

Underground Economy and Employee Misclassification Task Force 2016 Annual Report



www.Misclassification.RI.gov

Rhode Island Stakeholders
Department of Labor and Training
Department of Business Regulation
Department of Public Safety
Workers' Compensation Court
Division of Taxation
Office of the Attorney General
Contractors' Registration and Licensing Board

Table of Contents

Letter from DLT Director to Governor and Chairmen of RI House and Senate Finance Committees	1-2
Executive Summary	3
The Work of the Underground Economy and Misclassification Task Force, 2015	4-5
Summaries of Task Force Meetings	5
Applicable Laws, Rules and Regulations	6-7
Wage Violations	8-9
Worker Misclassification Working Group Investigates Complaints	10
Looking Forward	11
Press Release Issued September 1, 2015: Raimondo Cracks Down on Workplace Fraud; Demands Fair Pay for Workers	12
Press Release Issued October 13, 2015: DLT Continues Crackdown on Workplace Fraud	12
Providence Journal September 1, 2015: RI construction firm settles with DLT to pay more than \$730,000 in back wages, penalties	13-15
Providence Journal November 14, 2015: A sampling of recent wage-theft cases in RI	16-18
Providence Journal November 23, 2015: William Ruggieri: RI bidders should compete on level field	19-21
Appendix	23-30
Task Force Meeting Minutes: March 4, 2015	23
Task Force Meeting Minutes: June 3, 2015	26
Task Force Meeting Minutes: October 30, 2015	28



Director Scott R. Jensen

March 15, 2016

The Honorable Gina M. Raimondo
Governor
State of Rhode Island
State House
Providence, RI 02903

The Honorable Raymond E. Gallison, Jr.
Chairman
RI House Committee on Finance
State House, Room 35
Providence, RI 02903

The Honorable Daniel DaPonte
Chairman
RI Senate Committee on Finance
State House, Room 211
Providence, RI 02903

Re: Submittal of 2016 Annual Report summarizing the work of the Underground Economy and Employee Misclassification Task Force

In 2015, our first full year of operation, the Underground Economy and Misclassification Task Force focused on putting administrative and investigative assets in place, further coordinating staff work and processes between and among member agencies, and stepping up enforcement of companies violating Rhode Island's workplace fraud laws.

Positive results followed.

In September, DLT's Workforce Regulation and Safety division reached a \$730,000 settlement agreement with a Pawtucket construction firm that admitted to failing to pay the prevailing wage rate to 32 employees and misclassifying 27 employees as independent contractors. In October, DLT found that an East Providence flooring company had underpaid wages on a public project, fraudulently filled out weekly payroll records, and deliberately misclassified employees as independent contractors. DLT ordered the company to pay \$331,000 in civil penalties, interest, and back wages and debarred it from doing work on any prevailing wage jobs for three years.

As well, the Division of Taxation found that 673 employees had been improperly classified as independent contractors instead of employees in 2015, ordering the offending companies to pay more than \$220,000 in taxes.

Continued

As the illustration on Page 10 of this report depicts, worker misclassification cases can be confusing. They often have several overlapping jurisdictional components, and Rhode Island statutes create different investigative and adjudication processes for the different kinds of violations. This being the case, in 2016, the task force will work on developing a true statewide data management system that:

- Stores all case data of all pending employee misclassification cases,
- Allows staff across agencies access to update case details in real time,
- Improves communication and collaborative enforcement efforts, and
- Helps quantify how widespread employee misclassification is in RI.

“All any law-abiding contractor is looking for is the ability to compete on a level playing field,” said William Ruggieri, of Cranston-based Ruggieri Brothers Floor Covering, in an op-ed piece that ran in The Providence Journal on Nov. 23. “When that occurs, we get fair business opportunities, workers are treated fairly, and the taxpayers receive the proper revenues owed to the state and do not have to make up any shortfalls.” (See Page 19.)

The task force’s mission is to ensure fairness so that both workers and employers can benefit and so that the entire Rhode Island economy benefits. This report details how we did in 2015.

Sincerely,

A handwritten signature in blue ink, appearing to read 'S. Jensen', with a long horizontal flourish extending to the right.

Scott R. Jensen
Director
RI Department of Labor and Training

Executive Summary

During 2015, the Department of Labor and Training hired three additional Labor Standards Examiners and an Administrative Officer to strengthen the investigation of misclassification and to coordinate investigations with other fraud prevention units both within the Department of Labor and Training (DLT) as well as other agencies. Responding to the pervasiveness of misclassification in almost all industries in both the Labor Standards context and the Prevailing Wage context, the DLT has combined these two units to create the Workplace Fraud Unit and has implemented a new process where the investigation of misclassification is part of all routine wage investigations. The unit receives complaints from employees regarding misclassification, however, more frequently misclassification is revealed during the course of a routine wage investigation. Most workers are unaware they are being misclassified and it is typically when they experience a wage problem that they file a complaint with the Department of Labor and Training (DLT).

To improve coordination among the Workplace Fraud Unit, Task Force members designated agency administrators to a staff working group for the purpose of coordinating investigations and developing policy and procedures to support misclassification investigations

activities. The staff working group provides a mechanism for agencies to discuss case specifics which may be inappropriate to discuss during a public meeting. The staff working group is convened by the Sr. Advisor to the Director of DLT and is comprised of administrators from the Divisions of Workforce Regulation and Safety, Workers' Compensation, and Unemployment Insurance, the Office of the Attorney General, and the Department of Revenue Division of Taxation. In addition, the U.S. Department of Labor is also represented in this working group.

As the staff working group began collaborating on casework, it was soon determined that each misclassification case had to be evaluated by each agency to determine what statutes had been violated and what remedy could be sought to bring the employer into compliance. As the working group began their co-investigations, it was revealed that misclassification violations often occur in different combinations. For example, a workers' compensation investigation may reveal that the employer is insured, however, the individual workers were not reported by their employer to the Department of Revenue. In this case misclassification occurred, but a violation of statute was only found by one agency. An example of a co-investigation is provided on Page 10. Co-investi-

gations often take several months due to the need for each agency to conduct in-depth investigations and to then adjudicate any violations that were found. The most egregious instances of misclassification occur when employers fail to comply with any statute governing the employment of workers. However, in most cases investigated employers do carry a Workers' Compensation policy.

