

STRAIGHT TALK ON HEARING LOSS



NYSIF[®]

NEW YORK STATE INSURANCE FUND

Workers' Comp.

ADVISOR

nysif.com

April, May, June 2008

Underground Employees

**New York State Joint
Enforcement Task Force
Targets Employers Who
Misclassify Workers**



**Plus
NYSIF Crackdown Snags 158 in
Record Year for Fraud Arrests**

In This Issue

Exposing the Underground

A joint enforcement task force report sheds light on underground employment in New York State, documenting thousands of misclassified workers by employers abusing the workers' comp. and unemployment insurance systems.



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Hear No Evil?

It's the most common occupational disease in the United States, described by the World Health Organization as an epidemic, yet hearing loss gets little respect. *Safety Cop* offers an earful to tune employers in to the evils of noisy workplaces.



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Notice: Broker, Group Accounts

NYSIF now has a centralized electronic system for new business policy applications. Brokers and group managers should send all new business policy applications, deposit premium checks and other new business related documents to:

**New York State Insurance Fund
Document Control Center—New Business
1 Watervliet Avenue Ext.
Albany, NY 12206**

The new system, an important step toward NYSIF's goal of a paperless operation, allows faster, more efficient handling of policy applications.

Important Reminder

NYSIF reminds employers of the OSHA requirement to post a summary (OSHA Form 300A) of their total number of job-related injuries and illnesses for the year 2007. The form, which must remain posted in the workplace until April 30, 2008, is available on the OSHA Recordkeeping web page.

Cover Story

Underground Employees

It took only a small sampling of New York workplaces to find thousands of “underground employees” in a first round of investigations by a state joint task force that uncovered widespread illegal practices and abuses of the workers' compensation and unemployment systems by rogue employers.

Initial findings of the New York State Joint Enforcement Task Force on Worker Misclassification, released in February, revealed nearly 2,100 workers as misclassified by employers over a four-month period, resulting in millions of dollars of unreported wages, underpayments, and loss of revenue at all levels of government.

The special task force was created in September 2007 to target employers who shirk their obligations—including the payment of mandated wages and

Fraud File

**NYSIF
TOPS
PREVIOUS
ARREST
MARK**

Focus On Evasion of Workers' Comp. Obligations

NYSIF achieved its single best anti-fraud campaign with 158 arrests in 2007, a year in which NYSIF hiked its total arrests to over 1,080 since 1996.

CEO David P. Wehner stated: “Our industry-leading fraud program is a credit to the dedication of our entire staff, and to the successful working relationship among our Division of Confidential Investigations, New York State agencies that are our partners in fighting fraud, and law enforcement authorities across the state.”

State Task Force Report Shines Glaring Light on Misclassification by Rogue Employers

overtime, employment taxes, and obtaining workers' compensation coverage—by improperly misclassifying workers as independent contractors rather than as employees, or by paying them “off the books.”

The goal of the task force is to reduce long-standing abuses of workers and to level the playing field for law-abiding businesses. The report demonstrates why employee misclassification is a serious problem and why a coordinated approach is needed.

FAILING TO PROPERLY CLASSIFY WORKERS costs the state millions in lost tax revenues. In addition, failing to provide misclassified workers with employee benefits and protections means they and their families turn to taxpayer-supported public safety-net programs for such assistance.

Misclassification also creates an unfair competitive disadvantage for honest businesses that are forced to compete in the marketplace against employers who lower their operating costs and increase their profits by misclassifying their workers.

Worker misclassification falls into two general categories: misclassification as an independent contractor, or unreported (off-the-books) employment. In both cases, employers pay significantly less for workers' comp. insurance, or nothing at all.

THE FINDINGS, announced by NYS Labor Commissioner M. Patricia Smith, showed that through December 2007, the task force discovered \$19.4 million in unreported wages, for which employers paid no federal, state, local, unemployment or social security taxes.

