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Department of Business & Industry

OFFICE OF THE LABOR COMMISSIONER

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NOTICE & AGENDA OF PUBLIC MEETING

TASK FORCE ON EMPLOYEE MISCLASSIFICATION

The Department of Business and Industry, Task Force on Employee Misclassification will conduct a meeting on the following day, time, and location.

Online Meeting: Join from your computer, tablet, or smartphone.

Task Force on Employee Misclassification

Tuesday, February 23, 2021 9:00 AM - 11:00 AM (PST)

Please join my meeting from your computer, tablet, or smartphone.

<https://businessnv.webex.com/businessnv/j.php?MTID=m38d9d71b0e6a5bf5e39d9a1dbdd36fae>

Pursuant to the Governor of Nevada's Declaration of Emergency Directive 006, section 1, issued on March 22, 2020, which suspended certain requirements of Nevada's Open Meeting Law, there will be no physical location for this meeting.

As required by the Governor's Declaration of Emergency Directive 006, section 2, members of the public may submit public comment by logging into the webinar by accessing the following link:

<https://businessnv.webex.com/businessnv/j.php?MTID=m38d9d71b0e6a5bf5e39d9a1dbdd36fae>.

This option will require a computer with audio capabilities. Additionally, public comment can be submitted prior to, during, and up to 30 minutes after the meeting is adjourned via email to: mail1@labor.nv.gov. Public comment received prior to the meeting will be read into the record. Public comment received during the meeting and within 30 minutes of meeting adjournment will be added to the record.

Attached is an agenda of all items scheduled to be considered. Items may be taken out of the order presented on the agenda; items may be combined for consideration by the public body; discussion on items may be delayed; and items may be pulled or removed from the agenda at any time.

The Task Force on Employee Misclassification may put reasonable restrictions on time, place, and manner of public comment. Comments based upon viewpoint may not be restricted. Public comment will be limited to five (3) minutes per person, per item.

AGENDA

1. Call to Order and Roll Call.
2. Public Comment
3. Approval of Minutes from January 25, 2021 meeting.
4. What is Misclassification and Studies on Misclassification.
Shannon Chambers, Nevada Labor Commissioner.
5. Appointment of Task Force Members to Subcommittees.
Teresa McKee – Chair and Fran Almaraz – Vice Chair
Shannon Chambers, Nevada Labor Commissioner
6. Legislative Updates.
Shannon Chambers, Nevada Labor Commissioner.
7. Agenda Items for next meeting (for discussion).
8. Public Comment.
9. Adjournment.

This meeting has been properly noticed and posted at the following locations: Department of Business and Industry Director's Offices in Las Vegas and Carson City; Nevada Office of the Labor Commissioner; as well as online at www.labor.nv.gov and www.notices.nv.gov.

Note: We are pleased to make reasonable accommodations for members of the public with a disability. If special arrangements for the meeting are necessary, please notify Rosalind Hooper at (775) 684-1890 or RMcCloud@labor.nv.gov or Mail1@labor.nv.gov as soon as possible.

NRS 607.216 “Employee misclassification” defined. As used in [NRS 607.216](#) to [607.2195](#), inclusive, unless the context otherwise requires, “employee misclassification” means the practice by an employer of improperly classifying employees as independent contractors to avoid any legal obligation under state labor, employment and tax laws, including, without limitation, the laws governing minimum wage, overtime, unemployment insurance, workers’ compensation insurance, temporary disability insurance, wage payment and payroll taxes.

(Added to NRS by [2019, 3157](#))

NRS 607.217 Communication of information relating to employee misclassification among Labor Commissioner, certain state agencies and the Attorney General. The offices of the Labor Commissioner, Division of Industrial Relations of the Department of Business and Industry, Employment Security Division of the Department of Employment, Training and Rehabilitation, Department of Taxation and Attorney General:

1. Shall communicate between their respective offices information relating to suspected employee misclassification which is received in the performance of their official duties and which is not otherwise declared by law to be confidential.

2. May communicate between their respective offices information relating to employee misclassification which is received in the performance of their official duties and which is otherwise declared by law to be confidential, if the confidentiality of the information is otherwise maintained under the terms and conditions required by law.

(Added to NRS by [2019, 3157](#))

NRS 607.218 Task Force on Employee Misclassification: Creation; appointment, qualifications and terms of members; vacancies; meetings; Chair and Vice Chair; quorum; compensation; administrative support.

1. The Task Force on Employee Misclassification is hereby created.

2. The Governor shall appoint to serve on the Task Force:

(a) One person who represents an employer located in this State that employs more than 500 full-time or part-time employees.

(b) One person who represents an employer located in this State that employs 500 or fewer full-time or part-time employees.

(c) One person who is an independent contractor in this State.

(d) Two persons who represent organized labor in this State.

(e) One person who represents a trade or business association in this State.

(f) One person who represents a governmental agency that administers laws governing employee misclassification.

3. The Governor may appoint up to two additional members to serve on the Task Force as the Governor deems appropriate.

4. After the initial terms, the members of the Task Force serve a term of 2 years and until their respective successors are appointed. A member may be reappointed in the same manner as the original appointments.

5. Any vacancy occurring in the membership of the Task Force must be filled in the same manner as the original appointment not later than 30 days after the vacancy occurs.

6. The Task Force shall meet at least twice each fiscal year and may meet at such additional times as deemed necessary by the Chair.

7. At the first meeting of each fiscal year, the Task Force shall elect from its members a Chair and a Vice Chair.

8. A majority of the members of the Task Force constitutes a quorum for the transaction of business, and a majority of those members present at any meeting is sufficient for any official action taken by the Task Force.

9. The Task Force shall comply with the provisions of [chapter 241](#) of NRS, and all meetings of the Task Force must be conducted in accordance with that chapter.

10. Members of the Task Force serve without compensation.

11. The Labor Commissioner shall provide the personnel, facilities, equipment and supplies required by the Task Force to carry out its duties.

(Added to NRS by [2019, 3157](#))

NRS 607.219 Task Force on Employee Misclassification: Duties; annual report. The Task Force on Employee Misclassification created by [NRS 607.218](#) shall:

1. Evaluate the policies and practices of the Labor Commissioner, Division of Industrial Relations of the Department of Business and Industry, Employment Security Division of the Department of Employment, Training and Rehabilitation, Department of Taxation and Attorney General relating to employee misclassification.

2. Evaluate any existing fines, penalties or other disciplinary action relating to employee misclassification that are authorized to be imposed by a state agency.

3. Develop recommendations for policies, practices or proposed legislation to reduce the occurrence of employee misclassification.

4. On or before July 1, 2020, and on or before July 1 of each subsequent year, submit a written report to the Director of the Legislative Counsel Bureau for submission to the Legislative Commission. The report must include, without limitation, a summary of the work of the Task Force and recommendations for legislation concerning employee misclassification.

(Added to NRS by [2019, 3158](#))

NRS 607.2195 Task Force on Employee Misclassification: Authority to appoint subcommittee.

1. The Task Force on Employee Misclassification created by [NRS 607.218](#) may create a subcommittee to the Task Force for any purpose that is consistent with [NRS 607.216](#) to [607.2195](#), inclusive.

2. The Task Force shall appoint the members of the subcommittee and designate one of the members of the subcommittee as chair of the subcommittee. The chair of the subcommittee must be a member of the Task Force.

3. The subcommittee shall meet at the times and places specified by a call of the chair of the subcommittee. A majority of the members of the subcommittee constitutes a quorum, and a quorum may exercise any power or authority conferred on the subcommittee.

(Added to NRS by [2019, 3158](#))

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TASK FORCE ON EMPLOYEE MISCLASSIFICATION

JANUARY 25, 2021 - MEETING MINUTES

1. Call to Order and Roll Call.

Shannon Chambers, Nevada State Labor Commissioner, called the meeting to order at 9:30 a.m. Roll Call and Quorum.

2. Public Comment.

There was no public comment.

3. Overview of Task Force on Employee Misclassification.

Shannon Chambers, Nevada State Labor Commissioner, presented this item. Ms. Chambers provided information on the history and background of Senate Bill 493 80th (2019) Session of the Nevada Legislature, that created the Task Force on Employee Misclassification (Task Force). The Office of the Labor Commissioner supports the Task Force.

4. Election of Chair and Vice-Chair.

A motion was made to elect Teresa McKee, Chair, of the Task Force on Employee Misclassification. The motion was seconded and passed unanimously.

A motion was made to elect Fran Almaraz, Vice-Chair, of the Task Force on Employee Misclassification. The motion was seconded and passed unanimously.

5. Overview of current state and federal laws on Independent Contractors.

Shannon M. Chambers, Nevada State Labor Commissioner, presented this item. The following information was provided to the Task Force members.

<http://labor.nv.gov/uploadedFiles/labornvgov/content/Employer/Independent%20Contractor%20-%20Information%20Sheet.pdf>

[Final Rule: Independent Contractor Status under the Fair Labor Standards Act | U.S. Department of Labor \(dol.gov\)](#)

Ms. Chambers provided information on the Office of the Labor Commissioner and the current misclassification and independent contractor laws, regulations, and presumptions regarding independent contractors that are enforced by the Office of the Labor Commissioner. Ms. Chambers provided an outline of the claim process, penalties/fines, and the amount of claims involving potential misclassification.

The new United States Department of Labor Rule on Independent Contractors was mentioned and whether it would actually take effect in March 2021, given the election of President Biden, the appointment of a new Secretary of Labor, and the regulatory freeze implemented by President Biden on January 20, 2021. This issue will continue to be followed and information and updates provided.

Ms. Chambers also provided information on what happened in the State of California regarding the efforts to classify more workers as employees, and how that effort was overturned by California voters.

Vice-Chair Almaraz provided the Task Force with more information and background on the issue of misclassification and the various legislative actions that have been taken to address the issue of misclassification.

The Task Force members discussed studies that have been completed on misclassification and the Task Force was informed that a new study is set to be released regarding misclassification and the amount of money it costs the State.

Several Task Force members emphasized the importance of independent contractors and the value of the independent contractor work model. The COVID-19 public health emergency has required flexibility in the workplace and the ability to work from home with various schedules. Chair McKee noted the essential use of independent contractors in certain industries, such as the Real Estate Industry, and the value to the industry that this provides. Ms. Chambers and other members of the Task Force agreed that the independent contractor framework when done right is an essential element of modern employment and needed considering the events related to COVID-19.

The Task Force discussed targeting those potential industries where misclassification has been known to occur and working with other agencies to create a designated investigative task force for investigation of misclassification.

The Task Force members looked forward to addressing the potential issues related to misclassification, the benefits of the independent contractor structure, and developing potential recommendations to address those entities/industries that may be engaged in intentional misclassification of workers.

6. **Comments from Task Force members and discussion of possible subcommittees.**

Ms. Chambers informed the Task Force members that the creation of subcommittees was allowed and could be used to address specific issues related to misclassification.

The Task Force members discussed the creation of potential subcommittees, such as an Audit Subcommittee, Legislative Subcommittee, and a subcommittee that could address industry issues.

It was agreed that the Task Force members would submit subcommittee ideas by Friday, January 29, 2021, to the Labor Commissioner.

7. **Agenda Items for next meeting.**

Agenda items for the next meeting could include the following:

- Approval of Task Force Subcommittees and Subcommittee Appointments.
- Presentation of Misclassification Studies.
- Ideas on creation of investigative unit with other agencies to support Task Force.
- Presentation of laws and regulations on misclassification from other agencies.
- Other items to be placed on the agenda at the request of the Chair and Vice-Chair.

8. **Public Comment.**

There was no public comment.

9. **Adjournment.**

The meeting adjourned at 10:30 a.m.

PAYROLL FRAUD IN NEVADA'S CONSTRUCTION INDUSTRY: EXTENT AND FISCAL IMPACT

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Payroll Fraud in Nevada's Construction Industry: Extent and Fiscal Impact

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January 2021

Study results are based on publicly available information and are reproducible.

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Report Fact Sheet

Overview: This report investigates two forms of payroll fraud prevalent in Nevada's construction industry: (a) the misclassification of workers as independent contractors and the use of cash-only, off-the-books employment arrangements and (b) misclassification and underpayment of workers on public construction projects covered by prevailing wage laws.

Methodology: Estimating the extent of payroll fraud is complicated by the fact that, in concealing their illegal actions from authorities for fear of civil or criminal penalties, contractors simultaneously keep their actions hidden from state and federal agencies responsible for data collection on economic activity. However, this study uses a two-pronged approach to demonstrate the prevalence of these forms of payroll fraud in Nevada's construction industry. First, the incidence and economic costs of misclassification and off-the-books arrangements are indirectly estimated using a quantitative methodology advanced in a 2020 study published by the Institute for Construction Economic Research (ICERES). Second, payroll fraud on public works projects is explored through qualitative interviews with industry stakeholders familiar with these illegal practices. The sections below summarize the primary findings of this study.

Quantitative Analysis: Misclassified Independent Contractors & Cash-Only Work Arrangements

- There were an estimated 12,717 workers either misclassified as independent contractors or engaged in cash-only, off-the-books work arrangements in Nevada's construction industry in 2018. Of those, 8,573 were estimated to be working in Clark County with an additional 1,988 in Washoe County.
- Across Nevada, approximately 11.4% of the state's construction workforce was either misclassified or working off-the-books in 2018 (including employees and self-employed workers). Excluding white-collar workers, this amounts to 14.0% of the Nevada's blue-collar construction workforce.
- These estimates are generated by a comparison of employer payroll records with large-scale worker surveys administrated by the Census Bureau, additionally incorporating data from the IRS. Similar approaches have been used by analysts in studies of other states, however this methodology features a nontrivial margin of error. While the authors have reasons to suspect that these estimates are conservative, the projections offered above appear to be consistent with similar reports of other states.
- Law-abiding employers are required to pay between 18% and 38% more on a per-worker basis than contractors who engage in payroll fraud.
- Illegal labor practices likely reduced the labor costs of offending contractors by over \$90 million in Nevada in 2018; these costs are borne directly by workers and taxpayers.
- Based on a series of assumptions, this study contends that misclassification and off-the-books employment in the construction industry likely costs state taxpayers nearly \$50

million annually. Using data from 2018, the cost estimates suggest that these actions led to a \$31.1 million shortfall in the state's workers compensation fund, an \$11.8 million loss to Nevada's unemployment insurance program, and \$6.6 million in uncollected tax revenue via the Modified Business Tax.

Interviews: Misclassification and Underpayment on Public Works/Prevailing Wage Projects

- Misclassification on prevailing wage projects typically occurs when an employer uses a worker from a lower paid prevailing wage job classification, usually a laborer, to complete the tasks lawfully assigned to a worker in a higher-paid classification such as an electrician or pipefitter.
- Users of public works are at risk, and the risk of injury on the construction jobsites is higher when construction workers complete tasks they are not qualified to perform.
- Without supervision by the appropriate higher-skilled worker, formal apprentice training does not occur.
- Latent defects, requiring costly follow-up maintenance are more frequent when tasks are completed by other than specifically trained and qualified workers.
- Misclassification on public works projects also arises when agencies other than the Office of the Labor Commissioner establish their own job descriptions and responsibilities for higher and lower-skilled workers.
- Regardless of the cause, misclassification on public works projects creates an uneven playing field in which rule-breaking contractors are rewarded at the expense of law-abiding contractors.
- Wage theft occurs on public projects when open shop (nonunion) contractors pay their employees less than the minimum prevailing wage rate. In these cases, workers must often choose between confronting their employer about violating the State of Nevada's prevailing wage statute, or accepting wage theft to keep their jobs.
- Uniform and complete enforcement of prevailing wage regulations ensures that the right workers safely perform the tasks they are qualified to do, all workers are properly compensated, apprenticeship training takes place, and that all contractors compete on a level playing field.
- The contractors interviewed indicated that enforcement of Nevada's prevailing wage policy is woefully inadequate and that more field inspectors at public works projects jobsites are needed. While recent legislation has helped builders meet the requirements of prevailing wage standards, the lack of uniform enforcement by regulators is the biggest problem facing the contractors that were interviewed.

About the Authors

Jeff Waddoups received a B.A. degree in 1984 and a Ph.D. degree in 1989 from the University of Utah in Economics with specializations in labor economics and industrial relations. In 1989 he joined the Department of Economics at the University of Nevada, Las Vegas, where he is currently professor and chair of the department. He has developed and taught courses at the graduate and undergraduate levels in labor economics, research methods, labor law, statistics, health economics, the economics of discrimination, and macroeconomics. He has also held adjunct faculty positions at Penn State's Human Resource and Employment Relations masters' program, at Griffith University's Department of Management, and at the Helsinki School of Economics Bachelor of Business Administration Program. He is an internationally and nationally recognized scholar with publications in some of the top journals in labor economics and industrial relations including *Industrial & Labor Relations Review*, *Industrial Relations*, and the *British Journal of Industrial Relations*. Waddoups has developed a number of areas of research expertise over his career. Most recently he has focused on the impact of responsible contracting policies on construction costs, and on the impact of unions and collective bargaining on the incidence of job training both in Australia and the U.S. He is currently a Director at the Institute for Construction Economic Research.

Kevin Duncan, Ph. D., is a Professor of Economics and Distinguished University Professor at Colorado State University-Pueblo where he teaches business and regional economics in the Hasan School of Business. He has also been a visiting scholar at the University of California, Berkeley. Duncan has been the Director/Senior Economist for the Center for Business and Economic Research at CSU-Pueblo. In this capacity he has conducted applied research for the local chamber of commerce, the economic development corporation, businesses, non-profits, various state and local policy proposals, and labor unions. He has also participated in economic forums sponsored by U.S. Bank. His research on prevailing wage laws has been published in leading national and international academic journals including *Industrial & Labor Relations Review*, *Industrial Relations*, and *Construction Management and Economics*. His research on construction labor market policy has informed policy in 24 states and the U.S. House of Representatives. He received his Ph. D. in Economics from the University of Utah and his B.A. in Economics from the University of California, Riverside.

