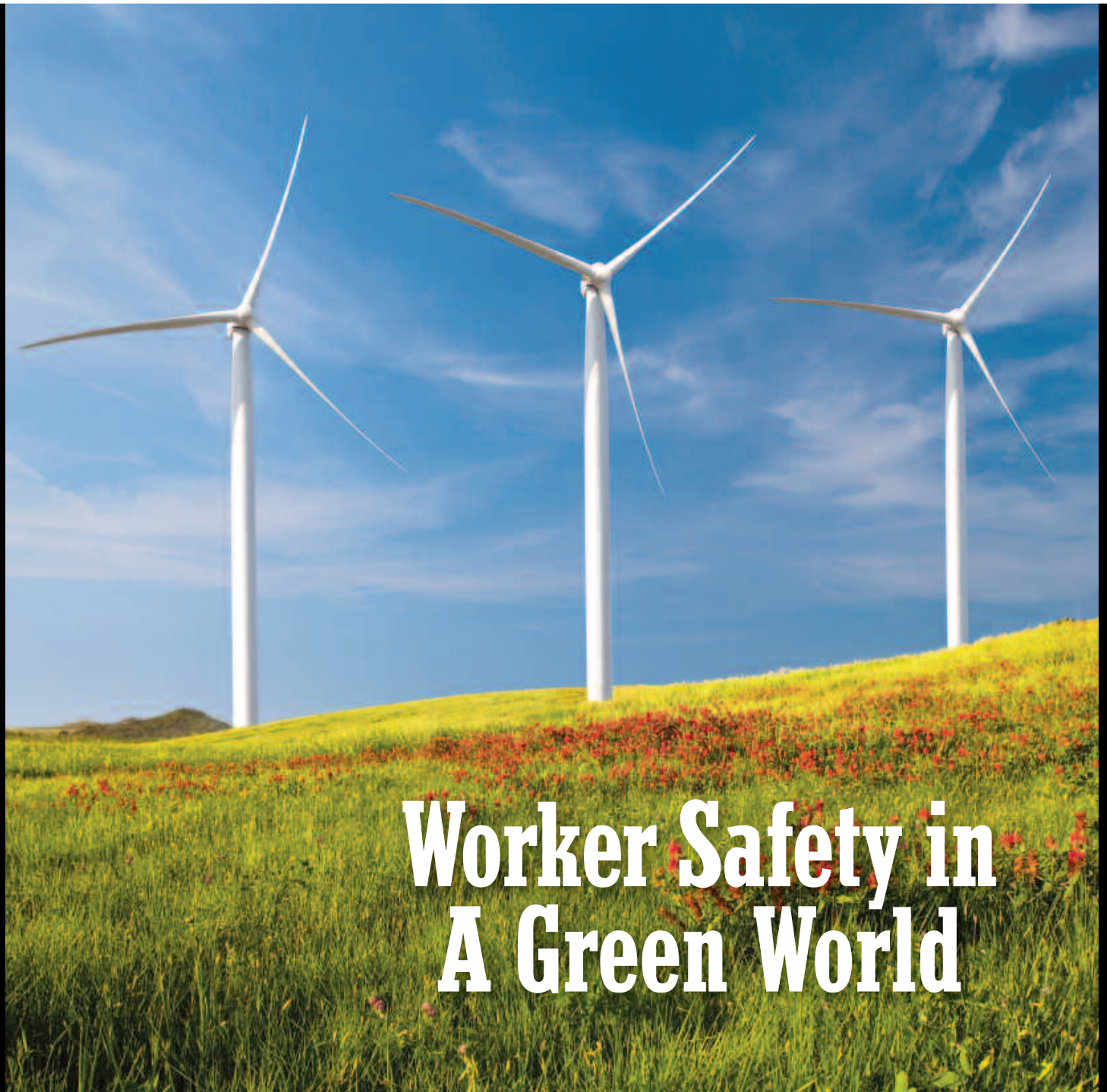


A PUBLICATION OF THE NATIONAL ALLIANCE FOR FAIR CONTRACTING, INC.

Prevailing Times

WWW.FAIRCONTRACTING.ORG

WINTER 2010



Worker Safety in A Green World

OSHA • BUDGET TARGETS ABUSE • MEET TOM HARKIN

Table of Contents

| | |
|--|----|
| Change Never Comes Without a Fight | 3 |
| Labor Depart. Recovers \$12 Million for Employee Stock Plan | 4 |
| Getting Workers Back on Union Rolls | 5 |
| Labor Commissioner Reaches Landmark Settlement | 6 |
| Labor Depart. Secures \$1M in overtime for Katrina workers | 7 |
| Worker Safety in a Green World with OSHA | 8 |
| Obama Budget Targets Independent Contractor Abuse | 10 |
| Maine Presses Forward on Task Force Report | 12 |
| Meet Senator Tom Harkin | 14 |
| Government Contractor to Pay \$1.66 Million | 16 |

Board of Directors

Rocco Davis, Chairman
LIUNA Pacific Southwest Regional Manager

Ed Smith, Chairman Emeritus
Ullico President

Brian Tobin, Co-Chairman
AGC of New Jersey

Karen Courtney, Secretary
Foundation for Fair Contracting Massachusetts

John Penn
LIUNA Midwest Regional Manager

Marc Poulos
Indiana, Illinois & Iowa Foundation for Fair Contracting

Sean McGarvey
Secretary-Treasurer Building Trades Department AFL-CIO

Steve White
ACT Foundation

Paul Von Berg
Brutoco Engineering

Eric Waterman
IMPACT

James Reed
Center for Contract Compliance

David Letinich
Washington Fair Contracting Foundation

Lou Sancio
Alliance for Competitive Contracting

Dan Aussem
Illinois Valley Contractors Association Exec. Director

Diane Ravnik
Western States Consultant

Michael McNelly
Director of Governmental Affairs & Administrator

Phillis Payne
Legal Counsel, Connerton & Payne Washington, D.C.

Geoffrey Griffith
Executive Assistant

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.

www.faircontracting.org

National Alliance for Fair Contracting, Inc.

Change Never Comes Without a Fight

THE PRESIDENT GAVE A TERRIFIC STATE OF THE UNION ADDRESS on January 27th and told it like it is for our fellow citizens in the middle of the strongest recession in the history of our nation.

He followed that up with a very informative Town Hall Meeting the very next day in Tampa, Florida where he was again quoted as saying that "Change never comes without a fight and we will not stop fighting for your future, no matter how many lumps we have to take to get it done".

Mr. President, the National Alliance for Fair Contracting and its many members will stand shoulder to shoulder with you and your Administration as you battle for fair and equitable treatment of America's work force. For too long, the scales of justice have been unbalanced in favor of Wall Street over Main Street with the results that the middle class of American citizens are being driven to the edge of extinction. NAFC is more than willing to fight the good fight with you, no matter how long it takes.

For far too long, good and hard working American citizens have been willing to allow themselves to be bullied out of some very basic human rights and it is time to gather our moral courage and do the right thing, not just for ourselves and our friends, but for the entire nation

This grass roots movement for change which began with the election of President Obama will not and cannot end before it has really begun. We must lock arms and walk the walk together towards change for a better America. One in which every American will be able to find work

"Change never comes without a fight and we will not stop fighting for your future, no matter how many lumps we have to take to get it done".

and provide for their families. Those in opposition, for no other reason than to oppose change, must be reminded that they were elected to public office to serve their country and its citizens and not their own personal ambitions.

If the President of the United States needs to leave Washington and travel around the country in campaign mode speaking directly to our fellow citizens then get it on.