The staff working group also works to continually improve investigation techniques and to improve internal policy and procedures in response to the Task Force. For example, while many employers have a Workers' Compensation policy while misclassifying employees, the policy may not adequately represent the number of employees working. This issue was brought to the attention of the Task Force and, in response, the staff working group developed a policy for DLT where the Division of Workers' Compensation refers hearing decisions or settlement agreements where misclassification was determined to the insurer so that the insurer can conduct an audit of the company to ensure premium fraud has not also occurred.

As a result of this collaboration and the work of the Task Force, the following misclassification enforcement results were achieved in 2015. **See tables on Pages 8 and 9.**

The Work of the Underground Economy and Misclassification Task Force 2015

Article 8 of the Fiscal Year 2015 Budget, enacted in June 2014, established the RI Underground Economy and Employee Misclassification Task Force.

The enabling statute directed the Task Force to reduce the incidence of the illegal practice of employers misclassifying employees as independent contractors, foster voluntary compliance with existing laws by educating businesses and workers about employee misclassification and its harmful impacts, and conduct joint, targeted investigation and enforcement actions against violators.

The legislation envisioned that by working to accomplish these goals, the Task Force would:

1. Protect the health, safety, and benefit rights of Rhode Island workers;
2. Restore competitive equality for Rhode Island businesses that are playing by the rules; and
3. Help the State of Rhode Island and the Federal Government collect more revenues

and program insurance premiums to which they are legally entitled.

Although confusion often surrounds the term “employee misclassification,” at its heart, it simply is workplace fraud.

It occurs when a worker is not classified as an employee, but should be. Its two most common forms are when companies do not report their workers at all, but rather, pay them completely “off the books” or “under the table” in cash,¹ and when employers deliberately misclassify employees as independent contractors.

Legitimate independent contractors are a firmly established and important part of the economy. When employers knowingly misclassify employees as independent contractors, however, it penalizes the workers, aboveboard businesses across Rhode Island, and the State Treasury and local governments.

Workplace fraud is costly and pervasive.

A paper issued in August 2014 by the nonpartisan National Employment Law Project (NELP) that looked at agency audits in 25 states found that “10 to 30 percent of employers, or even more, misclassify their employees as ‘independent contractors,’ meaning that several million workers nationally may be misclassified.” Based on a 2009 Government Accountability Office report estimating that independent contractor misclassification cost the federal government \$2.72 billion in revenues in 2006, the NELP report said, “State and federal governments lose billions in revenues annually as a result.”²

Annually, employee misclassification potentially costs Rhode Island tens of millions of dollars in uncollected income tax and uncollected premiums for Unemployment Insurance (UI), Temporary Disability Insurance (TDI), and Workers’ Compensation Insurance.³

¹ It is this practice to which the “underground economy” refers.

² *Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries*, A Survey of Research, National Employment Law Project, August 2014.

³ *Findings and Recommendations of the Special Joint Commission to Study the Underground Economy and Employee Misclassification*, a report submitted to the RI General Assembly, June 2009. The report cited a statistical analysis, conducted by staff of the RI Workers’ Compensation Court, finding that even at a very conservative estimate of 1% employee misclassification, the State of Rhode Island stood to lose more than \$12 million in FY 2008. Furthermore, the report stated, “A weighted average of 10 states that have calculated their percentage of misclassified employees, including Massachusetts and Connecticut, further indicated that potentially, 6.1% of RI employees were misclassified in FY 2008. This would have cost RI more than \$49.5 million in uncollected income tax and UI, TDI, and Workers’ Comp premiums (in FY 2008). Although these figures are not based on empirical data, but rather reasonable and informed estimates, they nevertheless indicate the significant cost that employee misclassification represents to Rhode Island.”

Article 8 of the enacted FY 15 budget directed the following state officials to serve on the group:

- The Director of the Department of Labor and Training (DLT — the DLT Director is the Task Force Chairman by statute)
- Attorney General of the State of Rhode Island
- RI Tax Administrator / Director of the Division of Taxation
- Director of the Department of Business Regulation (DBR)
- Public Safety Commissioner / Superintendent of the RI State Police
- Chief Judge of the Workers' Compensation Court, and the
- Assistant Director of DLT's Workforce Regulation and Safety division.

Summaries of Task Force Meetings

The first meeting of the taskforce in 2015 took place on **March 4, 2015**. Scott Jensen, the new DLT director and Task Force Chairman shared his expertise in investigation and enforcement of misclassification laws during his tenure as the Deputy Director at the Maryland State Department of Labor, Licensing and Regulation. Task Force Members additionally approved the design and content of a beta version of its standalone website,

through which employers and workers can find relevant information and file misclassification complaints. The website can be found at www.misclassification.ri.gov.

In addition to the new standalone website, a tip hotline was created for workers so they may report misclassification violations anonymously. The group considered the idea of using social media to bring awareness to the community surrounding this issue. The taskforce met its previous outreach goals discussed in 2014 by distributing misclassification informational flyers to over 30,000 employers in RI.

At the convening of the taskforce in **June 2015**, it was established that a Misclassification working group had been created which meets frequently to discuss the specifics of misclassification investigations.

The meeting was called into an executive session to discuss two high profile investigations. The Assistant Director of the Division of Workforce Regulation and Safety estimated that these ongoing investigations could take two months.

In the final meeting in **October 2015**, the Misclassification Taskforce discussed two prevailing wage cases with the Labor Standards Unit. The cases involved;

- The misclassification of 27 employees by Pawtucket construction company Cardoso Construction. The taskforce emphasized priority on getting employees their unpaid wages.
- A floor covering company that misclassified 17 of its workers which at the time was under appeal.

Senior Advisor to the Director Sarah Blusiewicz announced that the Department of Labor and Training had received a \$500,000 special grant by the U.S. Department of Labor to hire two in-house tax auditors which will streamline inter-agency collaboration on future investigations.

Assistant Director of Workforce Regulation and Safety Joe Degnan hired three new labor standards investigators, doubling his investigation team in order to ramp up misclassification enforcement.

A representative from Beacon Mutual, one of the biggest providers of Workers' Compensation Insurance in Rhode Island, requested higher investigations into workers' compensation fraud. The group agreed that more information was necessary to understand the relationship of misclassification to create a formal pathway to recovering lost premiums by offending businesses. **See Appendix for Task Force Meeting Minutes.**

Applicable Laws, Rules and Regulations

DLT typically deals with employee misclassification in two divisions: Workforce Regulation and Safety and Workers' Compensation.