Russell Ormiston is an associate professor of economics at Allegheny College and President of the Institute for Construction Economic Research. Dr. Ormiston has authored groundbreaking research on worker misclassification in the construction industry. He has also co-authored book chapters on workplace conditions in the residential construction industry, and academic and professional articles on the economic and social impacts of prevailing wage laws and project labor agreements in journals such as *Industrial Relations* and the *Labor Studies Journal*. Dr. Ormiston received his Ph.D. in Labor and Industrial Relations from Michigan State University in 2007. He has also earned two M.A. degrees (Labor and Industrial Relations, Economics) from Michigan State University.

Institute for Construction Economic Research (ICERES)



<http://iceres.org/>

The construction industry and its stakeholders face pressing long term issues regarding workforce sustainability, safety, productivity and integration of technology. The Institute for Construction Economic Research (ICERES) supports high quality research with the goal of finding and disseminating pragmatic solutions to these and other construction issues. The Institute for Construction Economic Research undertakes non-partisan research on issues facing the industry, collaborating with existing construction researchers and attracting new investigators into the field of construction research. The Institute also works to develop a network of researchers with ongoing programs on construction issues. In addition to its work in supporting research, the Institute disseminates this research with a working paper series, a web presence, and conferences.

Supporting Organizations



The Unified Construction Industry Council (UCIC) is a labor-management cooperation committee composed of 14 affiliated skill-craft trade unions which, collectively, are the Southern Nevada Building Trades Unions, and the local chapters of the Western Wall & Ceiling Contractors Association, National Electrical Contractors Association, and the Painting and Decorating Contractors of America. Taken together, UCIC represents over 20,000 skilled-trade workers and some 200 contractors, all of which play a vital role in Nevada's economy. UCIC is dedicated to fostering a safe, highly productive and sustainable construction industry in Southern Nevada.



Southern Nevada Building Trades Unions is an alliance of craft Unions that are the best choice for highly skilled and highly productive construction labor. That's because the Southern Nevada Building Trades Unions and its affiliated member Unions demonstrate a concerted commitment to world class skills development and training; coupled with a 21st century labor/management model that is founded upon principles of performance, pride, cooperation and partnership.



The Building and Construction Trades Council of Northern Nevada has been training, supporting, and advancing the men and women who build Northern Nevada since 1928. We represent more than a dozen local trades affiliates and their members by:

- Facilitating and promoting state-of-the-art workforce training programs.
- Furthering opportunities for construction career growth from apprenticeship to small business ownership.
- Providing a highly-skilled workforce to local construction industry companies.
- Partnering with local leaders and organizations to improve our communities.
- Lobbying for fair labor rights and issues at the local and national levels.
- Promoting economic development in Northern Nevada to keep our region growing and vibrant and a great place to live, work, and play.

The Council is located in Reno-Sparks, and our service area includes Carson City and the counties of Churchill, Douglas, Elko, Eureka, Humboldt, Lander, Lyon, Mineral, Pershing, Storey, Washoe, White Pine, and portions of Nye County.



WWCCA is the oldest, most powerful, and meaningful active Wall & Ceiling Association in the west. We have been a functioning entity for more than 100 years. WWCCA is a non-profit organization representing over 85 subcontractors and 100 affiliates who have joined to promote the installation of quality.

- Acoustical ceiling
- Decorative and ornamental plastering
- Drywall
- EIFS
- Fireproofing
- Insulation
- Lathing
- Plastering
- Steel stud framing

They employ only union trained craftsmen who are experienced and dedicated to "doing the job better."

The mission for which this association shall exist, shall be to aid its members, and the construction industry as a whole, in matters relating to technical, promotion, educational, labor relations and social community interest.



The Southwest Regional Council of Carpenters represents more than 55,000 members in Southern California, Nevada, Arizona, Utah, New Mexico, and Colorado. We work with developers and elected leaders to raise the standard of building and living for all workers. As an affiliate of the United Brotherhood of Carpenters and Joiners of America, SWRCC is the largest council in the Brotherhood.



The IBEW/NECA - Labor Management Cooperation Committee creates and inspires a collaborative and impartial environment in which labor and management identify challenges and resolve conflicts in a fair manner, and endeavors to elevate and promote its members and electrical industry in the interest of a higher standard of citizenship. The IBEW/NECA - Labor Management Cooperation Committee is an impartial liaison between labor and management which strives to enhance the image and success of its members, promote fair labor practices, and develop employment opportunities in the greater Las Vegas metropolitan area.



The Painting Decorating Contractors of America (PDCA) is a non-profit association established to represent the painting and decorating industry. The PDCA has established Industry Standards dedicated to the Painting and Decorating Industry.

The PDCA is dedicated to the success of painting and decorating contractors through ethics, education, and excellence. PDCA is recognized and supported by many industry manufacturers and suppliers as the association committed to helping professional painting and decorating contractors improve their business.

Executive Summary

Payroll fraud is a significant and long-standing problem in Nevada's construction industry. Construction employers routinely and blatantly misclassify employees as independent contractors, engage in cash-only work arrangements, misidentify employees as lower-skilled workers on public projects, and engage in wage theft. All of these illegal actions have a singular motivation: reduce labor costs.

While contractors and developers engage in these unethical practices to boost their bottom line, these actions come at a considerable cost to working-class Nevadans, fair-minded employers, and taxpayers as a whole. Most directly, payroll fraud degrades the standard of living for workers in these jobs, denying them their legally-earned rights to overtime pay, workers compensation, unemployment insurance and Social Security benefits. Payroll fraud also makes it difficult, if not impossible, for honest and law-abiding contractors to remain operating in a market where they must compete against firms with significantly lower costs. The exit of "good" employers from the market further degrades working conditions, leading to a "race to the bottom" that represents an existential threat to sustainability of the industry. Finally, payroll fraud harms taxpayers at large, as these actions lead to state revenue shortfalls from the Modified Business Tax, defund social programs like Social Security and Medicare, lead to higher UI and workers compensation tax rates for law-abiding businesses, and puts increased stress on income-supporting social programs.

This study analyzes two specific types of payroll fraud occurring regularly in Nevada's construction sector. First, construction employers routinely evade taxes and legally-required contributions to social programs by either misclassifying employees as independent contractors or paying workers entirely "off-the-books" using cash-only arrangements. Second, employers on public construction projects often fail to adhere to the requirements of the state's prevailing wage law by underpaying their workers through a variety of means (e.g., misreporting workers as belonging to lower-skilled trades).

To be clear, documenting the prevalence of payroll fraud in construction—and across the entire labor market—is notoriously difficult for researchers. These illegal actions are effectively a part of the *underground economy*. Contractors (and workers) regularly conceal their illegal actions from authorities for fear of civil or criminal penalties. However, in doing so, they are also simultaneously keeping their actions hidden from state and federal agencies responsible for data collection on economic activity. As a result, there is little *direct* evidence of payroll fraud in the data that researchers typically use to study labor market outcomes.

While detailing the extent and fiscal impact of payroll fraud is difficult, it is not impossible. Worker misclassification and off-the-books employment has been a source of considerable study by researchers and analysts, who have developed techniques to *indirectly* estimate the extent and economic costs of this form of payroll fraud by comparing employer payroll records to large, nationally-representative worker surveys. Indirect approaches used to measure payroll fraud are imperfect and come with a nontrivial amount of margin of error, but they represent durable empirical methodologies that have appeared in academic journals and numerous public policy papers. To those ends, this study relies on two recent

reports—a 2020 study published by the Institute for Construction Economic Research and a 2019 report commissioned by the Attorney General’s Office for the District of Columbia—that offer the most developed methodologies for assessing (a) an estimate for the number of workers directly affected by payroll fraud and (b) the corresponding economic costs on workers and taxpayers.

While the above approach is useful for developing projections for the amount of misclassification and off-the-books employment that occurs in the industry as a whole, there is no viable way to quantify the extent of payroll fraud *specifically* on public construction projects (i.e., prevailing wage regulations). To those ends, this study provides insights from interviews with contractors who regularly work on public construction projects to highlight the various ways in which unscrupulous employers evade their responsibilities under Nevada law.

The primary findings of this study are presented below:

Misclassified Independent Contractors & Cash-Only Work Arrangements

This study estimated the number of Nevada construction workers who were either misclassified as independent contractors or worked in cash-only arrangements in 2018, as well as the fiscal impact of these actions. Analyses were conducted for the state as a whole and, separately, for Clark and Washoe Counties. An overview of the results of the quantitative analysis offered in this study is presented in Table A (*next page*).

Incidence. The study projects that there were approximately 12,717 Nevada construction workers who were either misclassified as independent contractors or working in cash-only arrangements in 2018. This equates to 11.4% of the construction workforce (including employees and the self-employed) and 14.0% of blue-collar workers in the industry. Unsurprisingly, a majority of these workers were in Clark County (8,573) and Washoe County (1,988), which featured rates of incidence comparable to, if not slightly below, the state average.

It is reminded, however, that these estimates are developed from *indirect* methods of estimation. This approach is among the most advanced in the research literature on payroll fraud, however the authors acknowledge that the methodology is still akin to using a “blunt instrument”; practically speaking, this infers there is a nontrivial margin for error in these estimates. Nevertheless, the projections offered in this study appear to be consistent with the results of similar reports in other states; if anything, the results of this study appear conservative in comparison. Methodologically, there are a limited number of reasons to be concerned that these projections are too aggressive, but many more reasons suggesting that they are conservative and may be undercounting the prevalence of fraud. However, the findings above represent the authors’ best estimates of worker misclassification and off-the-books employment in Nevada’s construction industry at this time given the limitations of the data that are available to researchers.

Table A. Estimated Incidence and Economic Costs of Worker Misclassification and Off-the-Books Employment in Nevada Construction Industry, 2018

	Nevada	Clark County	Washoe County
<i>Incidence</i>			
Number of Workers Involved	12,717	8,573	1,988
Percent of Total Industry Employment	11.4%	10.9%	9.8%
Percent of Blue-Collar Industry Employment	14.0%	13.4%	12.1%
<i>Total Labor Costs (in \$ millions)</i>			
If Workers Hired Legally	\$603.9	\$391.6	\$97.3
If Workers Hired Fraudulently	Min \$436.6 Max \$510.1	Min \$282.9 Max \$330.5	Min \$70.4 Max \$82.2
<i>Direct Effects of Payroll Fraud to Workers (in \$ millions)</i>			
Overtime and Premium Pay Not Received	\$10.2	\$6.6	\$1.6
Employer Share of FICA Offloaded onto Workers	\$34.2	\$22.1	\$5.5
<i>Fiscal Losses; State of Nevada</i>			
Workers Compensation Fund	\$31.1	\$20.1	\$5.0
Unemployment Insurance Fund	\$11.8	\$7.9	\$1.8
Modified Business Tax Revenue	\$6.6	\$4.3	\$1.1

Fiscal Impact. This study projects that worker misclassification and off-the-books employment in Nevada’s construction industry cost the state nearly \$50 million in revenue in 2018. This includes a \$31.1 million shortfall in the state’s workers compensation fund, a lost \$11.8 million in revenue for the unemployment insurance program, and \$6.6 million in uncollected state revenue via the Modified Business Tax. In Clark County, the loss of state revenue was approximately \$32 million, with an additional shortfall of nearly \$8 million in Washoe County.

While evading state taxes and required contributions to social programs was a large proportion of the cost savings for contractors engaging payroll fraud, it was hardly the only means through which these unscrupulous employers boosted their bottom line. This study also estimates that employers were able to evade approximately \$10 million in overtime pay (i.e., the “half” in time-and-a-half) and offload over \$34 million in Social Security and Medicare tax obligations (i.e., the “employer share”) onto the backs of workers via these illegal actions. In sum, Nevada construction employers were able to shave over \$90 million in total labor costs attributable to required taxes and social contributions via this form of payroll fraud in 2018.

As with the incidence projections, the assessment of the fiscal impact of worker misclassification and off-the-books employment is limited by the lack of data on exactly how much money exchanges hands in the underground construction economy. However, the estimates presented above represent the authors’ best estimates given available information and what they believe are reasonable assumptions. In particular, the values above are

derived by incorporating Nevada-specific and county-specific information (e.g., UI tax rates, labor market conditions), wherever possible, into the empirical methodology developed by two distinguished economists and published by the Attorney General's Office for the District of Columbia in 2019. While there are reasons to be concerned that these costs are aggressive, there are larger reasons to suspect that these estimates are conservative; most prominently, these baseline estimates are calculated without factoring in the economic costs of wage theft (i.e., explicit nonpayment for work performed) given the lack of reliable data on its incidence.

Misclassification and Underpayment on Public Works/Prevailing Wage Projects

Payroll fraud on public works projects differs from fraud in the private sector and is difficult to quantify. Interviews with the owners and managers of two construction contracting businesses, who have extensive experience on public works projects that are covered by Nevada's prevailing wage law, provide insight into payroll fraud in the public sector. These interviews revealed that misclassification on prevailing wage projects typically occurs when an employer uses a worker from a lower paid prevailing wage job classification, usually a laborer, to complete the tasks lawfully assigned to a worker in a higher-paid classification such as an electrician or pipefitter. While misclassifying workers from a higher-skilled to a lower-skilled category may result in substantial labor cost savings for violating contractors, such behavior creates numerous problems. Users of public works are at risk, and the risk of injury on the construction jobsites is higher when construction workers complete tasks they are not qualified to perform. Without supervision by the appropriate higher-skilled worker, formal apprentice training does not occur. Latent defects, requiring costly follow-up maintenance are more frequent when tasks are completed by other than specifically trained and qualified workers. Misclassification on public works projects also arises when agencies other than the Office of the Labor Commissioner establish their own job descriptions and responsibilities for higher and lower-skilled workers. Regardless of the cause, misclassification on public works projects creates an uneven playing field in which rule-breaking contractors are rewarded at the expense of law-abiding contractors.

Wage theft can occur on public projects covered by prevailing wage standards when open shop (nonunion) contractors working on these projects inform their employees that they will not be paid the prevailing wage rate for any job classification, but instead will be paid their usual rates that are less than prevailing rates. In these cases, workers must often choose between confronting their employer about violating the State of Nevada's prevailing wage statute, or accepting wage theft to keep their jobs. According to the U.S. Department of Labor, the types of wage theft and misclassification described here are typical problems on federal prevailing wage construction projects.

Uniform and complete enforcement of prevailing wage regulations ensures that the right workers safely perform the tasks they are qualified to do, all workers are properly compensated, apprenticeship training takes place, and that all contractors compete on a level playing field. However, both of the contractors that the authors interviewed indicated that enforcement of Nevada's prevailing wage policy is woefully inadequate and that more field inspectors at public works projects jobsites are needed. Inspectors need to match a contractor's daily activity report of the types of work completed to their submitted certified

payroll records to ensure that job classifications are adhered to and that workers are properly compensated. Inspectors should also spend enough time on and off construction worksites to interview employees about labor standard compliance. While recent legislation has helped builders meet the requirements of prevailing wage standards, the lack of uniform enforcement by regulators is the biggest problem facing the contractors that were interviewed.

Implications for Policy

- The Nevada Legislature has recently introduced two policies to address payroll fraud in the state's construction industry. Senate Bill 493 (2019) requires that independent contractors in the construction industry must be licensed, establishes conditions for classifying an individual as an independent contractor, and prohibits employers from using coercion, misrepresentation, or fraud to convince an 'employee' to be classified as an independent contractor. Senate Bill 223 (2015) holds prime contractors liable for any labor cost indebtedness incurred by a subcontractor.
- It is too early to tell if the 2019 legislation addressing the classification of independent contractors has had an impact on payroll fraud in Nevada's construction industry. However, additional findings of this study suggest that the percent of construction industry employment that experiences payroll fraud has increased each year since 2016. This suggests that efforts to hold prime contractors liable for the labor cost indebtedness of subcontracts have not been sufficient in stopping payroll fraud. Similarly, it is unlikely that the relatively light penalties associated with Senate Bill 493 (a warning letter and possible referral to the Attorney General) will significantly alter the trend in payroll fraud. This suggests that the Nevada Legislature needs to act further.
- Examples from other states may be useful for the Nevada Legislature.
 - The Colorado General Assembly passed legislation in 2019 that equates wage theft with felony charges for amounts of \$2,000 or more. In addition to addressing wage theft in the private sector, this legislation may be applicable to wage theft on public works projects where workers from lower-paid job classifications complete the tasks lawfully assigned to a worker in a higher-paid classification
 - The California Department of Industrial Relations requires contractors and subcontractors on all public works projects to use an electronic certified payroll reporting system and to make this information publicly available. While confidential employee information is redacted, there is sufficient information for construction workers, or other interested parties to verify the compensation received by a construction employee and the compensation reported in the legally certified record of pay. Making this information available to the public may be an effective means of encouraging legal labor market practices among all contractors participating on public works projects in Nevada.
 - A 2016 study of the underground construction economy in New Jersey includes recommendations for appropriate legislative action. The suggestions include coordination and information sharing with the federal government, neighboring states, and state agencies, and the establishment of an interagency task force to investigate, report, and prosecute payroll fraud. Other recommendations call for enhanced legislation based on the experiences of other states, the creation of a tip line to allow parties to anonymously report suspicious hiring practices, the publication of completed enforcement actions that include the names of violators, and the step-up of enforcement that includes stop work orders, asset seizures, and fines that exceed the amount of back pay owed to a worker, etc.

- It is not sufficient for the Nevada Legislature to simply pass new laws. The State of Nevada has a responsibility to enforce this legislation. Additional resources may be needed to inspect private and public construction work sites and to pursue prosecution of violators.

Payroll Fraud in Nevada's Construction Industry: Extent and Fiscal Impact

Introduction

Illegal worker misclassification and other forms of payroll fraud in Nevada's construction industry harm workers, unfairly impede the ability of law-abiding contractors to compete, deprive the public of resources that support safety net programs, limit apprenticeship opportunities for the next generation of skilled workers, and reduce tax revenue for the State of Nevada. The purpose of this study is to identify various types of payroll fraud and to estimate the magnitude of the economic consequences for workers, law-abiding contractors, the public, and the State of Nevada.

