



Washington State Department of
Labor & Industries

Underground Economy Task Force

July 31, 2025



Agenda

Item	Time
Dept. of Labor & Industries Presentation	10:00 – 10:20
Employment Security Dept. Presentation	10:20 – 10:40
Dept. of Revenue Presentation	10:40 – 11:00
Subgroups	11:00 – 11:30
Updated Report Timeline and Upcoming Meetings	11:30 – 11:40
Public Comment	11:40 – 12:00

Subgroups

- Investigate possible recommendations.
- Identify areas of consensus.
- Allow for minority reports where there is disagreement.
- Present all findings to the task force for review and consideration.

Subgroups

- General contractor liability for worker wages and benefits.
- Transparency
- Penalties, incentives, and enforcement.
- Worker Misclassification: Independent contractors vs. employees.
- Contractor training, education, and rating.
- Labor broker registration.

GC liability for worker wages and benefits

- **Summary:** Joint and several liability for unpaid worker wages and benefits for general contractors and subcontractors.
- **Members:** Sen. Conway, Antonio Acosta, Neil Hartman, Ryan Likkel
- **Staff:** Marissa Chávez, HDC; Michael Davis, L&I

Transparency

- **Summary:** May include (1) subcontractor disclosure, (2) interagency communication, and (3) improving communications between local and state jurisdictions.
- **Members:** Sen. Conway, Rep. Schmidt, Antonio Acosta, Neil Hartman, Lisa Stuurmans
- **Staff:** Marissa Chávez, HDC; Stacey Folsom, HRC

Penalties, incentives, and enforcement

- **Summary:** Investigate adjusting penalties and index them to inflation to enhance deterrence. Consider options for incentivizing compliance.
- **Members:** Sen. Conway, Neil Hartman, Lisa Stuurmans
- **Staff:** Stacey Folsom, HRC; Marissa Chávez, HDC

Worker Misclassification

- **Summary:** Focused on proper classification of workers as independent contractors or employees. May investigate (1) creating additional penalties for employee misclassification, (2) providing for private rights of action, and (3) state enforcement mechanisms.
- **Members:** Sen. Conway, Neil Hartman, Savannah Palmira
- **Staff:** Bridget Osborne, L&I; Andre Unicume, L&I

Contractor education and rating

- **Summary:** Augment Washington's contractor registration system with education/training requirements. Current system could be replaced with a contractor licensing system and the establishment of minimum requirements for the license or licenses.
- **Members:** Sen. Conway, Gina Carlson, Neil Hartman, Ryan Likkel, Savannah Palmira
- **Staff:** Reasa Pearson, L&I; Andre Unicume, L&I

Labor broker registration

- **Summary:** Require persons providing construction labor services to register as a business and with L&I, potentially in a similar fashion as Farm Labor Contractors.
- **Members:** Sen. Conway, Antonio Acosta, Neil Hartman
- **Staff:** Caitlin Gates, L&I

Updated Report Timeline

- Recommendations finalized by September 15.
- Draft report to task force for review by October 15.
- Feedback requested by November 1.
- Submitted to the Legislature by December 31.

Upcoming Meetings

- Subgroup Work Session
 - August 14, 10:00am – 12:00n
- Task Force
 - August 26, 10:00am – 12:00n
 - September meetings: 1st and 4th weeks

Public Comment



Underground Construction Economy Task Force

Independent Contractors

Brenda Fay – Employment Standards

Chuck Ziegert – Prevailing Wage

Scott Nielsen – Workers Compensation

Introduction

- Independent Contractor vs Employee determination can utilize different criteria in different programs and agencies
- Workers Compensation
- Prevailing Wage
- Minimum Wage Requirements and Labor Standards (AKA – Minimum Wage Act – MWA)

WC Independent Contractors - Preliminary

- Risk in all employment – covered workers
- Owner Exclusion
 - RCW 51.12.020
- Beyond Personal Labor
 - White Test
 - Substantial Equipment
 - Labor of Others

If Essence Is Personal Labor >>> 7 Part Test

- General (non-construction) – RCW 51.08.180 and 51.08.195
- Construction – 51.08.181
 - “7 Part Test”
 - Must meet ALL 7 parts of the test to be exempt

RCW 51.08.181 – “Worker” – Registered Contractor and Electrician Exclusions

For the purposes of this title, any individual performing services that require registration under chapter [18.27](#) RCW or licensing under chapter [18.106](#) or [19.28](#) RCW for remuneration under an independent contract is not a worker when:

- (1) The individual has been, and will continue to be, free from control or direction over the performance of the service, both under the contract of service and in fact;
- (2) The service is either outside the usual course of business for which the service is performed, or the service is performed outside all of the places of business of the enterprise for which the service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed;
- (3) The individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or the individual has a principal place of business for the business the individual is conducting that is eligible for a business deduction for federal income tax purposes other than that furnished by the employer for which the business has contracted to furnish services;
- (4) On the effective date of the contract of service, the individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting;
- (5) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract, the individual has an active and valid certificate of registration with the department of revenue, and an active and valid account with any other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington;
- (6) On the effective date of the contract of service, the individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business which the individual is conducting; and
- (7) On the effective date of the contract of service, the individual has a valid contractor registration pursuant to chapter [18.27](#) RCW, a plumbing contractor license pursuant to chapter [18.106](#) RCW, or an electrical contractor license pursuant to chapter [19.28](#) RCW.

7 Part Test – Part 1

(1) The individual has been, and will continue to be, free from control or direction over the performance of the service, both under the contract of service and in fact;

7 Part Test - Test 2

(2) The service is either outside the usual course of business for which the service is performed, or the service is performed outside all of the places of business of the enterprise for which the service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed;

7 Part Test – Test 3

(3) The individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, **or** the individual has a principal place of business for the business the individual is conducting that is eligible for a business deduction for federal income tax purposes other than that furnished by the employer for which the business has contracted to furnish services;

7 Part Test – Test 4

- (4) On the effective date of the contract of service, the individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting;

7 Part Test – Test 5

(5) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract, the individual has an active and valid certificate of registration with the department of revenue, and an active and valid account with any other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington;

7 Part Test – Test 6

(6) On the effective date of the contract of service, the individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business which the individual is conducting; and

7 Part Test – Test 7

(7) On the effective date of the contract of service, the individual has a valid contractor registration pursuant to chapter [18.27](#) RCW, a plumbing contractor license pursuant to chapter [18.106](#) RCW, or an electrical contractor license pursuant to chapter [19.28](#) RCW.

Prevailing Wage

“Public work” means all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein. All public works, including maintenance when performed by contract shall comply with chapter 39.12 RCW.

RCW 39.12.100 – Independent Contractors - Criteria

For the purposes of this chapter, an individual employed on a public works project is not considered to be a laborer, worker, or mechanic when:

- (1) The individual has been and is free from control or direction over the performance of the service, both under the contract of service and in fact;
- (2) The service is either outside the usual course of business for the contractor or contractors for whom the individual performs services, or the service is performed outside all of the places of business of the enterprise for which the individual performs services, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed;
- (3) The individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or the individual has a principal place of business for the business the individual is conducting that is eligible for a business deduction for federal income tax purposes other than that furnished by the employer for which the business has contracted to furnish services;
- (4) On the effective date of the contract of service, the individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting;
- (5) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract of service, the individual has an active and valid certificate of registration with the department of revenue, and an active and valid account with any other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington;
- (6) On the effective date of the contract of service, the individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business which the individual is conducting; and
- (7) On the effective date of the contract of service, if the nature of the work performed requires registration under chapter [18.27](#) RCW or licensure under chapter [18.106](#), 19.28, or [70.87](#) RCW, the individual has the contractor registration and contractor licenses required by the laws of this state including chapters [18.27](#), 18.106, 19.28, and [70.87](#) RCW.

- Ownership Exemptions WAC 296-127-026
 - Sole owners and their spouses
 - Any partner with 30% or more ownership
 - President, vice-president, and treasurer of a corporation with 30% or more ownership

Contactor requirements

- ...contractor, subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract...RCW 39.12.030
 - Comply with all prevailing wage requirements
 - Intent and Affidavit forms
 - Certified Payroll Reports RCW 39.12.0120
 - Capture hours but not wages for Owner/Operators

Resources

- Prevailing Wage law booklet
 - <https://www.lni.wa.gov/forms-publications/F700-032-000.pdf>
- Program contact
 - PW1@lni.wa.gov

Evaluating Worker Classification for Wage and Hour Investigations under Employment Standards

- Worker classification is not always black and white
- Each case must be evaluated individually, based on the specific facts and evidence provided
- The Economic Reality Test is used to guide the wage and hour investigations
- Wage investigations are based on the preponderance of evidence
- All six factors should be considered and weighed in combination with each other in each case.

