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Report: Employee Misclassification Costs State Millions

by [Julián Aguilar](#) | January 29, 2013 | [14 Comments](#) Comment Republish Email Tweet Recommend

Even during the depths of the national financial crisis, Texas led the country in home construction, and the industry employed more than 950,000 people in Texas.

But many in the industry say it is also a breeding ground for payroll and tax fraud, and rife with employers who knowingly misclassify their employees, a practice that perpetuates the hiring of illegal workers. Industry moguls and researchers discussed such issues Tuesday at the Capitol, addressing the results of a yearlong research project on conditions in the industry by the [Workers Defense Project](#) and the University of Texas at Austin's Division of Diversity and Community

Engagement.

The study, titled "Build a Better Texas," said that more than 40 percent of construction workers in Texas — about 300,000 — are either misclassified or paid under the table. The result is more than \$54 million in lost unemployment tax revenue. Payroll fraud in Texas translates to about \$1.06 billion in lost federal income tax revenue, according to the study.

Some speakers on Tuesday pushed for the passage of legislation to address misclassification issues.

"I come to you as a conservative Republican businessman," said Stan Marek, the president and CEO of the [Marek Family of Companies](#), an interior contracting company with offices statewide. "We need our Legislature to do this. We need to clarify what the relationship is between an employer and an employee."

In the study, researchers interviewed more than 1,200 construction workers and dozens of project managers and contractors, which also found that Texas leads the country in the number of construction-related deaths and that most workers in the construction workforce — which includes plumbers, electricians, carpenters, painters and construction laborers — earn, on average, about \$6 per hour less than the national average. One of five construction workers in Texas are also victims of wage threat, and one in three that report the abuse are retaliated against.

The study comes at a time when construction leaders have [been busy lobbying](#) lawmakers to address what they claim is a loophole that allows employers to purposefully misclassify their employees as independent contractors or subcontractors, also called “1099” employees — named for the [employment form](#) they fill out. Employers can use this subcontractor classification to avoid paying payroll taxes, workers' compensation and overtime.

Marek has testified before the Texas Workforce Commission several times, hoping the commission will push lawmakers to fix the problem. He said Immigrations and Customs Enforcement has increased its inspections of [I-9 forms](#), the federal employment eligibility verification. But workers found to be ineligible to work here are not always deported. Instead they're often forced to go into an underground, cash-based economy if an unscrupulous employer is willing to misclassify the employee as an independent contractor.

Marek said a key component in solving the issue is comprehensive immigration reform at the federal level. He acknowledged, however, that if state lawmakers address the construction industry's concerns but immigration reform fails to occur, it could mean a shortage of workers.

“It's going to be tough because employers, if they do their due diligence and fill out their I-9's correctly, a lot of these workers we can't hire,” he said. “So we really need a solution in Washington, which we should get. But if we don't get it, we still got to deal with the issue in Texas. It's tough love.”

Workers Defense Project policy analyst Emily Timm agreed that immigration reform was a critical piece to the puzzle, but she said there isn't time to wait to solve issues like worker safety and misclassification at the state and local levels. She's hopeful, however, that as states tackle these issues independently, it will spur federal lawmakers into action.

“It sends a clear message to federal policymakers that this has to happen and we are not going to wait for them,” she said. “And this needs to happen in order to maintain our economy and our economic recovery.”

Marek conceded that industry leaders who profit from skirting tax and employment laws will resist changes and that a comprehensive fix could still be years ahead. But he said he and others like him are willing to put forth the effort for as long as it takes.

“I am 66 years old I've done this my whole life,” he said. “I have a great team behind me and I am going to spend the rest of my years fighting for this issue here and in Washington.”

At least one lawmaker has filed legislation that would address the problem. [House Bill 372](#), also known as the Workplace Fraud Prevention Act, by state Rep. [Joe Deshotel](#), D-Beaumont, would levy fines of up to \$5,000 on business owners for each employee not properly classified. He said his intent is to level the playing field because misclassification currently allows competitors to underbid each other and win project because they pay employees less and skirt tax requirements.



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