We specifically identify three types of payroll fraud and, where possible, quantitatively estimate their incidence and economic impact. The first type of fraud occurs when firms misclassify workers as *independent contractors* when they should lawfully be classified as *employees*. Workers classified as employees enjoy certain rights and protections that independent contractors do not. For example, the Fair Labor Standards Act (FLSA) provides a modicum of compensation security through the minimum wage along with an overtime premium of time-and-a-half for more than 40 hours of work per week. Employees also benefit from workers compensation insurance provided by the employer that pays medical bills resulting from injuries on the job. Unemployment insurance finances periods of joblessness when workers, through no fault of their own, find themselves without work. On the other hand, workers misclassified as independent contractors do not enjoy such protections.

While employee misclassification may occur for innocuous reasons—such as confusion over the law—this is considered more the exception than the rule. Instead, widespread misclassification can be attributable to more nefarious reasons: employers who engage in illegal acts to side-step labor standards and evade required employer contributions to social programs reduces labor costs at the public's expense. Employers who misclassify their employees also pay less Modified Business Tax (MBT), which is a significant source of revenue to Nevada's general fund. Finally, by reducing labor costs, these contractors place themselves in advantageous position to underbid law-abiding contractors for work in a competitive industry.

A second form of payroll fraud occurs when workers in the construction industry are not classified as employees as they should be legally, but work *off-the-books* for cash payments that go unreported to state and federal agencies. Such workers experience many of the same consequences as those misclassified as independent contractors. They do not have access through their employment to protections of the Fair Labor Standards Act (FLSA), to workers compensation insurance, unemployment insurance, and collective bargaining rights, among other benefits. Cash payments are another means by which cheating employers avoid the MBT.

To be clear, employers who misclassify workers as independent contractors and hire workers using cash-only payments are a problem in every industry across the country. But the problem is especially acute in construction given the transient nature of employers, workers and often the work itself. Because of its prevalence, however, researchers have developed methods to indirectly estimate the extent of these illegal actions. To those ends,

this report will be relying on an empirical methodology advanced in a 2020 study published by the Institute for Construction Economic Research (ICERES) that attempts to estimate the incidence and economic costs of these two types of payroll fraud on a state-by-state basis.

Consistent with findings across the U.S., the results of this study indicate that misclassification and other types of payroll fraud are alarmingly common in Nevada's construction industry. These fraudulent practices cost workers and the State of Nevada tens of millions of dollars per year. And, as outlined in this report, there are many reasons to consider that the projections offered in this study are *conservative* estimates of payroll fraud in Nevada. This stems from the authors making conservative assumptions in the absence of reliable data. As an example, the authors' baseline models are calculated without the deleterious effect of wage theft (i.e., nonpayment for work performed) given the lack of reliable data on its occurrence, although the study supplements the projections to consider the possible range of outcomes assuming reasonable estimates of wage theft.

Beyond these two common forms of payroll fraud, a third type addressed in the study occurs on public works projects that are covered by Nevada's prevailing wage law. This policy provides location and job-specific minimum wage and benefit rates for construction workers employed on publicly funded projects. Misclassification on prevailing wage projects occurs when an employer uses a worker from a lower paid job classification, usually a laborer, to complete the tasks lawfully assigned to a worker in a higher-paid classification (say an electrician or pipefitter). Although misclassifying workers from a higher-skilled to a lower-skilled category may result in substantial labor cost savings for violating contractors, such behavior undermines the quality of work, creates an un-level playing field in which rule-

breaking contractors are rewarded at the expense of law-abiding contractors, and undermines apprenticeship programs for high-skilled construction occupations such as electricians and plumber/pipefitters.

Unfortunately, while this type of payroll fraud is prevalent in construction across the country, it typically occurs undetected by government agencies, which makes it practically impossible for researchers to quantitatively estimate its scope in Nevada or elsewhere across the country. As a result, this study explores this type of payroll fraud using qualitative means: a series of interviews with construction contractors familiar with labor processes on public works projects.

The report proceeds with: 1) a review of previous research on employee misclassification and payroll fraud in construction to provide a basis for comparison of Nevada with other states; 2) quantitative estimates of the extent of employee misclassification and cash payments in Nevada's construction industry; 3) estimates of the fiscal impact of misclassification and cash payments on Nevada's unemployment insurance system, workers' compensation insurance program, and tax revenues from the Modified Business Tax; 4) identification and discussion of misclassification on public works projects and its potential to harm the quality of construction and the apprenticeship system so vital in creating the next generation of skilled construction workers; and 5) policy recommendations and discussion.

Review of Previous Research on Employee Misclassification in Construction

Introduction

It has long been recognized that misclassification of employees as independent contractors in the construction sector has been a problem in Nevada and elsewhere in the United States. A related and accompanying problem arises when construction contractors use workers illegally in off-the-books employment relationships. In both cases, workers are generally left without employment protections afforded to workers in standard employment relationships. Such protections include unemployment insurance (UI), workers compensation (WC) insurance, and protections afforded through the Fair Labor Standards Act and the National Labor Relations Act (e.g., minimum wages, overtime payments, and collective bargaining rights). Besides harming workers, misclassification and off-the-books employment also harms the state by depriving its UI and WC systems of revenue, and by reducing tax revenues to the state via avoidance of tax revenue, such as the Modified Business Tax in Nevada.

A number of studies have been conducted over the past two decades to address the incidence and nature of misclassification and other forms of payroll fraud in the construction industry across the U.S. The following literature review outlines a sampling of such studies. Our review finds that there has not been corresponding research on Nevada's construction industry, which is a gap in the literature that the present study is meant to fill. The one study that has examined misclassification in Nevada was released in 2011 through the Nevada

Legislative Counsel Bureau and was based on data from 2009–2010.¹ Unlike the present study, however, it focused more broadly on misclassified employment across all industries in the state and did not attempt to quantify the fiscal damage done through fraudulent misclassification and off-the-books cash payments in the state’s construction industry.

Employee Misclassification in Nevada

As indicated, the 2011 study by the Nevada Legislative Counsel Bureau addressed fraudulent employee misclassification in the state. The study focused specifically on negative impacts to unemployment insurance (UI) and workers compensation (WC), two employment protection programs available to employees. It also discussed potential losses in state tax revenues based on avoidance of the Modified Business Tax that occurs when employees are misclassified.

The UI program’s goal is to provide partial income replacement to employees who, through no fault of their own, become unemployed. The UI program, funded by a payroll tax on employers, sets aside revenues into a trust fund from which benefits are paid according to the recipients’ earnings in previous employment. If an employee is misclassified as an independent contractor, no payroll tax payment is due. Thus, an employer who misclassifies can cut employment costs by reducing the amount of tax they pay. If workers find themselves out of work, however, they do not have access to unemployment insurance payments. Workers and their families without access to such safety net resources face a higher

¹ Nevada Legislative Counsel Bureau. 2011. Employee Misclassification. Bulletin No 11.07. State of Nevada. Accessed at: <https://www.leg.state.nv.us/division/research/publications/interimreports/2011/bulletin11-07.pdf>

probability of falling into extreme poverty with all the negative social and economic consequences that follow.

Employers must also provide for workers' compensation insurance for their employees. Employers are not, however, required to provide such coverage for independent contractors. Misclassification of employees thus saves employers money on WC insurance premiums along with UI. The result is a WC system that is underfunded and injured workers must rely on taxpayer funded state funds to obtain treatment for their injuries.

In Nevada, employers are required to pay the Modified Business Tax, which is based on payroll. Misclassifying employees as independent contractors allows the employer to avoid this tax as well, as lost MBT funds represents a primary source of lost revenue for Nevada taxpayers. The MBT is 1.475% of wages less health insurance premiums above \$50,000 in a calendar quarter. The MBT currently represents roughly 14% of revenue to the state.²

Results reported in the 2011 study by the Nevada Legislative Counsel Bureau are based on benefit claims investigations, employer audits, interagency referrals, and public tips. Findings indicate that 12.4% of benefit claims investigations involved misclassification and that 2.7% of employment in the state was misclassified. This suggests that roughly 31,000 Nevadans in 2010 were misclassified as independent contractors when they were really employees.³ Because of its methodology of only using data that had been submitted to state

² See the following website: <https://guinncenter.org/photo-essay/nevada-budget-overview-2019-2021/>

³ Nevada Legislative Counsel Bureau. 2011. Employee Misclassification. Bulletin No 11.07. State of Nevada. Accessed at: <https://www.leg.state.nv.us/division/research/publications/interimreports/2011/bulletin11-07.pdf>

agencies, it could not estimate the number of employees who received cash payments, nor did it specifically focus on the construction sector.

The estimate of 31,000 misclassified employees underestimates the degree to which employers engage in payroll fraud to reduce their payments to UI, WC, and MBT, because it completely misses the incidence of off-the-books cash payments. By definition, this form of illegal compensation is not reported to state agencies, and therefore the state has no data documenting the extent of this activity. Indeed, part of the goal of the present research is to capture both misclassification of workers as independent contractors and those receiving illegal cash payments.

Although the Nevada Legislative Counsel Bureau's 2011 study pointed out the potential for revenue losses in UI, WC, and MBT as a result of misclassification fraud, unlike studies in other jurisdictions in the U.S., it did not provide an estimate of the magnitude of such losses. However, studies in other states have engaged in this analysis, including some with a focus specific to the construction industry. The next section briefly reviews these studies.

Employee Misclassification Elsewhere in the U.S.

To compare the experience in Nevada with experiences elsewhere, this study reviews some of the most important studies that have been conducted over the past two decades on the impact of misclassification and other payroll fraud. There are essentially three methodologies used in the various studies: 1) audit studies that are based on audits of claims data from UI, WC and other employment programs, 2) worker surveys, and 3) comparisons

of payroll data with worker surveys. A table featuring a synopsis of the studies reviewed in this section is presented in Appendix A.

Audit Studies. The 2011 study by the Nevada Legislative Counsel Bureau is an example of an audit study. Such studies have also been conducted elsewhere in the U.S. For example, in an earlier attempt to quantify the incidence and costs of misclassification in construction, Carré and Wilson (2004) used data from Massachusetts on unemployment insurance tax audits to estimate that between 14% and 24% of construction employers misclassified employees between 2001 and 2003, amounting to an estimated 2,634 employers on the low end and 4,459 employers on the high end, amounting to 7,478 to 15,970 affected construction workers during that time. They also concluded, unsurprisingly, that employers in construction were more likely to misclassify workers than employers in other industries. Roughly 5.4% of construction workers were misclassified compared to 4.5% of workers in Massachusetts overall. Workers in trucking and agriculture joined construction workers in being particularly at risk of working under misclassified status.⁴

Carré and Wilson (2005) also assessed misclassification in Maine using audits of UI claims benefits. These authors found that 14% of construction firms misclassified employees as independent contractors. Among firms misclassifying employees, more than 45% of workers were misclassified. The authors concluded that Maine lost substantial revenue in UI taxes, WC contributions, and other tax revenues. The study indicates losses in UI tax revenue of \$314,000, \$2.6 million in lost income tax revenue, and \$6.5 million in lost WC

⁴ Carré, Francoise, and Randall Wilson. 2004. "The Social and Economic Costs of Employee Misclassification in Construction."

<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.679.4695&rep=rep1&type=pdf>

contributions.⁵ Similarly, Kelsay and Sturgeon (2010) found that 16.8% of construction firms in Indiana misclassified employees. The report reveals that the state lost between \$10.7 million and \$17.7 million in income tax revenue and \$2.2 million in UI revenues annually during the 2007-2008 period.⁶

A study conducted in Michigan by Belman and Block (2009) found substantial losses due to misclassification fraud. The results indicate that 26.4% of construction firms misclassified employees. Among misclassifying firms, 18.9% of employees were misclassified. The losses to the state's UI system amounted to \$2.5 million annually.⁷ Similar numbers were computed by Virginia's Joint Legislative Audit Review Commission in 2012, finding that 33% of construction firms misclassified workers. Among misclassifying firms, 30% of employees were misclassified.⁸ In sum, audit studies from across the country reveal extensive misclassification of construction workers as independent contractors, with states regularly projected to lose millions of dollars in revenues as a result.

Surveys of Workers' Employment Experiences. Another class of studies uses worker surveys to assess the extent to which workers are misclassified and victims of other forms of payroll fraud. As Ormiston et al. (2020) point out, high-quality and large-scale surveys randomly administered remain the gold standard of social science research. The costs of producing a

⁵ Carré, Francoise, and Randall Wilson. 2005. "The Social and Economic Costs of Employee Misclassification in the Maine Construction Industry."

https://iiffc.org/images/pdf/employee_classification/Harvard.Maine.2005.pdf

⁶ Kelsay, Michael P. and James I. Sturgeon 2010. The Economic Costs of Employee Misclassification in the State of Indiana. University of Missouri – Kansas City, Department of Economics. <https://stoptaxfraud.net/wp-content/uploads/2019/11/Misclassification-in-Indiana-Full-9-10.pdf>

⁷ Belman, Dale, and Richard Block. 2009. "The Social and Economic Costs of Employee Misclassification in Michigan." Accessed at: <https://ippsr.msu.edu/sites/default/files/MAPPR/ARMisClass.pdf>

⁸ Virginia Joint Legislative Audit and Review Commission. 2012. "Review of Employee Misclassification in Virginia." <http://jlarc.virginia.gov/pdfs/reports/Rpt427.pdf>

high-quality survey and administering it randomly so that valid inferences can be made about the underlying population, however, are prohibitively high. In spite of difficulties in conducting such studies, there are several that have been published by the Workers Defense Project that have used large-scale worker surveys—two in Texas and one in six states in the Southern U.S.—even if the representativeness of the samples is unclear.⁹

The two studies in Texas highlight substantial amounts of payroll fraud that far exceed those presented in UI audits. Researchers for the Workers’ Defense Project published a study in 2009 and then again in 2013. In both surveys (n=395 in 2009 and n=1,195 in 2013), they discovered high rates of workers who were either misclassified or working off-the-books. In 2009 the rate was 38% and in 2013 it was 41%. Both surveys also found that construction firms did not have WC policies (18% of firms in 2009 and 32% in 2013). As an indication of the problem of these types of working conditions, 20% of respondents in the two surveys reported wage theft, which amounted to a median of \$960 in the 2013 study.¹⁰

A similar study conducted by the Workers Defense Project in six Southern states in 2017 also found high rates of misclassification and other employment abuses. A survey of 1,435 construction workers found that 35% were either misclassified or working off-the-books, as

⁹ Ormiston, Russell, Dale Belman, and Mark Erlich. 2020. An Empirical Methodology to Estimate the Incidence and Costs of Payroll Fraud in the Construction Industry.

¹⁰ Workers Defense Project. 2009. “Building Austin, Building Injustice.” Accessed at: <http://www.workersdefense.org/wp-content/uploads/2013/04/Building-Austin-Report-2.pdf>.

Workers Defense Project. 2013. “Building a Better Texas: Construction Conditions in the Lone Star State.” Accessed at: http://www.workersdefense.org/Build%20a%20Better%20Texas_FINAL.pdf

many as 11% experienced wage theft at some point in their careers as construction workers, and that only 43% of employers had a WC policy in place.¹¹

While it is difficult to compare results on the incidence of payroll fraud from audit studies compared to surveys, a general finding is that surveys tend to report more misclassification and other forms of payroll fraud than audit studies. Such results are not surprising given that audit studies are generated using data from firms who report their employment activities to the state's labor agencies. When firms conduct employment activities off-the-books, no data is generated for an audit study to find, which means that they miss a significant portion of payroll fraud and misclassification. On the other hand, surveys of workers, as long as they adequately represent the underlying population, capture all three types of workers – those in legal employment relationship, those that are misclassified as independent contractors when they are actually employees, and those who work completely off-the-books.

Studies that Compare Payroll Data with Worker Surveys. A number of more recent studies have taken a different approach to identifying payroll fraud that includes both misclassification and cash payments. Such an approach compares the legal employment that appears in payroll data as reported by *employers* to data generated by large-scale national surveys administered by the Census Bureau which ask *workers* about their employment experiences. The difference between what employers report and what workers report has

¹¹ Theodore, Nik, Bethany Boggess, Jackie Cornejo, and Emily Timm. 2017. "Build a Better South: Construction Working Conditions in the Southern U.S." Accessed at: <http://www.workersdefense.org/wp-content/uploads/2017/05/Build-a-Better-South-Full-Report-Digital.pdf>

become an accepted methodology among scholars seeking to estimate of the amount of work that is either misclassified or off-the-books cash payments. This approach is based on the fact that the Census queries workers about their work status including industry and occupation, but *not* the legality of their employment relationship; this results in presumed accurate estimates of the *total* number of workers per industry. Meanwhile, employers are required—through each state’s UI program—to submit their payroll records to note the number of legal employees; these data are published by the Bureau of Labor Statistics and other government agencies. By comparing these totals, researchers are able to glean important insight using a methodology outlined in the next section.

One of the first examples of research using this methodology found that 65,200 workers, or 30% of the construction workforce, in the Los Angeles County were not accounted for in the payroll data, thus they were classified as informal workers.¹² Roughly a decade later, Liu, Flaming and Burns (2014) extended and updated their research to all of California and found 143,900 workers were misclassified or unreported, which amounts to 16% of the construction workforce. Estimated annual losses in revenue amounted to \$473 million in state taxes, \$63 million in UI funds, \$146 million to the state’s disability fund, and \$264 million to the WC fund.¹³

In similar research, the Fiscal Policy Institute of New York (2007) released a study that estimated 57,000 construction workers in New York City were either misclassified or

¹² Flaming, Daniel, Brent Haydamack, and Pascale Joassart. 2005. “Hopeful Workers, Marginal Jobs: LA’s Off-the-books Labor Force.” <https://www.researchgate.net/publication>

¹³ Liu, Yvonne Yen, Daniel Flaming, and Patrick Burns. 2014. “Sinking Underground: The Growing Informal Economy in California Construction.” <https://economicrt.org/publication/sinking-underground>

working off-the-books, amounting to 25% of total employment in 2005. The losses to Social Security and Medicare taxes in that year were estimated at \$272 million, while \$70 million was lost in personal income tax.¹⁴

A decade later in a study of New Jersey's construction industry, Cooke, Figart and Froonjian (2016) compared payroll data with a survey of workers to find that 35,000 workers were either misclassified or unreported, which amounts to approximately 16% of the state's construction workforce. The annual fiscal impact on state's income taxes was \$20 million and \$3.7 to \$6.7 million to the UI program.¹⁵

Summary of Literature Review

Nevada conducted an audit study released in 2011 and found a significant amount of misclassification, suggesting substantial losses in state revenues to UI, WC and the MBT. The findings for Nevada are consistent with results of research in other states. Our literature review suggests that Nevada's 2011 study likely understates the level of misclassification and payroll fraud because it relies only on audits of payroll reports submitted to state agencies. As such, it misses workers who received cash payments or were victims of wage theft. One of the purposes of the present study is to update the estimates of the number of workers in construction who are misclassified and receive cash payments. This information

¹⁴ Fiscal Policy Institute. 2007. "Building Up New York, Tearing Down Job Quality: Taxpayer Impact of Worsening Employment Practices in New York City's Construction Industry." [Microsoft Word - Dec 2 report draft 2 jb.doc \(fiscalspolicy.org\)](#)

¹⁵ Cooke, Oliver, Deborah Figart, and John Froonjian. 2016. "The Underground Construction Economy in New Jersey." <https://stockton.edu/hughes-center/documents/2018-0424-underground-economy-report.pdf>

will be used to provide a reasonable estimate of the fiscal impact to UI and WC programs that provide a modicum of security to standard employees and the MBT, which is a significant source of general revenue for the state.

