

Underground Economy and Employee Misclassification Task Force 2018 Annual Report



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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

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Director Scott R. Jensen

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

The Honorable Marvin L. Abney
Chairman
RI House Committee on Finance
Providence, RI 02903

The Honorable William J. Conley, Jr.
Chairman
RI Senate Committee on Finance
Providence, RI 02903

RE: Submittal of 2018 Annual Report summarizing the recent work of the Underground Economy and Employee Misclassification Task Force

Governor Raimondo has made the reduction of workplace fraud one of the Department of Labor and Training's top priorities. Through the Underground Economy and Employee Misclassification Task Force — a collaboration of six state agencies led by DLT — we're progressing toward the Governor's goal of promoting shared prosperity by protecting workers' rights and helping law-abiding employers get the fair shot at success that they deserve.

Worker misclassification cases can be confusing because they often have overlapping jurisdictional parts. As well, Rhode Island statutes have established different investigative and adjudication procedures. Over time, this led to data gaps and uneven regulatory action. The task force counters siloed government by gathering the relevant regulatory and law enforcement agencies, consolidating and sharing data, and streamlining processes for fairer, faster, and more accurate resolutions.

Although the cases may be complicated, the costs of companies paying workers "under the table" or deliberately misclassifying workers couldn't be clearer:

- They avoid paying many state and federal taxes.
- They avoid providing workers' compensation coverage, which can have catastrophic consequences and ruin the lives of uncovered workers injured on the job.
- They may fail to follow wage, contractor registration, or other labor laws.
- They have a competitive advantage and may use it to underprice law-abiding businesses.

Continued

Our highest-impact enforcement action of 2017 underlines the task force’s cohesiveness. In September, we moved against two companies that purposely misclassified employees as independent contractors and helped secure nearly \$1 million in back pay for 200 workers plus civil penalties of \$1.3 million. With real-time communication and data-sharing, the task force will continue to educate employers about employee misclassification and hold violators accountable.

Our purpose is clear. As the Governor said in September, “When companies cheat, it harms the employees they’ve underpaid and hurts everyone else, too — all of the businesses and taxpayers that are playing by the rules and helping our economy grow.”