Workforce Regulation and Safety

- Historically, through investigations on related matters, both the Labor Standards and Prevailing Wage units have discovered cases where employees were potentially being misclassified as independent contractors. Such cases were referred to the Workers' Compensation division.
- In 2012, the General Assembly enacted a law (§28-14-19.1) which established misclassifying employees as a violation of the chapter, resulting in civil penalties of \$500 to \$3,000 for first offenses and up to \$5,000 each for subsequent violations.⁵
- The director has statutory discretion as to the amount of the fines based on factors present in the law.
- DLT is required to report any violations of the chapter to both the Contractors' Registration Board and the Tax Administrator.

Workers' Compensation

- For Workers' Compensation insurance purposes, independent contractors are required under § 28-29-17.1 to file a Notice of Designation as Independent Contractor form with DLT.
 - DLT receives about 6,000 forms per year.
 - Independent contractors must file one form per job/contract – they often have multiple forms on file.
- When Workers' Compensation investigators discover cases of potential employee misclassification, those matters are referred to the Division of Taxation.
- Investigators collaborate with Prevailing Wage and Labor Standards investigators to share information on cases and conduct joint investigations when appropriate.
- Investigators collaborate with the Contractors' Registration Board to share information regarding unregistered contractors doing business in RI.

Department of Business Regulation

The Department of Business Regulation/Insurance Division has oversight of Workers' Compensation insurance in RI pursuant to Title 27 and PL 2003, Chapter 410.

The Insurance Division is responsible for conducting financial examinations of domestic insurance companies to ensure financial solvency and market conduct examinations of domestic or foreign insurers to ensure compliance with the insurance statutes and regulations. The Insurance Division monitors activities of all licensees such as insurance producers, claims adjusters and appraisers. In total, the Insurance Division regulates over 105,000 licensees.

RIGL §27-7.1 requires every insurance company issuing Workers' Compensation insurance in RI to file policy forms, rating plans and classification systems with the Department prior to issuance. The Department engages the services of consulting actuaries to review the rating plans to ensure compliance with applicable statutes. The

⁵ Along with Article 8 of the FY 2015 Enacted Budget, RIGL §28-14-19.1 involves and governs the Office of the RI Attorney General in the misclassification issue.

existence of an underground economy and misclassification of employees could significantly impact rates, but we are unable to quantify the impact without significantly more information.

The Insurance Division investigates consumer complaints against insurers and licensees to determine compliance with Title 27 and PL 2003, Chapter 410.

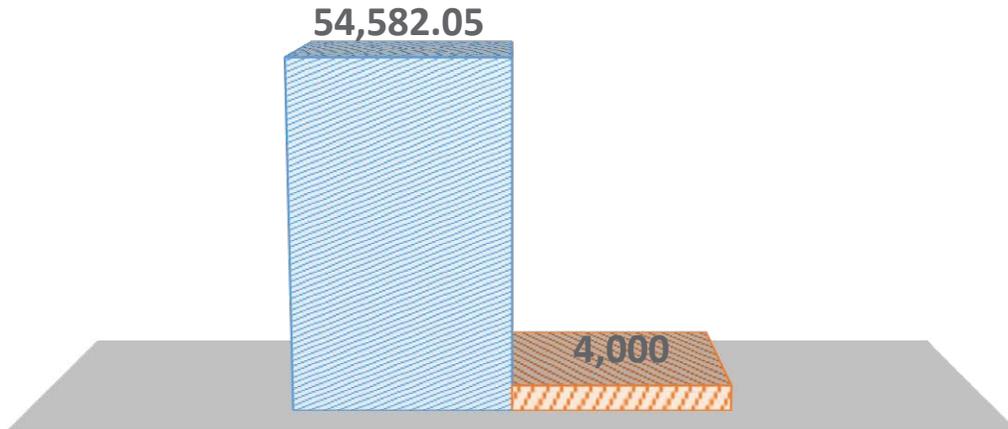
Formal challenges on the application of an insurer's rating system are heard by the RI Workers' Compensation Appeals Board under RIGL §27-7.1-11.1. Decisions of the Appeals Board are appealable to the Director of DBR. The WC Appeals Board does not have jurisdiction over disputes involving independent contractor vs. employee classification.

The Department works closely with the RI DLT. Through the complaint process, the Department refers workers' compensation matters that fall outside our jurisdiction, including disputes involving independent contractor vs. employee, to the RI Dept of Labor of Training for review and investigation.

Wage Violations

LABOR STANDARDS

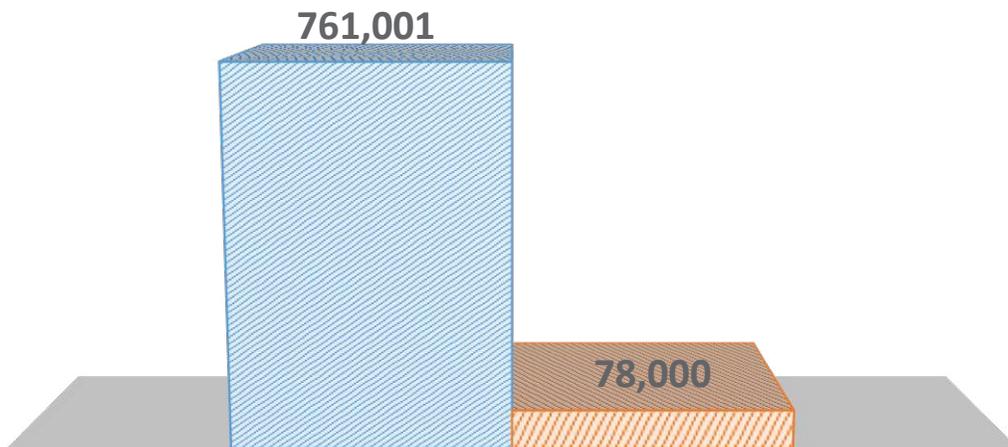
Wage Violations and Penalty Fees Misclassification Penalty



