THE CENTURY FOUNDATION

New Estimates: Misclassification in the Maryland Construction Industry

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January 2025

In late 2023, The Century Foundation (TCF) partnered with leading experts to publish state-by-state estimates for the number of workers misclassified in the construction industry and the costs borne to taxpayers and states from this pervasive illegal practice. Misclassification is used by unscrupulous employers to avoid paying their share of payroll taxes and to evade certain responsibilities and liabilities covered by employment law. In some industries, misclassification has become so extreme that it has gone underground, with employers not even formally classifying many workers even as independent contractors, but rather paying them through cash-only, off-the-books transactions or payments to intermediaries and shell companies.

Through misclassification and off-the-books payments, employers evade costs or shift them onto workers, which can result in lower tax revenues for states and public systems, as well as lower earnings and fewer protections for workers. Misclassification and off-the-books payments are widely used, with most states having more than one in ten workers in the construction industry misclassified in 2021, according to the most recent data available.

Since new data has been released, allowing for updated misclassification levels and costs to be estimated, I looked at the data for the state of Maryland to provide updated estimates on the costs and extent of misclassification. In 2023, an estimated 23,731 workers were misclassified or paid off the books in the construction industry.[1] This number represents roughly 11 percent of the total construction workforce in the state of Maryland.

[1] Author analysis of 2023 data across various sources including the American Community Survey and the Bureau of Labor Statistics. For full methodology, see the appendix at https://tcf.org/content/report/up-to-2-1-million-u-s-construction-workers-are-illegally-misclassified-or-paid-off-the-books/.

Costs of Misclassification and Off-the Books Payments in Maryland 2023	
Lost Overtime Pay	$27.4 million
Offloaded FICA	$82.3 million
Unpaid Unemployment Insurance	$9.1 million
Unpaid Workers' Comp. Premiums	$58.7 million
Lost Social Security and Medicare	$79.1 million
Lost Federal Income Tax	$32.1 million
Lost State Income Tax	$19.3 million

Source: Cost analysis by Russell Ormiston, Institute for Construction Employment Research, January 2024. For details of cost analysis methodology and definitions, see https://iceres.org/wp-content/uploads/2020/06/ICERES-Methodology-for-Wage-and-Tax-Fraud.pdf.

These new estimates underscore the need to ensure that employers are paying workers their rightful wages and offering the protections workers are entitled to under the law—especially as states aim to increase residential construction to address the housing crisis. Failure to ensure workers are classified properly not only harms workers but also places the cost burden onto states and taxpayers.

Acknowledgment: The author would like to thank Russell Ormiston for his research support and review.