

Employees pay the price of workers' comp neglect

Thousands of businesses fail to purchase insurance, but the state stands idle

BY MANDY LOCKE AND DAVID RAYNOR

mlocke@newsobserver.com, draynor@newsobserver.com

Tens of thousands of North Carolina businesses are putting their employees at risk by failing to buy workers' compensation insurance, a violation of the law that's driving some injured workers to destitution and businesses into bankruptcy.

Though the state has the power to crack down on these businesses, it doesn't act until a worker is hurt and left without a paycheck and with mounting medical bills. The state Industrial Commission rarely enforces penalties, and efforts to collect money for health care can drag on for years.

The Industrial Commission, charged with overseeing workers' compensation claims and enforcing that employers keep coverage, has never tried to figure out which businesses are shirking their responsibility.

A News & Observer analysis of the N.C. Rate Bureau's database of policies written for companies required to have workers' compensation found that the problem is widespread. Insurance carriers writing policies in North Carolina reported that they covered 140,472 businesses. Another 117 large companies are certified as self-insured.

The N.C. Department of Commerce says as many as 170,000 companies with four or more employees operate in the state. Dun & Bradstreet, a reputable business tracking organization, counts about 172,000 businesses headquartered in North Carolina with at least three employees; that doesn't count the branches of businesses in the state that are headquartered elsewhere.

Businesses with three or more employees are required to buy insurance or certify with the state that they can cover the costs of employees' injuries.

Since the 1930s, state law has put the burden of any



TAKA AKI IWABU - tiwabu@newsobserver.com

Danny Allred, 59, checks the pain in his neck at his home in Hillsborough. He has been permanently disabled since 2006, when he was crushed by a load of gravel in a work-related accident. His employer had no insurance, and Allred struggles to make ends meet.

workplace injuries on employers and the insurance they purchase. To make sure injured workers get the care they need quickly, the state has established laws to specify exactly how much is owed for degrees of disability and missed wages.

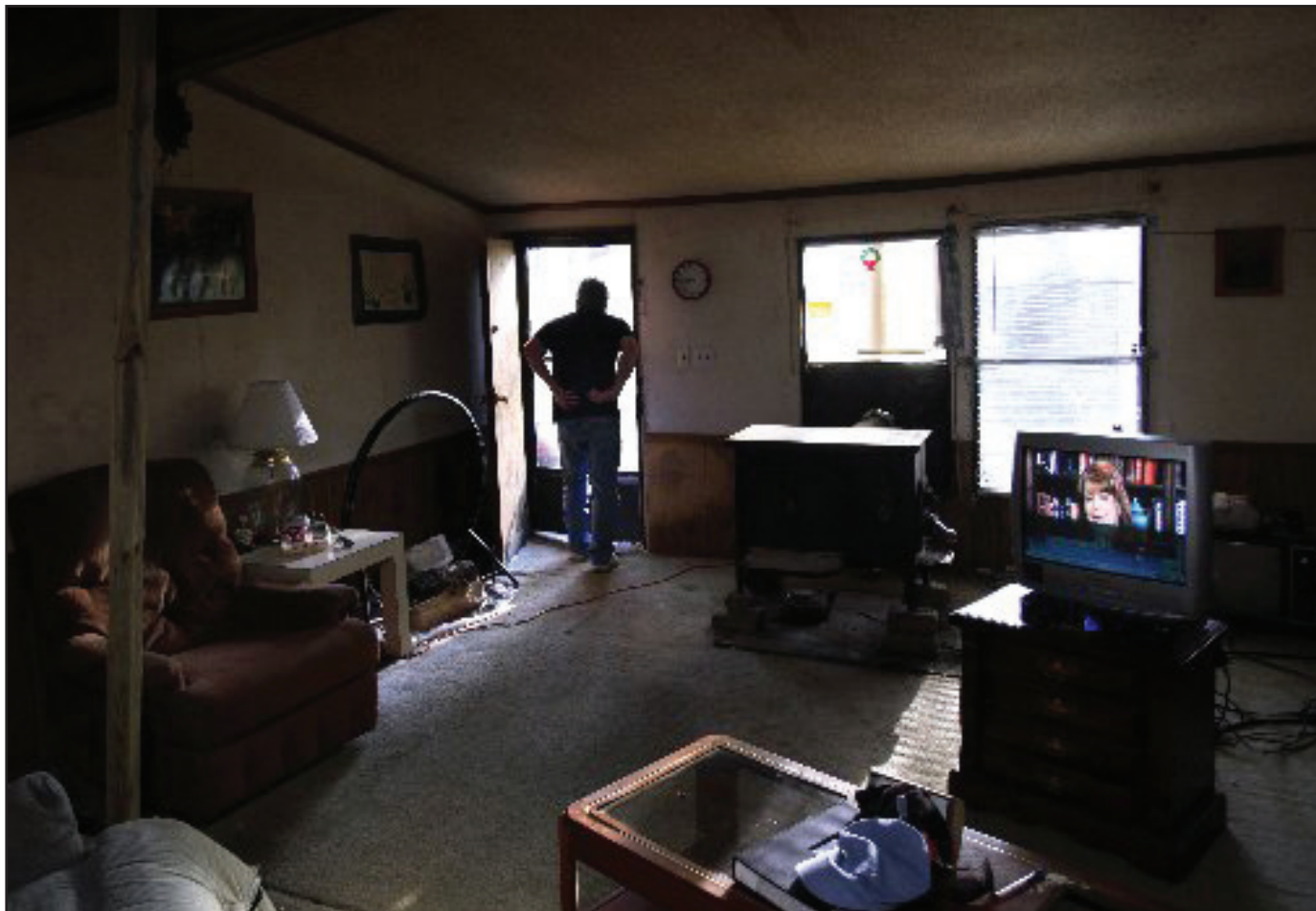
By law, employers are required to certify with the Industrial Commission that they have insurance, but the commission doesn't ask for that information. Instead, it contracts with the Rate Bureau to provide a database of businesses that have purchased insurance.