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

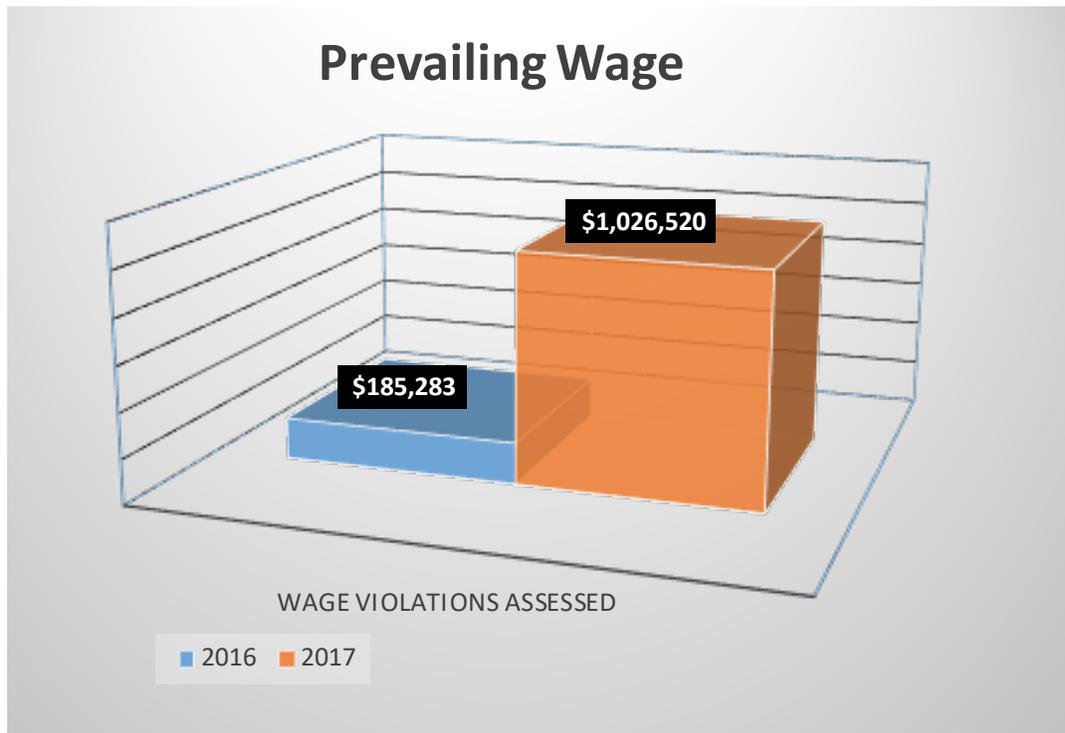
2017 Task Force Highlights

- Acting on a complaint that Valet Connection, Inc. was requiring drivers to contribute money from their tips to establish an accident fund overseen by the company, DLT investigated and found that the company didn't keep payroll records but did keep work schedules. Keeping work schedules implies control — whether an employer or worker controls what will be done and how it will be done — which is central to determining the employment relationship. The investigation led to Valet Connection agreeing it wrongly misclassified 167 workers for almost two years for which it agreed to pay \$375,000 in back pay plus interest and a civil penalty of over \$515,000.
- A separate DLT investigation into C & D Industrial LLC Inc. followed allegations that the company was underpaying wages on seven public projects across Rhode Island. State law requires that contractors and subcontractors on any publicly-funded project costing \$1,000 or more pay the prevailing wage to workers. In admitting that it purposely underpaid 35 workers, C & D Industrial must pay \$728,377 in back pay and interest, an identical \$728,377 civil penalty, and a \$35,000 misclassification penalty.
- DLT's Workers' Compensation division collected \$292,489 in penalties from companies failing to carry workers' comp insurance coverage. This more than doubled the amount collected in 2016 (\$132,624).
- In a 2-month span in the latter part of 2017, DLT Investigators conducted misclassification investigations at three hotels that were under renovation. These investigations resulted in five employers admitting in Settlement Agreements that they misclassified 46 employees.
- The Division of Taxation found that 560 Rhode Island employees had been improperly classified in 2017, resulting in almost \$6.2 million in unreported wages and an assessment of \$307,177 in additional state taxes.

