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SOME BUSINESSES WRONGLY CLASSIFY WORKERS TO AVOID PAYROLL TAXES

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Lots of employers in these tough economic times are illegally cutting costs by misclassifying some workers as independent contractors. The tactic -- used in an array of industries from home construction to information technology -- is sapping millions of dollars from the state's unemployment-insurance fund, tax coffers and workers' compensation fund, say Utah regulators. It's also making it difficult for aboveboard companies to compete.

Officials in charge of investigating the various violations involved say they can't do much about the problem. The same shaky economy that makes it tempting for employers to illicitly shave expenses is leaving regulators with staffs far too small to nab thousands of offenders.

SLIPPING THROUGH THE CRACKS

There's a pretty good rule of thumb for knowing a worker's contracting status: If he only works with one company, that business sets his hours and the company's success is tied to the worker's success, the company should probably consider him an employee, not an independent contractor. That means that company needs to issue a W-2 tax form -- and pay taxes, Social Security and unemployment and injury insurance on the employee's behalf, at a cost of about 30 cents more on the dollar.

In the most recent data available, Utah saw a steep one-year jump in the number of independent contractors who have only one employer -- a typical indicator that the worker has been misclassified, Bill Starks, state director of unemployment insurance, said. Two years ago, 200,000 independent contractors reported only to one employer. Last year, the number swelled to 300,000.

That's 100,000 more workers who aren't having their W-2s submitted -- and while there are plenty who will file their own taxes as they are supposed to, many won't.

The Utah Department of Workforce Services employs 24 full-time auditors to keep tabs on employees and companies. The agency conducts about 1,500 audits a year -- a third of which deal with misclassified workers.

"We have enough leads to keep 50 more auditors busy if we had them, but we focus on the bigger violators," Starks said. "With limited resources, we have to prioritize how to use them."

Meanwhile, those who are cheating the system are also sapping money from public schools and higher education, which receive all of Utah's employment taxes.

Utah State Tax Commission spokesman Charlie Roberts said that he'd like to have undercover investigators infiltrate questionable businesses. But, he said, there's no money for that.

"It requires dollars to do it right."

GAMING THE SYSTEM

One common way to subvert the law is through a labor broker -- someone who is paid a lump sum to find and pay workers -- sometimes under the table. Those workers are often undocumented and their labor saves companies lots of money.

"Right now, the system is completely backward," said the owner of a tile company who says he has lost bids to competitors using illegal labor. He spoke on condition of anonymity out of fear of jeopardizing future bids. "Don't set up a system where you make it more attractive for me to break the laws rather than follow them. Don't make it so my competition can put me out of business by breaking the law."

One company currently under investigation is Salt Lake City-based European Marble and Granite. Former workers say the company routinely used labor brokers to gather undocumented laborers who work without benefits.

"It's all people who don't have their papers," said one man who worked for European on a job in Page, Ariz., but quit after seeing fellow "independent contractors" hurt on the job without any recourse.

The man, an undocumented immigrant, said he fears deportation if he were publicly identified. He said that workers in his situation are powerless to demand fair treatment. "It's a lot of people who just got here and what they want is to work, [and] get money," he said. "They don't wonder if they are going to get hurt some day."

European owner Denise Bernhisel acknowledged the company is being audited by the U.S. Department of Labor. But she said her 45-employee business is law abiding and always has been.

The person whom some may refer to as a labor broker is simply a subcontractor for her company who hires his own crews to do stonework, Bernhisel said, and she has no legal obligation to check the status of his laborers.

"We are very compliant with all federal and state laws," she said of the business she has co-owned with her husband for 15 years and which has worked on such high-profile projects as the Utah Capitol renovation and construction of the new LDS Oquirrh Mountain Temple. "We're not cheating the government, we're not cheating our employees, we're not cheating our clients. We're a good solid company."

SHOW ME THE MONEY

State legislators attempted to tackle the problem in 2008, when they passed a bill increasing the penalties for knowingly misclassifying workers. At the time, the Attorney General's Office asked for funding for new investigators at agencies that enforce labor laws, saying it would be recouped with monies generated from fines.

But the initial funding never materialized. Today the law goes largely unenforced.

A companion bill created a database of independent contractors and a council to investigate suspect dealings. The database was supposed to be online in July of this year, but the funds were taken away as the state scrambled to fill more pressing holes in its budget.

The Utah Labor Commission has investigated nearly 1,000 cases involving disputes between workers and employees so far this year -- but only 25 involved worker **misclassification**.

But commission officials say they usually investigate only in response to complaints. That can be problematic when many misclassified workers don't come forward out of fear of deportation.

WHAT LIES AHEAD

When the state's new comprehensive immigration law takes effect in July, all companies that contract with the state or local government must run their new employees through the federal E-Verify system. Subcontractors are required to submit an affidavit confirming they have done the same with their new employees.

"Currently, we have no duty to ensure that our subcontractors are following federal laws," said Douglas Welling, president of Jacobsen Construction Co., the general contractor for the massive Utah Capitol project. "Whatever the new requirements, we'll figure out what they are and follow the strict definition of them."

But Welling said he wouldn't be surprised to learn that subcontractors who are breaking the law now will be breaking the law after July.

"I'm not too sure how valuable that law is going to be," he said.

Even if it is effective, it will cover only a small fraction of Utah's construction industry -- government contracts -- and applies only to new employees.

"I'm a little frustrated and a little angry. I'm cutting the heck out of my prices, and I can't cut anymore. I can't compete with someone who is breaking the law," said the tile-company owner who has been losing bids to rivals evading legitimate labor costs. "I can either compete the way they are or pull up the tent stakes."

Kirk Torgensen, chief deputy attorney general for Utah, said he understands that sort of frustration.

"If an employer is not issuing W-2s or, in the worst-case scenario, paying his employees under the table, how do you compete?" he asked. "That whole business is generated on the low-bid, and who gets the bid every time? "

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Maria Villaseñor contributed to this report.

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