Estimate of the Extent and Costs of Payroll Fraud in Nevada's Construction Industry

Introduction

The task of estimating the number of workers directly affected by payroll fraud in Nevada's construction industry and its subsequent economic costs to the state taxpayers are accompanied by considerable challenges. Payroll fraud, like any other part of the underground economy, often leaves no paper trail and is never reported to state and federal taxation bureaus. Unfortunately for researchers, contractors' attempts to conceal their illegal actions from regulators for fear of civil or criminal charges simultaneously hide evidence of their activities from government agencies responsible for data collection. Payroll fraud is also not directly queried in any of the nationally-representative worker surveys that economists and researchers typically rely upon when studying workplace outcomes, nor is it visible in common measures of business activity. As a result, analysts are typically limited in their ability to assess the incidence and costs of payroll fraud given a general lack of data availability.

While estimating the scope of payroll fraud is challenging, measuring *some* types of illegal activity is possible using various data sources. This section of the study uses available empirical techniques to estimate the incidence of cash payments and worker misclassification across the entirety of Nevada's construction industry. To be clear, this does

not represent the only type of payroll fraud in the sector, however researchers' ability to quantify its extent is near impossible. As an example, a later section will use stakeholder interviews to explore how misclassification occurs on public construction projects in Nevada.

The Incidence of Payroll Fraud

Data limitations certainly represent a source of frustration to researchers attempting to study worker misclassification and cash payments. But underground labor market activity is nevertheless of critical importance to economists, as illegal activity leads to tax revenue shortfalls and the distortions of legitimate labor markets. As highlighted in the previous section, researchers have responded to data limitations by developing three primary means through which to assess the incidence of these illegal labor market actions in the American construction industry: worker surveys, UI audits, and the comparison of Census data to employer records.

Each of these three empirical approaches has its own strengths and weaknesses in understanding payroll fraud. Workplace surveys may represent an ideal outcome, but the time and financial cost of identifying and surveying a *large and representative* sample of the entire industry makes this approach practically impossible for most researchers and organizations. UI audits offer direct evidence of illegal activity, but these require a commitment to release data by state agencies and typically only identify the number of workers misclassified as independent contractors by business who report their activity to the state UI program. Given that audit data generally fails to detect off-the-books contractors and workers—one of the primary problems in the construction industry—UI audits only

provide a partial perspective on the scope of illegal labor market activity relevant to this study.

Given these limitations, this study employs the third approach: a comparison of Census data to employer records. This methodology has become an increasingly popular approach among researchers interested in payroll fraud in that it (a) uses publicly-available data and (b) can account for the number of workers misclassified as independent contractors *and* workers with cash-only arrangements. Variants of this method have been applied in academic research journals—such as *Industrial Relations* and *Journal of Labor Economics*—and represent the foundation of numerous state-level policy papers across the country.¹⁶ The specific approach employed in this report is taken directly from a 2020 study published by the Institute for Construction Economic Research (Ormiston, et al. 2020), which presents an exhaustive overview of this methodology, its application in research, and its empirical pros and cons.¹⁷

While a full and detailed explanation of the empirical analysis as applied to Nevada is presented in Appendix B, the starting point of the analysis uses data from the American Community Survey (ACS) and Current Population Survey (CPS). These are two large, nationally representative surveys of households administered on a regular basis by the Census Bureau; the data from these surveys represent the gold standard for use by

¹⁶ Bohn, Sarah, and Emily Greene Owens. 2012. “Immigration and Informal Labor,” *Industrial Relations*, 51(4), 845-873; Abraham, Katharine G., John Haltiwanger, Kristin Sandusky, and James R. Speltzer. 2013. “Exploring Differences in Employment Between Household and Establishment Data,” *Journal of Labor Economics*, 31(S1), S129-S172.

¹⁷ Ormiston, Russell, Dale Belman, and Mark Erlich. 2020. “An Empirical Methodology to Estimate the Incidence and Costs of Payroll Fraud in the Construction Industry.” Accessed at: <http://iceres.org/wp-content/uploads/2020/06/ICERES-Methodology-for-Wage-and-Tax-Fraud.pdf>

economists and government officials. An analysis of ACS and CPS data reflect that workers self-reported an estimated total of 111,228 jobs in Nevada’s construction industry in 2018, the most recent year for which all relevant data are available. However, employers’ payroll records—submitted for UI purposes to the Nevada Department of Employment, Training and Rehabilitation (DETR) and aggregated and augmented by the U.S. Bureau of Economic Analysis—reflect that there were only 91,358 legal wage-and-salary jobs (i.e., those requiring a W-2) among Nevada’s construction employers in that year. This suggests that there were an estimated 19,870 jobs that did not show up on employers’ official payrolls.

To be clear, not all of the 19,870 construction jobs were necessarily representative of illegal behavior. Part of this total is comprised of legitimate, law-abiding self-employed construction workers, a long-time defining feature of the industry. But this total undoubtedly also includes workers misclassified as independent contractors—who do not appear on employers’ UI payroll records—and other workers who are hired off-the-books using cash-only arrangements. Separating the legal from the illegal amongst these nearly 20,000 positions is empirically challenging. Quite simply, there is no perfect way of isolating the degree of illegality with publicly-available data that currently exists; the 2020 ICERES study explored this issue in considerable detail. Using that study’s recommendations (based on research from the IRS) and local insight from economists familiar with Nevada’s construction industry, we conclude that 64% of the employment gap between worker surveys and payroll records represents the best available estimate of illegality in the sector’s labor market; a deeper accounting of this proportion is detailed in Appendix B.

As summarized in Table 1, the application of this approach to Nevada’s construction industry suggests that there were an estimated 12,717 workers who were either misclassified or receiving cash payments in Nevada’s construction industry in 2018. This equates to 11.4% of the state’s construction workforce (including the self-employed); after removing white-collar positions from the total, this suggests that approximately 14.0% of blue-collar construction tradespeople were employed in a way that exposed them to payroll fraud. Replicating the analysis on a county basis, the results indicate that there 8,573 construction workers in Clark County employed via fraudulent means, accounting for 10.9% of the industry’s workforce and 13.4% of blue-collar tradespeople. In Washoe County, the analysis points to an estimated 1,988 affected construction workers, representing 9.8% of the industry and 12.1% of blue-collar tradespeople.

Table 1. Estimating Total Construction Employment in Nevada, 2018

	Nevada (State)	Clark County	Washoe County
<i>Total Employment (ACS/CPS)</i>	111,228	78,556	20,300
<i>W-2 Employment (BEA/QCEW)</i>	91,358	65,161	17,193
<i>Calculations</i>			
Non-Payroll Jobs (Total – Payroll)	19,870	13,395	3,107
Estimated Illegal Jobs (64.0%)	12,717	8,573	1,988
% of Total Employment	11.4%	10.9%	9.8%
% of Blue-Collar Employment	14.0%	13.4%	12.1%

Given the lack of direct evidence about payroll fraud—and the indirect method used to generate the estimates in Table 1—it is imperative that this study assess the reasonableness of these numbers before moving forward. In sum, the authors have reasons to conclude that these estimates are credible but other reasons to suspect that they may be conservative.

First, a 2014 study of California—using a similar method—concluded that 16% of that state’s construction workforce was misclassified or working off-the-books with cash payments, a result that is reasonably consistent with the findings of this study.¹⁸ In contrast, a large survey of job sites in Texas suggested payroll fraud rates from 38% to 41%; while the representativeness of the samples these studies offers concern about the reliability of these numbers, it does offer a data point to suggest that rates in Nevada could be much higher than those advanced in Table 1.¹⁹ Correspondingly, the authors used conservative assumptions where possible in generating these empirical estimates, as Appendix B offers a number of methodological reasons that would support the larger estimated rates of illegality in Nevada’s construction industry.

Finally, an assessment of these results would not be complete without comparing them to only other known data point on payroll fraud in the state: the 2011 report from the Nevada Legislative Council Bureau that was summarized in the previous section.²⁰ As a reminder, this report concluded that 2.7% of audited employment was found to be workers misclassified as independent contractors. While the estimates in this study are much higher than 2.7%, there are numerous reasons to believe that our findings are not incongruent with the previous study. First, the current study accounts for both illegal cash payments and worker misclassification whereas the 2011 study only explored the latter. Second, the study by the Legislative Council Bureau only presented an average rate across all industries; studies in other states reveal that payroll fraud is higher—and sometimes much higher—in

¹⁸ Liu, Yvonne Yen, Daniel Flaming, and Patrick Burns. 2014. “Sinking Underground: The Growing Informal Economy in California Construction.”

¹⁹ Workers Defense Project. 2013. “Building a Better Texas: Construction Conditions in the Lone Star State.”

²⁰ Nevada Legislative Counsel Bureau. 2011. Employee Misclassification. Bulletin No 11.07. State of Nevada. Accessed at: <https://www.leg.state.nv.us/division/research/publications/interimreports/2011/bulletin11-07.pdf>

construction than the labor market as a whole. Finally, there is nearly a 10-year gap between reports and the authors' conversations with industry stakeholders across the country anecdotally point to an increase in payroll fraud since the Great Recession.

Economic Costs: Statewide

Payroll fraud in the construction industry exists in the construction industry largely due to employers' self-interest in evading legally-required tax contributions and other necessary expenses associated with legal employment. This imposes severe costs on workers and broader society. Payroll fraud defunds critical social programs, robs workers of their legal rights to benefits, and shifts much of employers' tax burden onto the backs of workers and taxpayers at large. This also severely disadvantages honest, law-abiding contractors in the bidding process for new projects, driving many out of business and further quickening the "race to the bottom" when it comes to employment conditions in many trades.²¹

Assessing the direct economic costs of payroll fraud, however, encounters a familiar problem: data availability. While the previous section was designed to estimate the incidence of payroll fraud in Nevada's construction industry, assessing the costs requires one to know how much money is exchanging hands illegally. The underground nature of this activity makes the development of a *definitive* answer to this question a practical impossibility. But there are available means of estimating the economic costs of payroll fraud in the

²¹ There are numerous reasons why payroll fraud has persisted—and seemingly intensified—in the construction industry over the last few decades; while this discussion rests outside the scope of the current report, there are other studies that have addressed these concerns. Among others, see: Belman, Dale, and Russell Ormiston. *Forthcoming*. "Best Practices in the United States Construction Industry," In J. Druker and G. White (Eds.). *Labour in the Construction Industry: An International Perspective*. Routledge; Ormiston, Russell, Dale Belman, Julie Brockman and Matt Hinkel. 2020. "Rebuilding Residential Construction," In P. Osterman (Ed.), *Creating Good Jobs: An Industry-Based Strategy*. MIT Press.

construction industry; to those ends, this study relies on a variant of the methodology originally advanced in a 2019 report commissioned by the Attorney General for the District of Columbia, who was interested in assessing the costs of construction industry payroll fraud in their jurisdiction.²² This methodology—originally developed by economists Dale Belman (Michigan State University) and Aaron Sojourner (University of Minnesota)—was further developed by Ormiston et al. (2020) and serves as the basis for the current study’s projections on the economic costs of payroll fraud in Nevada’s construction industry.

The general framework for assessing the state and county-level economic costs of payroll fraud is to (a) establish the economic cost of payroll fraud for a single worker and then (b) multiply this per-worker cost by the number of workers involved. While the number of workers was estimated in the previous section, developing the per-worker cost of payroll fraud in Nevada’s construction industry requires a number of assumptions—each of which are explained in full detail in Appendix B. The primary assumption is that workers affected by payroll fraud would, if paid legally, earn incomes equivalent to the 25th percentile of legal wage-and-salary employees in construction occupations in the region.²³ This assumption follows the blueprint established in prior statewide studies on payroll fraud and equates to \$35,130 per year for Nevada, \$33,770 for Clark County, and \$36,220 for Washoe County.²⁴

²² Belman, Dale, and Aaron Sojourner. 2019. “Economic Analysis of Incentives to Fraudulently Misclassify Employees in District of Columbia Construction,” Office of the Attorney General for the District of Columbia.

²³ The 25th percentile is chosen to balance two competing issues. First, it is widely accepted that payroll fraud more often affects less-skilled, and often lowest-paid, workers. However, this study avoids using an even lower earnings level—such as the 10th percentile—given innumerable anecdotal evidence that misclassification and cash-only arrangements also occur among higher-skilled and higher-paid workers in the construction industry. Given that this study’s choice of per-worker income should ideally represent the average, the authors feel that the 25th percentile offers the preferred approach to balance these competing concerns.

²⁴ Data for 2018 is available at: <https://www.bls.gov/oes/tables.htm>. Estimates for Clark and Washoe Counties are taken from BLS OES data on the Las Vegas and Reno Metropolitan Statistical Areas, respectively.

An important secondary assumption is rooted in Belman and Sojourner’s original study. They theorized that workers may need to be financially incentivized to engage in fraudulent relationships and forego the legal rights and benefits of employees (e.g., workers compensation and UI benefits). To those ends, the authors of that study proposed that workers may receive a sizeable wage premium in exchange for agreeing to work as independent contractors or to operate on a cash-only basis; in effect, they assume that workers share in the cost savings of payroll fraud with their employers.²⁵ While there is certainly anecdotal evidence that this happens in some corners of the industry—for example, a worker agreeing to be paid a couple of dollars more per hour if they are paid in cash—our conversations with industry stakeholders suggest that this may be more the exception than the rule. Instead, it seems more often to be the case that employers flex their monopsony power—they have the advantage in the negotiation over wages since they have the jobs that workers need—and are able to hire workers without having to offer any such wage premium.

The two possible outcomes described above shape how the costs of payroll fraud are estimated in this study. First, this report follows the specifications of Belman and Sojourner’s study in assuming a large wage premium is paid to workers engaged in payroll fraud; this produces a lower-bound, or *conservative*, estimate of the economic effect of payroll fraud. However, this report also uses the same empirical methodology to estimate the costs of payroll fraud assuming that no wage premium is paid to affected workers; this amounts to our *moderate* estimate of the economic costs. This secondary estimate is labeled as

²⁵ Belman and Sojourner (2019) assume that, at most, the wage premium is the cash value equivalent to what workers typically receive in fringe benefits (health insurance, pensions) in the labor market.

moderate—and not something more aggressive—because later discussion will offer reasons to suspect that these latter estimates are likely undercounting the economic costs associated with payroll fraud in Nevada’s construction industry.

While a complete and detailed description of the estimation process is provided in Appendix B, Table 2 presents the conservative and moderate estimates of the per-worker economic costs of payroll fraud in Nevada’s construction industry. The results suggest that a good construction employer—one that is operating legally and offers health insurance—must pay between \$7,376.80 and \$13,155.24 more per worker per year than contractors who engage in payroll fraud; this amounts to law-abiding firms paying 18.4% to 38.3% more than these illegal employers. Much of this differential in labor costs is attributable to the elimination of firms’ required taxes and contributions to social insurance programs, including a shifting of the “employer share” of the Social Security and Medicare tax burden from employers to workers; summed together, the evasion of legal responsibilities nets construction employers an expected cost savings of \$6,577.86 per worker per year.

Table 2. A Comparison of Per-Worker Labor Costs for Legal Employers and Those Engaging in Payroll Fraud in Nevada, 2018 (Assuming Legal Earnings = \$35,130)

	Legal Employer	Conservative Estimate	Moderate Estimate
<i>Value to Worker</i>			
Regular Pay	\$34,331.06	\$34,331.06	\$34,331.06
Overtime and Premium Pay	\$798.94	\$0.00	\$0.00
Fringe Benefits / Wage Premium	\$5,778.44	\$5,778.44	\$0.00
<i>Subtotal (1)</i>	\$40,908.44	\$40,109.51	\$34,331.06
<i>LESS: Social Security & Medicare (EE share) (2)</i>	\$2,687.45	\$6,136.75	\$5,252.65
Total – Net Value to Worker	\$38,221.00	\$33,972.75	\$29,078.41
<i>Employer Contributions to Social Programs</i>			
Social Security & Medicare (ER share)	\$2,687.45	\$0.00	\$0.00
Unemployment Insurance	\$927.20	\$0.00	\$0.00
Workers Compensation	\$2,445.05	\$0.00	\$0.00
Modified Business Tax	\$518.17	\$0.00	\$0.00
Total – ER Contributions to Social Programs (3)	\$6,577.86	\$0.00	\$0.00
<i>Totals</i>			
Total Net Value to Worker (1-2)	\$38,221.00	\$33,972.75	\$29,078.41
Total Value to Social Insurance (2+3)	\$9,265.31	\$6,136.75	\$5,252.65
Total Labor Costs (1+3)	\$47,486.30	\$40,109.51	\$34,331.06
<i>Differences from Legal Employer</i>			
Total Labor Cost Differential from Legal		\$7,376.80	\$13,155.24
% More that Legal Employers Must Pay		18.4%	38.3%

Notes: The worker is responsible for both the employee and employer's share of Social Security and Medicare when working off-the-books or as an independent contractor. Workers who receive a wage premium—such as the cash value of fringe benefits in the second column—must pay the tax on the premium; in contrast, the fringe benefits (e.g., health insurance) provided by the legal employer in the first column are not subject to tax.