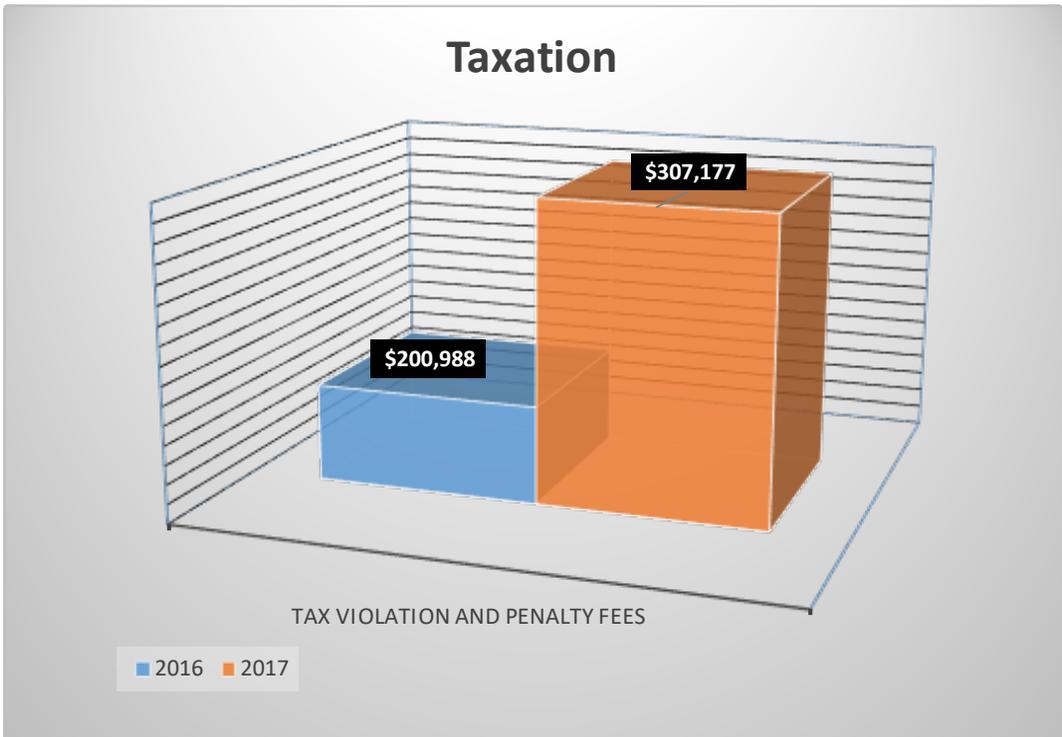
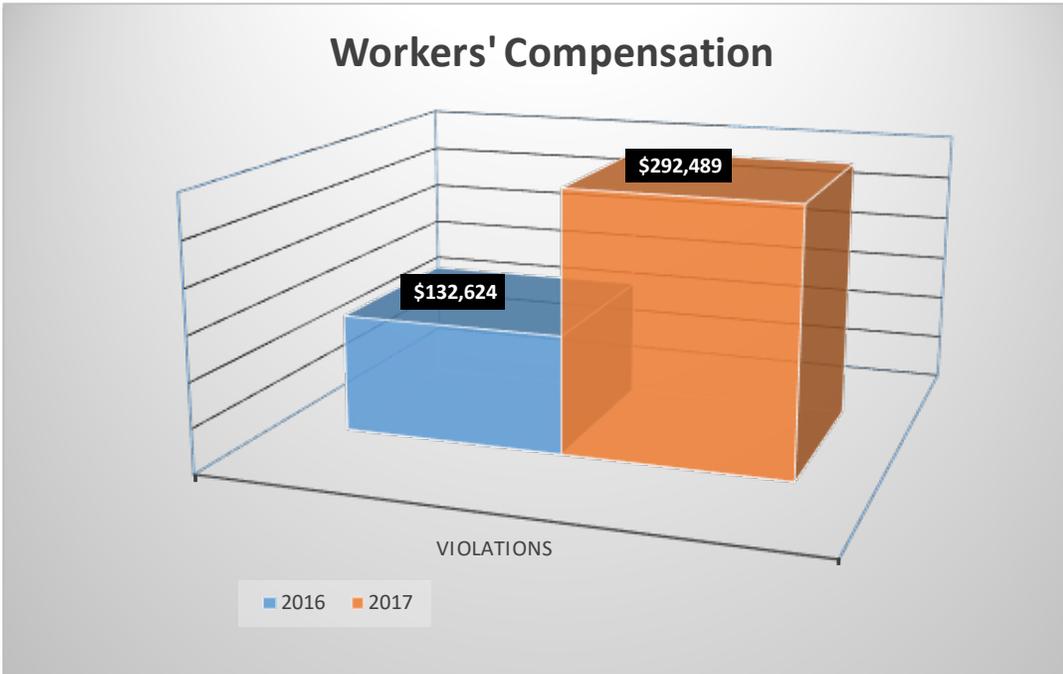
Each misclassification case must be evaluated by the relevant task force agency to determine what statutes may have been violated and what remedies can be sought to bring the employer into compliance. Generally, misclassification violations occur in different combinations. The most egregious instances are when employers fail to comply with any Labor Standards statute governing the employment of workers. Deliberate misclassification creates economic pressure by unfairly increasing the tax burden on employers that follow the rules.

Throughout 2017, DLT and Department of Revenue staff ramped up their collaboration, improving communication between investigators, examiners, and auditors across the two departments.

Penalties and Fees Assessed Through Investigations 2016-2017



Penalties and Fees Assessed Through Investigations 2016-2017



Informational Sessions

In 2017 the Task Force invited partners and stakeholders to present to the group about their practices and how the multi-agency Task Force can engage with these groups to improve outcomes.

Working collaboratively with these partners, the agencies that embody the Task Force can employ these best practices and better share information to ensure that educational and enforcement campaigns are focused and successful.

2017 Presentations

- Date: June 7, 2017
Presenter: Beacon Mutual Insurance Company
Michael D. Lynch, Esq.
Vice President of Claims Legal
Topic: Employee Misclassification and Workers' Compensation
- Date: September 6, 2017
Presenter: U.S. Department of Labor – Wage and Hour Division
Donald J. Epifano
Assistant District Director
Topic: Employee Misclassification and Wage and Hour Enforcement

Employee Misclassification: A Definition and Brief Discussion of the Scope of the Problem

Article 8 of the Fiscal Year 2015 Budget established the RI Underground Economy and Employee Misclassification Task Force.

It 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 law envisioned that by working to accomplish these goals, the task force would:

1. Protect the health, safety, and benefit rights of workers;
2. Restore competitive equality for 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.

