to access the web page. The Secretary shall coordinate with other relevant Federal agencies in order to provide similar information (or a link to the Department of Labor web page required by this subsection) on the websites of such other agencies.

SEC. 3. MISCLASSIFICATION OF EMPLOYEES FOR UNEMPLOYMENT COMPENSATION PURPOSES.

(a) In General- Section 303(a) of the Social Security Act (42 U.S.C. 503(a)) is amended ...

(2) by adding after paragraph (10) the following...

(A) Such auditing and investigative programs as may be necessary to identify employers that have not registered under the State law or that are paying unreported compensation, where these actions or omissions by the employers have the effect of excluding employees from unemployment compensation coverage; and

(B) The making of quarterly reports to the Secretary of Labor (in such form as the Secretary of Labor may require) describing the results of programs under subparagraph (A); and

(12) The establishment of administrative penalties for misclassifying employees, or paying unreported compensation to employees without proper record keeping, for unemployment compensation purposes.'

(b) **Review of Auditing Programs-** The Secretary of Labor shall include, in the Department of Labor's system for measuring States' performance in conducting unemployment compensation tax audits, a specific measure of their effectiveness in identifying the under-reporting of wages and the underpayment of unemployment compensation tax contributions (including their effectiveness in identifying instances of such under-reporting or underpayments despite the absence of cancelled checks, original time sheets, or other similar documentation).

(c) **Effective Date-**

(1) **IN GENERAL-** Except as provided in paragraph (2), the amendments made by subsection (a) shall take effect 12 months after the date of the enactment of this Act.

(2) **EXCEPTION-** If the Secretary of Labor finds that legislation is necessary in order for the unemployment compensation law of a State to comply with the amendments made by subsection (a), such amendments shall not apply with respect to such law until the later of--

(A) the day after the close of the first session of the legislature of such State which begins after the date of the enactment of this Act; or

(B) 12 months after the date of the enactment of this Act...

SEC. 4. DEPARTMENT OF LABOR COORDINATION AND REFERRAL.

Notwithstanding any other provision of law, any office, administration, or division of the Department of Labor that, while in the performance of its official duties, obtains information regarding the misclassification by an employer of any individual regarding whether such individual is an employee or a non-employee contracted for the performance of services for purposes of section 6 or 7 of the Fair Labor Standards Act or in records required under section 11(c) of such Act, shall report such information to the Employment Standards Administration of the Department. The Employment Standards Administration may report such information to the Internal Revenue Service as the Administration considers appropriate.

SEC. 5. TARGETED AUDITS.

The Secretary of Labor shall ensure that at least 25 percent of the audits of employers subject to the Fair Labor Standards Act that are conducted by the Wage and Hour Division of the Department of Labor are focused on potential violations of the record-keeping requirements of section 11(c) of such Act (29 U.S.C. 211(c)) (as amended by this Act). Such Division shall focus such audits on employers in industries with frequent incidence of misclassifying employees as non-employees, as determined by the Secretary.

New Legislation in the State of Washington

SUMMARY (House Bill 3122):

A new test is established to determine when work is done by independent contract in the construction industry for purposes of unemployment insurance and industrial insurance. The existing construction-specific tests are eliminated. All parts of the following test must be met:

- The individual has been and will continue to be free from control or direction over the performance of the service, both under contract and in fact.

- The service is either outside the usual course of business for which the service is performed, or outside of all the places of the enterprise for which the service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the place of business.

- The individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature, or the individual has a principal place of business that is eligible for a business deduction for federal income tax purposes, other than that furnished by the employer.

- On the effective date of the contract, the individual is responsible for filing, under the contract and in fact, a schedule of expenses with the Internal Revenue Service.

- On the effective date of the contract or within a reasonable period after the effective date, the individual has an active and valid certificate of registration with the Department of Revenue (DOR) and an active and valid account with any other state agencies, and has a Unified Business Identifier number.

- On the effective date of the contract, the individual is maintaining a separate set of books or records.

- On the effective date of the contract, the individual has a valid contractor registration or electrical contractor license if the work requires the registration or license.

Note: The new test is similar to the six-part test for all industries. The test differs in that the individual must have a valid contractor registration or electrical contractor license on the effective date of the contract and the accounts the individual must have with the DOR and any other state agencies must be active and valid. In addition, the principal place of business that is eligible for a business deduction must be other than that furnished by the employer. Effective June 12, 2008



Left to right: Bob Abbott, Assistant Business Manager Washington & Northern Idaho District Council of Laborers; The Honorable Governor of the State of Washington Christine Gregoire and National Alliance for Fair Contracting Board Member David Letinich at the signing of House Bill 3122 establishing a new test for Independent Contractor status in the construction industry and Senate Bill 6732 whose recommendations included items relating to penalties, data-sharing and detection, enforcement, and education and outreach activities.

