

To: Joint Legislative Task Force on the Underground Economy in Construction

From: Carl Hammersburg, Program Manager
Fraud Prevention & Compliance
Department of Labor and Industries

Re: Sub-Committee Meeting 12/1/2008 on Stop Work Orders for Workers'
Compensation Violations

Date: December 4, 2008

Main Discussion Points (*Based on sample draft prepared by legislative staff Kathy Buchli*)

L&I Agency Feedback

- As written, this mandates stop work orders be issued when criteria are met. To be an effective tool, it needs to be permissive.
- This is broad in the criteria, and could potentially be applied to firms with legitimate confusion regarding the 7-part test for coverage in 51.08.181, or situations with a close call. Restriction to narrow criteria such as failure to obtain coverage at all (unregistered firms), or previous documentation of willful misrepresentation would prevent broad application.
- Florida statistics presented to sub-committee. Of 12,091 stop work orders issued by Florida since passage of their law, 11,453, or 94%, were for firms we describe as unregistered (no coverage, or coverage cancelled).
- Any law passed would not have application/results similar to Florida. Florida is not only much larger in terms of population/firms, but has 70 compliance officers for stop work orders alone, more than the entire audit program from L&I. In addition, many of the stop work orders relate to issues with a 3-way coverage system in workers' compensation and firms that had coverage, but were dropped by a private carrier, then caught before obtaining state coverage or other coverage.
- Make it clear that this only applies to state fund firms in the construction industry. (51.08.181 is construction only, but 51.48.020(1) applies to all industries.

- How is it determined that an unregistered firm is “in compliance” and a stop work order is pulled? Registration is not enough, as the agency does that on behalf of the firm.

Other Discussion

- The sub-committee acknowledged the differences between our state and Florida, and that any stop work order statute would be applied in only a limited number of cases.
- Florida model/statute versus California and Connecticut. Dave Johnson - Unregistered/failure to cover appears closer to California approach. There may be the opportunity to blend with Connecticut to look at misrepresentation of payroll/employment.
- Information presented by John Bratton regarding the range of changes to workers’ compensation coverage passed by Florida in 2003 which collectively resulted in a drop in rates by approximately 15%. Stop work orders were not the only influence.
 - John Bratton also addressed timing, and if stop work orders should be tied to a larger bill, potentially in the 2010 session. Alternatively, stop work orders should only be pursued in 2009 if L&I supports, and would use the tool – it must be enforced.
- Craig Munson – Connection between DSHS New Hire Register reporting requirements and stop work orders.
 - Potential for L&I agency staff use that information on a more real-time basis to determine if a firm appears to have recently hired staff we are encountering on a jobsite. (L&I response – this is a possibility to explore)
 - Should stop work orders be used for failure to report New Hires to DSHS? (L&I response – We cannot take on responsibility for enforcement of a regulation by another agency. Discuss current enforcement options with DSHS staff, as this may be a resource issue, not a statutory issue)
- Handling of determining compliance for unregistered firms. Discussed the potential for estimating unpaid taxes and securing payment prior to a full audit, and that these elements appear to be missing from statutes in other states, indicating it is handled through rules or agency policy.
- Discussion of sectors of construction where this would help. Is this a commercial or residential problem? Also noted that the Florida bill specifically exempts individual homeowners from receiving a stop work order on their home.

Next Steps

- 1.** Report to task force on December 4, 2008
- 2.** Business/Labor – Take back to respective groups for further discussion given the conversation on December 1st. Is there support for continuing with changes as discussed?
- 3.** Bill draft – There is no actual bill draft to react to. Could business or labor prepare one?
- 4.** Agency feedback – Based on the sample written by staff, can L&I provide some initial feedback – specific provisions that are of higher concern.
- 5.** If support exists, obtain approval for sub-committee work to continue.