RCW 49.46 – Minimum Wage Requirements and Labor Standards

- **Provides protections to workers that include the right to:**
 - Earn at least minimum wage
 - Overtime for hours worked over 40 per workweek
 - Earn tips and service charges
 - Paid sick leave
 - Protection from retaliation for exercising the above rights

RCW 49.48.083 – Wage Complaints – Duty of department to investigate

L&I's Authority

- L&I has the authority to investigate wage complaints filed by employees against employers
- Depending on the nature of the working relationship with the hiring business or individual, a worker may be classified as either an employee or an independent contractor

Employee or Independent Contractor

Key Legal Factors under the Minimum Wage Act

We will apply the six-factor Economic Realities Test when determining whether an individual is an employee or an independent contractor:

1. **Degree of Control** –How much control does the business have over how, when, and where the work is done?

The more control the business has over the worker, the more likely the worker is an employee.

Questions to consider:

- Did the hiring business determine the rate and method of payment for your services?
- Does the hiring business determine and control your work schedule?
- Does the hiring business decide when and where the work is performed?
- Does the hiring business prohibit you from working for competitors or other businesses at the same time?

Employee or Independent Contractor

Key Legal Factors under the Minimum Wage Act

2. Opportunity for Profit or Loss – Is the worker's income tied to their own business decisions and management.

*When the worker's opportunity for profit is not limited by a business, and the worker controls their own business expenses, the worker is more likely an independent contractor

Questions to consider:

- Do you consider yourself your own business entity?
- Do you have a business license?
- Do you lease/rent equipment or space from the hiring business?
- Do you control the business advertising or any other business expenses?

Employee or Independent Contractor

Key Legal Factors under the Minimum Wage Act

3. Worker's Investment – Has the worker made a substantial investment in equipment or materials?

*When the worker's investment in equipment or materials is substantial, the worker is more likely an independent contractor.

Questions to consider:

- Do you supply the attire, materials, tools, and equipment necessary to perform the job you were hired to do?
- Do you pay rent to the hiring business to use their facility?
- Do you create advertising or presentation materials such as business cards, flyers, etc.? Which logo is on the advertising?

Employee or Independent Contractor

Key Legal Factors under the Minimum Wage Act

4. Degree of Skill Required – Does the work require specialized skills the worker uses independently?

*When a worker brings a special skill to a job and employs those skills in an independent manner, the worker is more likely an independent contractor.

Questions to consider:

- Are you particularly skilled at the work or service you were hired to perform?
- Do you perform work of a different trade or service different from the services provided by the hiring business to their customers?
- Do you receive any on-the-job training by the hiring business? If so, how extensive is the training?

Employee or Independent Contractor

Key Legal Factors under the Minimum Wage Act

5. Permanence of Relationship - Is the work ongoing or project-based? Can the worker serve other clients?

*When a limited-term working relationship exists, the worker is more likely an independent contractor, unless the nature of the work is seasonal.

Questions to consider:

- Do you consider yourself your own business entity?
- Do you have a business license?
- Do you lease/rent equipment or space from the hiring business?
- Do you control the business advertising or any other business expenses?

Employee or Independent Contractor

Key Legal Factors under the Minimum Wage Act

6. Integral to the Business? – Are the worker's services central to what the business provides?

*When the worker's opportunity for profit is not limited by a business, and the worker controls their own business expenses, the worker is more likely an independent contractor

Questions to consider:

- Do you consider yourself your own business entity?
- Do you have a business license?
- Do you lease/rent equipment or space from the hiring business?
- Do you control the business advertising or any other business expenses?

All six factors should be considered and weighed in combination with each other in each case. Once we determine that an employment relationship exists and wages are owed, we may proceed with issuing a citation and notice of assessment and potentially personal liability.