That would allow the President to take his message of changing America directly to the people. He is a teacher so let us let him teach. The effect would be that while other elected officials were back in Washington, DC spreading lies and attempting to govern through fear and discontent. The President would be out among the rest of the nation telling the people the



Rocco Davis, Chairman

truth and convincing them about the real things that need to get done.

Let the people be the true voice of America drowning out the weak voices in Congress whose only agenda seems to be working at remaining in office forever. The people know what is important and being employed is at the very top of their priority list.

He needs to visit Colleges throughout the nation holding town hall meetings and educating the next generation and their parents and grandparents on his efforts at securing their future. When citizens hear and see President Obama, especially in person, they experience a renewal of hope for our future and the future of our children.

Our children are this nation's most important natural resource and everything positive that is done today, even by NAFC, is being accomplished on their behalf. A nation in the 21st Century cannot allow itself to remain stagnant or it will surely fall behind and its citizens will be forced to live in an environment where their standard of living is lower than before. NAFC will never give up the fight for fair and equitable treatment of workers and responsible contractors.

Like our beloved President we will not quit. We will not go away. For, we are fighting for a better future for our families, our children and our country.

Labor Department Recovers \$12 Million for Employee Stock Plan Participants

The U.S. Department of Labor has obtained consent judgments providing for restitution of more than \$12 million by plan officials and service providers involved with the employee stock ownership plan sponsored by The Employee Ownership Holding Co. of Stockton, Calif., and Fife, Wash. The judgments also provide for release of a fund currently holding more than \$11 million, thereby making more money available to provide benefits to the ESOP's participants and beneficiaries.

"This legal action promises to recover millions in retirement dollars for workers and retirees as entrusted to plan fiduciaries and service providers," said Secretary of Labor Hilda L. Solis. "These settlements send a clear message that the Labor

Security Act in connection with improper transactions that took place in 2004 and 2007. In 2004, Eddy approved the stock purchase by The Employee Ownership Holding Co. from Couturier without a financial valuation supporting the amount paid to Couturier. As part of that transaction, Couturier received approximately \$34.4 million in cash and property in exchange for stock he owned in the ESOP (valued by the ESOP at less than \$500,000 at the time) and other non-ESOP compensation worth millions of dollars less than the amount Couturier received. Couturier received \$26 million in cash, property in Palm Desert, Calif., \$2.7 million in cash to pay taxes on that property and other compensation.



Department will not tolerate the blatant misuse of pension assets at the expense of workers and their families."

Under the judgments and a settlement agreement filed in a related private lawsuit, the settling defendants must pay \$8 million in cash into a settlement fund, pay \$800,000 in civil penalties to the federal government and return property to The Employee Ownership Holding Co. with an estimated value of \$4 million for the benefit of the ESOP and its participants.

Under the judgments with the department, the defendants will be barred for at least 10 years from serving in a fiduciary capacity to plans, and the attorney service providers will be required to comply with strict requirements in connection with their future involvement with employee benefit plans.

In November and December 2008, the Labor Department sued defendants Clair R. Couturier Jr.; David R. Johanson and his firm Johanson Berenson LLP; Robert E. Eddy; James Roorda; Matthew Donnelly and his firm Business Appraisal Institute; and David L. Heald and his firm Consulting Fiduciaries Inc. for violating the Employee Retirement Income

Among other things, the Labor Department's suit alleged that Donnelly, a convicted felon, and his firm were hired to justify the overpayment in cash and property paid to Couturier in exchange for stock he owned in the ESOP and other consideration. In October 2009, the court entered a consent judgment between the department and Donnelly permanently barring him from serving in the future as a fiduciary or service provider to any plan. Earlier this month, the court granted the secretary of labor's motion to appoint an independent fiduciary for the ESOP.

The legal action resulted from an investigation conducted by the Labor Department's Employee Benefits Security Administration's San Francisco Regional Office. In fiscal year 2009, the department achieved monetary results of \$1.3 billion in pension, 401(k), health and other benefits for millions of American workers and their families. Employers and workers can contact EBSA's San Francisco office at 415-625-2481 or toll-free at 866-444-3272 for help with problems relating to private sector pension and health plans.

Solis v. Couturier Civil Action Number 2:08-CV-02732-RRB-GGH

Getting Workers Back on Union Rolls

By David Madland, Karla Walter

Bureau of Labor Statistics numbers released today showed that unionization rates remained virtually unchanged between 2008 and 2009—falling a tenth of a percentage point from 12.4 in 2008 to 12.3 in 2009—and for the first time unionized public sector employees outnumber private sector union members. For the last six years union membership rates have hovered between 12 and 12.5 percent, but they have dropped considerably over the last 25 years. Significant legislative changes must occur in order for a substantial portion of the American workforce to get back onto union rolls as polls indicate they would like to do.

Unionization rates increased slightly in 2007 and 2008—growing from 12 percent to 12.1 percent in 2007 and from 12.1 percent to 12.4 percent in 2008. But over the last quarter century union membership rates have fallen significantly and the current union membership rates are a fraction of what they were in the early 1980s. Rates have fallen by almost 8 percentage points since 1983, the first year comparable union data are available, when union membership rates were 20.1 percent.

The ailing economy in 2009 reduced the union workforce by 771,000, and this decline appears to have disproportionately affected private sector unionized workers. Though the American economy shed almost 4.9 million jobs last year according to the BLS union figures released today—representing a decline of 3.8 percent—the total number of private sector unionized workers declined by 10.1 percent and the private sector unionization rate fell from 7.6 percent in 2008 to 7.2 percent in 2009.

For the first time in a quarter century public sector workers make up over half—51.5 percent—of the total unionized workforce despite there being five times more wage and salary workers in the private sector.

Public sector unionization has remained relatively steady over the past few decades and the percentage of public sector unionized workers increased slightly from 36.8 percent in 2008 to 37.4 percent in 2009. The strength of unions in the public sector compared to those in the private sector is primarily due to different employer practices in union elections in each sector.

Most Americans say they would join a union if they could. But in public sector union elections employers typically remain neutral, while in the private sector the current union selection process is broken and allows antiunion employers to engage in aggressive campaigns that often intimidate workers.

Center for American Progress



David Madland

Those in unions earn significantly more on average than their nonunion counterparts and union employers are more likely to provide benefits.