The commission makes no effort to figure out which employers don't have protection. It only learns of non-compliant companies when a worker has been hurt and appeals for help.

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TAKAAKI IWABU-tiwabu@newsobserver.com

At his mobile home in Hillsborough, Danny Allred stretches his back, which was injured in 2006. Allred's employer had canceled its workers' comp insurance, and Allred has so far been unable to collect the money that the Industrial Commission says he deserves.

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No easy fix?

From July 2010 to July 2011, 378 cases involving employers without workers' compensation had to be scheduled for a hearing by a judge at the Industrial Commission, which means that attempts to settle the claim failed.

Many of the employees worked in dangerous jobs, such as construction or roofing. Some of the companies were small and struggling; others acknowledged they needed the insurance but decided against it to cut costs.

Many of the workers suffered debilitating injuries that will forever keep them from the manual labor on which they built their livelihood. Sometimes, the claim is simple: a teenager who needed her finger stitched after an accident with a meat slicer at the sandwich shop where she worked.

Last session, the state legislature, in a sweeping bipartisan effort, rewrote portions of the workers' compensation law. Lawmakers trimmed amounts and length of

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payments due to workers to help drive down the cost of workers' compensation insurance. The changes did not address employers who don't buy insurance.

Speaker Pro Tem Dale Folwell, a Winston-Salem Republican who helped push the bill, said he was startled by the apparent number of uninsured employers and said it must be addressed.

"This highlights that there's a lot of work to do," said Folwell, who noted that the businesses that don't buy insurance have a competitive advantage over those who do. "Our challenge is to make the cheating less rewarding."

Mike Carpenter, executive vice president of the N.C. Homebuilders Association, said his group has worked for years to try to clamp down on those in the construction industry without workers' compensation. Homebuilders pushed successfully for a law in 1992 that requires builders to show proof of insurance to get a building permit.

"It's been a problem for a long time, and if there were an easy fix, I have to believe it would have been fixed a long time ago," Carpenter said.

The head of the Industrial Commission's fraud unit, charged with investigating cases of uninsured employers, said the unit focuses on collecting money for injured workers instead of punishing employers.

"What I'd say is we make a good-faith effort given the resources we have," said Sam Constance, chief investigator for the unit.

Industrial Commission Chairwoman Pam Young, appointed by former Gov. Mike Easley to head the commission in 2007, declined requests to be interviewed.

Unable to work

Danny Allred made his living roofing, mulching and hauling loads of debris since he dropped out of high school. Now, at age 59, Allred's back is so warped he cannot bend over to tie his shoes.