The task force initiated 35 unemployment insurance tax investigations and conducted 15 joint enforcement sweeps of work sites primarily in the construction and restaurant industries that found 2,078 misclassified workers and identified 117 employers at

sweep locations. It assessed more than \$1.4 million in taxes and penalties owed to the Unemployment Insurance Fund, which provides a critical safety net for workers who lose their jobs through no fault of their own.

The report also revealed underpayments of approximately \$3 million dollars to more than 640 workers who were owed minimum and overtime wages. Asbestos, recordkeeping and child labor violations also were uncovered.

LED BY THE NYS LABOR DEPARTMENT Unemployment Insurance Division, task force teams consist of other divisions including Labor Standards, Safety and Health, Office of Special Investigations and Bureau of Public Work, plus the NYS Workers' Comp. Board Bureau of Compliance and Office of the Fraud Inspector General, the NYS Department of Taxation and Finance, the NYC Comptroller's Office and the State Attorney General's Office.

The task force was asked to report its findings each February, along with recommendations to address the problem.

The Unemployment Insurance Division indicated that the problem is far greater than the scope of initial task force investigations. By re-engineering its statistical tracking methods, it began early in 2007 to capture more information than that of federally mandated audits of misclassified workers. The additional information appears to support the extent of misclassification. Specifically, from September 1 through December 31, 2007, UI audits found 35,410 misclassified workers.

The task force cited a 2007 Cornell University report revealing the extent of worker misclassification in New York State. A university study found 10% of private-sector employers failed to comply with state regulations governing

‘Our success is not possible without the cooperation of the NYS Insurance Dept. Frauds Bureau and Workers’ Comp. Board Fraud Inspector General.’ – NYSIF CEO David P. Wehner

In keeping with New York workers' comp. reform signed into law in 2007, NYSIF continued to crack down on policyholder, claimant and medical provider fraud, with particular focus on policyholders who under report payroll or misclassify workers to avoid paying proper premium.

NYSIF topped its previous one-year total for arrests – 148 set in 2006 – and accounted for fraud, restitution and estimated future savings of more than \$17,428,000 last year. Since 1996, cumulative fraud halted by NYSIF investigations, along

with restitution and estimated future savings has totaled more than \$140 million.

CEO Wehner cited inter-agency cooperation as a reason for NYSIF's 2007 anti-fraud results.

“The success of our program is not possible without the cooperation of the New York State Insurance Department Frauds Bureau and the Workers' Compensation Board Fraud Inspector General,” he said.



classification, with construction companies accounting for 14.9% of that group. The task force also cited a 2007 Fiscal Policy Institute report estimating that illegal underground construction employment would cost taxpayers \$557 million this year.

AMONG OTHER THINGS, the task force integrated data sharing focused on reducing workers' comp. fraud as directed by 2007 workers' comp. reforms. It also established an employment fraud hotline, web site and e-mail address that has led to nearly 600 calls and e-mails which resulted in 200 Unemployment Insurance tax audits.

The task force said it plans to enhance enforcement through continued interagency cooperation, information sharing and joint prosecution of serious violators. It has held consultations with business and labor representatives, including the National Employment Law Project, AFL-CIO, the Brennan Center for Justice, the Business Council of New York, and the Empire State Development Corp., to solicit ideas on how to improve operations regarding task force activities.

The task force made a point of distinguishing between employers who mistakenly misclassify workers based on the belief that they are indeed independent contractors, and employers who intentionally misclassify workers solely to avoid taxation and other employment protections.

The task force said employers who pay workers "off-the-books" to avoid taxation, wage and hour compliance, worker safety provisions, workers' comp. coverage, and other employee benefits, is an increasing trend. In some cases, it found workers forced to pretend they were working on a "volunteer" basis and others who said their employers warned them not to talk to investigators.