SUMMARY (Senate Bill 6732):

- Applicants for registration as a contractor must submit a unified business identifier (UBI) number.

- The Department of Labor and Industries (L&I) must deny an application for registration as a contractor and suspend an active registration if L&I determines that the applicant has falsified information on the application or the applicant does not have an active and valid certificate of registration with the Department of Revenue (DOR).

- Additionally, a person who submits false information on an application for registration is subject to a penalty of up to \$10,000.

- A contractor is prohibited from bidding on public works projects for one year if, within a five year period, the contractor commits two violations of any of the following: willfully violates contractor registration laws; knowingly misrepresents the amount of his or her payroll or employee hours to L&I; engages in business without a certificate of coverage under the industrial insurance provisions; or commits a second violation of the contractor registration laws.

- Employers must keep records of the compensation paid to contractors and electricians with whom they contract. Government agencies may disclose records between themselves if the agencies would be otherwise permitted to obtain that information.

- An expanded social marketing campaign must be created to warn consumers of the risks and potential consequences of hiring unregistered contractors.

- The term of the Task Force is extended to December 31, 2008.

Senator's Obama's comments on the Independent Contractor Issue at the BCTD Legislative Conference

"Your voices will be heard. If you have any doubts, you can ask the union leaders in Illinois. When I was home talking to some of the local leaders there a couple of years ago, they told me they were being underbid on projects because unscrupulous builders were gaming the system. And I listened. They said that on some construction jobs, those builders were calling their employees "independent contractors" to get out of having to pay employment taxes and workers comp or overtime.

That didn't sound right to me. So I set about leading an effort with Senator Durbin, Senator Kennedy and others in the Senate to end this practice. Because if you're doing the same work as other employees, you should have worker protections, the same ability to organize, and the same wages and benefits."



Senator Barack Obama

NAFC Board Action

Rocco Davis, who was unanimously elected to replace Edward M. Smith as Chairman of the Board of Directors, chaired his first NAFC Board meeting in San Diego on May 7th, 2008. The Board has made changes in the Board and its structure. The position of Executive Director, which was previously held by Rocco, was eliminated.

John Penn, the Midwest Regional Vice President of the Laborers' International Union of North America, was elected to the Board of Directors as a "Labor Organization" representative. John joined LIUNA in 1965 and is a member of Local 362 in Bloomington, Illinois. He is also a member of the Illinois Department of Transportation Highway Safety Committee as well as the McLean County Democratic Party Chairman. John received a Presidential Points of Light Award from then-President Clinton and was named Person of the Year by the Bloomington Pantograph. He is a welcomed addition to NAFC's Board of Directors.

Two St. Louis Contractors Plead Guilty To Underpaying Prevailing Wages In Connection With City Sewer Lateral Program

St. Louis, MO: Paula Hemm and Alberto Vushaj pled guilty to fraud charges involving their underpayment of prevailing wages in connection with the St. Louis City's Sewer Lateral Line Repair Program, United States Attorney Catherine L. Hanaway announced today.

Paula Hemm assisted in the operation of two construction companies in St. Louis, JKH Contracting and W and V Plumbing and Drainlaying. Alberto Vushaj also assisted in the operation of two construction companies, Vushaj Construction and W and V Plumbing and Drainlaying. Both companies participated in the City of St. Louis Sewer Lateral Line Repair program. Paula Hemm failed to pay prevailing wages to her workers on projects falling under the Sewer Lateral Line Repair program despite representations to the contrary made on the related Certified Payroll Forms, by a total of approximately \$30,969 for jobs falling under JKH Contracting. Vushaj underpaid a total of \$36,581 for work performed under Vushaj Construction. Additionally, Hemm

and Vushaj underpaid a total of \$27,986 for jobs falling under W and V Plumbing and Drainlaying. As a result, the City of St. Louis mailed checks to JKH Contracting, Vushaj Construction and W and V Plumbing and Drainlaying based on these false representations.

PAULA HEMM and ALBERTO VUSHAJ each pled guilty to one felony count of mail fraud before United States District Judge Stephen N. Limbaugh. Sentencings have been set for July 9, 2008.

Each mail fraud count carries a maximum penalty of 20 years in prison and/or fines up to \$250,000. Additionally, with their pleas, Hemm and Vushaj agreed to pay restitution to their former employees totaling \$95,536.