Workers also face substantial hardship as a result of payroll fraud: in addition to lost UI and workers compensation benefits, workers who do not receive overtime or premium pay (i.e., the “half” in time-and-a-half), are now responsible for both the employer and employee share of Social Security and Medicare, and are unlikely to receive fringe benefits. The results in Table 2 suggest that payroll fraud is estimated to cost an individual worker a minimum of \$4,248.25 even in the best-case scenario in which they receive a sizeable wage premium and do not need UI or workers compensation benefits. When factoring in the more typical outcome, workers’ ineligibility for UI or workers compensation benefits—two critically

important features in a volatile and physically demanding industry—and the lack of fringe benefits can lead to a substantial decline in the well-being of workers who are engaged in these types of employment relationships.

Table 3 extrapolates these per-worker totals to develop a critical outcome in this study: the statewide estimate of the economic costs of payroll fraud in Nevada’s construction industry. These outcomes are generated by multiplying the per-worker cost of payroll fraud by the number of workers estimated to be affected; for the state as a whole, a reminder that this was projected to be 12,717 workers. Putting these pieces together, the results of Table 3 suggest that these workers would have cost Nevada construction employers \$603.9 million if employed legally and provided an industry-average level of fringe benefits. In comparison, employers engaged in fraud spent just \$510.1 million in the conservative estimate—where the employer provides a wage premium equivalent to the value of fringe benefits—and just \$436.6 million in the moderate case where no wage premium is provided. Considering our conversations with industry stakeholders are much more suggestive of the absence of such a sizeable wage premium, this would suggest that law-breaking employers were likely able to slash their labor costs between \$100 million and \$160 million by engaging in unscrupulous labor practices in Nevada’s construction industry in 2018.

To be clear, a part of the presumed \$100-\$160 million in labor cost savings represents the failure of employers to provide fringe benefits to workers in the form of health insurance and pension contributions. That does not violate the law. However, employers evading required taxes and contributions to social programs is illegal, and it represents a majority of the savings these employers realize when engaging in payroll fraud. The biggest single

savings for employers is the offloading of their share of Social Security and Medicare onto the backs of workers who, in these employment relationships, are considered to be “self-employed” and thus responsible for both the employer and employee contributions; this amounted to \$34.2 million in tax liabilities transferred from contractors to workers.

Of more importance to local legislators, however, the results of Table 3 also suggest that payroll fraud in Nevada’s construction industry led to a nearly \$50 million shortfall in state revenues in 2018. The program hit hardest is the state’s workers compensation system, as contractors evaded \$31.1 million in required contributions. In addition, the results suggest that these illegal actions in the construction industry cost Nevada’s unemployment insurance program an estimated \$11.8 million. Finally, Table 3 projects that payroll fraud in the state’s construction sector led to \$6.6 million in uncollected revenue from the modified business tax (MBT). As a reminder, the authors project these estimates to be conservative given the likelihood—addressed in the previous section—that payroll fraud affects more workers than the 12,717 identified in this study.²⁶

²⁶ While the results offered in Table 3 represent the *direct* costs associated with payroll fraud in Nevada’s construction industry, there are also *indirect* economic costs. In particular, employers’ lack of tax withholding and failure to procure employment documentation open the door to workers to not report or underreport their income to the Internal Revenue Service, leading to shortfalls in federal income taxes, and Social Security and Medicare funding. To estimate federal income tax shortfalls for 2018 attributable to Nevada construction employers and workers due to payroll fraud, this study relies on the methodology advanced in the 2020 ICERES study to suggest federal income tax shortfalls between \$8.2 million and \$18.6 million. For Social Security and Medicare, the estimated shortfalls are between \$15.6 million and \$50.0 million. There are numerous conservative assumptions baked into this approach, suggesting that these numbers are best viewed as *lower-bound* estimates of federal revenue shortfalls attributable to payroll fraud in Nevada’s construction industry.

Table 3. Estimated Aggregate Labor Costs for Legal Employers and Those Engaging in Payroll Fraud, Nevada, 2018 (in \$ millions) (Assuming Legal Worker Earnings = \$35,130)

	Legal Employer	Conservative Estimate	Moderate Estimate
<i>Illegal Employment</i>			
Number of Workers	12,717	12,717	12,717
<i>Value to Worker</i>			
Regular Pay	\$436.6	\$436.6	\$436.6
Overtime and Premium Pay	\$10.2	\$0.0	\$0.0
Fringe Benefits / Wage Premium	\$73.5	\$73.5	\$0.0
<i>Subtotal (1)</i>	\$520.2	\$510.1	\$436.6
LESS: Social Security & Medicare (EE share) (2)	\$34.2	\$78.0	\$66.8
Total – Net Value to Worker	\$486.1	\$432.0	\$369.8
<i>Employer Contributions to Social Insurance</i>			
Social Security & Medicare (ER share)	\$34.2	\$0.0	\$0.0
Unemployment Insurance	\$11.8	\$0.0	\$0.0
Workers Compensation	\$31.1	\$0.0	\$0.0
Modified Business Tax	\$6.6	\$0.0	\$0.0
Total – ER Contributions to Social Insurance (3)	\$83.7	\$0.0	\$0.0
<i>Totals</i>			
Total Net Value to Worker (1-2)	\$486.1	\$432.0	\$369.8
Total Value to Social Insurance (2+3)	\$117.8	\$78.0	\$66.8
Total Labor Costs (1+3)	\$603.9	\$510.1	\$436.6
<i>Differences from Legal Employer</i>			
Total Labor Cost Differential from Legal		\$93.8	\$167.3
% More that Legal Employers Must Pay		18.4%	38.3%

Notes: The worker is responsible for both the employee and employer's share of Social Security and Medicare when working off-the-books or as an independent contractor. Workers who receive a wage premium—such as the cash value of fringe benefits in the second column—must pay the tax on the premium; in contrast, the fringe benefits (e.g., health insurance) provided by the legal employer in the first column are not subject to tax.

Economic Costs: Clark and Washoe Counties

Estimating the economic costs of payroll fraud within the construction industry of Clark and Washoe Counties follows the same approach as outlined above, albeit using different per-worker income levels: \$33,770 for Clark County and \$36,220 for Washoe County. Since the process of calculating per-worker costs are identical to that presented earlier, Tables 4 and 5 jump to providing the aggregate totals of labor costs and social insurance contributions for Clark and Washoe Counties, respectively. As a reminder, the presumed number of workers

affected by payroll fraud for Clark (8,573) and Washoe (1,988) come directly from the earlier section of this study.

Table 4. Estimated Aggregate Labor Costs for Legal Employers and Those Engaging in Payroll Fraud, Clark County, 2018 (in \$ millions) (Assuming Legal Worker Earnings = \$33,770)

	Legal Employer	Conservative Estimate	Moderate Estimate
<i>Illegal Employment</i>			
Number of Workers	8,573	8,573	8,573
<i>Value to Worker</i>			
Regular Pay	\$282.9	\$282.9	\$282.9
Overtime and Premium Pay	\$6.6	\$0.0	\$0.0
Fringe Benefits / Wage Premium	\$47.6	\$47.6	\$0.0
<i>Subtotal (1)</i>	\$337.1	\$330.5	\$282.9
<i>LESS: Social Security & Medicare (EE share) (2)</i>	\$22.1	\$50.6	\$43.3
Total – Net Value to Worker	\$315.0	\$280.0	\$239.6
<i>Employer Contributions to Social Insurance</i>			
Social Security & Medicare (ER share)	\$22.1	\$0.0	\$0.0
Unemployment Insurance	\$7.9	\$0.0	\$0.0
Workers Compensation	\$20.1	\$0.0	\$0.0
Modified Business Tax	\$4.3	\$0.0	\$0.0
Total – ER Contributions to Social Insurance (3)	\$54.5	\$0.0	\$0.0
<i>Totals</i>			
Total Net Value to Worker (1-2)	\$315.0	\$280.0	\$239.6
Total Value to Social Insurance (2+3)	\$76.7	\$50.6	\$43.3
Total Labor Costs (1+3)	\$391.6	\$330.5	\$282.9
<i>Differences from Legal Employer</i>			
Total Labor Cost Differential from Legal		\$61.1	\$108.7
% More that Legal Employers Must Pay		18.5%	38.4%

Notes: The worker is responsible for both the employee and employer's share of Social Security and Medicare when working off-the-books or as an independent contractor. Workers who receive a wage premium—such as the cash value of fringe benefits in the second column—must pay the tax on the premium; in contrast, the fringe benefits (e.g., health insurance) provided by the legal employer in the first column are not subject to tax.

The results of the analysis for Clark County presented in Table 4 suggest that while legal employment of these 8,573 affected workers should have cost contractors \$391.6 million, however payroll fraud allowed them to illegally reduce labor costs by anywhere from \$282.9 million (without wage premium) to \$330.5 million (with wage premium). Considering our

belief that wage premiums are minimal, at best, that means that these unscrupulous labor practices are likely to have shaved up to \$100 million in labor costs; much of that representing a transfer of funds from Clark County workers and taxpayers to contractors and construction owners' bottom lines. While nonpayment of fringe benefits is not illegal, the projections in Table 4 suggest that payroll fraud allowed these contractors to evade \$20.1 million in workers' compensation contributions, \$7.9 million in UI requirements, and \$4.3 million in MBT payments; that equates to \$32.3 million in state funding. Add in an additional \$22.1 million transfer in Social Security and Medicare liabilities from contractors to workers and it amounts to Clark County contractors reducing well over \$50 million in labor costs simply by evading their legal responsibilities.

Table 5 replicates the county-level analysis for Washoe County, applying the number of workers (1,988) and appropriate entry-level earnings level (\$36,220) for those in construction occupations. The results suggest that while these workers should have cost contractors \$97.3 million had they been employed legally, unscrupulous labor practices led to an estimated actual labor bill between \$70.4 million (no wage premium) and \$82.2 million (with wage premium). The net value to workers declined by up to \$20.0 million and state revenues suffered a nearly \$8 million shortfall, including workers compensation (\$5.0 million), unemployment insurance (\$1.8 million) and the modified business tax (\$1.1 million). In sum, these illegal labor practices directly affected Washoe County workers and taxpayers, while putting law-abiding contractors at a significant disadvantage in the bidding process for projects in the area.

Table 5. Estimated Aggregate Labor Costs for Legal Employers and Those Engaging in Payroll Fraud, Washoe County, 2018 (in \$ millions) (Assuming Legal Worker Earnings = \$36,220)

	Legal Employer	Conservative Estimate	Moderate Estimate
<i>Illegal Employment</i>			
Number of Workers	1,988	1,988	1,988
<i>Value to Worker</i>			
Regular Pay	\$70.4	\$70.4	\$70.4
Overtime and Premium Pay	\$1.6	\$0.0	\$0.0
Fringe Benefits / Wage Premium	\$11.8	\$11.8	\$0.0
<i>Subtotal (1)</i>	\$83.8	\$82.2	\$70.4
LESS: Social Security & Medicare (EE share) (2)	\$5.5	\$12.6	\$10.8
Total – Net Value to Worker	\$78.3	\$69.6	\$59.6
<i>Employer Contributions to Social Insurance</i>			
Social Security & Medicare (ER share)	\$5.5	\$0.0	\$0.0
Unemployment Insurance	\$1.8	\$0.0	\$0.0
Workers Compensation	\$5.0	\$0.0	\$0.0
Modified Business Tax	\$1.1	\$0.0	\$0.0
Total – ER Contributions to Social Insurance (3)	\$13.4	\$0.0	\$0.0
<i>Totals</i>			
Total Net Value to Worker (1-2)	\$78.3	\$69.6	\$59.6
Total Value to Social Insurance (2+3)	\$18.9	\$12.6	\$10.8
Total Labor Costs (1+3)	\$97.3	\$82.2	\$70.4
<i>Differences from Legal Employer</i>			
Total Labor Cost Differential from Legal		\$15.1	\$26.9
% More that Legal Employers Must Pay		18.3%	38.2%

Notes: The worker is responsible for both the employee and employer's share of Social Security and Medicare when working off-the-books or as an independent contractor. Workers who receive a wage premium—such as the cash value of fringe benefits in the second column—must pay the tax on the premium; in contrast, the fringe benefits (e.g., health insurance) provided by the legal employer in the first column are not subject to tax.

Discussion

The authors of this study were tasked with estimating the incidence and social costs attributable to payroll fraud in Nevada's construction industry. Directly applying the methodology developed in a 2020 study published by the Institute for Construction Economic Research (Ormiston et al. 2020), the authors project that there were roughly

12,717 construction workers who were either misclassified or receiving cash payments in Nevada in 2018. As to be expected, most of these workers are operating in Clark County (8,573 workers) and Washoe County (1,988 workers). Payroll fraud robs workers of their legally-earned benefits, disadvantages law-abiding employers, and effectively steals money from taxpayers. As outlined in this study, the social costs of these actions represent a transfer of tens of millions of dollars from workers and taxpayers to illegal employers in the construction industry and the general contractors and construction owners who hire them.

This study has applied the authors' preferred methodologies to estimate the incidence and cost of payroll fraud. To be clear, however, publicly-available data does not offer *direct* evidence of it occurring. Instead, researchers using such data can only approximate this via *indirect* approaches which, combined with the limitations of publicly-available data, amounts to estimating the incidence of payroll fraud using "blunt instruments." As a result, the authors acknowledge that these projections may feature a rather sizeable margin of error. Nevertheless, the authors have knowingly used conservative assumptions and approaches whenever possible and contend that the extent of payroll fraud may be substantial larger than estimated in this study.

In addition to the *number* of workers involved, the authors also recognize that data restrictions limit the ability of this study to estimate the full and true social costs of payroll fraud. For instance, legal employers must adhere to regulations imposed by the Occupational Safety and Health Administration. While this may be in the best interest of workers, it nevertheless imposes a substantial cost on legal employers that is often evaded by

contractors operating fraudulently. However, since there is no known credible estimate for the cost that this imposes on legally-operating employers, it is not included in this analysis.

A second means by which fraudulent employers reduce labor cost that is not captured in the methodology is wage theft. There are anecdotal reports of rampant wage theft among off-the-books workers in the construction industry, especially among the most vulnerable workers (e.g., undocumented laborers); as an example, see the 2015 report by Tom Juravich, Essie Ablavsky and Jake Williams.²⁷ However, while anecdotal reports are plentiful, there are no known estimates for its extent in the national or state construction industry. For the sake of generating conservative estimates, the results in this study assumed there was no wage theft among fraudulent workers. But if this report instead assumed that 3% of wages from fraudulent employers were not paid to workers (an approximation derived from the Workers Defense Project studies in Texas), the cost impact would be enormous. For example, an assumption of 3% wage theft and a \$35,130 average worker income would suggest that wage theft would cost affected workers, on the aggregate, upwards of \$15 million in 2018. This has enormous ripple effects throughout Nevada's society, harming workers, their families, social programs needed to support them, taxpayers, and law-abiding contractors who are forced to compete against these unscrupulous, cost-shaving employers for the same projects.

One area that is also unaddressed in this report is the fact that misclassified and cash payments workers do not receive fringe benefits—such as health insurance and pension

²⁷ For more, see; Juravich, Tom, Essie Ablavsky, and Jake Williams. 2015. "The Epidemic of Wage Theft in Residential Construction in Massachusetts," UMass-Amherst Working Paper Series.

contributions—like regular wage-and-salary employees. To be clear, not paying workers fringe benefits is entirely legal and, therefore, not considered to be a part of the economic costs of payroll fraud in this study. But the degradation of labor market conditions due to payroll fraud has undoubtedly led to a decline in the viability of employer-sponsored health insurance in many trades. This not only has devastating effects on Nevada workers and their families, but it also burdens social programs and the broader health care system at large.

Misclassification in Nevada’s Public Works Segment of the Construction Industry

The main goal of this report is to estimate the extent and fiscal impact of worker misclassification in Nevada’s construction industry. The purpose of this section is to illustrate the nature and consequences of worker misclassification in the public works sector of Nevada’s building industry that is covered by the state’s prevailing wage regulations. Employee misclassification on prevailing wage projects often takes a different form compared to private-sector projects and is generally not detectable using the datasets employed in the quantitative section of this study. Consequently, this section of the report is based on qualitative analysis (interviews with industry professionals) supplemented by additional information about prevailing wage standards and construction labor markets.

Public works construction financed or sponsored by the State of Nevada or any city, county, town, school district, public agency, or political subdivision is covered by the state’s prevailing wage standard.²⁸ This law applies to every public works contract over \$100,000. The law also requires that the wage rate paid to skilled and unskilled labor employed on

²⁸ See “Public Works and Prevailing Wage Guidelines and Responsibilities of Awarding Bodies and Contractors and the Office of the Labor Commissioner,” July 1, 2019. Accessed at: [http://labor.nv.gov/uploadedFiles/labornvgov/content/PrevailingWage/PWP%20Handbook%20June%202019\(1\).pdf](http://labor.nv.gov/uploadedFiles/labornvgov/content/PrevailingWage/PWP%20Handbook%20June%202019(1).pdf)

public works must not be less than the wage that prevails in the county or region where the public project is located. To determine minimum prevailing wage rates, the Office of the Labor Commissioner surveys contractors who have performed work in four regions of the state that include all of Nevada's 16 counties and Carson City.²⁹ The survey is conducted in each odd-numbered year and requests information for 43 general job classifications (carpenters, electricians, plumbers, etc.).³⁰ If the results of the survey find that a compensation rate is the same for more than 50% of the total hours worked for a particular job classification in a county or region, that rate is considered to be the prevailing wage for that type of work in that area. If no such rate can be determined, the prevailing wage for a job classification is the average wage rate (based on the number of hours worked) for the type of work in the region.

Based on extensive experience with construction projects covered by Nevada's prevailing wage law, the owners and senior management of two construction businesses were interviewed. One is an electrical contractor involved in traffic signals and other underground electrical work. This company is signatory to collective bargaining agreements with all of the trades involved in this type of work (electricians, laborers, and operating engineers). The other contractor focuses on paving, and road construction. While this contractor is a signatory to collective bargaining agreements with the construction unions involved in road

²⁹ See "Procedure for Determination of Prevailing Wage in County," Chapter 338 Public Works, Title 28, Public Works and Planning, State of Nevada. Accessed at: <https://www.leg.state.nv.us/NRS/NRS-338.html#NRS338Sec030>.