THE RECOMMENDATIONS

The task force urged adoption of the following:

- Establishment of a single, consistent standard for determining if an individual is an employee or an independent contractor;
- A statutory change to extend or clarify individual liability of corporate officers and their affiliates for misclassification actions enforced by the task force;
- Legislative changes to facilitate greater data sharing among agencies, specifically allowing the Dept. of Tax & Finance to participate in sweeps and share audit results.
- Possible tougher penalties for non-compliance, including criminal sanctions.

**NYS Dept. of Labor Employment
Fraud Hotline: 888-598-2077; or
www.labor.state.ny.us > Report
UI Fraud**

School's (Almost) Out: Hire Carefully!

As employers begin hiring summer workers, NYSIF CEO/Executive Director David P. Wehner reminded all policyholders of the laws governing youth in the workplace.

"It is essential for all New Yorkers—parents, minors and businesses—to be cognizant of current child labor laws," CEO Wehner said. "In order to ensure a safe workplace, employers must adhere to the regulations governing the employment of minors."

The most common violation regarding the employment of minors is the lack of working papers. Without proper working papers, minors cannot work legally in New York. Age-specific working papers are issued to minors by the schools they attend.

Minors under 14 cannot be employed at any time, with some exceptions: outside school hours, minors 12 or older may be employed to hand harvest berries, fruits and vegetables, and minors 11 or older may sell or deliver newspapers, shopping papers, or periodicals.

While not in school, minors 14-15 cannot work more than 40 hours a week; minors 16-17 cannot work more than 48 hours a week. In both cases, they may not work longer than eight hours a day. All minors (excluding news carriers and farm workers) cannot work between midnight and 6:00 a.m. When school is in session, no minor age 14-15 (excluding news carriers and farm workers) can be employed after 7:00 p.m. or before 7:00 a.m.

State and federal law prohibits all minors to operate band saws, circular saws and guillotine shears, most power-driven machinery, steam boilers, and any washing, grinding, cutting, slicing, pressing or mixing machinery. They also cannot work in manufacturing, construction, logging, roofing, mining, any occupation involving hazardous exposures, paint or clean a building's exterior from an elevated surface, or work in the manufacturing, packaging or storing of explosives.

Employers face fines of up to \$3,000 for non-compliance. Penalties triple if illegal employment results in death or serious injury. Visit the NYS Department of Labor web site at www.labor.state.ny.us for more information.



Rates Changing to "Loss Cost" System

New York State laws of 2008 make a number of changes affecting ratemaking for workers' compensation, replacing the current administered rate system with a loss cost system. Under the old system, a licensed rating service organization (RSO) filed complete rates with the Insurance Department (which it could accept or reject) based on a projection of losses for the coming year and expense factors for the entire industry. In a loss cost system, the RSO will only file the portion of the rates related to losses. Each individual insurer must apply its own expense factor ("loss cost multiplier") to the applicable loss cost to determine the complete rate. The changes are scheduled to take effect 10/1/08.

Buen mantenimiento... Zonas de trabajo accesibles y secas...



resultan en una cocina
comercial segura

Safety & Risk Management

New York State Insurance Fund
www.nysif.com



NYSIF Web Site Expands Spanish Safety Resources

NYSIF now offers workplace safety posters in Spanish to all businesses. In making the announcement, CEO/Executive Director David P. Wehner said NYSIF is responding to the ever-increasing percentage of Spanish speaking people in the New York workforce by expanding online services to include safety resources in Spanish for the first time.

“Our workforce is culturally diverse with many workers retaining their native culture and language,” he said. “At NYSIF, we believe we have a responsibility to assist our policyholders in accident prevention and providing a safe workplace for those who speak limited or no English.”

The 43 posters complement a growing section of safety and risk management resources available on NYSIF’s web site for Spanish-speaking workers. These include NYSIF *Safety Matters* construction series and the booklets, NYSIF *Partners in Safety* and NYSIF *Claims Guide*, which run the gamut of workplace safety and claims topics, respectively.

All NYSIF safety resources are easily printed from the nysif.com web site. NYSIF safety resources are available free to all businesses.