Hanaway commended the work performed on the case by the Department of Labor-Office of Inspector General, the Federal Bureau of Investigation and Assistant United States Attorney Jeffrey Jensen, who is handling the case for the U.S. Attorney's Office.

NAFC Chairman Emeritus

Ed Smith the long time Chairman of the Board of Directors of the National Alliance for Fair Contracting and Vice President and Midwest Regional Manager of the Laborers' International Union of North America has retired from the Union to become President of ULLICO, Incorporated.

In May of this year he was unanimously appointed

by the NAFC Board as "Chairman Emeritus for Life." His positive contribution on behalf of responsible contractors and their employees over the last several decades has been immeasurable. He will indeed be missed and the entire NAFC Board of Directors and staff wish him well in all of his future endeavors.

—Mike McNelly, NAFC Administrator

"With Ed Smith's departure from NAFC, there is indeed a gap that will be unable to be filled by most people. His dedication, commitment and perseverance toward his work of providing a level playing field for fair contractors and justice for all workers will be deeply missed. We thank him for all of his hard work and his vision that has made NAFC what it is today."

—Marc R. Poulos,
Board Member



"I am excited about what Ed Smith will do at Union Labor Life Insurance, his track record at NAFC and with the Laborers tells us all to look for great things ahead."

—Steve White,
Board Member



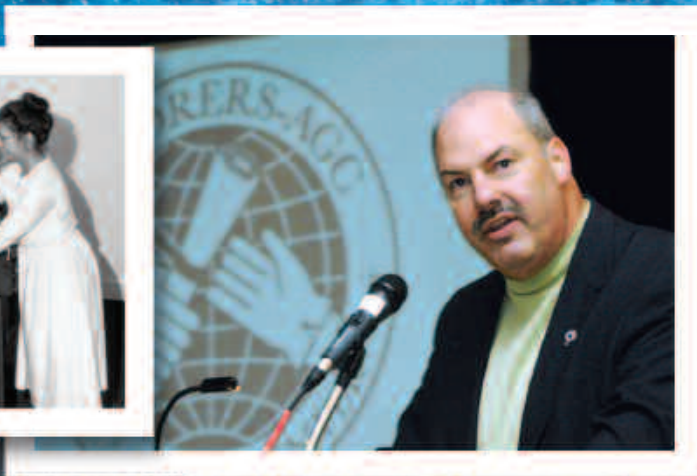
"Ed Smith is not only a consummate professional, but an absolute gentlemen. Ed has been a tremendous asset to the relationships between labor and management and helped create a competitive atmosphere for all involved."

—Brian N. Tobin, Board Member

s for Life Ed Smith

“We started NAFC in 1990 because of the advent of local enforcement groups. It was disbanded in 1997 and was resurrected by Ed Smith. Without Ed’s involvement NAFC would not exist today. His dedication will be missed.”

—Terry G. Bumpers, National LECET



“If it were not for Ed Smith—the NAFC would not have been revived. All of us at the NAFC have multiple responsibilities. Ed made being on the board rewarding and enjoyable - that does not happen very often!”

—Karen Courtney, Board Member



“Ed Smith is a visionary labor leader, everything he is involved with is first class and is bound for success. I know ULLICO will soar to greater heights with him at the wheel and I know those of us who worked with him at NAFC will double our efforts to make sure we don’t let him down.”

—Rocco Davis, Chairman

Illinois Prevailing Wage

By Michael Bologna

CHICAGO--Compliance under the Illinois Prevailing Wage Act has expanded over the last five years with state agencies taking on more active enforcement duties, state labor officials said May 14.

Compliance with the statute has also been enhanced by new commitments from industry associations and labor unions to inform contractors about their obligations and workers about their rights.

Against this backdrop, Illinois is poised for a potentially massive expansion to the program. Legislation is gaining momentum in the Illinois General Assembly that would expand the number of projects covered for prevailing wage treatment.

Such views were expressed by government and trade group speakers during the Midwest Prevailing Wage Conference in Chicago. The conference is organized annually by the Construction Industry Service Corp. (CISCO) and is sponsored by a dozen contractor groups, unions and construction services providers.

Enforcement Beefed Up Under Blagojevich

Catherine Shannon, director of the Illinois Department of Labor (IDOL), said enforcement of the state prevailing wage law was not a significant priority under previous administrations. As a result, she said, enforcement was infrequent and penalties available under the act were rarely imposed.

"Since 2003 when Gov. Rod Blagojevich (D) took office, the department has collected \$6 million on behalf of Illinois construction workers and we've given the money back to the workers who earned that money," Shannon said. "That is a very strong statistic. In addition, we have collected more than \$1 million in penalties. Previous administrations failed to collect those penalties."