³⁰ For the timing of the surveys see Nevada Revised Statute (NRS) 338.030. Accessed at: [NRS 338.025](#). Some of the job classifications (for laborers and operating engineers, for example, are further divided into groups based on the specific tasks with different wage rates per group). See for example, "Prevailing Wage Rates for Clark County," Office of the Labor Commissioner, State of Nevada. Accessed at: <http://labor.nv.gov/uploadedFiles/labornvgov/content/PrevailingWage/1.%20CLARK%202021.pdf>.

construction (such as laborers, operating engineers, and truck drivers), this business does some work outside of these agreements. Both establishments are located in Clark County.

Regardless of their differences, both of these contractors complained of worker misclassification on public works projects covered by Nevada's prevailing wage law. In both cases, the contractors complained of competitors, who are either not signatories to collective bargaining agreements or have limited participation in such agreements, of violating the rules of the prevailing wage standard. Both contractors indicated that rule breaking typically involves the use of a worker from a lower paid job classification, usually a laborer, completing the tasks of another worker in a higher-paid classification (such as an electrician for traffic signal work or an operating engineer for road construction).³¹ This type of behavior results in substantial labor costs savings for the violating contractor. For example, the prevailing wage rate for a laborer can be as much as 15% lower than the rate for a journey electrician/wireman working on traffic signals.³² Additionally, the prevailing wage rate for the electrician/wireman includes premium pay of 15% for second (swing) shift work and a 30% premium for third shift (graveyard) work. Since there is no night shift premium hourly pay for laborers, the wage differential between a laborer and an electrician/wireman in Clark County may grow to 34%. The night shift differences in hourly wages are important as considerable traffic signal work is completed when road congestion is low during evening hours. In any case, this places a rule-following electrical contractor who uses the proper

³¹ It is not possible to detect this type of misclassification using the datasets employed in the quantitative section of the study.

³² This is based on a comparison of prevailing wage rates for the electrician classification for a wireman-journeyman and the wage rate for a Group 1 laborer in Clark County. See: "Prevailing Wage Rates for Clark County," Office of the Labor Commissioner, State of Nevada. Accessed at: <http://labor.nv.gov/uploadedFiles/labornvgov/content/PrevailingWage/1.%20CLARK%202021.pdf>.

worker classification at a substantial disadvantage compared to a contractor who does not follow the rules and uses a laborer to perform the work of an electrician/wireman. For road construction, the laborer hourly rate can be as much as 26% less than the hourly prevailing rate for an operating engineer running asphalt paving equipment.³³ This type of misclassification on prevailing wage projects described by these Clark County builders is observed in other jurisdictions. For example, the U.S. Department of Labor identifies misclassification as a typical problem on federally funded projects covered by Davis-Bacon prevailing wage requirements.³⁴

These differences in wage rates are based on the lower skilled job classification receiving the minimum prevailing wage rate. One of the contractors noted that some open shop (nonunion) contractors working on public works projects inform their employees that they will not be paid the prevailing wage rate for any job classification, but instead will be paid their usual rates that are less than prevailing rates. In these cases, workers must often choose between confronting their employer about violating the State of Nevada's prevailing wage statute, or accepting this form of wage theft to keep their jobs. Again, the illegal compensation practice described by this contractor is another of the typical problems cited by the U.S. Department of Labor on federal prevailing wage construction projects.³⁵

³³ This is based on a comparison of prevailing wage rates for the operating engineer Group 8 classification and the wage rate for a Group 1 laborer in Clark County. See: "Prevailing Wage Rates for Clark County," Office of the Labor Commissioner, State of Nevada. Accessed at:

<http://labor.nv.gov/uploadedFiles/labornvgov/content/PrevailingWage/1.%20CLARK%202021.pdf>.

³⁴ See U.S. Department of Labor, "Fact Sheet #66: The Davis-Bacon and Related Acts," April 2009. Accessed at: <https://www.dol.gov/agencies/whd/fact-sheets/66-dbra>.

³⁵ See U.S. Department of Labor, "Fact Sheet #66: The Davis-Bacon and Related Acts," April 2009. Accessed at: <https://www.dol.gov/agencies/whd/fact-sheets/66-dbra>.

Contractors who engage in either worker misclassification or wage theft on public works projects are not motivated by passing these cost savings to the public works project owner. Rather, these contractors likely submit sufficiently lower bids to be awarded the project and then plan to violate prevailing wage standards during construction to turn the low bid into a profitable one. While these practices may benefit contractors that choose to violate the prevailing wage law, there are consequences with respect to public safety and apprenticeship training in the construction industry. For example, the electrical contractor stated that users of public works are at risk when construction workers complete tasks they are not qualified to perform. This contractor also stated that misclassification on public works projects interferes with the type of formal apprenticeship training that is fundamental to skills development in the construction industry. To be eligible for registration and approval by State Apprenticeship Council, an apprenticeship program must develop a plan expressing the terms and conditions of employment, training, and supervision of apprentices in the particular craft occupation in which the trainee will be apprenticed.³⁶ This means that when a journey-qualified electrician is employed on a public works project, there is an opportunity for an electrician apprentice to receive formal on-the-job training. However, when a contractor employs a laborer to perform electrical work on a public works project, it is likely that this contractor is more interested in reducing costs and increasing profits than in properly training the next generation of construction workers. Even if the misclassified journey laborer were to train an apprentice how to do electrical work, it would be

³⁶ See Nevada Revised Statute- Chapter 10- Apprenticeships: State Apprenticeship Council pursuant to chapter 610 of NRS: <https://www.leg.state.nv.us/nrs/nrs-610.html>.

inconsistent with the requirements of an approved training program for this craft. In other words, formal apprenticeship training is pointless when misclassification is practiced.

The contractor involved in road construction also provided a detailed explanation of the company's experience as a signatory to collective bargaining agreements with three unions. While there are many aspects to these arrangements, the contractor emphasized the effect on the division of labor at a construction site.³⁷ Each trade union establishes a 'jurisdiction' for the specific tasks their journey workers are responsible for. This is rooted in union apprenticeship programs where trainees receive extensive classroom and field work on how to properly perform the work of a trade. Therefore, at a union road construction worksite, operating engineers, laborers, and truck drivers all perform the work they were trained to do. The division of labor in this setting is enforced by the trades and by union contract compliance officers. This contrasts to the division of labor on a nonunion worksite where workers perform multiple tasks.

While the nonunion method may have cost efficiencies, this contractor pointed out shortcomings of the open shop approach. In particular, there is an increased likelihood of 'latent defects' when tasks are completed by other than specifically trained workers. A latent defect occurs when construction materials are not installed correctly because the installer is not fully trained in the relevant task. The consequence is that construction failure may occur prematurely. Instead of the installation lasting 20 years, for example, failure occurs prematurely, say in eight or 10 years. This would occur after the typical construction

³⁷ For the content of a collective bargaining agreement see as an example: "Master Labor Agreement Southern Nevada Plasters, 2011-2012." Accessed at: https://www.dol.gov/sites/dolgov/files/olms/regs/compliance/cba/private_9161_6-30-12.pdf

warranty expires in three to six years. While the project owner may have benefited from a slightly reduced bid cost from a nonunion contractor, the risk of expensive follow-up maintenance increases if a structure must be disassembled to repair a defect and then reassembled. The road construction contractor also indicated that these types of defects are less likely when union labor, that has successfully completed an apprenticeship program, is employed. Access to a trained and productive construction workforce is the reason this contractor voluntarily agreed to participate in collective bargaining agreements with unionized construction workers.

The union advantage in skills and productivity observed by this road construction contractor is rooted in the funding advantage of union training programs. Contractors who are signatories to collective bargaining agreements make cents per hour contributions to union member compensation packages that are used to finance apprenticeship programs.³⁸ These programs are jointly managed by the particular union and participating contractors. While unionized construction workers in Nevada represent about 26% of all building trades workers in Nevada, jointly managed union apprenticeship programs registered 91.5% of apprentices and represented 86% of all construction apprenticeship programs in Nevada between 2000 and 2017.³⁹ As a consequence, jointly managed programs account for over 92.0% of fully trained journey-workers in Nevada.

³⁸ See Kevin Duncan and Russ Ormiston. 2019. "What Does the Research Tell Us about Prevailing Wage Laws" (with Russell Ormiston), *Labor Studies Journal*, Vol. 44, Issue 2, 2019.

³⁹ For estimates of union density by state and over time see "Union Membership and Coverage Database from the CPS" by Barry Hirsch and David Macpherson. Accessed at: <http://www.unionstats.com/>. See Jeffrey Waddoups and Kevin Duncan. 2019. "The Impact of Nevada's Ninety-Percent Prevailing Wage Policy on School Construction Costs, Bid Competition, and Apprenticeship Training. March 5. Accessed at: <https://faircontracting.org/wp-content/uploads/2019/09/NV-PW-Study-Waddoups-Duncan-Format-3-5-19-2.pdf> for data on apprenticeship training program outcomes.

Another benefit of trained and skilled union labor is reduced fatalities in the construction industry. For example, a 2017 study based on data obtained from the Bureau of Labor Statistics, the New York City Department of Buildings, and the Occupational Safety and Health Administration found that in New York State, 86% of workers who died on private worksites were non-union. In New York City, nearly 83% of construction workers who died on private worksites were non-union.⁴⁰ Another study the Bureau of Labor Statistics found that nonunion construction workers represented 88% of construction fatalities in Massachusetts between 2011 and 2013.⁴¹

The road construction contractor also indicated that the self-enforcement mechanisms at a union worksite also guarantee that other work rules are followed with respect to compensation and overtime, etc. This contractor stated that this is in contrast to the open shop segment of the industry where there is an absence of constant enforcement of labor standards at the worksite. Under these conditions, the open shop contractor may exploit their position as an employer to misclassify and improperly pay their employees.

This road construction contractor also asserted that prevailing wage regulations should provide an enforcement role for working conditions of public works projects. The job classifications that are utilized in prevailing wage standards should result in the correctly trained worker doing the tasks they are qualified to do at the appropriate wage rate. However, this contractor indicated that enforcement of Nevada's prevailing wage policy is

⁴⁰ See "Deadly Skyline An Annual Report on Construction Fatalities in New York State," February 2020. Accessed at: [2020-Deadly-Skyline-Report.pdf \(nycosh.org\)](https://www.nycosha.org/2020-deadly-skyline-report.pdf).

⁴¹ See "Collecting Union Status for the Census of Fatal Occupational Injuries: A Massachusetts Case." Monthly Labor Review, U.S. Bureau of Labor Statistics, February 2019. Accessed at: [Study,https://www.bls.gov/opub/mlr/2019/article/collecting-union-status-for-the-census-of-fatal-occupational-injuries.htm](https://www.bls.gov/opub/mlr/2019/article/collecting-union-status-for-the-census-of-fatal-occupational-injuries.htm).

woefully inadequate and that more field inspectors at public works projects jobsites are needed. Moreover, he suggested that inspectors need to match a contractor's daily activity report of the types of work completed to their submitted certified payroll records to ensure that job classifications are adhered to and that workers are properly compensated. Inspectors should also spend enough time on and off construction worksites to interview employees about labor standard compliance. The electrical contractor expressed the same concern more forcibly by stating, based on their experience, that there were *no* field inspectors at public works jobsites and no one to interview exploited construction workers. This contractor notes that while recent legislation has helped contractors meet the requirements of prevailing wage standards, the lack of uniform enforcement by regulators is the biggest problem.

In addition to setting standards for work and pay to ensure that workers with the appropriate training are performing the right work, there are other ways prevailing wage laws can move the construction industry toward the more skilled, productive, and safe unionized segment of the building industry in Nevada. Since contractors are allowed to pay apprentices a fraction of the journey worker wage on prevailing wage projects, the policy creates an incentive to use apprentices.⁴² Research indicates that apprenticeship registrations are from 6% to 8% higher in states with prevailing wage requirements.⁴³ Additional research indicates that prevailing wage standards are associated with decreased

⁴² See Kevin Duncan and Russ Ormiston. 2019. "What Does the Research Tell Us about Prevailing Wage Laws" (with Russell Ormiston), *Labor Studies Journal*, Vol. 44, Issue 2. 2019.

⁴³ See Cihan Bilginsoy. 2005. "Wage Regulation and Training: The Impact of State Prevailing Wage Laws on Apprenticeship." *The Economics of Prevailing Wage Laws*. Editors: Hamid Azari-Rad, Peter Philips, and Mark Prus. 149-168.

injuries among construction workers.⁴⁴ The preponderance of research indicates that these benefits of prevailing wage laws can be obtained without increasing the cost of public construction.⁴⁵ This research includes a recent study indicating that Nevada's prevailing wage standard does not increase building costs or decrease the level of bid competition on school construction projects.⁴⁶ However, to receive the full benefits with respect to skills development and increased safety associated with prevailing wage laws, it is important to enforce the policy to ensure that contractors adhere to the regulations. As stated above, both contractors that were interviewed agreed that municipal and the state governments need to do more enforcement and to deploy more field inspectors.

Both contractors agreed that adopting the California policy of publicly available certified payroll records on prevailing wage projects would be useful in preventing worker misclassification and wage theft on public works projects in Nevada. The California Department of Industrial Relations requires contractors and subcontractors on all public works projects to use an electronic certified payroll reporting system (eCPR). It is through the eCPR searchable database that the public may view and print out certified payrolls.⁴⁷ Employees' names, addresses and social security numbers are redacted from the publicly

⁴⁴ See for examples, Azari-Rad, Hamid. 2005. "Prevailing wage laws and Injury Rates in Construction." In Hamid Azari-Rad, Peter Philips, and Mark Prus (Eds.), *The Economics of Prevailing Wage Laws*, pp. 123–148. Aldershot, UK: Ashgate and Philips, Peter. 2014. "Kentucky's Prevailing Wage Law: An Economic Impact Analysis." Accessed at: <http://www.faircontracting.org/wp-content/uploads/2014/02/Kentucky-Report-2014-Philips.pdf>.

⁴⁵ See Kevin Duncan and Russ Ormiston. 2019. "What Does the Research Tell Us about Prevailing Wage Laws" (with Russell Ormiston), *Labor Studies Journal*, Vol. 44, Issue 2. 2019.

⁴⁶ See Kevin Duncan and Jeffrey Waddoups. 2020. "Unintended Consequences of Nevada's Ninety-Percent Prevailing Wage Rule." *Labor Studies Journal*, Vol. 45, Issue 2, June.

⁴⁷ See "eCPR Search," DIR. Accessed at: <https://efiling.dir.ca.gov/eCPR/pages/search>. For a simple illustration of viewing a certified payroll, at the web site select a small county (Alpine) at the *County* prompt. Select the date of program inception (4-1-15) at the *Date Range From* prompt and the current date at the *Date Range To* prompt. Click *Search* and PDF copies of weekly and complete certified payrolls can be selected for public works completed in this county. Employee names, addresses, and social security numbers redacted.

available information. However, there is sufficient information about prevailing wage projects for construction workers, or other interested parties, in verifying the hourly rate of pay, hours worked, and type of work a construction employee experienced with the legally certified record of wages, hours worked, and job classification reported by the contractor. Making this information available to the public may be an effective means of encouraging legal labor market practices among all contractors participating on public works projects in Nevada.

The absence of standardized rules creates confusion for contractors and undermines some of the fundamental objectives of the State's prevailing wage standards. According to the electrical contractor, conflicting rules between public agencies contributes to misclassification on public works projects. For example, the Office of the Labor Commissioner establishes specific job descriptions and responsibilities for each prevailing wage job classification.⁴⁸ According to this contractor, other agencies, such as the Regional Transit Commission of Southern Nevada (RTC) may also rule on job responsibilities and prevailing wage job classifications for transportation work. The job descriptions and prevailing wage rates for 'electrician-wireman' and 'electrician-communication technician' illustrate the problems associated with overlapping and inconsistent prevailing wage enforcement. According to the job descriptions approved by the Office of the Labor Commissioner, both electrician-wireman and electrician-communication technician have responsibility for work involving fiber optic cable installation. Work with this type of cable

⁴⁸ See "2020-2021 Prevailing Wage Job Descriptions," Office of the Labor Commissioner, State of Nevada. Accessed at: http://labor.nv.gov/PrevailingWage/Job_Descriptions/2020-2021_Prevailing_Wage_Job_Classifications/.

may take place in, or out-of-doors. The out-of-doors work of an electrician-wireman engaged in traffic lighting, with underground and overhead wiring systems, differs significantly from the scope of work for the electrician-communication technician who focuses primarily on inside tasks related to sound, visual, intercom, and radio systems, etc. According to the Office of the Labor Commissioner, traffic lighting systems that include stringing fiber optic cable are outside work and are the responsibility of an electrician-wireman. According to the electrical contractor, the RTC currently rules that electrician-communication technicians may install fiber optic cable on traffic lighting systems, even though the Office of the Labor Commissioner has determined that traffic lighting and fiber optic cable work resides within the electrician-wireman classification. Since the hourly prevailing wage rate for electrician-communication technicians in Clark County is about 71% of the prevailing rate for an electrician-wireman, there is an incentive for contractors to use an inside electrician for outside work.⁴⁹ This may result in the type of latent defects described above, or in unsafe electrical work on traffic lighting systems. On the other hand, a contractor who matches out-of-doors electrical work with an appropriately skilled outside electrician faces a relative financial disadvantage when working on RTC projects. This example illustrates the need for uniform rule making across agencies with sole responsibility for establishing standards residing with the Office of the Labor Commissioner.

⁴⁹ See “2021 Prevailing Wage Rates Clark County,” Office of the Labor Commissioner, State of Nevada. Accessed at: <http://labor.nv.gov/uploadedFiles/labornvgov/content/PrevailingWage/1.%20CLARK%202021.pdf>.

State-Level Policies and Actions to Reduce Payroll Fraud in Nevada

The Nevada Legislature has recently introduced two policies to address payroll fraud in the state's construction industry. Senate Bill 493 (2019) requires that independent contractors in the construction industry must be licensed. They must also adhere to what is commonly referred to as the "ABC test" to determine if an individual may be classified as an independent contractor.⁵⁰ The three parts of this rule establish that:

A) The work performed by the independent contractor is free from control and direction by the hiring entity.