Allred's doctors and a deputy commissioner at the Industrial Commission have declared him permanently



TAKAAKI IWABU- tiwabu@newsobserver.com

Sandra Perkins stands by her husband, Danny Allred, as he stretches his back to ease pain. Medicaid pays for muscle relaxers, and food stamps help buy groceries. But Allred, like many North Carolina workers, has not been able to collect workers' comp.

unable to work since he was crushed by a load of gravel during a work-related crash in 2006.

Earlier that year, Allred said a member of his Hillsborough church, Ted Wright, offered him a job with his landscaping crew. Allred put Wright's business card in his wallet and said a prayer of thanks for his luck finding a job. On the card, right under T&J Services, are the words "fully insured."

Wright and business partner John Summey, however, had canceled their workers' compensation policy months before Allred started. The company did not offer health insurance.

"It was bad timing," Summey said in an interview. "We both knew we needed insurance ... but we were scraping it together to make ends meet."

Deputy Commissioner James Gillen ruled in 2011 that the company owners owe Allred \$211 a week in wages from the time of the accident until he can work again.

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So far, that amounts to \$61,711. They also owe \$40,000 to UNC Hospitals for Allred's care after the accident. Wright and Summey, who initially tried to settle the claim, appealed the decision to the full commission and await an opinion.

Wright, through his attorney, declined to comment.

For Allred, each day is a struggle. He perches on the edge of his recliner, the only way he can sit without suffering back spasms. Medicaid pays for the muscle relaxers he needs to be limber enough to change his clothes each morning.

He eats with the help of food stamps, and Orange County Social Services helps pay his electric and water bills most months.

About once a week, Allred said he sees a group of workers for Wright pass his trailer on their way to mow a yard. Sometimes, Allred said, they honk and wave.

Enforcement is lax

The Industrial Commission had the power to try to put Summey and Wright behind bars. Knowingly failing to carry workers' comp insurance is a Class H felony.

The commission's six-person fraud team opened a case against the men, as it did with hundreds that year. After presenting the case to a local prosecutor, the fraud team closed the case without charges.

Jim Woodall, district attorney in Orange County, said his assistant believed the owners accidentally let the policy lapse and were seeking another. The business owners had testified before the commission that they canceled the policy because they couldn't afford it.

Since January 2011, three uninsured employers have been arrested. About 200 of the criminal investigations were closed in this time, while 95 were cleared because the employer paid the injured worker or bought insurance.

Employers without workers' compensation can be fined \$100 for each day they are without coverage and can also

WHAT IS WORKERS' COMP?

Workers' compensation came about in the 1930s to ensure that businesses were responsible for workers hurt on the job. The states put limits on what could be paid to workers for injuries and absences.

In North Carolina, businesses with three or more employees are required to buy insurance or certify with the Department of Insurance that they have enough assets to self-insure.

When an employer doesn't buy this insurance, the injured worker could sue the business owner. Most, however, go to the state Industrial Commission, which can order uninsured employers to pay what workers are due for their injuries.

In fiscal year 2011, the commission dealt with 62,409 workers' compensation claims. The majority, 75 percent, were settled through mediation.

be ordered to pay in fines the same amount they owe the employee and medical providers.

But the commission collects little. Of the 225 uninsured employer cases the fraud unit pursued since January 2011, it collected \$30,500, amounting to an average of \$135 per case. The commission can, and most often does, waive the penalty if the employer settles with the injured worker.

Tracy Curtner, an assistant attorney general assigned to the fraud unit from 2006 to 2011, said the commission was loath to pursue collection of payments and fines. "There are drawers full of uncollected judgments going back for years," said Curtner, now in private practice.

Uninsured employers have been a problem at least since 1997, said state Sen. Doug Berger, a Democrat from Youngsville and a former deputy commissioner.

The commission has worked some over the years to address the problem, Berger said. But he said it has done nothing to ensure that employers carry insurance before an accident happens.

Berger said that he routinely used his power as a deputy

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commissioner to hold an employer in contempt of court until it paid. Sometimes that meant the threat of jail.

Buck Lattimore, chairman of the commission from 2000 to 2007, said the commission backed away from using contempt as a tool to order businesses to pay up after he stepped down as chairman.

"I thought we should use every tool we had to get payment," he said. "But, some (commissioners) thought we were overstepping our bounds."

