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Before:  
The Senate Labor & Commerce Committee  
January 16, 2020

In favor of:  
SB 5565 An act relating to direct contractor liability for payment of wages and benefits

My role at the Pacific Northwest Regional Council of Carpenters focuses on researching construction industry issues, including wage theft, tax fraud, and other wage and hour topics. My work began in 2015 as a labor compliance investigator where I have since monitored developments in local, state, and federal employment practices.

During my time as an investigator, I personally witnessed complex cases of theft and fraud. Most of us take for granted that on pay day, we’ll actually get paid; that is not true for an increasing number of construction workers in Washington. If your employer steals from you, it is a long, litigious road with little promise of recompense at the end.

In Washington, misclassification and wage theft are increasing—between 2008 and 2014 the number of Washington employers misclassifying their employees rose from 5% to 14.4%. In the last five years, Labor and Industries has processed an increasing number of wage claims for construction workers, although only roughly half (58%) of that money is ever collected.

In early 2016, I received a case for seven workers who were not paid overtime, travel time, nor lunch breaks. When they were paid, they weren’t paid the agreed upon wage. After an eight month investigation, Labor and Industries found nearly $100k in wages due. The subcontractor appealed and settled over a year later for less than half the original findings. From the time of theft, these workers waited over four years to get half of what they were owed. Most workers can’t wait four years to get their paycheck.

The motivation for cheating contractors is straightforward—misclassifying workers means a cost savings of up to 30% by avoiding legally mandated tax and insurance expenses. Wage theft in the construction industry is particularly rampant due to the transient nature of job sites and the complicated relationships between workers and tiers of employers. These tiers are the result of a vicious cycle of

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1 Economic Consequences of Misclassification in the State of Washington, Harvard Law School, 2019
2 Data from Labor and Industries - Fellin 2019
low-bidding that incentivizes subcontractors to continually cut costs or risk losing work. The sad truth is that the lowest bid gets the job—not the one with the best reputation or most skilled workers, or even one that follows the law. Too often those cost savings come at the expense of unpaid workers.

In 2016, I received a case for two workers who were not paid overtime, or provided rest breaks. When they did pay, they paid in cash. To keep the workers off the books, the general contractor wrote checks to a subcontractor, a labor broker, who would drive to California to cash the checks, then return with the money to pay the workers. To Washington state, those workers never existed. I referred the subcontractor to Labor and Industries for tax fraud and wage theft, but by the time the investigation began, the company closed. The workers didn’t get paid, Washington didn’t get paid, but the general contractor still got the labor.

Law-abiding contractors and Washingtonians are left paying increased premiums and higher taxes. Sadly, this scheme is becoming the rule rather than the exception. Washington lost an estimated $152 million in unemployment taxes and $268 million in workers’ compensation and private self-insured insurance premiums between 2013 and 2017. These estimates likely understate the problem.

Beyond cheated workers and cheated governments is the impacted business community. In the same way many workers struggle to make ends meet, the same is true of law-abiding contractors that struggle to grow their business when they are continually under-bid and out-competed. It’s lawful contractors that are driven from the market—not the cheating contractor, not the project developer, and not even the owner. As it stands, we are asking the business community to choose between keeping their doors open and following the law.

Our state works hard to uphold our promises to workers, yet wage theft and fraud are complex issues, time-consuming issues. An average of 1.3% of Washington’s workforce is misclassified—that translates to 45,000 workers. The reality is that there will never be enough staff in our agencies, community organizations, or labor groups to adequately monitor the size and transience of the construction industry. We need a legislative solution that encourages self-policing if we are to make meaningful change in the fight against wage theft and in the lives of Washington’s workers.

For these reasons, I ask for your support in passing SB 5565.

Thank you.

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4 Economic Consequences of Misclassification in the State of Washington, Harvard Law School, 2019
6 Economic consequences of Misclassification in the State of Washington, Harvard Law School, 2019