Penalties and Fees collected through Labor Standards Investigations in USD

PREVAILING WAGE

Wage Violation and Penalty Fees Misclassification Penalty

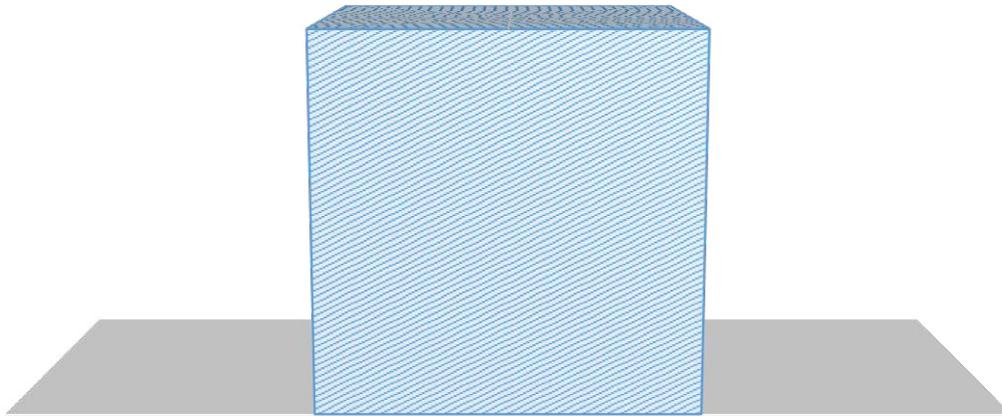


Penalties and Fees collected through Prevailing Wage Investigations in USD

WORKERS COMPENSATION

Wage Violations and Penalty Fees

95,203.71

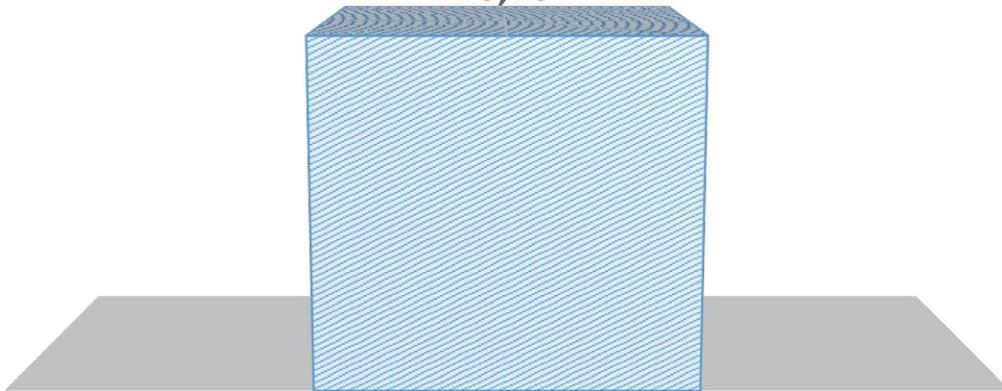


Penalties and Fees collected through Workers Compensation Investigations in USD

TAXATION

Tax Violation and Penalty Fees

220,107

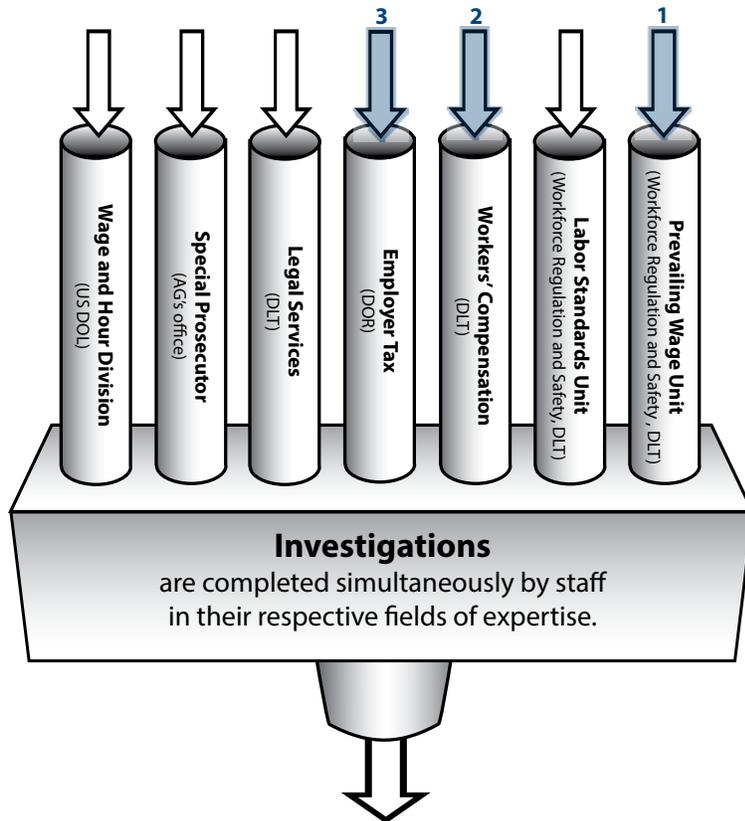


Penalties and Fees collected through Taxation Investigations in USD

In 2015, the Division of Taxation found that 673 RI employees had been improperly classified as independent contractors, and ordered the offending companies to pay more than \$220,000 in taxes.

Worker Misclassification Working Group Investigates Complaints

Complaints are referred to the Worker Misclassification Working Group and parsed out for further investigation.



Findings are presented and **penalties** are assessed.

A SAMPLE CASE:

The Division of Workforce Regulation and Safety received a complaint in 2014. A cursory investigation revealed employees had been misclassified. The Worker Misclassification Working Group was dispatched in April 2015.

In this particular case, concurrent investigations were opened by:

1. Prevailing Wage,
2. Workers' Compensation, and
3. Employer Tax

Once investigations were complete, the Worker Misclassification Working Group assessed:

\$351,811.63	Back wages
\$351,811.63	Fines
\$ 27,000.00	Penalties
\$ 25,000.00	Back taxes

The contractor was ultimately fined \$755,623.26 (in back wages, fines, penalties and taxes and penalties) for misclassifying employees.

DETAILS OF THE SAMPLE CASE:

Prevailing Wage identified violations of the Prevailing Wage Statute and the Payment of Wages Statute. The Department of Labor and Training entered a settlement agreement with the contractor in June 2015.

That agreement identified 27 employees as having been misclassified and, as a result of being underpaid the prevailing wage, those individuals did not receive a total of \$351,811.63 in wages.

Therefore, the contractor owed the Department of Labor and Training a fine of \$351,811.63, and also, a \$27,000 penalty (\$1,000 per misclassified employee). In addition, the employer was required to compensate those individuals for the \$351,811.63 owed them.

Workers' Compensation investigated the contractor's insurance status and he was found to be insured. The Prevailing Wage settlement agreement was subsequently shared with the contractor's insurer in January 2016.

Employer Tax completed an audit in January 2016 and it revealed that 81 employees had been misclassified. As a result, \$854,000 in wages were under reported.

The finding was that the contractor owed the Department of Revenue \$25,000 in back taxes.