Contempt statistics over the years are unavailable, but the fraud unit did collect more civil penalties against uninsured companies in many of the years in Lattimore's tenure, records show. The commission rarely uses its authority to enforce payment now, plaintiffs' lawyers say.

Lattimore said compelling businesses to buy insurance is tough.

"How do you even find these people?" Lattimore asked. "The people who skip out on insurance aren't the people who are in plain sight. They don't buy business licenses or pay their taxes."

Failing to check

When Summey and Wright, owners of the landscaping company where Allred worked in 2006, canceled their workers' compensation insurance on Sept. 7, 2005, they mailed a letter to Liberty Mutual Insurance.

Liberty Mutual was then obliged to alert the N.C. Rate Bureau. The Rate Bureau then provided the information to the Industrial Commission, as it does with every workers' comp policy written, renewed or canceled.

While the commission uses the database to find the proper insurer when a claim is filed, no one at the Industrial Commission monitors the cancellations, even when it's a company it has previously threatened with fines and discipline to purchase insurance.

"I'm sure we could do a query in our system to come

up with a list of all policies that have been canceled," said Sue Taylor, director of insurance operations for the bureau. "We've not been asked to do that."

Lawyers who represent uninsured employees wish the state would do more to send a message to employers.

"The commission doesn't seem to want to enforce its orders and use the power it has," said Bob Bollinger, a Charlotte lawyer who represents several injured workers who have not been paid despite orders by the commission.

Some states have done more to help cover workers employed by uninsured businesses. In South Carolina, insurance companies pay into a fund used to cover costs for such cases. In New York, state officials in 2008 raided construction sites and stopped work by companies without insurance.

In North Carolina, these workers are often on their own to collect payments from their old bosses. The order from the Industrial Commission is simply a sheet of paper.

To get money, unless it's handed over voluntarily, the worker must get a judgment issued in state court or persuade the Industrial Commission to hold the company in contempt and demand payment. Collecting is often a futile effort, attorneys say.

Summey, the landscaping company owner, said he has nothing to offer Allred, even if he loses on appeal and is ordered to pay. Summey, who parted ways with Wright soon after Allred's accident, said he'll likely end up bankrupt.

Summey said that he has taken a minimum wage job with the city of Durham and that nothing he owns is worth much.

"It's not a happy situation at my house, either," Summey said. "I just hope we can put this behind us."

Locke: 919-829-8927

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Romney acted as CEO for Mass.

Former governor described as direct, detailed, aloof

By LESLEY CLARK
McClintock Newspapers

BOSTON In 2006, 12 tons of concrete dropped from the roof of a tunnel on a major Massachusetts artery, killing a woman and terrifying drivers. Gov. Mitt Romney cut short a New Hampshire vacation and raced back to work.

The Republican governor promised a top-to-bottom review of the project, pressed for emergency legislation and the ouster of the turnpike's director. He held press conferences and briefed lawmakers, displaying a flare for detail.

"He called me in for a meeting. I figured there'd be engineers and contractors, but the governor did the whole show," said state Sen. Steven Badour, the Democratic chair of the transportation committee. "He walked us through what had transpired and why. What had happened to the epoxy that was supposed to be holding up the ceiling. It was impressive."

The response was vintage Chief Executive Officer Romney. Focused and direct, an approach he honed at the private equity firm Bain Capital and applied to the governorship — with mixed results.

Romney's campaign touts what it says was his success at turning the state's economy around — patching a massive budget shortfall while keeping a campaign promise to not raise taxes. And there's his signature achievement: working with Democratic lawmakers to pass the state's landmark health care law, which he signed in 2006 with the man he'd tried to unseat in 1994, Sen. Edward Kennedy, at his side.

Lawmakers and political observers, though, paint a portrait of a chief executive who was uncomfortable with Massachusetts' clubby politics and never seemed invested in the state.

"Ultimately he's a disappointment because of the great expectations," said Thomas Whalen, a political historian at Boston University. "The general attitude was, this was a stepping stone for him for

SEE ROMNEY, PAGE 15A

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Darryl Allred, 59, checks the pain in his neck at his home in Hillsborough. He has been permanently disabled since 2008, when he was crushed by a load of gravel in a work-related accident. His employer had no insurance, and Allred struggles to make ends meet.