Example Scenario 1 – Covered / Not Covered

- City of Tumwater decides to remodel an office building (100% City Funded)
- C.O.T. hires Brenda's General Construction who then subs to Scott's Flooring (a licensed contractor) to do the carpeting work
- Scott's Flooring subcontracts to 3 separate licensed contractors "A Flooring", "B Carpets", and "C Floors and More."
- The owners of A, B, and C do all of the work (all are single owners who own 100% of their company)
- "A Flooring" only does room 101, "B" Only does room 108, "C" only does room 111.
- A, B, and C each meet all parts of the 7 Part Test for Workers Comp and Prevailing Wage.
- For MWA purposes and based on limited information, A, B and C appear to be properly classified as Independent Contractors rather than employees. As long as each holds a business license, exercises control over their work, has the opportunity for profit or loss, are financially independent, and use their own materials and tools to complete specialized tasks that require a degree of skill. Additionally, their working relationship cannot be an "employment relationship."

Example Scenario 2 – Collections Actions

- In our scenario above, Scott's Flooring has some of it's own employees does not pay the workers and doesn't pay WC – how can we address
- Workers Comp - Prime Contractor Liability can be assessed up through the hiring chain to the GC or property owner
- Prevailing Wage
 - Wages and interest from violator
 - Retainage (5% / lien against) or payment / performance bond
 - Prime can pay on behalf of (POBO) - No DIRECT liability for GC
 - Liability to awarding agency if "Combined Form" is used.
- Employment Standards
 - WPA Investigation Final Citation >>> Revenue Agent – Direct Liability against Scott's Flooring
 - Possible Personal Liability against owner / responsible agent of Scott's
 - Can file against construction bond (up to 50%)
 - Withhold and Deliver
 - No direct liability to General Contractor or property owner

Hold for Data Issues

- Legal
- Data Security
- IT Systems / Different Platforms
- Analysis
- Identity Resolution



ESD Underground Economy



**Employment
Security
Department**
WASHINGTON STATE

July 31, 2025

ESD Employer Audit Team



ESD Employer Audit Team

- Five designated auditors who are trained with a focus on underground economy
 - Primary focus: uncover unreported labor, cash-only payrolls and misclassified workers
 - Audit methods: investigate through payroll record analysis
 - Collaboration: coordination with partners whenever possible
 - Education & outreach: educate employers of laws and regulations
 - Outcomes: recover unpaid wages, impose penalties and reinforce contractor licensing requirements

What methods does ESD Use to verify workers?



Independent Contractor Test/Exemption Testing

- ESD follows RCW 50.04.145
 - All seven parts of the test must be met to be considered exempt.
 - Paid Leave follows similar testing RCW 50A.05.10

- ✓ Freedom and Control
- ✓ Outside client's business scope or location
- ✓ Independent established business
- ✓ Responsible for IRS expense filings
- ✓ Active state tax registrations & UBI
- ✓ Own separate books and records
- ✓ Valid contractor license/registration

- Auditors conduct a thorough analysis of all reported expenditures to identify instances of covered employment and establish the classification of the individuals performing the work.

How does ESD discover work?



Missing Reports:

When employers fail to submit required reports, the system initiates a placeholder filing that triggers an audit review. This process often prompts direct contact from auditors, encouraging employers to comply and submit missing information—sometimes resolving the issue without a full audit.

Blocked Benefit Claims:

When a claimant reports working for an employer who has not submitted corresponding wage data, it may prompt automated audit creation based on reporting thresholds. Patterns in these claims often initiate further review, and tips generated through these observations can lead to deeper investigations to uncover potential unreported work.

Tips/Leads:

Tips and referrals reported from the field, the public or internal sources can uncover discrepancies or patterns in employer behavior. These tips/leads help flag employers that may warrant deeper investigation, allowing auditors to focus efforts where there is the greatest potential for unreported worker or noncompliance.