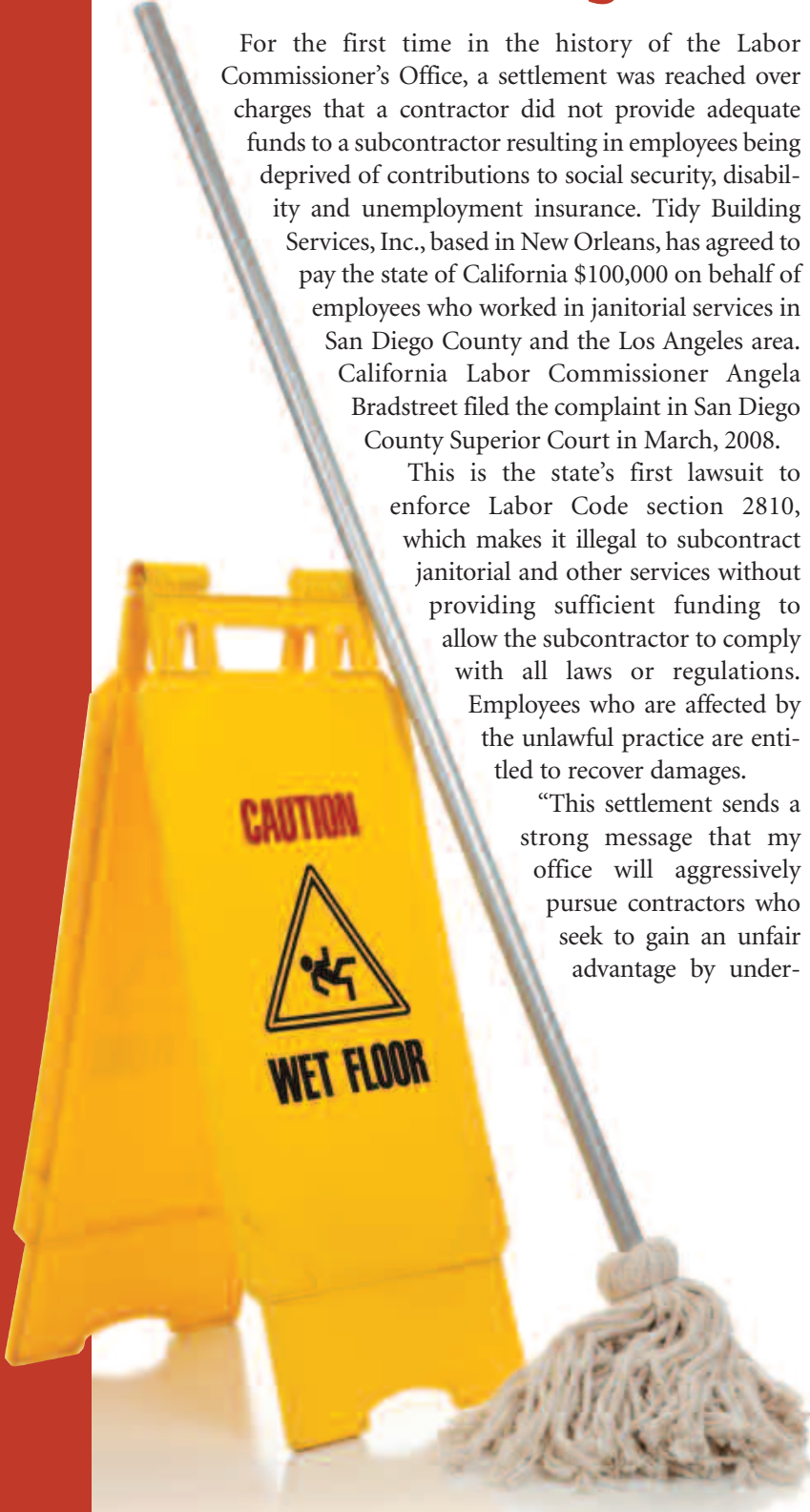
These unfair union election laws mean that workers cannot choose a union without employer interference and even if they successfully vote to join a union they are often prevented from fairly negotiating a first contract. Research from MIT's Sloan School of Management shows that workers in 45 percent of successful elections were still waiting for a first contract two years after voting.

Unions benefit workers. Those in unions earn significantly more on average than their nonunion counterparts and union employers are more likely to provide benefits. When unions are strong and able to represent the people who want to join them, these gains spread throughout the economy. Nonunion companies increase their wages and all workers have more purchasing power.

It will take substantial legislative changes to allow all Americans a stronger voice on the job and a true opportunity to unionize. The Employee Free Choice Act is the first step toward restoring workers' basic democratic right to make a free choice to join a union. It would reform the labor relations system through provisions that create a level playing for workers by granting workers a fair and direct path to form unions, hold bad actors accountable with stiffer penalties on employers who break the rules, and restore fairness in negotiating with a first contract arbitration process. Passing the bill would help restore workplace democracy for workers attempting to organize, boost unionization rates, and improve the economic standing and workplace conditions for millions of American workers.

This article is printed with permission of the Center for American Progress Action Fund. David Madland is the Director of the American Worker Project and Karla Walter is a Policy Analyst at American Progress.

CA Labor Commissioner Reaches Landmark Settlement Against Janitorial Company



For the first time in the history of the Labor Commissioner's Office, a settlement was reached over charges that a contractor did not provide adequate funds to a subcontractor resulting in employees being deprived of contributions to social security, disability and unemployment insurance. Tidy Building Services, Inc., based in New Orleans, has agreed to pay the state of California \$100,000 on behalf of employees who worked in janitorial services in San Diego County and the Los Angeles area. California Labor Commissioner Angela Bradstreet filed the complaint in San Diego County Superior Court in March, 2008.

This is the state's first lawsuit to enforce Labor Code section 2810, which makes it illegal to subcontract janitorial and other services without providing sufficient funding to allow the subcontractor to comply with all laws or regulations. Employees who are affected by the unlawful practice are entitled to recover damages.

"This settlement sends a strong message that my office will aggressively pursue contractors who seek to gain an unfair advantage by under-

"The subcontractors get squeezed, the workers don't get paid, and law-abiding contractors lose out as well through unfair competition."

funding subcontracts," said Bradstreet, "The subcontractors get squeezed, the workers don't get paid, and law-abiding contractors lose out as well through unfair competition."

More than 200 employees will receive between \$100 and \$2,000 each in compensation as part of the settlement. The settlement provides that payment will be made by the end of this month.

Labor Code section 2810 became law in 2004 to address the particular problems faced by low wage workers in the janitorial, construction, security guard, farm labor and garment industries where the violation of wage and hour laws is more prevalent because of the widespread utilization of immigrant workers. Those workers are often more vulnerable to being exploited because of language barriers and immigration status. Labor Code 2810 was designed to spread the responsibility for systemic violations of minimum labor standards by making those entering service contracts responsible for fully and accurately estimating service contract performance. The cost of labor law compliance must be incorporated into the contract price paid.

The California Labor Commissioner's Office, also known as the Division of Labor Standards Enforcement, is a division of the California Department of Industrial Relations. The division adjudicates wage claims, investigates discrimination and public works complaints, and enforces state labor law. To learn more about the functions of the California Labor Commissioner's Office, visit our website at www.dir.ca.gov/dlse. Employees with work-related questions or complaints may call the California Workers' Information Hotline at (866) 924-9757.

Labor Department secures \$1 million in overtime back wages for 154 Hurricane Katrina recovery workers

The U.S. Department of Labor's Wage and Hour Division has resolved a lawsuit against Houston-based Universal Project Management Inc. and Irving, Texas-based Fluor Enterprises Inc. for failing to pay \$1 million to 154 workers in overtime compensation in the wake of Hurricane Katrina as required by the Fair Labor Standards Act (FLSA).

"Workers who help rebuild our communities and secure the safety of local residents following natural disasters should be fairly and legally compensated for the work they perform," said Secretary of Labor Hilda L. Solis. "This department is committed to securing their wages and overtime."

The department filed a consent judgment against Fluor Enterprises Inc. and obtained a default judgment against Universal Project Management Inc. in the U.S. District Court for the Southern District of Texas, Houston Division, following an investigation by the Wage and Hour Division in Houston which found that the companies paid straight time only for all hours worked. The settlement agreement has resulted in payment of \$1 million for these hurricane workers. Payment of back wages is ongoing.

Fluor Enterprises, primarily engaged in engineering, procurement and construction, entered into a contract with the Federal Emergency Management Agency following Hurricane Katrina. As general contractor, Fluor Enterprises subcontracted with

Universal Project Management to inspect temporary housing trailers for displaced residents who lost their homes in the aftermath of the hurricane. Fluor Enterprises has denied the company had any liability.