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Tens of thousands of North Carolina businesses are putting their employees at risk by failing to buy workers' compensation insurance, a violation of the law that's driving some injured workers to destitution and businesses into bankruptcy.

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The Industrial Commission, charged with overseeing workers' compensation claims and enforcing that employers keep coverage, has never tried to figure out which businesses are shirking their responsibility.

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SEE NEGLECT, PAGE 15A

What is workers' comp?

Workers' compensation came about in the 1930s to ensure that businesses were responsible for workers hurt on the job. The states put limits on what could be paid to workers for injuries and absences.

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When an employer doesn't buy this insurance, the injured worker could sue the business owner. Most, however, go to the state Industrial Commission, which can order uninsured employers to pay what workers are due for their injuries.

In fiscal year 2011, the commission dealt with 92,409 workers' compensation claims. The majority, 75 percent, were settled through mediation.

Inside

Two cases: Widows of men killed in workplace accidents fall of struggling to get by with no insurance. **3A**



From left, John Greene of Bolling Springs, David Gaffney of Creston and Jim Bridges of Shelby show their respect during the national anthem at Saturday's USO event.

After decades, a day of thanks for vets

Speedway Homecoming gives those who served in Vietnam due praise

By MARTHA QUELLIN
mquellin@newsobserver.com

CONCORD James Gooch remembers some of his fellow soldiers stopping on their way home from serving in Vietnam to buy new civilian clothes and throwing away or even burning their uniforms.

They didn't want strangers to know where they had been.

Saturday, thousands of them proudly displayed their former military affiliations on ball caps, T-shirts or leather vests as they walked around inside the Charlotte Motor Speedway complex for the Vietnam Veterans Homecoming Celebration. Now, strangers came up to thank them.

"It feels good," said Gooch, 62, of Henderson, who cooked and drove a truck for the Army's 275th Signal Company while in Vietnam.

It's a different time. When the U.S. pulled out of the conflict in 1973, much of the public had turned against involvement in Vietnam and was in no

» Online

See more photos from the celebration at newsobserver.com/localpics

mood to honor the troops who had served there.

Today, people seem more able to separate the politics of a war from the people who are sent to fight it.

Maybe that's why, 40 years later, some 62,500 people, including vets, their families, members of dozens of advocacy groups and others who just wanted a chance to say thanks, came

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NEGLECT

Since the 1930s, state law has put the burden of any workplace injuries on employers and the insurance companies they purchase. To make sure injured workers get the care they need quickly, the state has established laws to specify exactly how much is owed for damages of disability and missed wages.

No law, employees are required to certify with the Industrial Commission that they have insurance, and the commission doesn't ask for that information. Instead, it contracts with the Rate Bureau to provide a database of businesses that have purchased insurance.

The commission makes an effort to figure out which employers don't have protection. In only a few of noncompliant companies when a worker has been hurt and awaits for help.

No easy fix?

From July 2010 to July 2011, 1,378 cases involving employers without workers' compensation had to be scheduled for a hearing by a judge at the Industrial Commission, which means that attorneys are the claim takers.

Many of the employers of construction workers, such as construction companies, are not insured. Some of the companies were small and struggling, others were not. Some of the construction workers' compensation claims were denied, but they were not insured.

Many of the workers suffered devastating injuries that will forever be with them from the moment they were injured. Some of the workers were injured on the job, but they were not insured. Some of the workers were injured on the job, but they were not insured.



At his mobile home in Halloworth, Danny Alford stretches his back, which was injured in 2008. Alford's employer had no workers' comp insurance, and Alford has no way to collect the money that the Industrial Commission says he deserves.

Two accidents, two widows, no coverage for workers' deaths

By Mandy Locke
mlocke@newsobserver.com

Linda Maynard felt good about her husband Richard's new job when she went with him to 2006 to fill out the paperwork to start hauling trucks for G&J Transport in Boston. Company driver for G&J Transport, Richard Maynard was a 40-year-old father of two children. "I thought this was a flourishing business, and the owner seemed like nice people," said Maynard.

What Maynard didn't know is that the company had decided to let its workers' compensation insurance lapse years earlier to save money. And she didn't know that a driver for the company died in 2004, leaving his widow with a young child.

