

The goal of worker misclassification/independent contractors' legislation should be to protect the rights of Vermont workers to collect overtime pay, social security, Medicare benefits, family medical leave act benefits, unemployment benefits, and workers compensation. Misclassified workers dilute the state's payroll taxes, workers compensation funds, and payments into the unemployment insurance pool. The practice impacts responsible business owners who can't compete with businesses with an underhandedly low payroll, and charges the tax paying public with compensating for these employers tax evasion.

Independent contractors are not required to carry workers comp insurance, which entices employers to misclassify their workers. Workers compensation is critical, as any worker – including the safest worker can become in need of workers compensation in the blink of an eye. The USPS delivers mail 303 days a year, year in and year out. Late last year a letter carrier, in South Burlington, was struck by a motorist while loading his mail bag from the back of a legally parked postal vehicle. His legs were crushed, and he feels lucky to be alive. Workers comp enables him to focus on his long recovery, instead of worrying about medical costs and livelihood. If a contractor, Independent or otherwise, can't afford workers compensation insurance can Vermont afford to have this person work here?

As I testified in January, most protections against discrimination on the basis of race, gender, religion, age, disability, and national origin are only available to employees and job applicants. Public policy should not favor the 1099 over the W-2. It is estimated a business can save 30 percent on labor cost by misclassifying workers as independent contractors. (National Conference of State Legislators) This is not a new concept, reducing the cost of employees has led to outsourcing and off shore jobs facilitated by NAFTA and other disastrous international trade agreements. For decades misclassified workers have been a growing sector in the workforce, especially people of color, immigrants and women.

Data from Massachusetts on worker misclassification documents 28 misclassification cases involving 1 retail, 1 restaurant, 8 landscaping, 9 miscellaneous, 13 cleaning, 14 nail salon, and 127 construction workers, with total restitution and penalty of over \$95,000. The numbers indicate the primary source of misclassification lies in the construction industry.

While this legislation has a broader focus and inclusive of a gig economy, it is disproportionately prevalent in the construction industry, and should be recognized as such. Much testimony before this committee anecdotally surrounded the construction industry. The test cases before the Vermont Supreme Court concern two construction workers.

McClatchy and ProPublica ran a series of articles “Contract to Cheat” examining worker misclassification. Utilizing just payroll data, they were able to discern enforceable violations of the labor code. I mention this because payroll data available to the Agency of Transportation, Vermont Department of Labor, and Building and Grounds illustrates the story of worker misclassification. If journalists can utilize the data to prove a case, then surely the government can also do so. In the estimation of the Vermont State Labor Council, this is low hanging fruit.

The focal point of this legislation should be enforcing the laws already on the books. We do not need to develop and enhance loopholes and ways to cheat workers out of their benefits and tax payers out of their hard earned tax dollars.