"Some employees involved in the inspection of trailers during the hurricane recovery worked up to 84 hours in a week without the required overtime compensation for hours worked over 40 in a workweek."

—Cynthia Watson, regional administrator for the Wage and Hour Division's Southwest Region

The FLSA requires that covered employees be paid at least the federal minimum wage of \$7.25 for all hours worked, plus time and one-half their regular rates of pay, including commissions, bonuses and incentive pay, for hours worked beyond 40 per week. Employers must also maintain accurate time and payroll records.

For more information about the FLSA and other federal wage laws, call the Wage and Hour Division's toll-free helpline at 866-4US-WAGE (487-9243) or the Wage and Hour Division's district office in Houston at 713-339-5500. Information is also available on the Internet at <http://www.dol.gov/whd>.

Worker Safety in a Green

By Elisha Seaton and Dean McKenzie
Directorate of Construction
Occupational Safety and Health Administration

If you have been in a supermarket lately, you have probably seen a number of “green” products on the shelves – green paper towels, green kitchen cleaner, even green dog food. Equally visible to many Americans are green job initiatives. If you live in a rural area, you may see wind turbines sprouting up. If you live in an urban environment, you may have walked past a solar panel installation project or taken public transportation where energy efficiency initiatives are often advertised. “Green jobs” are being viewed in a positive light because they are associated with a growth market that will also help the environment.

The problem is that often these jobs are viewed in this positive light without any thought for worker safety and health. As a result, guidelines designed specifically for green industry workers often fail to mention safety. While the promotion and creation of environmentally-friendly jobs are essential, OSHA wants to emphasize the fundamental importance of addressing the safety and health of green sector workers.

What is a Green Job?

Some of the difficulty in developing a definitive list of safety and health issues and protections for green jobs is the term’s elusive definition. For example, the United Nations Environment Program used broad terms when it defined a green job as “work in agricultural, manufacturing, research and development, administrative, and service activities that contribute(s) substantially to preserving or restoring environmental quality.” With such an expansive concept, it is not easy to pinpoint what may or may not be considered a green job. To add complexity to the issue, being green is



becoming an integral part of staying competitive in the marketplace. As more companies emphasize recycling and high-efficiency, more jobs are being viewed as “green.”

It is obvious to most of us that jobs in such areas as solar panel installation, green roofs, and wind energy fall within the green sector. However, there are many jobs that are not as often recognized as green, such as home and commercial weatherization or “green retrofit” building renovation, that fall under the green umbrella as well. When evaluating safety needs to protect workers, it is important for everyone to recognize the ever-changing landscape of green jobs.

Green jobs present many great opportunities. They are good for the economy, the environment, energy independence, and for job creation. Green jobs can provide a new livelihood for displaced workers and new growth opportunities for employers. Green energy is also a means by which we can improve our energy independence. For example, currently, 4% of our nation’s energy comes from wind power. By 2020, the wind industry expects that to increase to nearly 20%. This large increase in production will require thousands of workers in manufacturing, construction, operations and maintenance.

Making Green Jobs Safe

The widespread buzz surrounding green jobs in conjunction with the government grants and incentives for green jobs will help draw employers and workers into new industries. While increased production has innumerable benefits, including the creation of new opportunities for workers, we must not lose sight of the underlying health and safety hazards in this fast-paced indus-

World with OSHA®

try. Individuals may lack both adequate safety training and the ability to recognize and avoid hazards in these new settings. As a result, a focus on identifying hazards and safe work practices in these green industries is essential.

The green job sector has many health and safety hazards that are already known. In these jobs, it is critical to educate new workers about the hazards on the job. Green jobs also present new and challenging risks for which training is vital. The wind energy sector provides examples of both familiar and unfamiliar hazards. Wind turbine blade manufacturing takes place in a fiberglass manufacturing facility complete with all of the dust and resins one would find in a yacht building operation or body shop. Post-production, however, some safety issues associated with wind energy installation may be unknown to some employers. OSHA's existing standards address many of the hazards present in this industry. However, many European companies installing wind turbines in the U.S. may be unfamiliar with OSHA's regulatory framework and need to learn about these requirements.

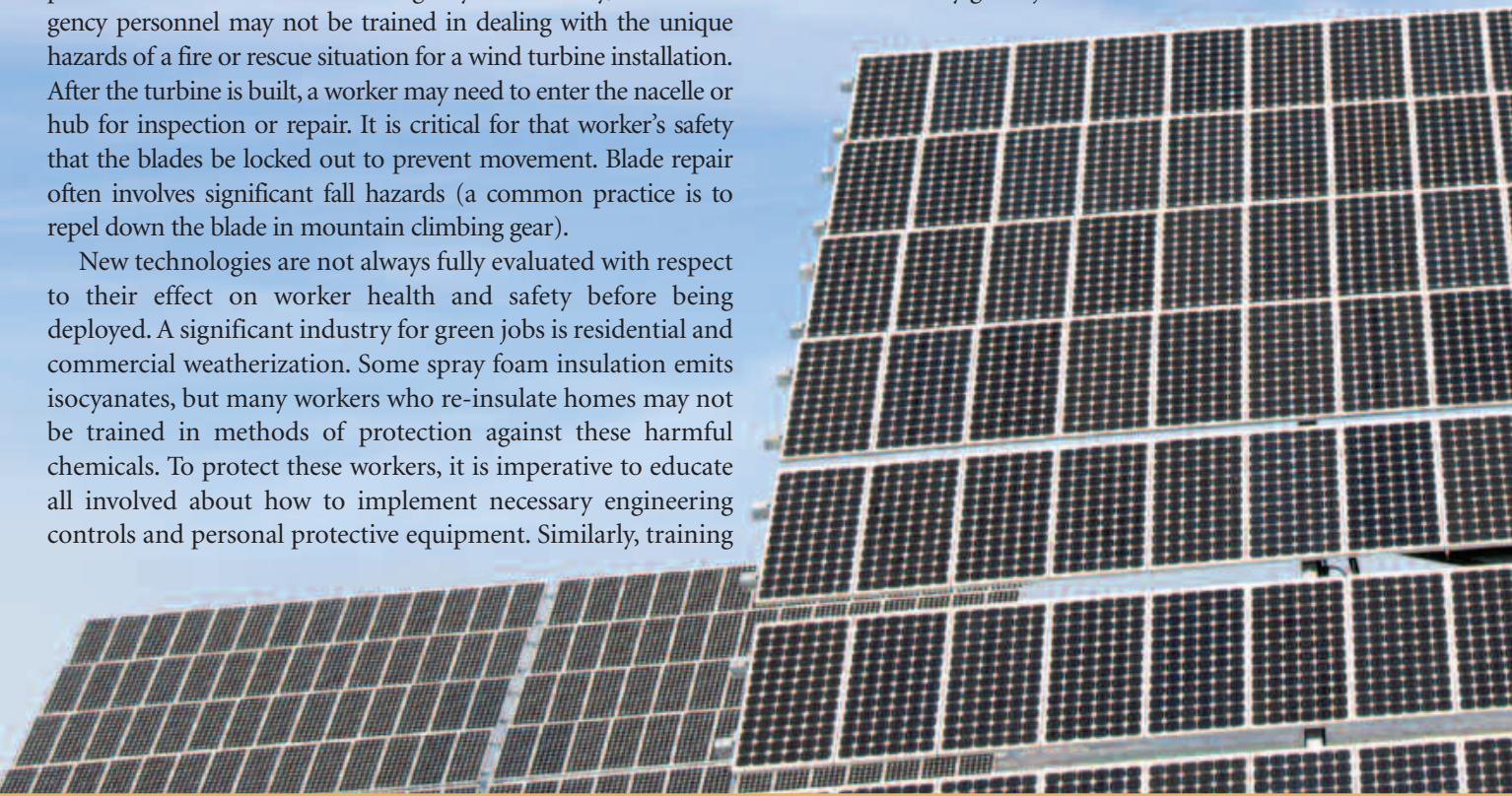
Wind farms present unique challenges, as they are often located far from metropolitan areas and, therefore, a long distance from health clinics or emergency personnel. During installation of the turbine the employer must ensure that effective procedures are in place in the event of a medical emergency. Additionally, local emergency personnel may not be trained in dealing with the unique hazards of a fire or rescue situation for a wind turbine installation. After the turbine is built, a worker may need to enter the nacelle or hub for inspection or repair. It is critical for that worker's safety that the blades be locked out to prevent movement. Blade repair often involves significant fall hazards (a common practice is to repel down the blade in mountain climbing gear).