Shannon added that 271 prevailing wage cases are being prosecuted by the Illinois Attorney General. She said the cases reflect \$4.5 million in underpayments to Illinois workers and potentially \$1 million in penalties.

Shannon said complaints received by IDOL are generally forwarded to a conciliator, who assigns a case file number and initiates a preliminary investigation. Conciliators generally notify the contractor that a complaint has been filed and an investigation will be conducted. She said the conciliator then interviews workers affected by the alleged underpayment problem. The conciliator will then do an audit of the contractor's payroll to determine whether all required wages and benefits have been paid.

Demand Letters Issued During Violations

When inconsistencies or violations are discovered, Shannon said the department will issue a "demand letter" describing the degree of underpayment and penalties being imposed. Penalties are pegged at 20 percent of the underpayment. If the contractor fails to respond, a second letter is sent to the contractor giving 10 days to comply with the original demand. If that letter is ignored, she said the department refers the matter to the Illinois Attorney General.

Following such investigations, Shannon said, the state agency also determines whether to issue a "notice of violation." If a contractor is issued two notices of violation in five years, she said, a four-year debarment is imposed. She noted that in the last five years more than 500 first

notices of violation have been issued and 25 firms have been debarred.

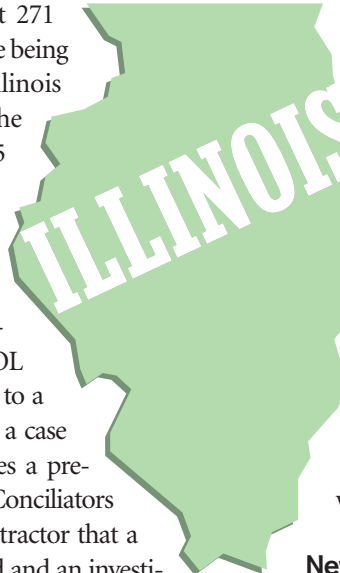
Despite the state agency's more aggressive enforcement strategies, Shannon said her agency does not have the resources to police every prevailing wage problem taking place in the state. She praised organizations such as CISCO for their efforts to inform and counsel employers and public bodies about their prevailing wage duties.

New Outreach by State Attorney General

Jon Rosenblatt, labor counsel for the Office of the Illinois Attorney General, said his office is attempting to enhance prevailing wage compliance with a new outreach and assessment effort. Rosenblatt said he would, in the near future, contact hundreds of public entities engaged in public contracting.

Rosenblatt said the letters will inform such bodies about the prevailing wage rules. The letters will also attempt to assess compliance through a questionnaire about the performance of contractors and subcontractors working for these public bodies. While it is unclear what the letters and questionnaires will net, Rosenblatt said he hopes the effort will generate higher levels of understanding and compliance.

"It could turn up a lot of information, but it could be a dead end," Rosenblatt said. "The goal is to make sure people understand that they are supposed to be getting things like certified payrolls on a monthly basis. We feel that if we can make more contractors and subcontractors just submit the paperwork, we might be able to get rid of some of the violations that are probably occurring."



Compliance Expands

Cutting Off Payments When Violations Discovered

Illinois Comptroller Daniel Hynes said he responded to prevailing wage challenges six years ago, when he learned the state was often ignoring its enforcement obligations. In August 2002 Hynes issued an executive order that enabled his office to suspend payments to contractors who failed to comply with the law. While IDOL and the attorney general have both boosted their enforcement efforts, Hynes said he is still committed to cutting off payments when his investigative staff discovers violations.

Hynes told contractors and union officials attending the conference to be prepared for a new wave of prevailing wage scrutiny in the coming years. He noted that the Illinois General Assembly will likely support a \$25 billion capital works program during the current legislative session.

Funds earmarked through the program will be used to repair, maintain and expand the state's network of roads, bridges and mass transit systems. The funds will also be used to renovate and expand state buildings and schools. With this huge influx of public works projects coming to the state, Hynes said state agencies must be prepared for significant prevailing wage compliance problems as well.

"When it does happen, we will see a new round of necessary enforcement action," he said. "I wish it wasn't necessary, but it will be necessary."

Act Poised for Significant Expansion

Marc Poulos, executive director of the Indiana-Illinois-Iowa Foundation for Fair Contracting, said the scope of the Illinois Prevailing Wage Act is poised for a potentially significant expansion this year. Under House Bill 773 the act would be amended to impose prevailing wage obligations on

projects occurring in tax increment financing development zones.