B) The independent contractor is providing a service that is either outside of the usual course of business or is performed outside of all the places of business of the hiring entity.

C) The service is performed in the course of an independently established trade, occupation, profession, or business in which the independent contractor is customarily engaged.⁵¹

Senate Bill 493 also establishes expected behavior and penalties for misclassification. For example, employers are prohibited from willfully misclassifying employees. Employers are also barred from using coercion, misrepresentation, or fraud to convince an 'employee' to be classified as an independent contractor, or to establish such a business in order to be classified as an independent contractor. Penalties include a warning letter or referral to the Attorney General's Office or to other law enforcement agencies.⁵² Senate Bill 223 (2015)

⁵⁰ <http://labor.nv.gov/uploadedFiles/labornvgov/content/Employer/Independent%20Contractor%20-%20Information%20Sheet.pdf>

⁵¹ The ABC test is also included in Revised Nevada Statute 612.085. Accessed at: <http://nv.elaws.us/nrs/612.085>

⁵² <http://labor.nv.gov/uploadedFiles/labornvgov/content/Employer/Independent%20Contractor%20-%20Information%20Sheet.pdf>

holds prime contractors liable for any labor cost indebtedness incurred by a subcontractor.⁵³

This type of legislation creates incentives for the prime parties responsible for labor standards at the job site to ensure that payroll fraud does not occur.⁵⁴

It is too early to tell if the 2019 legislation addressing the classification of independent contractors has had an impact on payroll fraud in Nevada's construction industry. However, additional findings of this study suggest that the percent of construction industry employment that experiences payroll fraud has increased each year since 2016. This suggests that efforts to hold prime contractors liable for the labor cost indebtedness of subcontracts have not been sufficient in stopping payroll fraud.⁵⁵ Similarly, it is likely that the relatively light penalties associated with Senate Bill 493 (a warning letter and possible referral to the Attorney General) will significantly alter the trend in payroll fraud. This suggests that the Nevada Legislature needs to act further.

Examples from other states may be useful for the Nevada Legislature. The Colorado General Assembly passed legislation in 2019 that equates wage theft with felony charges for amounts of \$2,000 or more.⁵⁶ While this study did not measure the extent and cost of wage theft in Nevada's construction industry, other evidence described in this report indicates that incomplete compensation, or the lack of any wage payment is a significant problem in this sector. In addition to applying to instances of wage theft in the private sector, the Colorado

⁵³ [Bill Text: NV SB223 | 2015 | 78th Legislature | Enrolled | LegiScan](#)

⁵⁴ For an example of other states that have similar contractor liability laws related to subcontractor labor costs see: "Labor and Employment-General Contractor Liability for Unpaid Wages," House Bill 1539, General Assembly of Maryland, 2018. Accessed at: <http://mgaleg.maryland.gov/Webmga/fmMain.aspx?pid=billpage&tab=subject3&id=hb1539&stab=01&ys=2018RS>.

⁵⁵ Additional results provided by the authors upon request.

⁵⁶ https://leg.colorado.gov/sites/default/files/2019a_1267_signed.pdf

legislation may also apply to misclassification resulting in insufficient payment on the public works projects covered by prevailing wage standards. Wage theft occurs on these types of projects when contractors substitute workers in lower paid job classifications for workers in higher paid classifications.

Another means of addressing misclassification on public works projects is the requirement that certified payrolls are made available to the public. As mentioned in the interview section of this study, the California Department of Industrial Relations requires contractors and subcontractors on all public works projects to use an electronic certified payroll reporting system (eCPR). It is through the eCPR searchable database that the public may view and print out certified payrolls.⁵⁷ Employees' names, addresses and social security numbers are redacted from the publicly available information. However, there is sufficient information about prevailing wage projects for construction workers, or other interested parties, in verifying the hourly rate of pay, hours worked, and type of work a construction employee experienced with the legally certified record of wages, hours worked, and job classification reported by the contractor. Making this information available to the public may be an effective means of encouraging legal labor market practices among all contractors participating on public works projects in Nevada.

A 2016 study of the underground construction economy in New Jersey includes recommendations for appropriate legislative action.⁵⁸ The suggestions include coordination

⁵⁷ See "eCPR Search," DIR. Accessed at: <https://efiling.dir.ca.gov/eCPR/pages/search>. For a simple illustration of viewing a certified payroll, at the web site select a small county (Alpine) at the *County* prompt. Select the date of program inception (4-1-15) at the *Date Range From* prompt and the current date at the *Date Range To* prompt. Click *Search* and PDF copies of weekly and complete certified payrolls can be selected for public works completed in this county. Employee names, addresses, and social security numbers redacted.

⁵⁸ [2018-0424-underground-economy-report.pdf \(stockton.edu\)](https://www.stockton.edu/2018-0424-underground-economy-report.pdf)

and information sharing with the federal government, neighboring states, and state agencies, and the establishment of an interagency task force to investigate, report, and prosecute payroll fraud. Other recommendations call for enhanced legislation based on the experiences of other states, the creation of a tip line to allow parties to anonymously report suspicious hiring practices, the publication of completed enforcement actions that include the names of violators, and the step-up of enforcement that includes stop work orders, asset seizures, and fines that exceed the amount of back pay owed to a worker, etc.

In any case, it is not sufficient for the Nevada Legislature to simply pass new laws. The State of Nevada has a responsibility to enforce this legislation. Interviews with the owners and managers of construction contractor businesses indicate that enforcement of existing labor standards is woefully inadequate and that more field inspectors at job sites are needed. Inspectors should also spend enough time on and off construction worksites to interview employees about labor standard compliance. Additional resources may be needed to pursue prosecution of violators on privately and publicly funded projects.

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Appendix A

Selected Studies on Employee Misclassification and Payroll Fraud in the American Construction Industry

Table A1: Review of Literature on Employee Misclassification and Payroll Fraud

Author (Year)	Region	Findings
<i>Audit Studies</i>		
Legislative Counsel Bureau (2011)	Nevada	Finds that 12.4% of UI benefit claims involved misclassification and 2.7% of audited employment was misclassified, amounting to 31,000 misclassified employees and \$8.2 million in lost revenue to UI fund. The study focused on all employment in the state, not just the construction sector. Points to negative impacts on Workers Compensation program and revenues from Modified Business Tax, but provides no dollar amounts.
Carre' and Wilson (2004)	Massachusetts	UI audits find 14 - 24% of construction employers misclassified employees, which implies 2,634 to 4,459 employers and 7,478 and 15,970 employees. Construction employers more likely to misclassify than employers in other industries.
Carre' and Wilson (2005)	Maine	UI audits find 14% of construction employers misclassified employees. Among the misclassifiers, 45% of employees were misclassified. The state lost \$314K in UI revenue, \$2.6 in tax revenue and \$6.5 million in WC contributions.
Kelsay and Sturgeon (2006)	Illinois	The state lost between \$10.7 and \$17.7 million in state income tax revenue, between \$4.3 and \$7.2 million in WC premiums, and \$2.2 million in UI revenues from misclassification.
Belman and Block (2009)	Michigan	UI audits find 26.4% of construction employers misclassified employees. Among the misclassifiers, 18.9% of employees were misclassified. The state lost \$2.5 million in UI revenue.
Virginia Joint Legislative Audit Review Commission (2012)	Virginia	UI audits find 33% of construction employers misclassified employees. Among the misclassifiers, 30% of employees were misclassified. The state lost \$2.5 million in UI revenue.

Survey of Workers' Employment Experience

Workers Defense Project (2009)	Austin, Texas	Survey of 312 workers found that 38% of workers were either misclassified or working off the books. Workers reported that 18% of firms did not have WC policies, 20% of workers reported wage theft.
Workers Defense Project (2013)	Texas	Survey of 1,195 workers found that 41% of workers were either misclassified or working off the books. Workers reported that 32% of firms did not have WC policies, 22% of workers reported wage theft. The median level of wage theft was \$960.
Theodore et al. (2017)	Six Southern States	Survey of 1,435 construction workers revealed that 35% were either misclassified or working off the books; 11% had experienced wage theft during their careers, 43% said employers kept a WC policy.

Studies Comparing Payroll Data with Worker Surveys

Flaiming, Haydamack, and Joassart (2005)	Los Angeles	Estimated that 65,000 workers were employed informally in Los Angeles County' construction industry. This represents 30% of the construction workforce.
Liu, Flaming, and Burns (2014)	California	Found that 143,900 workers were misclassified or unreported, which amounts to 16% of the construction workforce. Estimated losses in revenue amounted to \$473 million in state taxes, \$63 million in UI funds, \$146 million to the state's disability fund, and \$264 million to the WC fund.
Fiscal Policy Institute of New York (2007)	New York City	57,000 construction workers in New York City were either misclassified or working off the books, amounting to 25% of total employment. The losses to Social Security and Medicare taxes were estimated at \$272 million, while \$70 million was lost in personal income tax
Cooke, Figart, and Froonjian (2016)	New Jersey	Found that 35,000 workers were either misclassified or unreported, which amounts to approximately 16% of the state's construction workforce. The fiscal impact on state's income taxes was \$20 million and 3.7 to 6.7 million to the UI program.

Appendix B

Detailed Description of Empirical Methodology Used to Estimate the Incidence and Economic Costs of Misclassification and Cash-Only Employment

Introduction

The methodology employed in this study follows closely with the approach advanced in the 2020 study published by the Institute for Construction Economic Research (ICERES) and funded by the United Brotherhood of Carpenters (UBC).⁵⁹ To estimate the number of workers involved, this analysis consists of comparing (a) *total construction employment* as determined by large-scale, nationally representative worker surveys as administered by the U.S. Census Bureau and (b) *legal wage-and-salary employment* as procured from analyses of employers' payroll records submitted to the state unemployment insurance agency and aggregated by the U.S. Department of Labor. To estimate the economic costs associated with payroll fraud, this study applies the approach advanced in a 2019 report commissioned by the Attorney General for the District of Columbia and authored by economists Dale Belman (Michigan State University) and Aaron Sojourner (University of Minnesota). This approach was applied and further developed in the 2020 ICERES report.⁶⁰

⁵⁹ Ormiston, Russell, Dale Belman and Mark Erlich. 2020. "An Empirical Methodology to Estimate the Incidence and Costs of Payroll Fraud in the Construction Industry." United Brotherhood of Carpenters.

⁶⁰ Belman, Dale, and Aaron Sojourner. 2019. "Economic Analysis of Incentives to Fraudulently Misclassify Employees in District of Columbia Construction." <https://oag.dc.gov/sites/default/files/2019-09/OAG-Illegal-Worker-Misclassification-Report.pdf>

Number of Construction Jobs in Nevada

To estimate total construction employment in Nevada's construction industry, the starting point of the analysis will be an examination of data from the 2018 American Community Survey, the most recent year for which all data necessary for this study has been published.⁶¹ As presented in Table B1, the results of the 2018 ACS reflect that 109,882 employed Nevada residents identified construction as the industry of their primary job.⁶² While this number is the starting point to calculate total employment, it requires two additional considerations. First, the ACS only queries workers about their *primary* job during the week that the survey is administered. However, some workers hold second jobs in the construction industry that must also be counted. While the ACS does not offer this information, analysis of a similar household survey—the Current Population Survey—reveals that second jobs in construction added an additional 1.96% jobs on a national basis in 2018.⁶³ Applying this number to Nevada, it suggests that second jobs would increase the total number of jobs by 2,150; this lifts total statewide construction employment to 112,032.⁶⁴

⁶¹ For more information on the ACS, see: <https://www.census.gov/programs-surveys/acs/>.

⁶² ACS data used in this study was drawn from the 2018 ACS 1-Year Estimates at the following site: <https://data.census.gov/cedsci/table?t=Class%20of%20Worker%3AIndustry&g=0400000US32&tid=ACST1Y2018.S2407&moe=false&hidePreview=true>.

⁶³ An analysis of the 2018 Current Population Survey reveals that an estimated 11,216,643 people identified construction as the industry of their primary job. An additional 219,459 people revealed a second job within the construction industry. These results suggest that, on a national basis, estimates of construction employment that only incorporates respondents' primary jobs should be inflated by an additional 1.956544% to capture second jobs.

⁶⁴ It is recognized that the authors are applying a national proportion to state-level data. However, the CPS does not have a large enough sample size to produce reliable estimates of state-level data on second jobs. Without evidence suggesting that multiple job-holding is statistically different in Nevada when compared to other states, the authors believe that the application of the national rate is appropriate.

Finally, the results of the American Community Survey are based on workers' state of *residence*, not their state of *work*. While the Nevada construction industry features a substantial number of out-of-state workers, a larger number of Nevada residents working in construction cross state lines for employment. Since this study's goal is to analyze the construction industry *in Nevada*, this report must adjust for the net inflow or outflow of residents working in the construction industry. Fortunately, the 2018 ACS does provide information on people's state of work. The authors' analysis of the underlying ACS data suggests a net outflow of 804 construction workers out of Nevada in 2018.⁶⁵ As reflected in Table B1, summing the three data points provided so far yields an estimated total construction employment in Nevada of 111,228.

Table B1. Estimating Total Construction Employment in Nevada, 2018

<i>Nevada Residents; Self-Identified Job Type (2018 ACS)</i>		
Wage-and-Salary Jobs (A)	97,068	
Self-Employed Jobs (B)	12,814	
Total Jobs for Nevada Residents (A+B)		109,882
Number of Second Jobs (estimate)		2,150
<i>Inflow & Outflow of Workers</i>		
Residents from Other States Working in Nevada (C)	3,356	
Nevada Resident Working in Other States (D)	4,160	
Net Inflow/Outflow of Workers into/out of Nevada (C-D)		(804)
Total Construction Employment in Nevada		111,228

*Source: 2018 American Community Survey (1-Year Sample).*⁶⁶

⁶⁵ ACS and CPS microdata sets for this study were extracted at ipums.org, a service provided by the Institute for Social Research and Data Innovation at the University of Minnesota.

⁶⁶ Data on the levels of employment among wage-and-salary jobs and self-employed jobs were accessed from the ACS via data.census.gov in August 2020. Since that time, site has removed employment levels in each category and replaced them with percentages of the total, leading to negligible differences in estimated employment totals in each category.

Estimating the Number of Workers Affected by Payroll Fraud

As highlighted in the report, the Bureau of Economic Analysis reported that there were 91,358 legal wage-and-salary jobs in Nevada's construction industry in 2018.⁶⁷ When compared to the results of Table B1, which suggests that there were an estimated 19,870 jobs that did not show up on employer payrolls among Nevada contractors. As highlighted in the text, part of this total is comprised of legitimate, law-abiding self-employed construction workers, a long-time defining feature of the industry. But this total is also composed of workers misclassified as independent contractors and other workers who are hired using cash-only arrangements.

As outlined in the 2020 ICERES report, many researchers have pointed to the gap between worker surveys and payroll records as an important starting point in estimating the number of workers who are misclassified or are working in cash-only arrangements in the construction industry. However, there has not been consensus on how to best estimate the proportion of workers who are legitimate, law-abiding self-employed workers and those who are in fraudulent employment relationships. A full explanation and the pros and cons of each approach is described in the 2020 ICERES study, however the overarching concern is that many previously-explored methods woefully undercount the degree of illegality in the

⁶⁷ This estimate is derived from data series SAEMP27, representing employment by industry by state, accessible via BEA's regional accounts data located: <https://www.bea.gov/data/employment/employment-by-state>. Note that the BEA augments UI payroll data to develop more complete estimates of legal employment; this includes reviewing additional administrative records, adjusting for reporting errors, and including workers who are in legitimate jobs that are not covered by state UI programs. For more on the BEA methodology, see: Bureau of Economic Analysis. 2019. "State Personal Income and Employment: Concepts, Data Sources, and Statistical Methods."

industry.⁶⁸ As a result, this study utilizes the methodology advanced in the 2020 ICERES report: the use of estimated income underreporting rates by self-employed construction workers as published in IRS reports and IRS-sponsored research.

The authors of the 2020 ICERES study contend that income underreporting rates represent the best *available* proxy for the degree of illegality among self-employed construction workers. While their study provides much more background and justification, the general logic is that worker misclassification and off-the-books arrangements are, for the most part, efforts on the part of employers to conceal payments to workers and evade taxes due to the government. To be clear, the decision to report—or not report—income on tax returns is the responsibility of the worker. But employers who rely on cash-only payments—without tax documentation—effectively open the door for income underreporting.

The decision to consider 64% of the gap between worker surveys and payroll records as the appropriate method to estimate the degree of illegality is based on a number of factors. First and most importantly, a 2016 IRS report of the entire labor market, it was estimated that

⁶⁸ As an example, analyzing the *number* of tax returns to proxy legal self-employment falls considerably short in that this approach assumes that every person who files a tax return is operating entirely above board; conversations with industry stakeholders—and simple common sense—suggest that this is not true. The 2020 UBC study investigated this approach and found estimates of illegality to be so low as to be contradicted by numerous state UI audits that offer the best—albeit limited—direct evidence that researchers have about illegal activity in the construction industry. Similarly, an approach advanced by Parrott (2011) implicitly assumes that all self-employed construction workers are operating fully above board, an assumption that is similarly inconsistent with our many conversations with industry stakeholders and contradicted by a 2016 study in the academic journal *Public Budgeting and Finance*. For more, see: Ormiston, Russell, Dale Belman and Mark Erlich. 2020. “An Empirical Methodology to Estimate the Incidence and Costs of Payroll Fraud in the Construction Industry.”; Parrott, James. 2011. “Employee Misclassification in New York Construction—Economic and Fiscal Costs,” Proceedings of the 63rd Annual Meeting of the Labor and Employment Relations Association; Alm, James, and Brian Erard. 2016. “Using Public Information to Estimate Self-Employment Earnings of Informal Suppliers,” *Public Budgeting & Finance*, 36(1), 22-46.

64% of nonfarm proprietor income—which is subject to “little to no information reporting”—is not reported on tax forms; in contrast, only 1% of wages and salaries documented on W-2s is misreported to the government.⁶⁹ Considering that any worker not receiving a W-2 (i.e., not on an employer payroll) is technically considered self-employed, this 64% rate offers a baseline perspective about the degree of illegal labor market activity occurring among Nevada’s self-employed construction workforce.