New technologies are not always fully evaluated with respect to their effect on worker health and safety before being deployed. A significant industry for green jobs is residential and commercial weatherization. Some spray foam insulation emits isocyanates, but many workers who re-insulate homes may not be trained in methods of protection against these harmful chemicals. To protect these workers, it is imperative to educate all involved about how to implement necessary engineering controls and personal protective equipment. Similarly, training

and education is required for an emerging trend in road construction: crushing and recycling road and bridge materials on the job site. Among other hazards, this process can expose workers to silica hazards. Likewise, workers recycling fluorescent lights containing mercury may be exposed.

Solar production is another green industry that requires vigilance when it comes to safety and health considerations. Workers who manufacture solar panels work with cadmium telluride, a carcinogen. Other products with serious health hazards include new composite wood products, which contain off-gassing formaldehyde, and batteries for tools, hybrid cars, computers, and other products, which often use volatile lithium.

The jobs and industries discussed above represent just a small part of a large, evolving industry. We hope that the examples provided here promote evaluation and understanding of the hazards in these industries, how to recognize hazards, and how to implement solutions for worker protection. OSHA's existing standards cover most work activities in green construction, but awareness of these standards may be lacking. As a result, OSHA is working to communicate the concerns regarding green job safety. Green jobs can be a wonderful, new, and sustainable opportunity for America so long as we take the steps needed to ensure the safety and health of each and every green job worker.



Obama Budget Targets Inde

The Obama Administration's 2011 Budget includes groundbreaking changes in the area of worker misclassification and independent contractor abuse. The new budget proposals are designed to "increase certainty with respect to worker classification" and describe how the current IRS law harms workers:

"Since 1978, the IRS has not been permitted to issue general guidance addressing worker classification, and in many instances has been precluded from reclassifying workers — even prospectively — who may have been misclassified. Since 1978 there have been many changes in working relationships between service providers and service recipients. As a result, there has been continued and growing uncertainty about the correct classification of some workers.

Many benefits and worker protections are available only for workers who are classified as employees. Incorrect classification as an independent contractor for tax purposes may spill over to other areas and, for example, lead to a worker not receiving benefits for unemployment (unemployment insurance) or on-the-job injuries (workers' compensation), or not being protected by various on-the-job health and safety requirements".

The 2011 Budget also describes the competitive disadvantage which the current policy places on fair employers, particularly in industries such as construction where abuse is widespread:

"The incorrect classification of workers also creates opportunities for competitive advantages over [employers]... who properly classify their workers. Such misclassification may lower the



[employer's]... total cost of labor by avoiding workers' compensation and unemployment compensation premiums, and could also provide increased opportunities for noncompliance by service providers.

Workers, service recipients, and tax administrators would benefit from reducing uncertainty about worker classification, eliminating potential competitive advantages and incentives to misclassify workers associated with worker misclassification by competitors, and reducing opportunities for noncompliance by workers classified as self-employed, while maintaining the benefits and worker protections ... ?"

The Treasury Budget focuses its proposals for change on a special provision in the tax code known as section 530 which allows an employer to "treat a worker as an independent contractor for Federal employment tax purposes even though the worker actually may be an employee under the common law rules..." If an employer meets the requirements for the special 530 provision with respect to a class of workers, the IRS is prohibited from reclassifying the workers as employees:

"If the IRS determines that the special provision applies to a class of workers, it does not determine whether the workers are in fact employees or independent contractors. Thus, the worker classification continues indefinitely even if incorrect. The special [530] provision also prohibits the IRS from issuing generally applicable guidance addressing the proper classification of workers"

The Obama Budget proposes the following changes in current law and policy:

- The IRS would be permitted to require prospective reclassification of workers who are currently misclassified and whose reclassification has been prohibited under current law.
- The reduced penalties for misclassification provided under current law would be retained, except that lower penalties would apply only if the service recipient voluntarily reclassifies its workers before being contacted by the IRS or another enforcement agency and if the service recipient had filed all required information returns (Forms 1099) reporting the payments to the independent contractors.
- For service recipients with only a small number of employees and a small number of misclassified workers, even reduced penalties would be waived if the service recipient (1) had consistently filed Forms 1099 reporting all payments to all misclassified workers and (2) agreed to prospective reclassification of misclassified workers. It is anticipated that, after enactment, new enforcement activity would focus mainly on obtaining the proper worker classification prospectively, since in many cases the proper classification of workers may not have been clear. (Statutory employee or nonemployee treatment as specified under current law would be retained.)
- The Department of the Treasury and the IRS also would be permitted to issue generally applicable guidance on the proper classification of workers under common law standards. This would enable service recipients to properly classify workers with much less concern about future IRS examinations.
- Treasury and the IRS would be directed to issue guidance interpreting common law in a neutral manner recognizing that many workers are, in fact, not employees.

pendent Contractor Abuse

In addition to the Treasury proposal contained in the 2011 Budget, the IRS is launching a National Research Program (NRP) to study the impact of employment tax underpayments on the tax gap. According to IRS chief of employment tax, the IRS will conduct random audits of approximately 6,000 employers over a three-year period, scheduled to begin in 2010.

The new IRS study was recommended in an audit report released by the Treasury Inspector General for Tax Administration, which finds that “[m]isclassified workers are a significant portion of the employment tax gap”:

The IRS’ most recent estimate of the tax gap is approximately \$345 billion. The employment tax portion of this figure due to underreporting is estimated to be about \$54 billion with an estimated \$1.6 billion being attributable to worker misclassification. However, the \$1.6 billion estimate is based on Tax Year 1984 data. The IRS conducted a preliminary analysis of Fiscal Year 2006 operational and program data and found that underreporting attributable to misclassified workers is likely to be markedly higher than the \$1.6 billion. We recommended that the Deputy Commissioner for Services and Enforcement develop and implement an agency-wide employment tax program to address the issue of worker classification to improve coordination among the business divisions, improve compliance, and reduce the tax gap. The Deputy Commissioner for Services and Enforcement should also consider conducting a formal National Research Program reporting compliance study to measure the impact of worker misclassification on the employment tax gap”. While Actions Have Been Taken to Address Worker Misclassification, an Agency-Wide Employment Tax Program and Better Data are Needed, Report of the Treasury Inspector General for Tax Administration.