Poulos acknowledged that the measure is controversial. He noted that the measure is opposed by the City of Chicago, the Illinois Chamber of Commerce, and various other municipal and commercial groups. At the same time he said the measure was crafted with the help of the key government agencies and enjoys strong support from unions and some contractors.

H.B. 773 won support in the Illinois House on May 3 by a vote of 64 to 49.

Poulos predicted the bill's opponents would not be able to stop its momentum as it continues through the legislative process.

"We worked literally for 16 months on

this H.B. 773 project with all the big contractor associations, the public bodies, all the building and construction trades, the Department of Labor, the Attorney General's office and we've gotten an agreement. All the big players on this big bill have come into alignment. So I think the city and the chamber are going to have a very difficult time overcoming that type of involvement."

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New Jersey Applies Prevailing Wage Requirements To Economic Development Financing

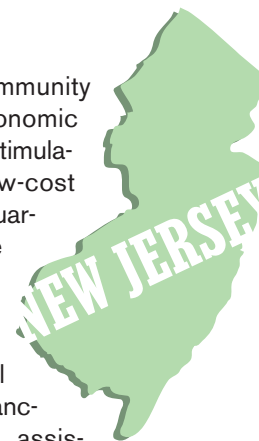
One of the areas posing a growing threat to both state and federal prevailing wage coverage is the emergence of so-called "innovative financing" of public construction projects. The New Jersey Legislature has taken steps to address the problem by enacting a statute (S2247) which applies the state's prevailing wage law to economic development projects.

The law requires that the prevailing wage shall be paid to workers employed in the performance of construction projects receiving financial assistance from the New Jersey Economic Development Authority (EDA) and any construction project undertaken to fulfill any condition of receiving EDA financial assistance, including assistance from the "Business Employment Incentive Program".

New Jersey's Economic Development Authority provides financing for projects designed to promote urban

development, community rehabilitation, economic growth and job stimulation through low-cost financing, loans, guarantees, incentive grants and tax credits. The bill states that the prevailing wage will apply to EDA financing whether the assistance is provided before, during or after the completion of the construction project (unless construction commences more than two years after the recipient has executed a commitment letter with the EDA regarding the assistance and the first payment or assistance is received).

The full text of the bill may be found at <http://www.njleg.state.nj.us/bills/BillView.asp>



Labor's Wage War

Catherine Ruckelshaus is the Litigation Director for the National Employment Law Project (NELP) where she specializes in wage and hour law. She was a speaker at NAFC's 9th Annual Conference in Chicago on the important topic of legal and legislative remedies to combat worker misclassification and independent contractor abuse.

Like the fair contracting compliance groups which make up NAFC, Ruckelshaus knows from first-hand experience how workers' rights advocates face weak or non-existent labor law enforcement by state and federal government agencies. She states that "in the last eight years, the U.S. Department of Labor has become at best a non-entity for workers seeking to enforce labor standards. At worst, it has become workers' enemy, by siding with employers in litigation and writing opinion letters supporting employers."

In a recent article - *Labor's Wage War* - published in Fordham University's *Urban Law Journal*, Ruckelshaus has made a compelling case that there is a deep void in our nation's system for protecting workplace rights. She documents how organizations such as NAFC and fair contracting compliance groups all over the country have rushed into the "enforcement gap" created by inaction from federal and state labor enforcement agencies.

Ruckelshaus profiles the "innovative efforts" of four organizations which "impact... the war against unpaid wages and poor labor standards." Along with NAFC and its affiliated fair contracting groups, Ruckelshaus showcases the work of the Maintenance Cooperation Trust Fund of California, SEIU's Wage & Hour Project, the New York Civic Participation Project and the AFL-CIO Worker Centers Partnership.

Labor's Wage War portrays how:

Almost every growing sector in the bottom half of our economy-health care, child care, retail, building services, construction, and hospitality-is plagued by penurious employers who drag down working conditions for everyone....Far from ramping up enforcement to combat these unlawful practices, federal and state public agencies have reduced staffing and enforcement efforts....The labor movement has stepped into this void, partnering with community organizations and law abiding employers, creating relationships with state departments of labor and attorneys general, and supporting private labor standards enforcement models to shore up the wage floor for all workers.... Some of the more exciting of these new labor standards enforcement models include... the national network of Foundations for Fair Contracting, which use union and employer monies to police wage and hour violators."

Labor's Wage War describes the conditions in the construction industry which give rise to low-ball contractors who cheat to compete on public construction projects: "NAFC affiliates confront common industry practices that drive pay lower. Property owners subcontract out labor-intensive work and encourage intense competition for bids by rewarding the lowest bidder, whose only real margin is in its labor costs. Worker pay and benefits (if any) are the fungible costs for these contractors, and they compete by chiseling payroll and related labor costs to subpar levels. Law-abiding contractors in these fields cannot compete for business if these low-ball contractors are permitted to continue operating, and it is the latter group of contractors who joined together with unions to create these innovative labor standards enforcement organizations."

