

Underground Economy and Employee Misclassification Task Force 2017 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

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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 Daniel DaPonte
Chairman
RI Senate Committee on Finance
Providence, RI 02903

RE: Submittal of 2017 Annual Report summarizing the recent work of the Underground Economy and Employee Misclassification Task Force

In 2016, the Underground Economy and Employee Misclassification Task Force built upon a strong foundation established in the previous year. Worker misclassification cases can be confusing because they often have several overlapping jurisdictional parts. Also, Rhode Island statutes create different investigative and adjudication processes for different kinds of violations.

Early on, the task force saw the need for more staff resources and a more robust statewide data management system in order to overcome these challenges. Without a centralized shareable system, data gaps can delay the resolution of cases. New administrative and investigative assets put in place in 2016, however, will ensure that the task force is able to focus more on coordinating member agencies and enforcing companies found violating workplace fraud laws.

DLT enforcement actions in 2016 resulted in settlement agreements that kept with the task force's mission of ensuring fairness so that both workers and employers can benefit, to the benefit of the whole economy. We are happy to report progress.

Continued

With a federal grant in hand, we have brought staff up to needed levels. Our collaboration has streamlined processes, resulting in faster and more accurate resolutions. As we move toward implementing a fully operating, comprehensive data system, we envision greater efficiencies and a further stepping up of enforcement of violators. Although they are a minority to be sure, employers that cheat the system hurt not only Rhode Island workers but also Rhode Island companies that play by the rules, pay proper wages, and grow the economy.

Sincerely,

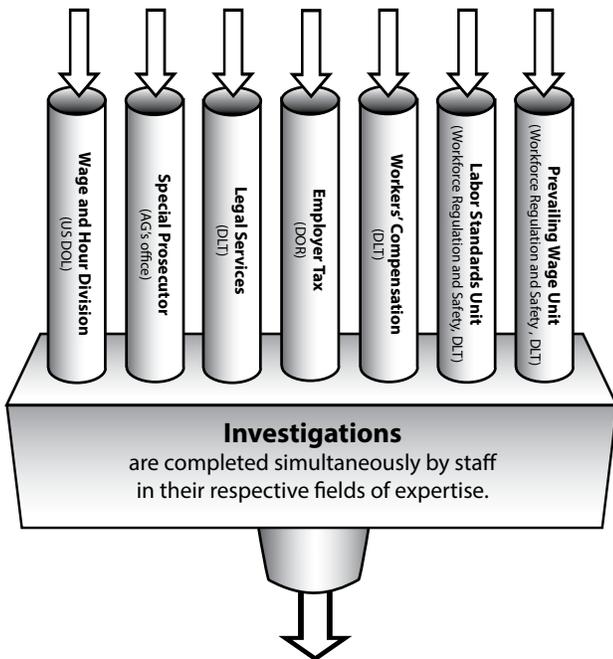
A handwritten signature in blue ink, appearing to read "S. Jensen", with a long horizontal flourish extending to the right.

Scott R. Jensen
Director
RI Department of Labor and Training

2016 Task Force Highlights

- Six construction companies entered into settlement agreements with DLT where they admitted to misclassifying 33 workers on four separate construction projects.
- The proprietor of a law firm entered into a settlement agreement with DLT in which the firm admitted to misclassifying 17 workers, many of them attorneys.
- Two locally owned neighborhood grocery stores entered into separate settlement agreements with DLT in which they admitted to misclassifying 26 employees.
- The Division of Taxation found that 590 RI employees had been improperly classified in 2016, resulting in almost \$5.6 million in unreported wages and an assessment of \$200,988 in additional state taxes.
- With the proceeds of a federal grant from the US Department of Labor, DLT was able to hire two in-house tax auditors and fund an IT business process analysis for its Workplace Fraud Unit.

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

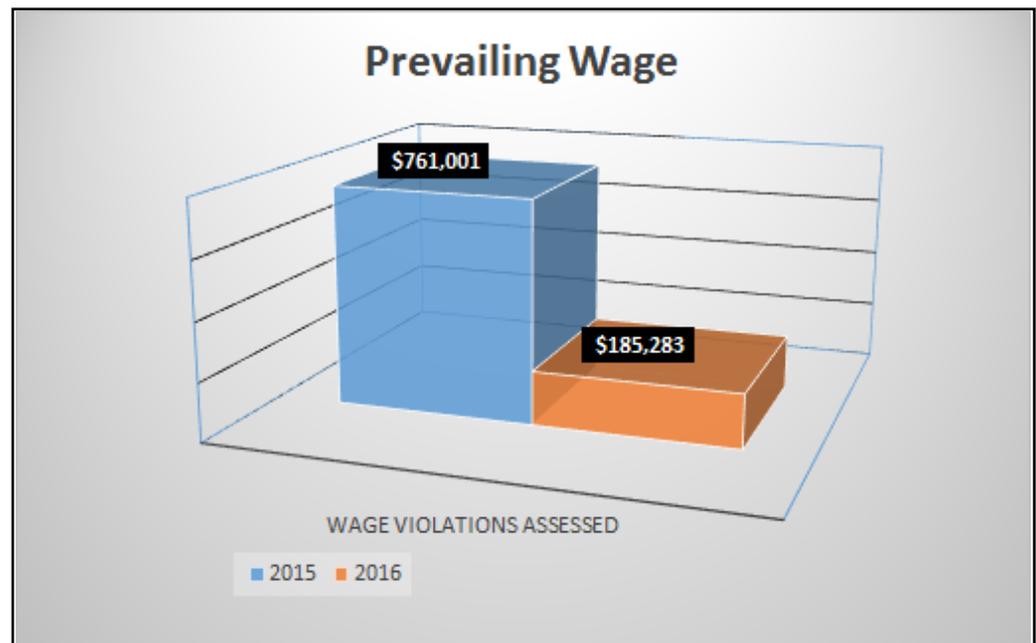


Findings are presented and **penalties** are assessed.