Then it happened to her. In February 2007, Richard Maynard was hit and killed by a driver when he was crossing a highway to get to his job. Gregory and Joyce Nixon told his widow they wanted to stop their coverage because it was too costly. Joyce Nixon told his widow they were required by law to have the insurance. By the end of the month, though, the company let the policy expire.

Twelve days later, David Murray, one of their drivers, crashed his rig in Virginia and burned to death.

Murray's widow, Gwen, signed a settlement agreement with the Nixon's attorney, accepting payments a fraction of what she was owed by law. Seven months later, the \$345 weekly check stopped.

"They told they were out of money," Gwen said Murray said in an interview. Gregory Nixon, assisted by those last words, declined to comment.

The two women eventually hired attorneys and pushed their claims to the state Industrial Commission. There, during a hearing, they



Linda Maynard of La Grange lost her husband, Richard, in 2007 after an accident. She had to fight to get her compensation from his employer.

bugged and told each other how their husbands died on the job. At the time of Murray's death in 2004, G&J Transport was a small operation. It was interested in a limited liability corporation with the insurance after my husband died," Murray said.

Murray didn't take her case to the commission until 2008. But when the Nixon's attorney filed a notice with the Industrial Commission to the N.C. Rate Bureau. They provide an up-to-date account of terminated, renewed and new policies, but the commission doesn't monitor those cancellations.

The attorneys for both widows discovered that the Nixon had been desisting property they owned to other family members to "avoid their workers' compensation liability," a deputy commissioner determined in an order. Though the commission ordered the Nixon to pay the widow's attorney's fees, the Nixon refused to pay the bill and failed to show up to court.

The widow sued the Nixon for fraudulently concealing property. Both women's claims have

Unable to work

Danny Alford made his living roughing, mulching and hauling loads of debris from his drop-off at high school. Now, at age 50, Alford's back is so weak he cannot bend over to his shoes.

Alford's doctors said a deputy commissioner at the Industrial Commission have declared him permanently unable to work since he was crushed by a load of gravel during a work-related crash in 2009.

Earlier that year, Alford said a member of his 11th Street Church, Ted Wright, offered him a job with his landscaping business in his wallet and said a prayer of thanks for his kid finding a job. On the cart, right under Ted's services, was the work "full insured."

Wright and business partner John Sumner, however, had canceled their workers' compensation policy months before Alford started. The company did not offer health insurance.

"It was bad timing," Sumner said in an interview. "We both were need-insured-independently, but we were scraping it together to make ends meet."

Deputy Commissioner James Gilen noted in 2011 that the company owners owe Alford \$211 a week.

"I'm sure we could do a query in our system to come up with a list of all (workers' comp) policies that have been canceled. We've not been asked to do that."

By Mandy Locke
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Uninsured employees have been a problem at least since 1997, said State Sen. Doug Berger, a Democrat from Knoxville and a former deputy commissioner.

The commission has worked some of the years to address the problem. Berger said he has had some success in ensuring that employers carry insurance before an accident happens.

Berger said he has recently used his authority to enforce payment to hold an employer or company of court until it is paid. Sometimes that meant the threat of jail.

Bob Latimore, chairman of the commission from 2004 to 2007, said the commission has worked from using contempt as a tool to force businesses to pay up after they stepped down as chairmen.

"I thought we should use every tool we had to get payment," he said. "But, some (commissioners) try to get around it."

Curt Carter, an assistant attorney general assigned to the fraud

Romney offers may hint at future run

ROMNEY

Republican lawmakers credit Romney's focus on the bottom line for averting disaster when he took office.

"We were in crisis, the budget was in tatters," said Dan Winkler, a Republican state representative who served as Romney's chief counsel for his first two years. "We didn't have political power, we were totally unbalanced, but Mitt balanced the budget - but not at a requirement of state law."

The health care law - which came together late in Romney's term - was Romney's big accomplishment. He got personally involved in hammering out the complex details of how to provide coverage for the state's uninsured. But it came together after Romney already had declared he would seek a second term and as his aspirations for higher office grew more evident.

Campaigning as outsider

Romney was elected fresh off his success the 2002 Winter Olympics and recovered from a financial scandal and he campaigned as a political outsider. He promised to close the state's budget deficit and to cut taxes.

He was the fourth Republican governor in a row - analysis says Massachusetts voters like to keep the overwhelmingly Democratic legislature in charge.