The article shows how NAFC and the fair contracting movement grew over over the last several decades and developed strategies to level the playing field in public construction:

"NAFC is a national network of labor-management organizations founded in the late 1990's, whose members include fair contracting organizations, labor-management groups, contractors, contractor associations, international and local unions, and building and construction trade councils. Its mission is to promote fair contracting approaches to create a level playing field for responsible bidders on publicly-financed construction projects. NAFC brings together labor, management, and government to enforce the Davis-Bacon Act and related prevailing wage acts by bringing the perspective of both contractors and workers to the public contract process. It serves as a clearinghouse for information on prevailing wage and public works, and it sponsors educational seminars on public works compliance. Recently, NAFC has become active in combating independent contractor misclassification, a rampant problem in construction jobs and has sponsored studies to determine the costs of independent contractor abuses."

Ruckelshaus concludes that if the innovative approaches pioneered by NAFC, its fair contracting affiliates and the other organizations profiled in *Labor's Wage War* can be duplicated throughout the economy that "real and lasting change for workers, their jobs, and our economy is within reach."

Labor's Wage War, Catherine K. Ruckelshaus, Vol. XXXV Fordham Urban Law Journal 373-407 (February 2008), can be read in full at <http://law.fordham.edu/ulj.htm>. Visit NELP's website at www.nelp.org for resources for workers' rights advocates.



Is Prevailing Wage Costlier?

New Economic Policy Institute Study says “no”

Many state and local governments, for more than a century, have required private contractors on public works projects to pay wages and benefits on par with what is commonly paid to construction workers in the area. The federal government followed suit in 1931 with passage of the Davis-Bacon Act. The Act requires contractors to pay the prevailing wage, defined as the wage rate paid to at least 50% of workers in the industry in that area or, if no wage rate reaches the 50% mark, the industry average for the area.

The idea behind the prevailing wage is simple: a wage floor keeps big government projects from damaging the local economy by driving down wages and undermining living standards. A counter-argument has been raised, however, which claims that requiring contractors to pay the prevailing wage drives up the cost of the projects – a cost ultimately borne by the taxpayers. This claim, with its ring of plausibility, has already been used as grounds for repealing the prevailing wage requirements in some states.

Over the history of this wage policy, a considerable body of research has arisen exploring its impact – research that seems to offer something to all sides of the debate. A new analysis from the Economic Policy Institute sorts out the confusing picture by reviewing the major research studies on the relationship between the cost of projects covered by prevailing wage laws and those that are not.

The EPI report, “Prevailing Wages and Government Contracting Costs” by economic analyst Nooshin Mahalia, finds that the studies that prevailing wage opponents cite contain a critical flaw that makes their findings unreliable. They are based on hypothetical models which assume as a starting point that higher wages will necessarily raise contract costs, rather than test-

ing whether, in practice, there is a relationship between wages and contract costs. Mahalia’s analysis shows that most researchers have found that prevailing wage regulations in practice do not increase government contracting costs.

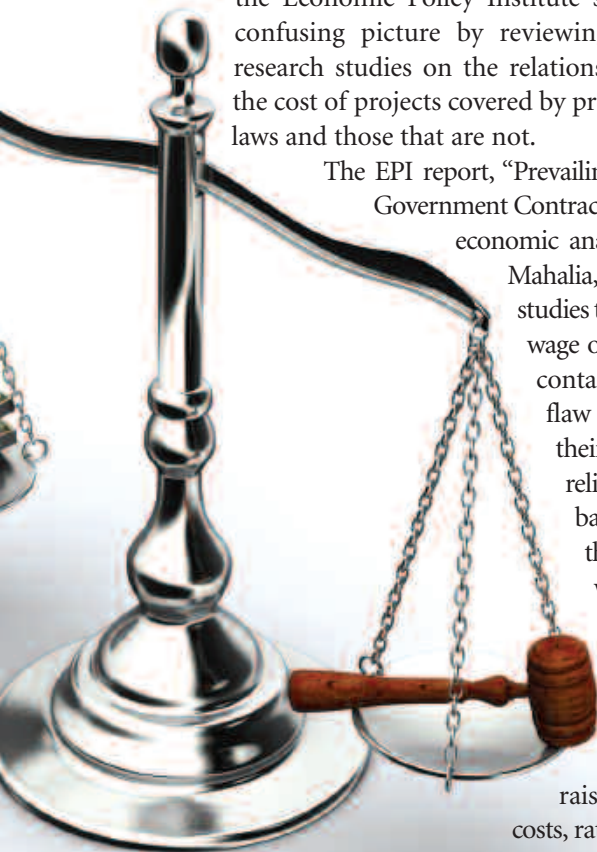
How is it possible for a contractor to pay higher wages without increasing the overall cost to the government? Mahalia’s study details a number of factors that explain a result that seems, at first blush, counterintuitive:

1. Prevailing wage regulations do not always increase wages, as some public contractors may pay at those rates without the regulation.
2. Labor costs, including benefits and payroll taxes, add up to about one-quarter of construction costs. Thus even a wage raise of 10%, for example, would only affect overall costs about 2.5%, making its impact small.
3. Improved productivity can offset higher wages. The better-skilled workers attracted by these wages might complete the job in less time, or the firms that hire them might introduce labor-saving technologies for the express purpose of offsetting higher labor costs.
4. Higher wages might be offset through other means, such as using lower-cost materials.
5. Contractors might offset higher wages by reducing their profits slightly.

Mahalia’s report discusses recent studies that have expanded their inquiry into the impact of prevailing wage regulations by exploring indirect costs and benefits. These studies find that prevailing wage laws can enhance state tax revenues, industry income, and non-wage benefits for workers; lower future maintenance and repair costs; reduce occupational injuries and fatalities; and increase the pool of skilled construction workers – creating benefits for both the public and the industry.

Among the research studies that are based on actual costs rather than hypotheticals, Mahalia concludes that the weight of the evidence strongly indicates that prevailing wage regulations have no adverse economic impact, and that their direct and indirect positive effects make them a prudent and beneficial policy.

Editor’s Note: The entire EPI study released on July 8, 2008 can be viewed at <http://www.epi.org/content.cfm/bp215> or contact Nancy Coleman or Karen Conner at 202-775-8810 (news@epi.org) for further information.



The 10th Annual NAFC Conference in Washington DC, October 1-3, 2008.

Our 10th Annual Conference will be held this year in Washington, D.C. at the Washington Court Hotel from October 1st-3rd. Registration forms will be mailed out to our members as well as posted on the NAFC web site at www.faircontracting.org.

It will be an historic occasion for our labor-management trust as well as an important and historic time in the history of our nation with the Presidential elections right around the corner. You can feel the winds changing as the country looks forward to the changing of the guard at the White House.

With that in mind, the Board of Directors of the National Alliance for Fair Contracting felt that it was an appropriate time to reflect upon the organization's past and remind the conference attendees of the strong foundation upon which the organization was built many years ago; the foundation that has kept the candle of hope burning for all responsible contractors and their employees over the past eight years.

And so the theme of this conference will be "Getting back to basics, leveling the playing field for all that are involved in publicly funded construction."

For the challenges that our members all face today are the same as they were back then, only more difficult due to the lack of dedicated government oversight during the Bush administration. The tools that we have all utilized in the past are just as important today and probably more so due to the lack of government attention to the very important issues such as the abuse of independent con-

tractor status and lack of enforcement of the Davis-Bacon Act and related laws.

Addressing these issues will face major obstacles, however the relationships that all of us have built up over the years with honest and frustrated government officials attempting to do their jobs and properly serve the public may also be rewarded by a more positive direction of policies by newly elected officials of either party willing to give our country a new sense of direction.

The speakers you will hear at the conference will all stress the need for change and the reestablishing of the middle class as well as maintaining a fair and competitive bidding process for all government construction projects. The fair contracting organizations represented at the conference will indeed be an important part of that effort.

The workshops presented will stress the importance of compliance with the basics of the Davis-Bacon Act and other related laws, working with government agencies such as the US Internal Revenue Service and the daily workings of a fair contracting organization.

The legal round table will discuss important issues such as the rampant abuse of independent contractor status and new responsible contractor ordinances.

With welcoming remarks by President Mark H. Ayers of the Building & Construction Trades Department of the AFL-CIO and closing remarks by General President Terence M. O'Sullivan of the Laborers' International Union of North America it will be an important and interesting conference for all those in attendance.



Stop Defining Workers Out of Their Workplace Rights

By Rep. George Miller (D-CA), chairman of the House Education and Labor Committee

When Democrats took control of Congress in January 2007, we promised to change the way Washington operates by turning our attention to the long-neglected priorities of American workers and their families.

Congress immediately went to work to increase the minimum wage, reduce student loan costs, and insist that our nation's workplace safety regulators actually do their jobs.