Looking Forward

Governor Raimondo has made misclassification enforcement one of the top priorities for the RI Department of Labor and Training (DLT). DLT requested and was granted \$500,000 to hire two tax examiners and to develop a data management system as part of the statewide expansion of misclassification enforcement. The agency has made significant investments in misclassification enforcement, including three additional wage and hour investigators and an additional administrative support staff member. However, as collaboration between the wage units, Workers' Compensation, Unemployment Insurance (UI), and the Division of Taxation grew, it became apparent the greatest challenge to misclassification enforcement is the separation between the DLT units and the Division of Taxation.

The misclassification working group has identified four main challenges to comprehensive misclassification enforcement.

First, Rhode Island statute creates different investigation and adjudication processes for the different types of violations. As a result, no

unit can investigate and bring actions for all violations that were found and the number of violations found may change.

Second, the available staff across the enforcement units is small due to the numerous budget reductions over the past two decades.

Third, DLT investigators and the UI Employer Tax examiners are not co-located. While the wage units, Workers' Compensation units, and UI Fraud unit are located at the DLT building, the UI Employer Tax unit is located in a different city. As a result, frontline investigators and examiners are unable to conduct joint investigation activities on a daily basis and have little interaction with each other during the investigation.

Fourth, Rhode Island does not have a data management system capable of tracking and reporting misclassification investigation data. Each unit maintains their own data system to track their own case work, yet no existing system has the capacity to become the statewide misclassification tracking system.

Co-locating the new tax examiners with the DLT units will eliminate the need for managers to communicate case information between their units. Instead, frontline investigators will work together on teams and share information directly with one another. Using this system, true joint investigations will be possible. The daily teamwork of the tax examiners and DLT investigators will allow each case to be thoroughly investigated and all appropriate laws to be applied at once.

Another component of this project is the development of a misclassification data management system. The system will house all case data and allow each unit access to input case details. By allowing each unit access to the system, investigators and examiners will be able to see all violations and adjust their own investigations to include any new information. In addition to improving collaboration between the enforcement units, a centralized data system will also provide the ability to accurately report misclassification enforcement activities statewide across all units.



GOVERNOR GINA M. RAIMONDO

FOR IMMEDIATE RELEASE
September 1, 2015

CONTACT:
Governor's Communications Office
401-222-8290
Twitter: [@ginaraimondo](#)
Facebook: [Gina M Raimondo](#)

Raimondo Cracks Down on Workplace Fraud; Demands Fair Pay for Workers

Announces Four-Point Plan to Protect Workers and Hold Cheaters Accountable; Fines Company for Violating Workplace Fraud Laws

PROVIDENCE, R.I. - Governor Gina M. Raimondo announced today that she is increasing efforts to protect Rhode Island workers against employers who violate labor laws, including underpaying wages.

A new Workplace Fraud Unit within the Department of Labor and Training's Workplace Regulation and Safety division recently reached a settlement with a company that admitted to violating worker protection laws. Cardoso Construction LLC agreed to pay more than \$730,000 in back wages, interest and penalties. This is the first significant action of this new unit.

"Everyone should be able to make it in Rhode Island, and workers should get a fair day's pay for a fair day's work," Raimondo said. "We're going to go after companies that cheat because breaking the law not only hurts workers, it also hurts companies that follow the rules, pay proper wages and help grow the Rhode Island economy. By ensuring fairness, we can expand economic opportunity for employers and workers alike."



FOR IMMEDIATE RELEASE:

Oct. 13, 2015

DLT Continues Crackdown on Workplace Fraud

Second Enforcement Action Brings Amount of Penalties to over \$1 Million

CRANSTON, RI — RI Department of Labor and Training Director Scott Jensen today announced another company is facing penalties for underpaying wages on a public project, fraudulently filling out weekly payroll records and wrongly misclassifying employees as independent contractors.

The DLT reached a decision against Mancieri Flooring Co. LLC on September 24. DLT ordered the company to pay \$331,000 in civil penalties, interest and back wages and debarred it from doing work on any prevailing wage jobs in Rhode Island for three years. (See attached document.) On Sept. 1, Governor Gina M. Raimondo announced DLT's \$730,000 settlement agreement with Pawtucket-based Cardoso Construction LLC.

"Ensuring that workers get a fair day's pay for a fair day's work is one of the ways we will help everyone make it in Rhode Island," Governor Raimondo said. "Breaking the law not only hurts workers, it also hurts all of the Rhode Island companies that follow the rules, pay proper wages and help grow our economy."

"Governor Raimondo has made workplace fraud enforcement one of our top priorities," said Jensen. "We have strengthened our team that works on misclassification violations and continue to increase the effectiveness of our new Workplace Fraud Unit to bring more employers into compliance and protect workers."

After an investigation by DLT's Prevailing Wage Unit and a June 29 administrative hearing for which Kevin Mancieri failed to appear, DLT found that Mancieri Flooring (663 Warren Ave., East Providence, 02914):

- Failed to pay the prevailing wage rate on flooring removal and installation work it was subcontracted to do at the University of Rhode Island from 2012 to 2014;
- Failed to pay 17 employees the proper wage and overtime rates, paying an hourly wage of \$12.50 to \$25 — much lower than the applicable

R.I. construction firm settles with DLT to pay more than \$730,000 in back wages, penalties

By Kate Bramson
Journal Staff Writer

Posted Sep. 1, 2015 at 1:11 PM
Updated Sep 1, 2015 at 9:58 PM

PROVIDENCE — A tale of two very different companies emerged Tuesday once Governor Raimondo's office announced a \$730,000 settlement agreement with a firm that did drywall work on the University of Rhode Island's new wellness center and must now pay that amount in back wages, interest and penalties.

Cardoso Construction LLC, of Pawtucket, whose manager is Joaquim S. Cardoso, of East Providence, failed to pay the prevailing wage rate to 32 employees and misclassified 27 employees as "independent contractors," according to the consent agreement between the Rhode Island Department of Labor and Training and Cardoso. The DLT released that consent agreement, signed Aug. 18, to The Providence Journal Tuesday.

In announcing the settlement, Raimondo said it's the first significant action of her new Workplace Fraud Unit, which will focus DLT's effort on dishonest companies, investigate wrongdoing and enforce worker-protection laws.

"We're going to go after companies that cheat because breaking the law not only hurts workers, it also hurts companies that follow the rules, pay proper wages and help grow the Rhode Island economy," Raimondo said in a statement.