The posters are suitable for displaying in the workplace and can be a valuable resource to help businesses raise the level of employee awareness in maintaining a safe work environment. NYSIF policyholders looking for a particular category that is not available may request to have a safety poster created to meet a specific business need through the web site.

Posters en Español: NYSIF Spanish safety posters are suitable for a variety of businesses, including restaurant industry sample (above), which translates to, “Good housekeeping ... clear dry work areas... Make for a safe commercial kitchen”

Alliance Rolls Along Keeping Workers Safe

The NYSIF/OSHA Albany alliance is back at work helping NYSIF policyholders maintain and improve workplace safety.

Recent sessions included NYSIF/OSHA outreach training at Vassar College in Poughkeepsie for Hudson Valley Safety Council members, and at Middle Granville Volunteer Fire Department for slate valley policyholders in Washington County.

NYSIF OSHA-certified Outreach Trainers John McCarthy, Augie Bortoloni and Russell Fitch, along with OSHA’s Paul Wigger, conducted various parts of the training.

NYSIF PHS Rep. Russ Fitch has been garnering awards for his safety services, including a Certificate of Recognition for his work in conducting Workplace Safety and Loss Prevention consultation under Industrial Code Rule 59 from the NYS Dept. of Labor in 2007. He earned another in 2008 for outstanding commitment and dedication to the safety and health of mine workers in New York State.

“Your efforts have a positive effect...and help keep the State of New York at the forefront in the field of mine safety and health by helping provide the highest level of mine safety training expertise to the working men and women of our state,” wrote New York Labor Commissioner M. Patricia Smith in a letter to Mr. Fitch.



Aligned: NYSIF’s John McCarthy, OSHA’s Paul Wigger, NYSIF’s Augie Bortoloni and Russell Fitch (l-r)



Bells and horns are intentionally loud to warn of danger. Yet workers who would never ignore a fire alarm put their hearing at risk by ignoring loud noise in the workplace. Over time, high noise levels can lead to permanent hearing loss. While noise-induced hearing loss is irreversible, it is a fully preventable occupational disease if employers and workers cooperate.

DEFINING THE PROBLEM

So many workers fail to take basic precautions against hearing loss that one writer calls it the

Gary Dombroff, WCP/CSC

Safety Cop



“Rodney Dangerfield of worker protection” – it gets no respect. Safety and workers’ comp. professionals, however, have taken notice. The New York Workers’ Compensation Board ranks hearing loss as its second-highest occupational disease claim. The Centers for Disease Control and Prevention (CDC) lists hearing loss as the most common occupational illness in North America. The World Health Organization considers it an epidemic.

According to the National Institute for Occupational Safety and Health (NIOSH), industries with above-average noise exposure include agriculture, mining, construction, manufacturing and utilities, and transportation. Construction has an exceptionally high exposure: 44% of carpenters and 48% of plumbers report a perceived hearing loss. Of course, any worker can be at risk for work-related, noise-induced hearing loss.

Most hearing loss occurs slowly unless caused by traumatic head injury or exposure to deafening noise. Workers may not notice lost hearing acuity right away. Hearing diminishes gradually and painlessly. Unfortunately, many noise-exposed employees do nothing, and wind up losing more of their hearing.

TAKE THE NOISE-LEVEL QUICK QUIZ

Employers, therefore, should act promptly to protect hearing. The first step in preventing noise-induced hearing loss is determining the noise level.

How do you know if your workplace is too loud? NIOSH has some rules of thumb: “First, if you have to raise your voice to talk to someone who is an arm’s length away, the noise is likely to be hazardous. Second, if your ears are ringing, or sounds seem dull

or flat after leaving a noisy place, then you probably were exposed to hazardous noise.”

