



SHEET METAL AND AIR CONDITIONING CONTRACTORS' NATIONAL ASSOCIATION

February 5, 2010

The Honorable Senator/Representative
Washington, DC

Dear Senator/Representative:

The Sheet Metal and Air Conditioning Contractors' National Association (SMACNA), is supported by more than 4,500 construction firms engaged in industrial, commercial, residential, architectural and specialty sheet metal construction throughout the United States. As President of SMACNA, I want to express our strong support for H.R. 3408/S. 2882, The Taxpayer Responsibility, Accountability and Consistency Act of 2009. This long overdue and narrowly designed legislation would prevent much of the widespread willful worker misclassifications as well as add greater legislative clarity for a far smaller group of employers who mistakenly misclassify their workforce. We also would note that the Obama Administration's has shown leadership on this issue and called for independent contractor reform in the recently released FY 2011 Budget.

The misclassification of employees as independent contractors has long been epidemic in the construction industry and degrades the quality of the workforce and their economic security. The practice hurts lawful employers, working families, and federal, state and local governments which lose significant tax revenues as employee withholding laws are evaded. **Misclassification costs the government and the taxpayers, at all levels, substantial, uncollected revenues.** Governments lose Social Security taxes, unemployment insurance taxes, and income taxes. There are broader social consequences because less revenue means less money is available for vital federal, state and local services and programs.

SMACNA employers contribute to employee economic security and fully comply with all workforce protections and legal requirements. Employers who misclassify their workers reap substantial savings and gain unfair competitive marketplace advantages by avoiding payment of Social Security and Medicare taxes, payment of federal and state unemployment insurance taxes, and payment of workers' compensation premiums. Ethical employers too often compete in both the public and private market against unscrupulous employers who deliberately misclassify their workers as independent contractors and who otherwise do not fully comply with federal and state laws and regulations.



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Important legal obligations including prevailing wage, workers compensation, EEO, family and medical leave, overtime, unemployment compensation, minimum wage, Medicare and other labor and employment law adhered to by lawful contractors are irrelevant to the employers misclassifying workers. Even worse, employees misclassified as independent contractors are left without the benefit of economic, workforce and legal protections to which they are fully entitled.

In today's economy, good paying jobs with healthcare and related benefits are already scarce in construction and other industries. However, workers classified as independent contractors are even less likely to receive any type of health and pension benefits, including workers compensation should they be injured on the job. They are burdened with paying the full portion of Social Security and Medicare taxes yet numerous reports document that they are not making these payments, assuming they **are** employees and that their employee contributions are being made by the employer. Often these misclassified workers are unaware of the employment laws altogether for a variety of reasons ranging from language difficulties, workplace inexperience and many others.

SMACNA supports, without reservation, both H.R./S. 2882 and their efforts to reform Section 530 of the tax code and eliminate the ability of employers to rely on industry practice as a basis for "safe harbor" for those intentionally misclassifying employees as independent contractors. We ask that you express your support for this important reform legislation and urge that you become a cosponsor of H.R./S. 2882. For decades SMACNA member firms have called for Congressional action to strictly limit the abuse of independent contractor status and willful misclassification of employees. We offer to continue working with all Members of Congress toward that long overdue outcome.

Sincerely,



John Lindemulder
President
SMACNA, Inc