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New Law Shuts Down Dozens Of Work Sites
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New Law Shuts Down Dozens Of Work Sites

State targets contractors cutting corners on workers' comp coverage

By THOMAS B. SCHEFFEY

A new, quick and powerful enforcement tool has been used by the state Department of Labor to close down more than 85 work sites in Connecticut since last year, as officials target construction contractors with inadequate workers' compensation insurance.

Many of those hit with stop-work orders have misrepresented employees as independent contractors, underestimated payroll figures (sometimes by paying workers off-the-books cash) or misrepresented employee duties so as to avoid proper calculation of workers' comp coverage needs.

So far, none of the actions by the Labor Department's wage and hour division have been appealed, and work sites have been permitted to reopen after contractors obtained adequate coverage.

Workers' compensation lawyer John Letizia, of New Haven's Letizia, Ambrose & Falls, said he's surprised the new law allowing the shutdowns, which went into effect in 2007, isn't being applied beyond the construction field. But Department of Labor officials predict they will

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soon be casting a wider net.

"In my 20 years of working in the labor and employment area, I have not seen a bill go in so quietly and have such a major impact on employers as this statute," Letizia said.

About half of the contractors hit with the stop-work orders are from out of state, including companies as far away as Georgia, Alabama, New Mexico and Arizona.

The law was enacted as Public Act 07-89 and amends the workers' comp statutes to allow fines of \$150 to \$250 a day if employers prevent Labor Department officials from speaking with employees. The employers, meanwhile, are required to show records that establish the number of employees covered by workers' comp and provide information about subcontractors as well.

If the law is ignored, it carries Class D felony penalties, which can result in imprisonment of one to five years. If a contractor illegally resumes work, a \$1,000 a day fine applies, said Gary Pechie, who heads the wage and hour division.

The Labor Department has two enforcement officers armed with laptop computers that can connect with the database maintained by the National Council on Compensation Insurance Inc., based in Boca Raton, Fla.

Insurance companies are pleased with the labor department's efforts, said Pechie. "The carriers, the big ones, are very thankful, because they're on the hook for a higher liability and aren't getting the premiums to cover that liability," he said.

Despite the fact that his agents are "diminutive" in stature, said Pechie, they command plenty of respect, and there have not been confrontations at the job sites. "If they're shut down, the contractors just get in their vans and drive off," Pechie said. "The pushback comes later. We get angry calls from the owner, the insurance agent, the lawyers for the company."

So far, some garages and gas stations have been the targets of enforcement, he said, but not restaurants, small businesses or factories. "As the weather gets colder, we'll turn our attention indoors. So far, there has been so much evidence of fraud in the construction field, that's where we've been focused," Pechie said.

Pechie said he plans to approach restaurant enforcement very carefully. "It's a big deal if a restaurant is shut down - it can be very costly," he said. He said he may allow an owner a day to get proper coverage before imposing a stop-work order at a restaurant. "But if a restaurant

has everybody being paid under the table, off the books, we're going to take action. We're going to manage how we implement this law very carefully."

Broad Dividends

Letizia said the increasing number of illegal aliens in the construction workforce has complicated the workers' comp coverage situation and made it harder to remedy.

"The reality is that many small contractors and subcontractors utilize illegal aliens or workers who do not have proper work visas or citizenship," he said.

Those undocumented workers are rarely included in workers' comp policies. The new state law is "an indirect way" for state officials to deal with the influx of illegal workers, said Letizia, "but it's the most effective way ever. There is no other way, in practice now."

In the construction field, other state and federal agencies have authority to enforce workplace violations, but the process is invariably slow.

"This small little workers' comp measure is actually accomplishing more than all these federal and state agencies seeking out violators," Letizia said. "And it's doing it effectively, immediately and without the involvement of lawyers and courts."

No other legal remedy "is going in and shutting them down without going through an arduous process of court, hearings and delays," Letizia noted.

An employer who has misclassified employees as independent contractors is typically short-changing workers, insurers and government tax collectors, Letizia said.

"Once you misclassify someone as an independent contractor, you're not paying your share of Social Security, you're not paying unemployment tax, you're certainly not paying any overtime and are skirting the workers' comp requirement," he noted.

Donald Shubert, president of the Connecticut Construction Industry Association, said that dishonest contractors are hurting the law-abiding ones.

"A solid contractor will make a large investment managing their safety program, purchasing adequate coverage," Shubert said. "When other employers skirt the workers' comp requirements, [the law-abiding contractor] is at a tremendous disadvantage in bidding."

Shubert said his association is normally wary of enforcement regulations that might have a negative impact on contractors. In this case, he said, "We're very pleased with the way the [Labor Department] has administered it."

Broader Net

Pechie, the wage and hour chief, said he has been working with his counterparts in other states to identify national contractors with a history of cutting corners on workers' compensation coverage.

The Connecticut statute, he said, is based on a 2003 Florida law. Pechie said he and others in his office went on sweeps with enforcement agents in Florida's workers' compensation division as a training exercise before enforcing the Connecticut law.

Pechie recently met with his enforcement counterparts in eight states through a labor clinic at Columbia University's School of Law, and said he would like to identify larger corporations that repeatedly hire contractors and subcontractors who flout the workers' comp insurance requirements.

A company that places more emphasis on the lowest possible bid than on compliance with worker safety laws may be taking shortcuts in other areas, Pechie said. "We're trying to develop a public policy issue around this. If they're cutting corners on workers' comp, how do we know they're not violating the building codes and other construction safety laws? You should not be building buildings, cutting corners."

Letizia, a workers' comp lawyer who represents employers, said the Connecticut enforcement program is broadly beneficial.

"It's amazing when something works this well," he said. "Are we screwing business? No. Of the places shut down, no one's even asked for a hearing. So everyone has paid the fine and remedied the problem. That's the ideal of a good regulation.

"Any legitimate contractor would support this law. It evens the playing field so the crooks in the industry don't have an advantage."*