If your business generates this kind of noise, or if workers report hearing problems, you should see if the noise level requires an OSHA-mandated hearing conservation program. While prevention is the goal, workers who have lost some hearing can benefit by limiting the damage already done. Assessing and monitoring exposure, and instituting an appropriate hearing conservation plan can prevent noise-induced hearing loss.

Industries with above-average noise exposure

**Agriculture
Mining
Construction
Manufacturing
Utilities**



The World Health Organization calls hearing loss an epidemic.

START EARLY

There may be time to stem hearing loss if proper precautions are taken early enough. The American College of Occupational and Environmental Medicine states: “Since the loss of hearing due to noise is not reversible, early detection and intervention is critical to improving prevention of this condition. The rate of hearing loss due to chronic noise exposure is greatest during the first 10-15 years of exposure.”

What’s more, hearing loss is a double-edged sword. Consider the hearing-impaired worker’s safety. ACOEM states: “On the job, such hearing loss can impact worker communication and safety. Other conditions associated with hearing loss may be depression, social isolation, and increased risk of accidents.” Preserving hearing throughout a career is critical to a worker’s overall safety, productivity – and the prevention of an occupational loss-of-hearing claim.

The claim, of course, comes after the damage is done. Even the best hearing rehabilitation or return to work program can’t restore a hearing-impaired worker to his or her former capability. NYSIF helps these claimants by supplying hearing aids and other devices like amplified phones, and lip-reading training. While the worker’s career may continue, none of these devices and techniques can restore the quality of life enjoyed before the hearing loss.

HOME, QUIET HOME!

It’s a noisy world off the job, too. It is especially important for workers already at risk due to occupational noise exposure to protect their hearing from sources like portable music players, loud concerts, subway trains, power tools and lawnmowers.

Next time: OSHA’s Hearing Conservation Standard and requirements.

Monthly Safety Topics

Find safety topics at nysif.com> Safety & Risk Management> Small Business

April Ergonomics Office Safety Tips

May Back Safety

June Health and Wellness

PPE Rule Clarifies Employer Requirement



In case you missed it, the Occupational Safety and Health Administration issued a final rule on Nov. 15, 2007 that employers must provide all personal protective equipment (PPE) at no cost to employees, with few exceptions (*WCA Jan-Mar '08*).

The new rule establishes a consistent requirement that employers pay for all PPE under OSHA's general industry, construction and maritime standards. Exempt from the requirement are safety-toe protective footwear (however, the employer must pay for metatarsal protection that attaches to the shoes), prescription safety eyewear, logging boots, everyday clothing and weather-related gear.

The rule requires employers to pay for all other PPE used to comply with OSHA's minimum standards and does not place any new PPE requirements on employers.

Employees may elect to use their own PPE, but employers cannot require them to use or pay for their own PPE and must make sure the equipment meets minimum OSHA standards. Employers must pay for replacement PPE, except when an employee has lost or intentionally damaged the PPE.

A final provision sets an enforcement deadline of six months for employers to comply with the rule. OSHA estimates the rule will result in 21,000 fewer injuries per year.

Policyholders Are SHARP Operators

OSHA's Safety and Health Achievement Recognition Program (SHARP) recognizes small employers who operate an exemplary safety and health management system.

NYSIF policyholders identified as "newly SHARP" in the past year:

Anachemia Chemicals Inc.
Applied Technology Mfg.
Armstrong Mold Corporation
Bonide Products Inc.
C.H. Thompson Co. Inc.
Chemung ARC
Colandrea Pontiac-Buick
Ed Levin Inc.
Hagen Pet Foods Inc.
Legendary Auto Interiors
Spray Nine Corp.
Troy Belting & Supply Co.
Walter Snyder Printer Inc.



For details of the program, visit OSHA's Small Business web page.

Redesigned eTool for Small Business

OSHA launched a redesigned Small Business Assistance web site that provides an updated "Safety Pays" eTool and a new link to Spanish-language safety resources. The updated eTool allows employers to estimate the costs of work-related injuries and illnesses and projects the sales growth required to cover those costs.