Girard R. Visconti, Cardoso's lawyer, said Tuesday he agrees with the governor's position on holding cheaters accountable. But Visconti said he was "very disappointed" to learn when a reporter called his office that the governor issued a news release without telling him and without offering a chance for his client to say anything in the release.

Visconti, a partner with Shechtman Halperin Savage, LLP, who specializes in construction law, said in 47 years practicing, he has never seen anybody "come to the plate" in the way Cardoso has to make things right. That includes agreeing to pay back, over the next five years, all past wages, said Visconti, who returned a reporter's call while on vacation in Italy.

Cardoso was a subcontractor to Iron Construction Group LLC of Warwick, the general contractor for the \$11-million Anna Fascitelli Fitness and Wellness Center at URI, which opened in 2013. Because that project was a publicly funded government contract, state law requires workers be paid a prevailing wage rate, an amount often driven by what unions pay mechanics and other laborers, DLT spokesman Michael J. Healey said. Cardoso's employees are not union workers, Visconti said.

Here's what Visconti said happened: Cardoso, a U.S. citizen from Portugal, asked his employees during the downturn in Rhode Island's economy: "Will you take less in wages?" Cardoso told them it was the only way the firm would get jobs, and most agreed to be paid less, Visconti said: "Ignorance of the law is no excuse, but he thought he could do it."

Then Cardoso's accountant discovered what he did and told him he couldn't, Visconti said. The consent agreement says the company and DLT worked together to correct employees' certified payroll records to be in compliance with the law.

Cardoso must pay back wages that range from \$250 to Jonathan Tweedly to \$63,737.10 to Nelson Bravo. Seven employees are owed less than \$1,000. Some are owed much more: Bruno Duarte, \$57,151.34; Adrian Garcia, \$49,533.90; Ailton Amado, \$44,301.42.

Cardoso could easily have taken another path, Visconti said: Gone into receivership, closed up shop and moved to Portugal. But he didn't want to lay off employees.

"To me, he's a hero because he had a choice between going into receivership ... or keeping the company going," Visconti said. " ... He's got so much Portuguese pride, and he agreed to pay everybody."

Cardoso's firm is now working on four public-works projects in Rhode Island and paying prevailing wages, Visconti said.

"This man had tears in his eyes," Visconti said. "He was crying, and he wanted to save this company. ... He made a mistake, and he's trying to correct it."

The DLT has filed a lawsuit in Superior Court, Providence, against North American Specialty Insurance Company, which provided the performance bond on the URI project, DLT Director Scott Jensen said. Such bonds offer insurance that a construction project will be completed. If the state prevails, that insurance would cover \$351,812 in back wages, Jensen said, and Cardoso's payments would be reduced to the fines and penalties. The state's role is to do its best to ensure workers get paid, Jensen said.

Jensen said he doesn't know if Cardoso and Visconti's description might be true.

"It could also be the case that he was trying to undercut other bidders by misclassifying his employees as independent contractors, and that's what he admitted to," Jensen said.

—kbramson@providencejournal.com

(401) 277-7470

On Twitter: @JournalKate

A sampling of recent wage-theft cases in R.I.

Related images



Protesters picket the popular downtown Providence restaurant Gourmet Heaven on Weyb...
[+]

By Karen Lee Ziner

Journal Staff Writer

Posted Nov. 14, 2015 @ 10:30 pm

Recent wage-theft cases in Rhode Island have involved food workers, construction workers and garbage collectors. Among them:

Gourmet Heaven

Protesters targeted the popular Providence deli and take-out restaurant owned by Chung Cho at its downtown Providence store on Weybosset Street last December. A Gourmet Heaven store on College Hill had closed abruptly two weeks before.

Workers who were among the dozens of demonstrators alleged they had not been paid overtime or minimum wage. In claims filed with the Rhode Island Department of Labor against Cho, some alleged "physical abuse by lower-level management," and said they'd been injured on the job. Two other protests followed, including one outside Cho's Connecticut home.

The Rhode Island Center for Justice subsequently filed a federal court lawsuit against Cho on behalf of three former Gourmet Heaven employees in February; five others subsequently joined the case. They are seeking back wages and more than \$140,000 for alleged violations of state and federal wage laws.

The suit alleges Cho violated state minimum wage law — in some cases paying \$360 to \$400 for as many as 84 hours of work per week — and violated the federal Fair Labor Standards Act by denying overtime wages.

In court documents, Cho denies the workers' claims. Barring a settlement, the case is set to go to trial in 2016.

The lawsuit notes Cho's legal troubles in Connecticut, which overlapped the Rhode Island workers' wage dispute. After Cho violated the terms of a settlement agreement requiring him to pay \$150,000 in back wages to employees at his two New Haven stores, a judge spared him criminal prosecution and possible imprisonment, but he must pay the back wages by year's end.

Cilantro Mexican Grill

The Rhode Island restaurant chain was ordered to pay \$100,417 in back wages and damages to 32 restaurant workers in May after federal investigators found that it violated federal wage and hour laws by failing to pay overtime.

The company was also ordered to pay a civil penalty of \$2,325 for allowing three minors to use their own cars to deliver food.

The case marked the first in an ongoing U.S. Department of Labor restaurant enforcement initiative here and in Connecticut.

Cardoso Construction

The Pawtucket Company and its manager, Joaquim Cardoso, agreed to pay more than \$730,000 in back wages, interest and penalties under a settlement agreement with the state Department of Labor and Training's Workplace Fraud Unit in September.

Cardoso agreed to pay 32 workers a total of \$351,812 and an equal penalty to the DLT, plus a fine of \$27,000 for drywall work at the University of Rhode Island. Investigators found that Cardoso misclassified the employees as independent contractors.

Marrocco Group

Entrepreneur Gianfranco Marrocco and his businesses agreed in May to pay \$303,000 in back wages and damages to 146 low-wage workers after a U.S. Department of Labor investigation found "numerous payment schemes" that deprived cooks and dishwashers of overtime pay. The investigation was into the Marrocco Group's four restaurants, two bar-lounges and a boutique hotel on Federal Hill he owned at the time. He sold one restaurant — Mediterraneo — last week.

--*kziner@providencejournal.com*

(401) 277-7375

William Ruggieri: R.I. bidders should compete on level field

By William Ruggieri

Posted Nov. 23, 2015 at 2:01 AM

My family has owned a local floor covering business for 66 years and three generations. We have built a reputable business employing local office staff, salespeople, project managers, warehouse workers, truck drivers and tradespeople.