The Obama budget also proposes new funding for enforcement in the Department of Labor to target worker misclassification:

“Individuals wrongly classified as independent contractors are denied access to critical benefits and protections to which they may be entitled as regular employees. Worker misclassification also generates substantial losses to the Treasury and the Social Security, Medicare and Unemployment Insurance Trust Funds. To address this problem, the FY 2011 Budget includes a joint Labor-Treasury initiative to strengthen and coordinate Federal and State efforts to enforce statutory prohibitions, identify, and deter misclassification of employees as independent contractors. The Department of Labor’s budget includes \$25 million to support this initiative. . . .”

The new DOL Budget would fund the following programs:

- Wage and Hour Division. An additional \$12 million and 90 FTE are requested to focus on misclassification during targeted WHD investigations.
- Employment and Training Administration. \$11.25 million and 2 FTE are requested for competitive grants to States to increase their capacity to focus on misclassification and reward the States that are most successful at detecting and prosecuting employers that fail to pay their fair share of taxes due to misclassification.
- Solicitor of Labor. \$1.6 million and 10 FTE are requested to pursue misclassification litigation, including multi-State litigation to coordinate enforcement with States and leverage their groundbreaking work.

Occupational Safety and Health Administration. \$150 thousand is requested to modify training curriculum and investigation guidelines to allow inspectors to identify potential employee misclassification and share information with WHD.

- Further, Treasury and the IRS would develop guidance that would provide safe harbors and/or rebuttable presumptions, both narrowly defined. To make that guidance clearer and more useful for service recipients, it would generally be industry- or job-specific.
- Priority for the development of guidance would be given to industries and jobs in which application of the common law test has been particularly problematic, where there has been a history of worker misclassification, or where there have been failures to report compensation paid.
- Service recipients would be required to give notice to independent contractors, when they first begin performing services for the service recipient, that explains how they will be classified and the consequences thereof, e.g., tax implications, workers’ compensation implications, wage and hour implications.
- The IRS would be permitted to disclose to the Department of Labor information about service recipients whose workers are reclassified.
- To ease compliance burdens for independent contractors, independent contractors receiving payments totaling \$600 or more in a calendar year from a service recipient would be permitted to require the service recipient to withhold for Federal tax purposes a flat rate percentage of their gross payments, with the flat rate percentage being selected by the contractor.
- The proposal would be effective upon enactment, but prospective reclassification of those covered by the current special provision would not be effective until the first calendar year beginning at least one year after date of enactment.
- The transition period could be up to two years for independent contractors with existing written contracts establishing their status.

Maine Presses Forward on

Developments at the state level continue to signal a renewed commitment to combating independent contractor abuse. In Maine, the Governor established a Joint Enforcement Task Force on Employee Misclassification by Executive Order in January, 2009, to coordinate the investigation and enforcement of employee misclassification matters by state agencies.

A new Report from the Maine Task Force describes its activities and findings after one year in operation:

“[T]he majority of Maine businesses [are] law-abiding and ... disadvantaged when competing against businesses that artificially lower their costs by misclassifying workers. Reducing misclassification through outreach and better enforcement of the law will help to level the playing field for honest employers in the competitive marketplace.

... [I]mproving enforcement of the misclassification laws will help the taxpayers of

“misclassification is more widespread in certain industries” including construction.

The Report describes several innovative aspects of the Maine enforcement effort, including working with other States on misclassification. Maine’s Task Force has developed working relationships with task forces from Massachusetts, New York, New Hampshire, Vermont, Connecticut, Rhode Island, New Jersey, and Maryland. The Report notes that:

“Task force members shared information, heard about the successes and missteps of other states, and learned strategies to improve task force effectiveness. ... The Task Force Coordinator has met with counterparts from Massachusetts and New York, and routinely communicates with them and task force representatives from other states ... [T]ask force representatives from the Northeast states began participating in regular monthly conference telephone calls to continue to share information. In addition to learning enforcement strategies and techniques from each other, the task forces hope to eventually be able to share substantive enforcement information. These relationships will prove to be extremely valuable as states deal with multistate misclassifying employers”.

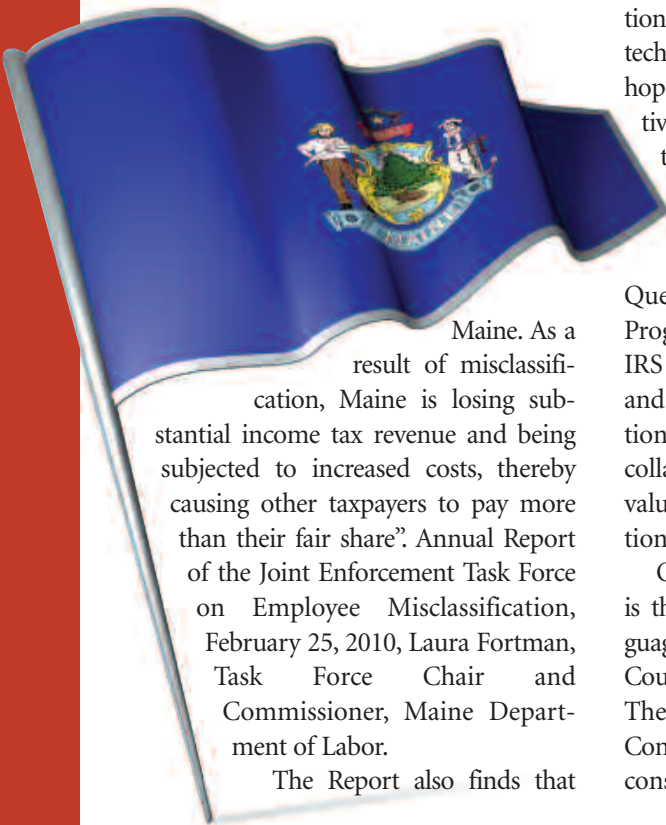
Maine is also participating in the IRS Questionable Employment Tax Practices Program created in 2007, which allows the IRS and state workforce agencies to share and exchange employment tax information. According to the Report, Maine’s collaboration with the IRS has proven a valuable source of leads on misclassification cases.

Of particular interest to NAFC members is the Report’s description of model language recently developed by the National Council of Insurance Legislators (NCOIL). The Construction Industry Workers’ Compensation Coverage Model Act targets construction employee misclassification

through transparency, disclosure, and accountability. The model would mandate workers’ compensation with the exception of sole proprietors on residential projects, and homeowners, and would hold primary contractors liable. The model also establishes auditing procedures, penalties for insurance fraud, and enhanced state enforcement authority.

Going forward into its second year, the Maine Task Force has voted to take the following actions:

- Establish a pilot program for ... field auditors to apply the new 12 part workers’ compensation test for employment at the same time they apply to ABC test to evaluate whether that test would yield different results from the ABC test, and if so, how. After the Workers’ Compensation Board has gained experience applying this test to the construction industry, and ... auditors have had experience applying the test, the Task Force can consider the issue of the appropriate legal standard of employment for misclassification purposes.
- Conduct more community forums in places where they have not yet been held in order to keep the Task Force’s momentum going, keep the public informed, and continue to learn more about how misclassification affects Maine’s workers and businesses.
- Support L.D. 1565, which would give stop work order authority to the Executive Director of the Workers’ Compensation Board. The Task Force recommended that if L.D. 1565 is passed, the Workers’ Compensation Board should ensure by rules and regulations that the stop work order power is not used in a way that would create a safety problem, such as issuing a stop work order against a flagging company on a DOT construction site without notice to DOT.
- Through the Communications and



Maine. As a result of misclassification, Maine is losing substantial income tax revenue and being subjected to increased costs, thereby causing other taxpayers to pay more than their fair share”. Annual Report of the Joint Enforcement Task Force on Employee Misclassification, February 25, 2010, Laura Fortman, Task Force Chair and Commissioner, Maine Department of Labor.