Focus on Reducing Crystalline Silica

OSHA recently implemented a National Emphasis Program to reduce workplace exposure to crystalline silica. OSHA's Safety and Health Topics web page provides resources that identify and offer possible solutions to this industrial health hazard that affects the following occupations/operations:

General contractors
 Highway and street construction
 Bridge, tunnel and elevated highway construction

List continues on page 8

Commissioners Denis Hughes, Kenneth Theobalds



Denis M. Hughes and Kenneth R. Theobalds have been named to NYSIF's Board of Commissioners. Mr. Hughes is president of NYS American Federation of Labor-Congress of Industrial Organizations (AFL-CIO), serving in that capacity since 1999. A graduate of Empire State College Harry Van Arsdale School of Labor Studies, Mr. Hughes serves on the Federal Reserve Bank of New York Board of Directors. He joined AFL-CIO in 1985. Following 9/11, he helped labor's effort to secure \$20 billion to rebuild New York State.



Mr. Theobalds is vice president of Government Affairs for Entergy Nuclear Northeast. A graduate of Cornell University, Mr. Theobalds is chairman of the African-American Chamber of Commerce of Westchester and Rockland, Inc., and a former deputy executive director of NYSIF. He joined Entergy in 2002 as director of Government Affairs.

Both appointments have been confirmed by the NYS Senate.

Deputy Director Tom Gleason, Deputy Attorney Shirley Stark

CEO David Wehner announced the appointments of Tom Gleason as deputy executive director, Insurance Services, and Shirley Stark as deputy general attorney. NYSIF's Board of Commissioners approved the appointments in December.



Mr. Gleason has more than 30 years in workers' compensation and risk management, including several years as executive director of the NYS WCB.

Mr. Gleason will have responsibilities in claims, customer service, disability benefits, return-to-work and workers' comp. reform.

Ms. Stark spent more than 20 years in the NYS Attorney General's Office, most recently as chief of Consumer Frauds and Protection. She will oversee contract issues, corporate governance, e-commerce and technology issues, records retention, employee relations proceedings, and security and investments compliance.



Workers' Comp. Advisor

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Business Managers

Lorna Morris **Safety Group Office 1** Sherwin Taylor **Safety Group Office 2** John DeFazio **Group 90 Metro Office** Joseph Nolte **Albany** James Fehrer **Binghamton** Ronald Reed **Buffalo** Cliff Meister **Nassau** Lisa Ellsworth **Rochester** Eileen Wojnar **Suffolk** Kathleen Campbell **Syracuse** Carl Heitner **White Plains**

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Disability Benefits Claims & Service **1-866-697-4332**
Business office contact information nysif.com

Send WCA comments to jmesa@nysif.com

OCCUPATIONS WITH EXPOSURE TO CRYSTALLINE SILICA

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Water, sewer, pipeline, and communications and power line construction

Heavy construction

Painting, paper hanging

Masonry, stone setting, other stone work

Plastering, drywall, acoustical and installation work

Roofing, siding, sheet metal work

Concrete work

Excavation work

Wrecking, demolition work

Special trade contractors

Brick and structural clay tile

Clay refractories

China/Earthenware plumbing fixtures, fittings and bath accessories

China kitchen and table articles

Porcelain electrical supplies

Pottery products

Nonmetallic mineral products

Steel works, blast furnaces, rolling mills



Gray and ductile iron foundries

Malleable iron foundries

Steel foundries

Primary production of aluminum

Aluminum, copper and nonferrous foundries

Enameled iron, metal sanitary ware

Fabricated and structural metal*

Boiler shops*

Sheet metal work*

Electroplating, polishing, anodizing, coloring*

Coating, engraving and allied services*

Construction machinery and equipment*

Industrial and commercial machinery equipment*

Truck trailers*

Brick, stone, related construction materials

Top, body and upholstery repair shops and paint shops*

**exposure primarily from abrasive blasting operations*