The 64% benchmark of potential illegality is supported by an interpretation of the data presented by a 2016 study in *Public Budgeting and Finance*.⁷⁰ Combining perspectives with a separate study on the reported earnings of self-employed workers, the 2020 UBC study espoused that, using moderate assumptions, self-employed construction workers may be misreporting up to 56.5% to 65.2% of their income.⁷¹ A substantial proportion of that was non-reporting, while another piece was workers mistakenly reporting self-employment earnings as W-2 wages (i.e., a sign of earnings attributable to either misclassification as independent contractor or accrued while working off-the-books).⁷²

⁶⁹ For more, see: Internal Revenue Service. 2016. “Federal Tax Compliance Research: Tax Gap Estimates for Tax Years 2008-2010.” IRS Publication 1415.

⁷⁰ Alm, James, and Brian Erard. 2016. “Using Public Information to Estimate Self-Employment Earnings of Informal Suppliers,” *Public Budgeting & Finance*, 36(1), 22-46.

⁷¹ As summarized fully in the 2020 UBC study, perspectives of income underreporting rates among self-employed workers in the Alm and Erard (2016) study are open to multiple interpretations. While the 2020 UBC study identified 38.6% as its most conservative interpretation of income underreporting—and thus the benchmark for illegality among self-employed construction workers—that minimum was offered as a *lower-bound* with the knowledge that it was likely undercounting the number of workers affected by payroll fraud; how this relates to Nevada estimates will be explored later in this report. For more, see: Ormiston, Russell, Dale Belman and Mark Erlich. 2020. “An Empirical Methodology to Estimate the Incidence and Costs of Payroll Fraud in the Construction Industry.”; Alm, James, and Brian Erard. 2016. “Using Public Information to Estimate Self-Employment Earnings of Informal Suppliers,” *Public Budgeting & Finance*, 36(1), 22-46.

⁷² As discussed in the 2020 UBC study, it is open to interpretation on how self-employment income misreported as W-2 wages should be considered; in developing their ranges of possible estimates of illegality, the 2020 UBC study also acknowledged that misreported—instead of non-reported—income may be a sign of innocuous error and not necessarily illegality. Nevertheless, the scope of the income mistakenly reported as W-2 wages

The use of income underreporting rates to proxy illegal employment practices is hardly perfect; even the 2020 UBC report deems it a “blunt instrument” to measure illegality and may significantly underrepresent the degree of illegality in the market. The primary concern of using income underreporting rates is that just because a worker reports their income correctly and pays their taxes does not necessarily mean that their employment situation was legal under state and federal law (e.g., an employee falsely classified as an independent contractor using a 1099-MISC).⁷³ From that perspective, it is empirically possible that workers in *all 19,780 jobs* are engaging in some form of fraudulent activity, with 64% of all *income* going unreported to IRS. The authors of the 2020 ICERES report acknowledge these to be non-trivial concerns, however the authors of this study are comfortable with this methodology, as (a) other approaches have more substantial flaws and (b) this suggests that our estimates of illegality likely have some degree of conservatism baked into them.

Finally, it should be noted that the authors of the 2020 ICERES study actually used two proportions in estimating a range of the number of workers affected by misclassification or cash-only payments. In addition to 64%, that study also advanced an additional proportion (38.6%) that it deemed to be the *lower-bound* rate; this was generated by a more conservative interpretation of the 2016 study in *Public Budgeting and Finance*. The authors

gives a clear indication that a substantial amount would appear to be reflective of illegal employment structures such as misclassification or off-the-books employment.

⁷³ Another way that our approach may be undercounting the number of workers involved in payroll fraud is that the use of an overall income underreporting rate does not preclude the possibility that *every* self-employed construction worker engages in some underreporting that aggregates to 64.0%. While it is highly unlikely that every worker engages in fraud, this suggestion further demonstrates some level of conservatism in our approach.

of the current study did not advance the estimates using this 38.6% rate for multiple reasons. First, the 2020 ICERES study offered considerable warning to researchers about the ample methodological reasons that the 38.6% would undercount illegal employment; some of those reasons are offered above. On top of that, additional analysis by the current study's authors revealed research that has suggested that the American Community Survey may undercount the number of foreign-born people in the United States.⁷⁴ Given the number of foreign-born workers in Nevada's construction industry, this suggests that the ACS is likely undercounting total employment in the sector and, thus, underestimating the difference between total employment and legal wage-and-salary employment. These concerns were realized when an initial application of this lower-bound rate produced estimates of illegality so low (6.9% of industry employment) that two of this study's authors—who have been studying the state's construction industry for years—indicated that the estimates were not realistic. This was further supported by the fact that this projected rate was far below the estimates found in studies of other states. As a result, the authors of this study agreed that the use of the more aggressive—but still realistic—rate of 64.0% when estimating the scope of underground labor market activity was a far better estimator.

⁷⁴ Passel, Jeffrey S., and D'Vera Cohn. 2018. "U.S. Unauthorized Immigrant Total Dips to Lowest Level in a Decade," Pew Research Center, published November 27, 2018; <https://www.pewresearch.org/hispanic/2018/11/27/unauthorized-immigration-estimate-methodology/>.

Costs of Payroll Fraud: Introduction

To project the economic costs attributable to payroll fraud, this study relies on a variant of the methodology advanced in a 2019 report commissioned by the Attorney General for the District of Columbia and authored by economists Dale Belman (Michigan State University) and Aaron Sojourner (University of Minnesota). This approach was applied and further developed in the 2020 report advanced by the United Brotherhood of Carpenters in projecting the national costs of payroll fraud in the construction industry. The analysis in the current study directly applies the approach outlined in the 2020 UBC report to estimate the statewide economic costs of payroll fraud in the construction industry in Nevada, as well as the corresponding economic costs in Clark and Washoe Counties.

Costs of Payroll Fraud: Nevada

As a reminder, the economic costs of payroll fraud established in this study are calculated by multiplying the number of workers involved (from the previous section) by the per-worker cost. In order to develop the per-worker cost estimate, this study relies on similar assumptions, underlying data sources, and empirical approach as used by the Belman and Sojourner analysis. This includes the application of construction-industry data from the Employer Costs for Employee Compensation (ECEC) program administrated by the Bureau of Labor Statistics; these reports offer the national average per-hour rates for all types of

worker compensation for workers in the construction sector.⁷⁵ This work is complemented with Nevada-specific tax and contributions schedules where possible.

Following Belman and Sojourner's blueprint, this study starts by decomposing the pay of a worker in Nevada earning \$35,130 per year. What follows below is a more detailed explanation of the values found in Table 2 in the main part of the report:

- *Regular vs. Overtime and Premium Pay:* One of the defining characteristics of legal employment is that employees are entitled to overtime wage rates (i.e., time-and-a-half) if they exceed 40 hours of work in a given week; in contrast, higher rates for overtime are not required for workers misclassified as independent contractors. Further, regular employees are often granted a premium for working on holidays. The starting point of \$35,130, however, does not differentiate between regular, overtime and premium pay.⁷⁶ Fortunately, calculations derived from the ECEC reflect that 2.27% of construction workers' income, on average, is derived from the overtime and premium rates on a national basis (e.g., the "half" in "time-and-a-half").⁷⁷ Applying this to the worker in question, this means that \$34,331.06 was earned via regular rates with an additional \$798.94 earned from overtime and premium pay.

⁷⁵ This study relies on the ECEC rates for the construction industry from September 2018, available at: https://www.bls.gov/news.release/archives/ecec_12142018.pdf.

⁷⁶ This study assumes that workers' total of \$35,130 includes all tax-eligible income payments that find their way on workers' paychecks, including wages and salaries, paid leave, and supplemental pay.

⁷⁷ This number is estimated by adding up all tax-eligible income payments made to workers; from the ECEC, this would include the categories of wages and salaries, paid leave, supplemental pay. That sum for September 2018 was \$30.34 per hour. Of that, \$0.69 per hour was deemed to be from overtime and premium pay. Dividing \$0.69 by \$30.34 yields 2.27%.

- *Social Security and Medicare:* To be conservative, this study assumes that workers' \$35,130 in self-reported earnings represents *gross* annual pay. The employee will then have 7.65% deducted for Social Security and Medicare, a contribution otherwise known as the Federal Insurance Contribution Act (FICA) tax; this amounts to \$2,687.45 being taken out of employees' paychecks. The employer will also be required to pay an additional \$2,687.45 to cover its share of Social Security and Medicare without it showing up on the employee's pay stub. Removing the employee's share of FICA, this leaves the worker with \$32,442.55 in *net* annual pay.
- *Worker's Compensation:* While this rate may differ across trades and individual firms, the authors' correspondence with the Nevada Department of Insurance suggests that the average workers compensation premium rate in the industry is 6.96%. While this represents the "loss costs" and may be augmented by insurance companies, this study will use this rate as contractors' average costs of workers compensation coverage in order to maintain a conservative estimation strategy. Multiplying this rate by \$35,130, this suggests that the employer will pay \$2,445.05 in workers compensation costs to cover this employee.
- *Unemployment Insurance:* While the amount that employers must pay to fulfill its legal obligation to Nevada's unemployment insurance program also varies by trade and firm, the authors' correspondence with the Nevada Department of Employment, Training and Rehabilitation offers that the average UI rate in the state's construction industry is 3.04%; this rate was applied to the first \$30,500 earned by an employee

in 2018.⁷⁸ This leads to a projection that, across the state, construction employers would contribute \$927.20 to state UI funds for a worker who was paid \$35,130.

- *Modified Business Tax:* Employers in Nevada are taxed at 1.475% on wages after the deduction of health benefits paid by the employer and certain wages paid to qualified veterans.⁷⁹ Multiplying this rate \$35,130 equates to \$518.17 in annual MBT paid by a typical construction contractor.⁸⁰
- *Tax-Exempt Benefit Costs:* Workers' responses on the American Community Survey do not offer insight into the dollar value associated with employer-provided, tax-exempt fringe benefit costs, which include things like health insurance and pension funding. However, calculations from the ECEC suggest that, on average, construction employers spend \$17.73 on these fringe benefits for every \$100 paid to the worker on a national basis. While this may be true for the average worker, benefit packages are likely to be much smaller for those workers paid an entry-level wage. As such, this

⁷⁸ State-by-state DOL UI rates and taxable base wage levels for 2018 are located here: <https://oui.doleta.gov/unemploy/docs/aetr-2018.pdf>.

⁷⁹ https://tax.nv.gov/FAQs/Modified_Business_Tax_Information__FAQ_s/.

⁸⁰ Employers do not have to pay the MBT on the first \$50,000 of their collective payroll in a given year. This exemption would slightly lessen the required tax due by a construction employer that hires a small number of workers. However, incorporating this deduction in the calculation is complicated by the fact that there is no known information on the relationship between firm size and the use of fraudulent employment practices. While conversations with industry stakeholders suggest that misclassification and cash-only employment is a particular problem among the many small employers prevalent in the construction industry (who would not pay tax if hiring only a single worker), it is also well known that large and mid-size firms also engage in similar practices (who would pay the full tax of an additional worker given their payroll). In an attempt to explore the potential offset-per-worker that this \$50,000 threshold would impose on the per-worker costs in this study, the authors considered using the average Nevada construction employer. However, according to data from the BLS, the typical construction firm employs approximately 15 workers legally, meaning it would already be well beyond the \$50,000 payroll threshold and thus responsible for the entire 1.475% of the MBT due upon the hire of a misclassified independent contractor or cash-only worker. As a result, the full 1.475% was used in the calculation in this study.

study analyzes differences in the incidence of employer-sponsored health insurance in the ACS to suggest that a more appropriate fringe benefit rate for these workers should be \$16.45 for every \$100 paid to the worker.⁸¹ Multiplying this rate by \$35,130, this implies that employers would spend \$5,778.44 in insurance and pension benefits for this worker.⁸²

Aggregating all wages, benefits, taxes and required social contributions, this employee would cost a legally-operating employer in Nevada a total of \$47,486.30. Of those funds, workers would receive \$38,221.00 in after-tax earnings and fringe benefits. The remaining \$9,265.31 would be diverted to Social Security, Medicare, workers compensation and unemployment insurance programs.

⁸¹ The rate of \$17.73 is deflated by comparing the average rate of employer-sponsored health insurance across the entire industry (61.75%) against the rate for those who earn between \$30,000 and \$40,000 (57.28%); empirically, the calculation is $17.7320 \times 0.5728 / 0.6175 = 16.4484$. To be fair, using the industry-average ratio of \$17.47 to calculate the fringe benefit packages of lower-income workers would also have offered validity: the smaller benefit packages would be a product of working with a smaller base income. But this study was compelled to deflate the rate of fringe benefits at the lower-income range to account for the lack of union employers in this income range and for the sake of generating conservative empirical estimates.

⁸² This study ignores potential mandatory health insurance costs such as the opt-out of the Affordable Care Act. A vast majority of construction firms do not employ the 50+ employees that would make it legally obligated to comply with the law.

TASK FORCE ON EMPLOYEE MISCLASSIFIATION

NRS 607.219 Task Force on Employee Misclassification: Duties; annual report. The Task Force on Employee Misclassification created by [NRS 607.218](#) shall:

1. Evaluate the policies and practices of the Labor Commissioner, Division of Industrial Relations of the Department of Business and Industry, Employment Security Division of the Department of Employment, Training and Rehabilitation, Department of Taxation and Attorney General relating to employee misclassification.
2. Evaluate any existing fines, penalties or other disciplinary action relating to employee misclassification that are authorized to be imposed by a state agency.
3. Develop recommendations for policies, practices or proposed legislation to reduce the occurrence of employee misclassification.
4. On or before July 1, 2020, and on or before July 1 of each subsequent year, submit a written report to the Director of the Legislative Counsel Bureau for submission to the Legislative Commission. The report must include, without limitation, a summary of the work of the Task Force and recommendations for legislation concerning employee misclassification.

(Added to NRS by [2019, 3158](#))

TASK FORCE ON EMPLOYEE MISCLASSIFIATION SUBCOMMITTEES

NRS 607.2195 Task Force on Employee Misclassification: Authority to appoint subcommittee.

1. The Task Force on Employee Misclassification created by [NRS 607.218](#) may create a subcommittee to the Task Force for any purpose that is consistent with [NRS 607.216](#) to [607.2195](#), inclusive.
2. The Task Force shall appoint the members of the subcommittee and designate one of the members of the subcommittee as chair of the subcommittee. The chair of the subcommittee must be a member of the Task Force.
3. The subcommittee shall meet at the times and places specified by a call of the chair of the subcommittee. A majority of the members of the subcommittee constitutes a quorum, and a quorum may exercise any power or authority conferred on the subcommittee.

(Added to NRS by [2019, 3158](#))

AGENCY REVIEW AND POLICY SUBCOMMITTEE – NRS 607.2195

1. Evaluate the policies and practices of the Labor Commissioner, Division of Industrial Relations of the Department of Business and Industry, Employment Security Division of the Department of Employment, Training and Rehabilitation, Department of Taxation and Attorney General relating to employee misclassification. NRS 607.219
2. Evaluate any existing fines, penalties or other disciplinary action relating to employee misclassification that are authorized to be imposed by a state agency. NRS 607.219

LEGISLATIVE AND INDUSTRY SUBCOMMITTEE – NRS 607.2195

1. Develop recommendations for policies, practices or proposed legislation to reduce the occurrence of employee misclassification. NRS 607.219
2. On or before July 1, 2020, and on or before July 1 of each subsequent year, submit a written report to the Director of the Legislative Counsel Bureau for submission to the Legislative Commission. The report must include, without limitation, a summary of the work of the Task Force and recommendations for legislation concerning employee misclassification. NRS 607.219
3. Study industries and industry practices utilizing independent contractors and the need for independent contractors and workplace flexibility.

Independent Contracting Regulation: The Big Fish

Economic Reality Test

- An individual is an employee “if as a matter of economic reality, the individual is economically dependent on that employer for work”

Two Core Factors:

- The nature and degree of control over the work
- The worker’s opportunity for profit or loss

Three Guidepost Factors:

- The amount of specialized training or skill required for the work that the potential employer does not provide
- The degree of permanence of the working relationship, focusing on the continuity and duration of the relationship and weighing toward independent contractor status if the relationship is definite in duration or sporadic
- Whether the work performed is “part of an integrated unit of production.”

Independent Contracting Regulation: Future is Uncertain

Proposed rule – Sept. 25, 2020

Final rule – January 6, 2020

Effective Date – March 8, 2020

On Friday, the DOL proposed to delay the regulations until May 7, 2021, “to review and consider the rule”

- No litigation challenge, yet
- Will Congress act?
 - ✓ Congressional Review Act?
 - ✓ New legislation?
- Will DOL Act?
 - ✓ A regulation redo -- certain but slower change

Will California's AB5 be the National Standard?

A person is an employee, rather than an independent contractor, unless:

1. The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
2. The person performs work that is outside the usual course of the hiring entity's business.
3. The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.



Why is Independent Contracting Under Attack?

Critical Benefits and Protections Depend on Employment Status

- Minimum Wage & Overtime
- Family & Medical Leave
- Workplace Safety (OSHA)
- Civil Rights Laws
- Unemployment Insurance
- Workers Compensation
- Affordable Care Act
- Right to Unionize (NLRB)

Loss of Tax Revenue

- Studies estimate that the federal government loses between \$2.7 to \$4.3 billion annually
- States studies have shown millions in annual losses of tax, unemployment and workers' compensation revenue
 - Ohio, \$498 million
 - Pennsylvania, \$281 million
 - Massachusetts, \$278 million
 - Illinois, \$216 million

Avoid the IC Red Flags



- Do not classify individual workers or former employees as ICs
- Do not engage ICs to perform the same work as employees
- Do not engage ICs for full-time work over a long period of time
- Do not prohibit ICs from working for other companies
- Do not provide training, instruction or otherwise attempt to control how work is performed
- Do not provide tools or equipment
- Do not reimburse for business expenses
- Do not conduct performance reviews – limit review of IC work to safety, quality control and compliance with contract specs