The Report also finds that

Task Force Report

Outreach Subcommittee, continue to expand outreach efforts, including working with and speaking to community groups. It should also seek more press coverage. A press release should be issued very soon about the tip line and tip form, since they and the database are up and running.

- Meet with the Bureau of General Services ... to put into place any procedures, training, and outreach necessary to ensure compliance with misclassification laws. The Task Force believes that the State must take all necessary action to ensure that State money is not used to support misclassification.
- Encourage Maine Revenue Services to partner with the other Task Force partner agencies beginning in the fall of 2010. MRS should meet with representatives of MDOL and the Task Force in the summer to work out a plan to be implemented in the fall. Areas for partnership include misclassification awareness training for MRS auditors, MRS sharing potential misclassification information with MDOL, and MRS implementing results of MDOL audits as appropriate.
- Create a subcommittee of representatives of the Workers' Compensation Board and the Bureau of Insurance to look at whether workers' compensation insurers should be required by law to share their misclassification audits with the Workers' Compensation Board. The information would then be shared with partner agencies. This recommendation arose from the discussion of the NCOIL Model Construction Industry Workers' Compensation Act adopted in late November.

Annual Report of the Joint Enforcement Task Force on Employee Misclassification, February 25, 2010, Laura Fortman, Task Force Chair and Commissioner, Maine Department of Labor, can be found at <http://www.maine.gov/labor/misclass/>.

National Council of Insurance Legislators (NCOIL) can be found at www.ncoil.org.

Presidential Documents

Memorandum of January 20, 2010

The President— Addressing Tax Delinquency by Government Contractors

Memorandum for the Heads of Executive Departments and Agencies

The Federal Government pays more than half a trillion dollars a year to contractors and has an important obligation to protect American taxpayer money and the integrity of the Federal acquisition process. Yet reports by the Government Accountability Office (GAO) state that Federal contracts are awarded to tens of thousands of companies with serious tax delinquencies. The total amount in unpaid taxes owed by these contracting companies is estimated to be more than \$5 billion.

Too often, Federal contracting officials do not have the most basic information they need to make informed judgments about whether a company trying to win a Federal contract is delinquent in paying its taxes. We need to give our contracting officials the tools they need to protect taxpayer dollars.

Accordingly, I hereby direct the Commissioner of Internal Revenue (Commissioner) to conduct a review of certifications of non-delinquency in taxes that companies bidding for Federal contracts are required to submit pursuant to a 2008 amendment to the Federal Acquisition Regulation. I further direct that the Commissioner report to me within 90 days on the overall accuracy of contractors' certifications.

I also direct the Director of the Office of Management and Budget, working with the Secretary of the Treasury and other agency heads, to evaluate practices of contracting officers and debarring officials in response to contractors' certifications of serious tax delinquencies and to provide me, within 90 days, recommendations on process improvements to ensure these contractors are not awarded new contracts, including a plan to make contractor certifications available in a Government-wide database, as is already being done with other information on contractors.

Executive departments and agencies shall carry out the provisions of this memorandum to the extent permitted by law. This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of the Office of Management and Budget is hereby authorized and directed to publish this memorandum in the Federal Register.

Senator Tom Harkin, A modest

Tom Harkin was born in Cumming, Iowa (pop. 150) on November 19, 1939, the son of an Iowa coal miner father and a Slovenian immigrant mother. He still lives in the house in Cumming where he was born.

Growing up in a close-knit family of modest means, Tom and his five siblings learned early in life the importance of hard work and responsibility. During his youth, he worked in a variety of jobs - on farms and construction sites, as a paper boy and at a Des Moines bottling plant.

After graduating from Dowling High School in Des Moines, he attended Iowa State University on a Navy ROTC scholarship, earning a degree in government and economics.

Following graduation, Tom served in the Navy as a jet pilot on active duty from 1962 to 1967. Later, he continued to fly in the Naval Reserves. He is an active member of American Legion Post 562 in Cumming and the Commander of the Congressional Squadron of the Civil Air Patrol.

In 1968, Tom married Ruth Raduenz, the daughter of a farmer and a school teacher from Minnesota.

Start in Washington...

Tom went to Washington in 1969 to join the staff of Iowa Congressman Neal Smith. As a staff member accompanying a congressional delegation to South Vietnam, he independently investigated and photographed the infamous “tiger cage” cells at a secret prison on Con Son Island, where prisoners - many of them students - were being tortured and kept in inhumane conditions. Despite pressure to suppress his findings, Tom’s photos and eyewitness account were published in Life magazine. As a result, hundreds of abused prisoners were released.

In 1972, Tom and Ruth graduated in the same class at Catholic University of America Law School in Washington, D.C. They returned to Iowa and settled in Ames. Tom worked with Polk County Legal Aid, assisting low-income Iowans who

“The struggle to provide affordable, quality health care is over, it was a battle worth fighting, a battle worth winning”

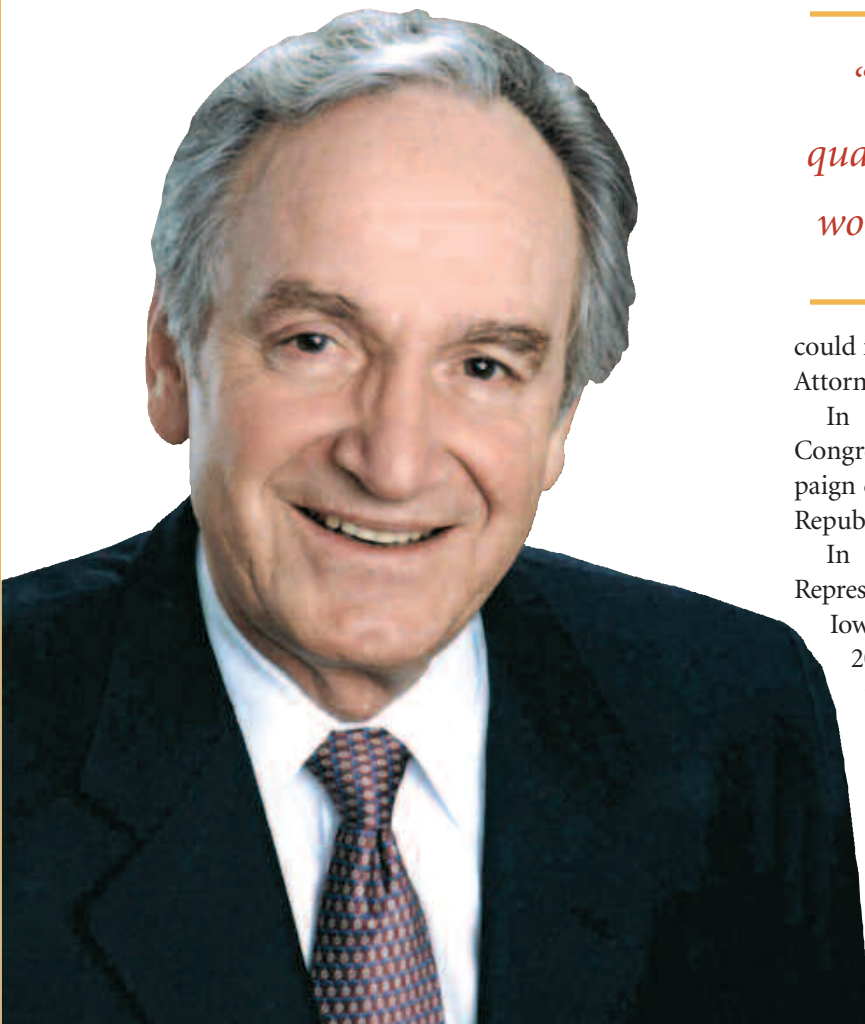
could not afford legal help. Ruth won election as Story County Attorney, becoming the first female elected to this position.

