Good morning everyone, I am Dennis O’Brien, President of William J. Donovan company out of Philadelphia, Pennsylvania and I’m a member of the Sheet Metal and Air Conditioning Contractors’ National Association representing approximately 3500 contributing contractors nationwide, most of whom are small employers.

I was so pleased to be invited here today, mainly because I know so many people think of misclassification just as a problem for workers who are harmed by business owners who intentionally misclassify them as independent contractors.

While it is true, workers are harmed, it is also true that misclassification hurts employers like me.

This is an important issue to me personally because Donovan has been in business almost 115 years – 115 years of doing business as a good corporate citizen.

We’re not a big company and profit margins are small but I’m proud to say that I am able to achieve my business goals and still provide my workers with good pay, benefits and give them the worker protections they deserve as hard-working employees.

I want Donovan and companies like ours to continue for another 115 years.

For a small company like Donovan – we employ about 120 people in the field and in the office -- it is getting harder to compete against business owners who game the system. By the way, though, this is not just an issue for small contractors, there is a large contractor in Atlanta, who employers hundreds of people, who is losing bids due to misclassification.

You know, in construction, you compete for every new job. You estimate what it will cost you to do the job. Others are bidding for the job too, which is fine, as
long as they are following the same rules you are! But today, too many are not following the same rules.

Unethical companies are more than willing to misclassify workers to save 30 percent or more on their labor costs. It is a business model. Sadly, they don’t misclassify just to win the bid, but they also do it to put more money in their own pocket. Really, it is payroll fraud.

Those companies obviously don’t worry about the well-being of their employees like I do.

I like to say... employers don’t just have rights; they have responsibilities too.

Employers shouldn’t be trying to evade worker protections by misusing independent contractor classification. Every worker should be able to count on a safe work environment, even if it is a construction site; they should know they will receive pay for overtime hours worked, allowed leave for military duty or for family and medical leave. For example, one of my sheet metal workers is expecting a baby within the next few weeks and her position will be available to her when she returns to work.

Nowadays, construction schedules are so compressed, that I am often required to ask our employees to work overtime to ensure our ductwork is installed prior to the next trade beginning their work. As a lawful employer, I have to pay overtime at time and a half. Businesses abusing independent contractor status or paying workers under the table, see a big cost advantage when they avoid overtime pay.

As a responsible employer, when I bid, I have to calculate not just wages, but all the things Laura mentioned earlier, Social Security and Medicare taxes, workers compensation, and unemployment insurance.

By the way, as an example, my cost, last year, just for unemployment insurance was about $150,000.
Employers have the additional responsibility of processing payroll and forwarding related taxes. Properly classifying employees assures federal, state and local governments that taxes are withheld and remitted. When employers misclassify workers, none of this happens.

My point is, even a reputable, 115-year-old company, doing high tech work, has to fight for bids every day against companies that don't pay any of those things and don't worry about any worker protections.

Because I also happen to be the President of SMACNA of Pennsylvania, I can add that as an association, we have been forced to try to address the problem of worker misclassification at the state level too. Unethical contractors are gaming the system and honest contractors like me are losing bids.

It has been mentioned, but it is not just a “fair playing field” issue either. Taxpayers, and federal, state and local governments lose tax revenue and pick up the tab for a variety of social services. Our state legislators have recognized this, and we have made some progress in the state, but it is not enough.

We know it is critical that this issue be addressed at the federal level and I’m pleased to note that as important step in this fight, SMACNA will be supporting...

1) The Payroll Fraud and Prevention Act, by Congresswoman Alma Adams, Chair of the Subcommittee on Workforce Protections, of the Committee on Education and Labor and sponsored by Rep. Brian Fitzpatrick, from my home state of Pennsylvania,

I hope your bosses will join in the fight by supporting and cosponsoring these bills.

Thank you.