Thank you

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Underground Economy

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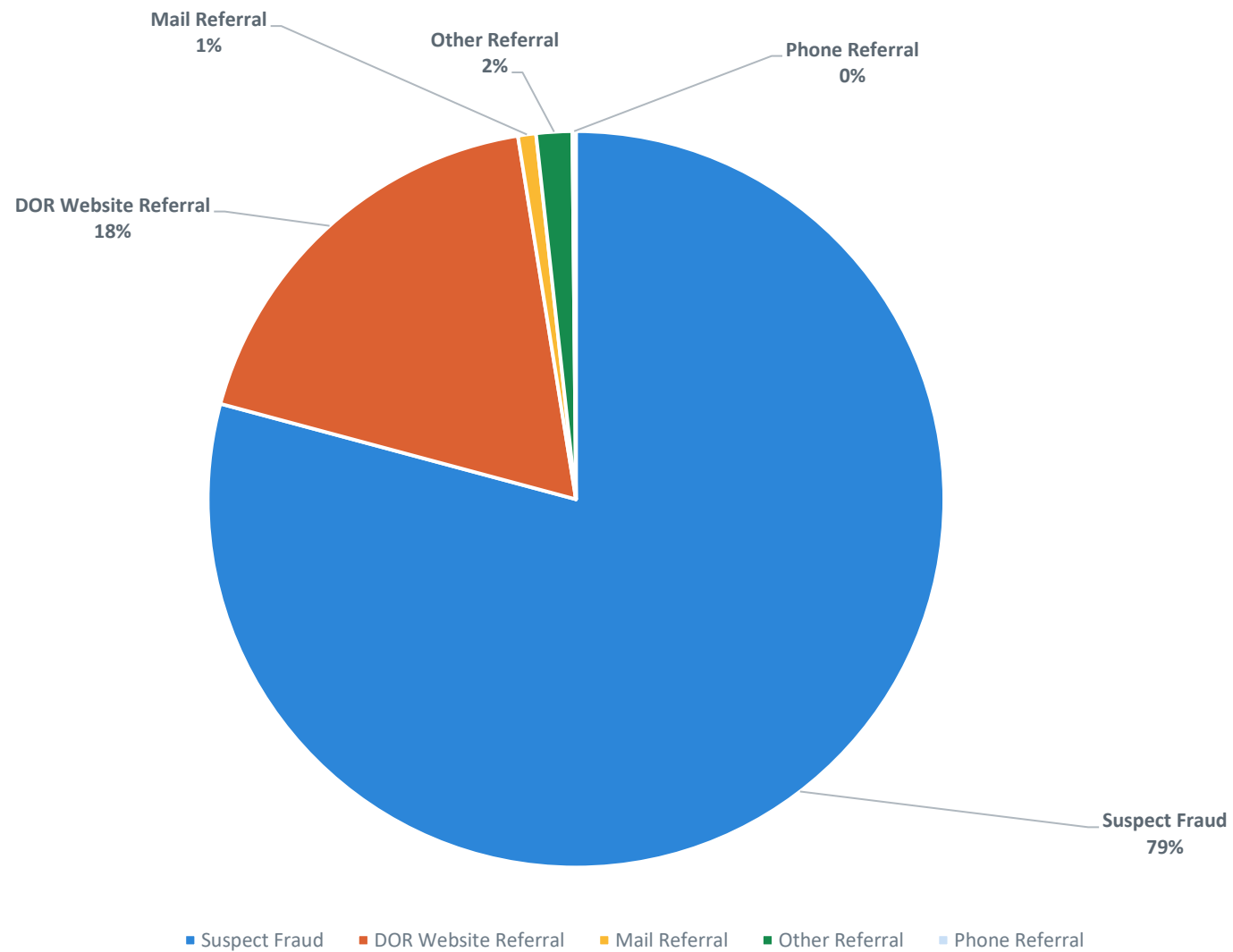
(360) 534-1537



FY 2024 – Fraud Reporting and Investigation



- The Department operates a Tax Discovery program to generate and investigate leads for non-compliant business.
- We received and processed 1,250 fraud referrals from various sources, including:
 - [SuspectFraud.wa.gov](https://suspectfraud.wa.gov)
 - Inter-agency referrals
 - Fraud Hotline
- In FY 24, this program opened 3,832 cases overall and issued 846 assessments for unpaid taxes.



FY 2024 – Involuntary Registration Highlights



- The Department investigated 452 businesses that appeared to be operating without a tax registration in FY 24
- 427 were registered through the Tax Discovery program.
- 174 were found to owe taxes.

FY 2024 – Tax Discovery Collections

- Assessed over \$80 million through the Tax Discovery program
 - Over \$29 million for in-state businesses.
 - Over \$51 million for out-of-state businesses.
 - Of the assessed taxes, 44% came from state and local retail sales tax and 52% were from B&O
 - 6% retailing B&O
 - 21% wholesaling B&O
 - 25% service and other B&O

Interagency Coordination

- No centralized tracking system between agencies
 - Cannot identify contractors who have violations with multiple agencies
- If we identify substantial violations that may impact LNI or ESD, we reach out immediately
 - Informal process- typically an auditor or manager reaches out via email
 - DOR reports criminal cases to the AGO (\$5000 or more of RST)



Questions?