Romney rejected big ego salaries and brought an analytical, bottom-line perspective to the job. He was business world. You go in and do a deal, you don't have to be a lawyer or a politician.

His approach was not always well received. "I don't think that legislators voted to alert the business community," said a senior Romney aide. "Most governments would give a call. They're a heads up for what we're going to do."

The Romney administration did very little to seek input, and that style would prevail.

Beth Myers, a former Romney chief of staff who now serves as a senior campaign aide, pushed back against suggestions that Romney had raised corporate taxes, contending that his administration had targeted tax loopholes that were "pretty glaring."

An early effort to redesign the state's sprawling education system failed with that. The administration had turned what it knew best - a consultant - and delivered a drivers' license to a state House committee officer, said Democratic state Rep. Ronald Mariani, who chaired the Massachusetts committee when Romney was



Then-Massachusetts Gov. Mitt Romney shakes hands with supporters after signing health care reform into law in 2006. The law, which requires all residents to have health insurance, became known as Romney's signature achievement as governor.

years of the Massachusetts Turnpike Foundation. "The actual put from the education community from the stakeholders, was as massive, if any. It went nowhere."

Even though Romney campaigned as business friendly, tax activist Winkler said business groups were angered by a move to raise corporate taxes - without alerting the business community.

"Most governments would give a call. They're a heads up for what we're going to do," Winkler said. "The Romney administration did very little to seek input, and that style would prevail."

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Giffords offers may hint at future run

GIFFORDS

When Gabrielle Giffords announced she would step down from Congress in January, she did not shy away from the possibility that she would one day run for office again.

"I will return," she said, "and we will work together for Arizona and this great country."

Two months later, at the urging of her supporters and top advisers, Giffords appears to be building on to much of the nearly \$3 million left in her campaign account, in order to leave the door open for a potential run for the House or the Senate in the next campaign cycle.

"Much of the money in the Giffords' coffers came in after she was nearly killed in a shooting campaign in Tucson last year. In the weeks since her resignation, she has made no attempt to return the money to donors or turn it over to the county Democratic Party for use in the race to succeed her in Congress."

"There's a lot of people, including me, who are hoping that she hangs on to the majority of the money she has because we want to see her run again," said Michael McNulty, a longtime supporter and confidant of Giffords.

Giffords, a Democrat, is still going through intensive rehabilitation in Houston, and her supporters say they are careful not to set expectations too high. Still, they hope she will run for the House again.

"She is focused on her recovery, which is exactly as she should be, but we haven't ruled out any hope for the future," McNulty said. Ron Barber, a former aide to Giffords, is running for the seat she left.



Giffords' offers may hint at future run.

WORKERS

thought we were oversteering our course."

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Employees pay the price of workers' comp neglect

By Mandy Locke and David Raynor

Published April 1, 2012 in The News & Observer

Cheating employers make it tough to compete

Off the books and under the table, some companies skirt employment rules

By MANDY LOCKE
mlocke@newsobserver.com

BENSON As a commercial masonry contractor, Doug Burton prides himself on being exact.

He counts bricks to calculate estimates. He knows each of his laborers by first and last name. He has memorized exactly what he'll owe in taxes if he takes on an additional worker and knows week to week whether he can afford it.

Burton strictly follows rules, and until 2009, he made a good living doing it.

As the economy faltered and he and his competitors fought for scarce projects, Burton lost his footing. Time and again, his company, Whitman Masonry, got beat on bids, often by a hefty margin.

As the end of 2010 neared, he had shed more than half his labor force. He couldn't figure out what he was doing wrong.

"Finally, it just dawned on me," Burton said. "My competitors were cheating."

Some of the other bidders were subcontracting their labor needs to middlemen who called their workers independent contractors - or treated them like ghosts, paid under the table and never acknowledged. A single employee cost Burton nearly 20 percent more to pay state and federal taxes, unemployment taxes and workers' compensation insurance.

Those in the construction industry say the scheme is now prevalent across the trades. A News & Observer review of state Industrial Commission decisions, in which arbitrators sort through workers' compensation claims, shows the practice is common and has penetrated other industries.

The cost is huge in unpaid medical bills for injured workers, uncollected business and personal taxes, and



'Finally, it just dawned on me. My competitors were cheating.'

DOUG BURTON
OWNER, WHITMAN MASONRY

payments not made to a depleted state unemployment reserve.