As a company that plays by the rules, we have not always found it easy to be successful. The business climate in our state has not always been hospitable, and we compete against other contractors that make their own rules. Even so, over the course of multiple generations, we have done our best to develop a successful local business.

We also take great pride in, and are devoted members of, our community. We have raised our families here. Both personally and businesswise, we are completely invested in Rhode Island.

Three years ago, our company competitively bid on a public works flooring project at the University of Rhode Island. Unfortunately, we were not the low bidder. After the bid opening, I was called in for a scope review with the architect and the university to discuss why my bid was 20 percent higher than that of the low bidder.

I explained that the short summer schedule would require working double shifts, six to seven days per week, and my bid included the overtime wages required to meet the schedule. I discussed the fact that the low bidder, an out-of-state contractor from Arizona, could not possibly complete this job and be paying his workers the prevailing wages at his bid price. I was told that the university was concerned with saving the 20 percent and that there would be other opportunities for me to bid. So I moved on.

Fast forward to Oct. 13: On that date, the State Department of Labor and Training announced that a subcontractor who worked on this particular project misclassified 17 employees as independent contractors and underpaid their wages. The announcement further stated that "the DLT ordered the company to pay \$331,000 in civil penalties, interest and back wages and debarred it from doing work on any prevailing wage project in Rhode Island for three years."

I decided to write this Commentary piece because, as the second-lowest bidder on this project, I wanted to share with Rhode Islanders the frustrations of law-abiding businesses, as well as the real costs of allowing unscrupulous contractors to participate in the marketplace.

First, such participation takes business and profit opportunities away from a longstanding local company. When that occurs, our existing local workforce loses work and income opportunities, and we do not hire any new employees.

Second, taxpayers do not receive tax and benefit revenues legally owed to the state. No income tax, FICA or FUTA contributions, unemployment, TDI, and worker's compensation premiums. As a consequence, taxpayers and/or law-abiding businesses have to make up any shortfalls. Cumulatively, this overall cost to our economy is staggering. In fact, the Rhode Island General Assembly put out a report in 2008, saying that misclassification "cost the state a total of \$49,852,317" annually.

Third, the lack of integrity in the marketplace allows unscrupulous contractors to prosper at the expense of law-abiding contractors, and as indicated above, not only does it make it difficult to compete but it also increases the cost of doing business and suppresses wages.

All any law-abiding contractor is looking for is the ability to compete on a level playing field. When that occurs, we get fair business opportunities, workers are

treated fairly, and the taxpayers receive the proper revenues owed to the state and do not have to make up any shortfalls.

In a press release, Gov. Gina Raimondo said that breaking the law “hurts all of the Rhode Island companies that follow the rules.” Governor, we could not agree more. In this particular instance, we would have been the low bidder if this contractor had played by the rules. Regardless, the DLT’s actions are restoring our company’s confidence in the integrity of the marketplace; when there is confidence in the marketplace good things happen.

William Ruggieri is president of Ruggieri Brothers Floor Covering, in Cranston.

Appendix

UNDERGROUND ECONOMY AND EMPLOYEE MISCLASSIFICATION TASK FORCE MEETING

Wednesday, March 4, 2015
9:00am

1511 Pontiac Avenue, Conference Room 73-1
Cranston, RI 02920

In attendance:

Scott Jensen, DLT Director - Chair
David Sullivan, Tax Administrator
Paula Pallozzi, Department of Business Regulation
Joseph Degnan, Assistant Director DLT Workforce Regulation and Safety
Genevieve Allaire Johnson, Attorney General's Office Designee
George Salem Jr, Associate Judge, Workers' Compensation Court Designee

The Commissioner of the Department of Public Safety (or designee) was not in attendance.

Also in attendance were Matt Weldon, DLT Assistant Director and Sean Fontes, DLT Executive Legal Counsel.

1.) Welcome / Call to Order: The meeting was called to order at 9:07am by DLT Director and Chair, Scott Jensen.

2.) Approval of the Previous Meeting's Minutes: A motion was made by George Salem Jr to approve the minutes to the previous meeting (11/20/2014); seconded by Genevieve Allaire Johnson and passed unanimously.

3.) Introduction/Background:

Administration's Focus/Approach: DLT Director Scott Jensen addressed the task force. Funding is being sought for a Misclassification Unit.

Given multiple agencies may be investigating the same employer; how agencies could coordinate/consolidate efforts should be looked at.

Past Experience: Director Jensen addressed the taskforce on his experience in Maryland. Maryland also set up a task force and Director Jensen hopes that this task force can learn from that experience.

4.) Outreach Efforts: DLT Assistant Director, Matt Weldon, addressed the task force. Employer Flyer: The informational flyer has been sent out to over 30,000 employers in RI.

Employer Seminars: DLT UI has added a portion on misclassification to their employer seminar.

Press Release / Media Coverage: A copy of the press release was distributed to members. A copy of a PBN article was also distributed. It was noted that coverage was also seen on news channels.

Hotline: Taxation has developed tip hotline, 574-TIPS. David Sullivan reports that some outreach has been done. The hotline has received over 20 tips so far, though some have been unrelated to misclassification. Mr. Sullivan reports the hotline is working well.

Website: Matt Weldon reports that a stand alone website has been developed but is not live yet. The web address is www.misclassification.ri.gov. The goal will be to have an online form as well. Mr. Weldon distributes screenshots of the site for members to review and requests feedback. There was no objection to the site going live. DLT Director Jensen recommends promotion of the site before it goes live. The site should be up within 2 weeks.

5.) Joint Investigations Workgroup:

Update on activities: Matt Weldon provides an update. The group is working to build a framework to deal with complaints. Taxation takes in the complaint and shares the information with the other agencies. Complaints also come through DLT Workforce Regulation and Safety (Prevailing Wage complaints and Labor Standards complaints).

Database Development: Matt Weldon reports that a database is in development.

Director Jensen inquires if the workgroup has looked at who could be deployed for investigations at odd hours. David Sullivan (Taxation) informs that Taxation does have investigators that could be used though DLT has greater strength to shut down jobs. Taxation will work with DLT to look into the matter.

Social media is discussed.

6.) Report to General Assembly: Matt Weldon informs that the report to the General Assembly is due March 15, 2015 and every March 15th thereafter. Mr. Weldon will draft the report to be reviewed by taskforce members for feedback before being submitted.

7.) Data Sharing Agreements: Sean Fontes, DLT Executive Counsel, addressed the taskforce regarding the sharing of information amongst the agencies of the taskforce. Counsel Fontes has drafted a MOU that has been circulated to the legal counsel of each agency. The MOU will need to be signed by each agency and should be completed in a week or two.