In 1974, Tom was elected to Congress from Iowa’s Fifth Congressional District. His energetic, person-to-person campaign carried the day against an incumbent in a long-standing Republican district.

In 1984, after serving 10 years in the U.S. House of Representatives, Tom challenged an incumbent Senator and won.

Iowans returned him to the Senate in 1990, 1996 and again in 2002. In November 2008, Tom made history by becoming the first Iowa Democrat to win a fifth term in the U.S. Senate.

During his first term in Congress, Tom became the first member to create a Mobile Office. It is a specially equipped van that Harkin staff members use to bring congressional services to every one of Iowa’s 99 counties each year. Though the vehicle has changed over the years (the current vehicle is engineered to run on E-85 ethanol), its purpose has not.



beginning...

A commitment to the issues

As a young senator, Tom was tapped by Senator Ted Kennedy to craft legislation to protect the civil rights of millions of Americans with physical and mental disabilities. Tom knew firsthand about the challenges facing people with disabilities from his late brother, Frank, who was deaf from an early age. What emerged from that process would later become Tom's signature legislative achievement — **The Americans with Disabilities Act (ADA)**.

The ADA has become known as the 'Emancipation Proclamation for people with disabilities.' The legislation changed the landscape of America by requiring buildings and transportation to be wheelchair accessible, and workplace accommodations for people with disabilities. To preserve the intent of the ADA after several court rulings weakened its standards, Tom and Senator Orrin Hatch (R-UT) introduced the ADA Amendments bill to ensure that all Americans with disabilities are protected from discrimination. It was signed into law in September 2008.

Tom has also led the fight to advance **collaborative research in paralysis** and improve quality of life for people living with paralysis and mobility impairments from any cause including stroke, ALS, spinal cord injuries, and others. His Christopher and Dana Reeve Act, named after the actor and his wife, became law in March 2009.

He also led the fight to lift former President Bush's restrictions on **embryonic stem cell research**, which shows great promise for new treatments of conditions like Parkinson's, spinal cord injuries and juvenile diabetes.

Tom has long believed that in America, we have a "**sick care**" system, not a health care system. Rather than treating people once they get sick, he believes that we should remove the barriers to a healthy lifestyle, reduce chronic disease and rein in the high cost of health care, creating a "**wellness society**" in America.

He has done this in two ways — first as chairman of the Senate panel that funds medical research, where in tandem with Senator Arlen Specter, he led the effort between 1998 and 2003 to double funding for research into cardiovascular disease, cancer, Alzheimer's and other diseases. Second, as a member of the Senate Health, Education, Labor and Pensions (HELP) Committee, where he crafted the prevention and wellness title of the Committee's health reform bill, *The Affordable Health Choices Act*. The proposal creates incentives across the full health care spectrum focused on fighting disease and creating healthier lifestyles and good nutrition with an aim toward doctor training and coverage of preventive services and the elimination of co-pays and deductibles for these services; and at the

Senator Harkin's Committee Assignments

- **Health, Education, Labor, And Pensions** (*Chairman*)
 - Public Health
 - Employment, Safety and Training
- **Agriculture, Nutrition, And Forestry**
- **Small Business And Entrepreneurship**
- **Appropriations**
- **Labor, Health and Human Services, and Education** (*Chairman*)
- **Agriculture, Rural Development, FDA**
- **Energy and Water Development**
- **Defense**
- **State, Foreign Operations**
- **Transportation, Treasury, the Judiciary, HUD, and Related Agencies**

grassroots level with grants for community initiatives that will support more walkable communities, healthier schools and increased access to nutritious foods in safe environments.

As the chair of the Senate subcommittee that funds education, Tom has fought to **improve education in Iowa and across the country**. He has worked to reduce class size, give students better computer and Internet access, expand school counseling and safety programs, and improve teacher training. He has led the effort to modernize America's school infrastructure. Each year he secures funding for "**Harkin Grants**" to help school districts in Iowa update and repair their facilities.

Tom's dedication to **agriculture** dates back to 1975 when he first came to Congress and became a member of the Agriculture Committee. In that time, he has had the great privilege of serving as Chairman of the Senate Committee during enactment of the 2002 and 2007 farm bills — bipartisan legislation that passed Congress by an overwhelming majority. It is because of these bills that support for renewable energy and farm income grew exponentially, acres and acres of lands have been preserved through conservation efforts, rural developments efforts grew to help small towns that Americans have access to more fruits and vegetables and food assistance is covered for American families who need it.

In September 2009, Tom succeeded Senator Ted Kennedy in becoming **chairman of the Senate Health, Education, Labor and Pensions (HELP) Committee**. Tom believes that to serve in this capacity is to carry on the legacy of Senator Kennedy, who dedicated his life to ensuring that our economy works for all Americans, guaranteeing every child the opportunity to pursue a quality education and, of course, the cause of his life: access to quality, affordable health care for all Americans.

Tom and Ruth have two daughters: Amy and Jenny, and two grandchildren. Ruth Harkin currently serves on the Iowa Board of Regents, responsible for leading Iowa's public universities.

BREAKING NEWS

Government Contractor Ordered to Pay \$1.66 Million in Damages For Violation of the False Claims Act

NASHVILLE, Tenn. – Circle C Construction, LLC (Circle C) was ordered to pay the United States \$1,661,423.13 as treble damages for breaching its agreement to abide by the Davis-Bacon Act requirements to pay electricians agreed-upon wages in constructing buildings at the Fort Campbell Army base, in violation of the federal False Claims Act.

In October 2008, The United States filed a lawsuit against Circle C and its electrical subcontractor, Phase Tech, LLC, (Phase Tech) alleging that Circle C filed false payroll certifications with the government that failed to disclose Phase Tech as a subcontractor; failed to identify any of its employees, as required by federal law and the contract's terms, and falsely certified that Circle C and its agents were paying the prevailing wages to employees that were required by the contract. The case against Phase Tech was settled in June 2009, in which Phase Tech agreed to pay \$15,000.00 in damages.

The United States Attorney's Office will vigorously pursue allegations that government contractors have not dealt fairly with the United States and its agencies," said U.S. Attorney Ed

Yarbrough. "Moreover, businesses that contract with the government to pay prevailing wages to employees and contractors on government projects will be held to the letter of their agreement in order to protect local wage standards for the benefit of local workers."

In granting judgment for the United States, United States District Judge William J. Haynes, Jr., found that Circle C, a company that has held government contracts for nearly twenty years, contracted with the Army to construct buildings at Fort Campbell, and agreed to pay its electrical workers a base hourly rate of \$19.19 plus fringe benefits of \$3.94 per hour. Throughout the relevant time period, Circle C only paid electricians between \$12 and \$16 per hour for their work at Fort Campbell. Circle C also agreed to submit complete and accurate payroll certifications to Fort Campbell as a condition of payment. Although Circle C submitted payroll certifications for its employees and for other subcontractors, it did not submit certifications for its electrical subcontractor, Phase Tech. After the lawsuit was filed, Circle C submitted payroll certifications to the Army for Phase Tech, but did not verify them and they contained inaccuracies.

The investigation was conducted by special agents of the United States Department of Labor. The United States was represented by Assistant United States Attorney Ellen Bowden McIntyre.