Employee Misclassification: A Definition and Brief Discussion of the Scope of the Problem

Although confusion often surrounds the term, “employee misclassification”, it is simply another way of saying workplace fraud.

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, 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, they penalize workers, honest businesses across Rhode Island, and the State Treasury and local governments.

Workplace fraud is costly and pervasive.

A 2014 research paper issued 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.”

Annually, employee misclassification probably costs Rhode Island tens of millions of dollars in uncollected income tax and uncollected premiums for Unemployment Insurance, Temporary Disability Insurance, and Workers’ Compensation insurance.¹

The following state officials serve on the group task force:

- The Director of the Department of Labor and Training (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
- 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

¹ 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 stated, “A weighted average of 10 states that have calculated their percentage of misclassified employees, including Massachusetts and Connecticut...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.”

Press Release:

RI Continues Crackdown on Workplace Fraud

Actions against two companies that misclassified employees as independent contractors help secure nearly \$1 million in back pay for 200 workers plus civil penalties of \$1.3 million.

September 18, 2017

CRANSTON, RI — The Rhode Island Department of Labor and Training (DLT) today announced the outcomes of two workplace fraud cases that the Underground Economy and Employee Misclassification Task Force and DLT have closed. Combined, the decision against a valet parking company and a settlement agreement with a painting and plastering contractor will secure nearly \$1 million in back pay for the businesses' 202 employees who were wrongly misclassified as independent contractors. Civil penalties and interest against East Greenwich-based Valet Connection Inc. and C & D Industrial LLC, located in Central Falls, totaled another \$1.3 million.

"When companies cheat, it harms the employees they've underpaid and hurts everyone else, too — all of the businesses and taxpayers that are playing by the rules and helping our economy grow," said Governor Gina M. Raimondo. "These cases and outcomes are about ensuring fairness so that workers, employers and all Rhode Island taxpayers can benefit."

Complaints that Valet Connection was requiring drivers to contribute money from their tips to establish an accident fund overseen by the company led to an investigation, which found that Valet Connection didn't keep payroll records but did keep work schedules. Control — whether an employer or a worker controls what will be done and how it will be done — is central to determining the employment relationship.

At a hearing, Valet Connection agreed that it wrongly misclassified 167 drivers between January 2013 and May 2015. A DLT hearing officer later found the company's conduct "to be an outright attempt to circumvent its financial obligations to their employees and the State of Rhode Island" (see attached document). The hearing officer, attorney David D. Barricelli, ordered Valet Connection to pay \$258,235 in wages owed plus interest of \$116,735 to the workers, a civil penalty equal to twice the wages owed or \$516,471 and a misclassification penalty of \$83,500 (\$500 for each of the 167 employees).

The investigation of C & D Industrial followed allegations that the company was underpaying wages on public projects. State law requires that contractors and subcontractors on any publicly-funded project costing \$1,000 or more pay the prevailing wage to workers. State investigators found remittance reports in which C & D Industrial documented it was performing work from January to March 2015 but did not submit certified payroll records in those same months, as required by law, for the 35 workers it was employing on seven public projects across Rhode Island. C & D Industrial admitted the violation. The company must pay \$728,377 in wages owed, a \$728,377 civil penalty and a \$35,000 misclassification penalty.

Press Release:

RI Continues Crackdown on Workplace Fraud

“Governor Raimondo has made the enforcement of workplace fraud one of DLT’s top priorities,” said DLT Director Scott Jensen. “By coordinating efforts across state government to identify and stop fraudulent employment activities and by cracking down on violators, we are protecting the health, safety and benefit rights of workers and helping law-abiding employers get the fair shot at success that they deserve.”

Chief Labor Standards Investigator Wendy Antonelli, Labor Standards Investigator Joseph Szrom, and Labor Standards Examiner Angela Dennett led the investigation into Valet Connection Inc. Chief Prevailing Wage Investigator Lisa Tirocchi and Senior Prevailing Wage Investigator Mark Ryan led the investigation of C & D Industrial.

Led by DLT, the misclassification task force includes the Office of the Attorney General, Department of Business Regulation, Division of Taxation, Department of Public Safety, and Workers’ Compensation Court. The Contractors’ Registration and Licensing Board assists in some capacities.



RI Department of Labor and Training

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Auxiliary aids and services are available upon request to individuals with disabilities.

Governor Gina M. Raimondo • Director Scott R. Jensen

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