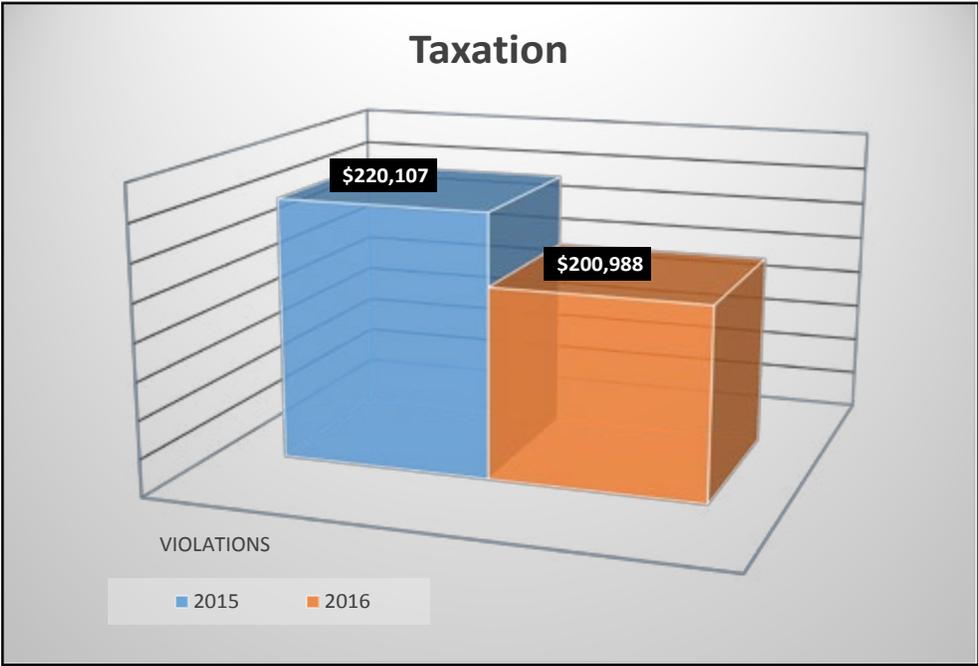
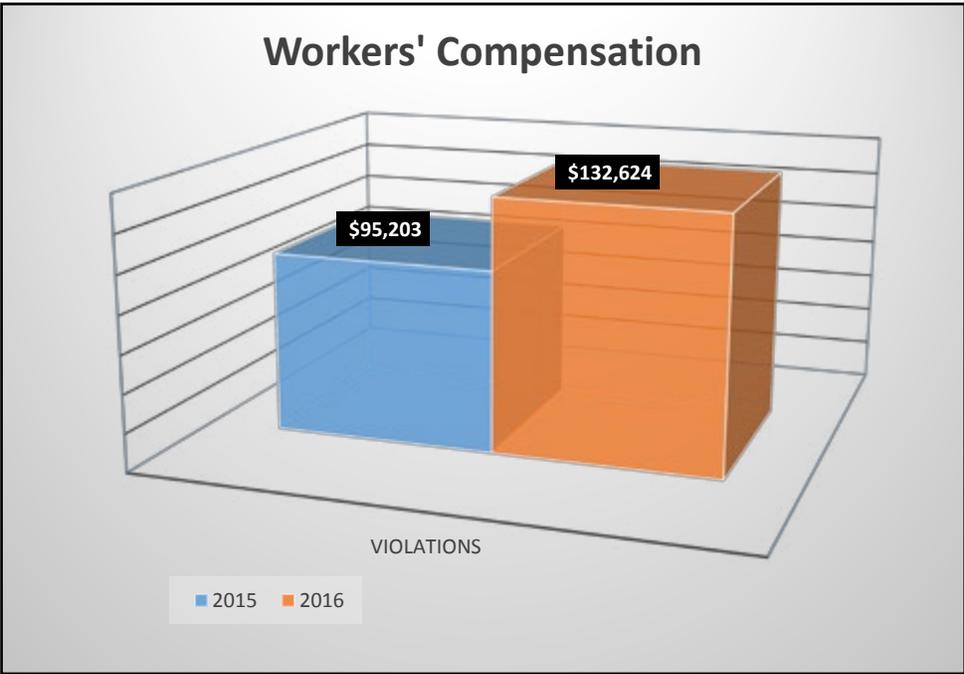
Each misclassification case must be evaluated by the relevant task force agency to determine what statutes may have been violated and what remedies can be sought to bring the employer into compliance. Generally, misclassification violations occur in different combinations. The most egregious instances 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 2016, DLT and Department of Revenue staff ramped up their collaboration, improving communication between investigators, examiners, and auditors across the two departments. Completing a centralized, on-demand, data management system is the task force's highest priority for 2017.

Penalties and Fees Collected Through Investigations 2015-2016



Penalties and Fees Collected Through Investigations 2015-2016



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.

Although confusion often surrounds the term, “employee misclassification” 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.

Governor Raimondo has made misclassification enforcement one of DLT’s top priorities. Legitimate independent contractors are a firmly established and important part of the economy. When employers knowingly misclassify employees as independent contractors, however, they penalize the workers, aboveboard 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,

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

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 (UI), Temporary Disability Insurance (TDI), 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.”



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Governor Gina M. Raimondo • Director Scott R. Jensen

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