Of course, we still have a lot we intend to accomplish – like providing healthcare for all Americans, stopping workplace discrimination, and making sure that workers are able to decide for themselves whether or not to join a union. These are the kinds of important reforms that Senate Republicans block with filibusters and that President Bush threatens to veto. But we will keep pushing, even if it takes a new President in the oval office to get these changes into law.

One area of concern is the growing practice by some employers to misclassify employees as independent contractors in order to deny them the rights and benefits they have earned and deserve.

That is why I strongly support legislation introduced by Rep. Lynn Woolsey (D-CA) and Rep. Rob Andrews (D-NJ) that will help to end this practice. The Employee Misclassification Prevention Act of 2008 (H.R. 6111) will increase penalties on employers who misclassify workers as independent contractors. It will step up law enforcement efforts to catch employers who break the law.

Misclassifying employees as independent contractors is wrong. Not only does it cost the government in unpaid payroll taxes and workers compensation premiums – revenues that are relied on to fund Social Security and workers compensation programs – but it also denies essential workplace protections for workers. Workers lose basic rights to such things as workers' compensation coverage, minimum wage and overtime protections, family and medical leave, and the right to organize and collectively bargain.

Employers who purposefully misclassify workers as independent contractors also gain a short-term unfair

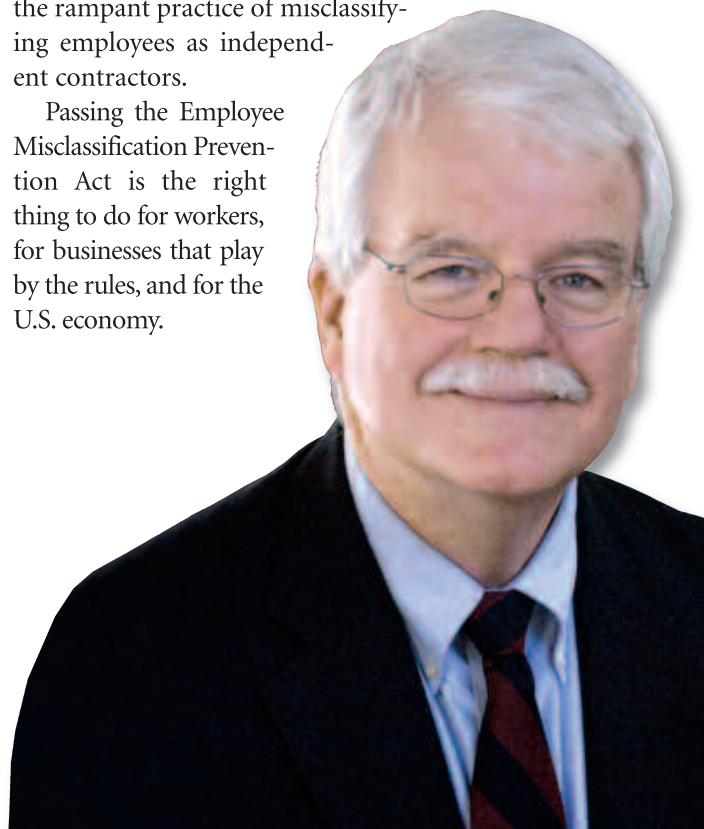
advantage among their competitors when it comes to labor costs. Of course, these short-sighted employers also lose out in the long-term, because they must contend with higher turnover and lower morale.

According to the Government Accountability Office, more than 10 million workers in the U.S. are classified as independent contractors. A number of studies have found that many of these so-called independent contractors are misclassified, deliberately or otherwise, when they should be considered regular full-time employees.

The U.S. Department of Labor says that the number one factor for employers to misclassify workers is employers' desire to avoid paying workers' compensation premiums and to avoid complying with workplace injury and disability regulations. Yet the Department has done little to end this abuse.

It is clear by the lack of any urgency on the part of the Department of Labor that Congress must step in to reverse the rampant practice of misclassifying employees as independent contractors.

Passing the Employee Misclassification Prevention Act is the right thing to do for workers, for businesses that play by the rules, and for the U.S. economy.



Rep. George Miller (D-CA)

National Alliance for Fair Contracting

Membership Application

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The National Alliance for Fair Contracting (NAFC) is a well known professional nationwide labor-management trust founded in 1990 to encourage fair contracting in the field of publicly funded construction. An annual membership fee of only \$600 entitles your organization to unrestricted access to the NAFC website at www.faircontracting.org, a subscription to the NAFC Fax Alert and the Prevailing Times Magazine, national legislative updates, consultation on the Davis-Bacon Act & Freedom of Information Act, as well as educational/training opportunities.

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