8.) Public Comment Period:

- Donald Epifano, of US DOL, addressed the taskforce expressing his support of the taskforce and explained how US DOL works with the State of Connecticut and offers the same type of relationship. Matt Weldon will work on a MOU with USDOL and include Mr. Epifano in the workgroup.
- The task force was informed of House Bill 5388 that would require that the designation of a worker as an "independent contractor" form to be filed annually, with a fifty dollar (\$50) filing fee with the director of revenue, and not the director of labor and training.
- Joe Walsh (IBEW Local 99) inquired of a single definition of employee.
- Attorney Greg Mancini (Build RI) addressed the task force regarding mechanical liens. Mr. Mancini also asked the Department, going forward, to reconsider its interpretation of the law or submit legislation to broaden the law referencing a hearing decision he had received.
- Michael Sabitoni (President of RI Building and Construction Trades Council and Business Agent for the Laborers Union) addressed the taskforce that the deterrent in construction to combat misclassification is the "example" and, when appropriate, an example should be made public.

The public is encouraged to provide the task force with any tips they may have.

9.) Adjournment: The meeting adjourned at 10:23am.

**UNDERGROUND ECONOMY AND EMPLOYEE
MISCLASSIFICATION TASK FORCE MEETING**

**Wednesday, June 3, 2015
9:00am**

**1511 Pontiac Avenue, Conference Room 73-1
Cranston, RI 02920**

In attendance:

Scott Jensen, DLT Director - Chair
Phillip D'Ambra, Tax Administrator representative
Joseph Degnan, Assistant Director DLT Workforce Regulation and Safety
George Salem Jr, Associate Judge, Workers' Compensation Court Designee

Attorney General or designee; Director of Business Regulation or designee; and The Commissioner of the Department of Public Safety or designee were not in attendance.

Also in attendance were Matt Weldon, DLT Assistant Director; Sean Fontes, DLT Executive Legal Counsel; and Sarah Blusiewicz, Senior Advisor to the Director.

1.) Welcome / Call to Order: The meeting was called to order at 9:12am by DLT Director and Chair, Scott Jensen.

2.) Approval of the Previous Meeting's Minutes: A motion was made by George Salem Jr to approve the minutes to the previous meeting (3/4/2015); seconded by Joseph Degnan and passed unanimously.

3.) Sarah Blusiewicz, Senior Advisor to the Director, discussed Collaborative Enforcement Plans involving the Department of Labor and Training and the Division of Taxation from the Department of Revenue. Ms. Blusiewicz advised that a Misclassification Working Group has been established to work more closely on collaborative efforts. The working group is made up of several members of the Department of Labor and Training and the Division of Taxation.

4.) A motion is made by Joseph Degnan for the task force to enter into Executive Session in order to brief the task force on specifics of two ongoing wage/misclassification investigation. George Salem Jr seconded the motion and it passed unanimously. The task force entered into Executive Session.

The task force entered Executive Session at 9:40am and exited at 9:50am.

5.) Mr. Degnan advised the group, in the open meeting, that the Department's Prevailing Wage Section was conducting two (2) separate investigations where it is believed that there is wide spread wage violations and misclassification of employees as independent contractors. Mr. Degnan estimated that the investigations in these cases would be complete in the next two (2) months.

6.) **Adjournment:** The meeting adjourned at 9:55am.

DRAFT

Department of Labor & Training, Labor Standards Unit

Meeting Minutes

October 30, 2015

Present: see attached list

Scott Jensen, Director made a motion for meeting to come to order.

David Sullivan seconded the motion. All approved.

- Joe Degnan discussed 2 prevailing wage cases with the Labor Standards Unit. The first between the State and Cardoso Construction. 27 employees involved. Bond company responsible for wages only, not the penalty. The priority is to get the employee their money.

The second case involving the Floor covering company involved 17 employees . This case is under appeal for misclassification of employees.

Joe briefly shared they are working on another case which involves a large scale misclassification of employees.

Discussion on Legislative changes on March report.

- Sarah Blusiewicz discussed weekly meetings with the Department of Revenue and DLT are working well. Federal money of \$500,000.00 was granted.

- Joe Degnan stated 3 new positions for Investigators for Labor Standards are coming on board. The total will be 1 Chief, 4 investigators and 1 support staff. This will enable more investigators on the road with some announced and unannounced visits to companies who had complaints filed against them.
- Scott Jensen introduced Carol McLaughlin, Prosecutor for the Attorney General's Office. She discussed her work with the Financial Crimes Unit and the Fraud Unit which involves the Auto Theft Unit at the DMV.
- Sarah Blusiewicz asked for recommendations from the audience on how we can help educate employers (trades people) on DLT guidelines, ie:
 - o TDI
 - o Unemployment tax laws
 - o Workers Compensation Insurance Regulations
 - o Income Tax

A draft document for discussion was proposed for next meeting.

Suggestions for ALL information to be **clear** and **concise** then submitted for approval and put on our website.

- Matt Weldon brought to attention New Business. Discussion involving the dealer license plates being sublet. There is no taxes going back to the state and he wants Mr. David Sullivan to look at this issue. Mr. Sullivan agreed to follow up on this issue due to how it hurts RI business.
- Michael Lynch from Beacon Mutual Insurance Co. discussed in depth the problem of not collecting premiums for independent or under the table paid workers. He gave an example of misclassifying a "secretary" vs. a "roofer" in order to keep premiums low. He requested Workers Compensation to be investigated for fraud.

- Paula Pallozzi advised there is an audit process at workers comp. and told everyone there is another board who will be willing to help with this process.
- George Nee commented on how well the meeting was conducted and how hard the DLT is working with their commitment.
- Greg Mancini discussed the second URI project questioning Mr. Lynch about how overtime compensation would affect workers comp. and violating the law. Mr. Lynch stated more information is needed to form a formal path as to what the penalty should be, how the insurance company is notified and how to get back their premiums.
- Mike Healey, Public Affairs spokesperson for the DLT spoke briefly on a story in process regarding wage theft on undocumented workers.

Scott Jensen made a motion to adjourn the meeting and Carol Mclaughlin seconded the motion.

10:30 am



RI Department of Labor and Training

Administrative Offices: 1511 Pontiac Avenue • Cranston, RI 02920-4407
(401) 462-8000 • RI Relay 711 • www.dlt.ri.gov

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