As honest businesses have struggled to compete, North Carolina officials have barely paid attention.

The state's leaders have imposed requirements on business owners through the years, requiring them to buy workers' comp insurance, pay taxes and unemployment insurance, and maintain a safe workplace. But state regulators work in the silos of their own agencies, rarely sharing information that would enable investigators to detect businesses determined to cheat.

As a result, those who play by the rules say they struggle to stay afloat while competitors who break the law profit. And their workers are left vulnerable, facing untreated

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Cheating employers make it tough to compete: First in a series

By Mandy Locke

Published August 19, 2012 in The News & Observer

Cheating employers make it tough to compete



SHAWN ROCCO-srocco@newsobserver.com

Doug Burton, center left, the owner of Whitman Masonry, says he plays by the rules and pays taxes, unemployment insurance and workers' comp. But he loses work to competitors who can undercut him because they hire subcontractors that don't pay those taxes.

story continued from previous page

injuries if they are hurt on the job and financial hardship if they get laid off.

"There is no risk in running this game," Burton said. "It seems they never get caught."

'They wash their hands of it'

Burton, 54, learned to be exacting as a young man, studying engineering at Virginia Military Institute.

The trait served him well when a business associate offered him a chance to invest in a masonry company in the fertile

Triangle market.

Burton took to the field: troubleshooting renovation plans, training and hiring workers, getting involved in the professional association. In 1990, he bought half of Whitman Masonry, and when founder Mackie Whitman retired in 2008, Burton took over.

Through the years, Burton's crews have helped build schools and banks and office buildings. At its height, Whitman Masonry had a crew of 75 workers building multimil-

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lion-dollar projects.

But as the recession rocked the building industry and jobs dried up, Burton worked hard to hang on to his crew. Meanwhile, his competitors shed workers in favor of subcontractors who promised laborers as needed.

“They wash their hands of it and (don’t) know what’s going on,” Burton said.

Burton resisted the trend. But as the economy limped in 2009, so did his company.

“We’d come to work Monday feeling good because we had two jobs to bid,” Burton said. Days later, he said, they were deflated, having lost the jobs.

Burton started trimming. He gave up Hurricanes hockey tickets. He eliminated dental insurance and the 401(k) match for employees. He cut his salary by a third and laid off a few dozen laborers. Just before Christmas in 2010, Burton called the remaining crew together for a meeting.

“I told them we simply couldn’t compete,” Burton said.

Burton explained why as best he could. He ticked through all the taxes he pays for employees and the workers’ compensation insurance he buys. He told them he suspected other bosses weren’t swallowing those costs.

Burton asked his employees to name names.

Workers without withholding

Sabas Martin Galeana and his crew have helped build some of the most significant construction projects in the Triangle and counties to the east.

His masonry company, Martin’s Bricklaying, has built university dormitories, renovated N.C. State University’s Carter-Finley Stadium and, in 2010, Kenan Stadium at UNC-Chapel Hill. He has built schools, hospitals and grocery stores from Roanoke Rapids to Wilmington.

And in 2010 and 2011, his crews did much of the masonry work at Wake County’s \$125 million detention center on Hammond Road.

Martin’s business, however, appears to have violated state and federal laws.



SHAWN ROCCO-srocco@newsobserver.com

Children's Hospital at Vidant Medical Center in Greenville is one of the big masonry jobs where Sabas Martin Galeana provided labor.

The N&O interviewed four of Martin’s past and current employees, some of whom have worked for him for eight years. A reporter reviewed about 30 pay stubs for several workers from 2006 through 2012, including some collected for a workers’ compensation claim filed for a member of Martin’s crew who worked on the Wake County Detention Center.

Martin appears to have appropriately withheld state and federal taxes in 2006 and 2007 for at least one employee, pay stubs show. In 2007, however, the agency now known as the state Division of Employment Security filed a lien against Martin for unpaid unemployment taxes.

The Internal Revenue Service also came down on Martin between 2003 and 2009, court records show. The agency filed two separate tax liens against him amounting to \$70,600 in unpaid unemployment tax, federal taxes and penalties. He settled the last of those liens in 2009.

Pay stubs as recent as July for several of Martin’s employees show that Martin did not withhold any state or federal taxes. State laws say that employers must provide

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detailed deduction information each pay period when wages are withheld.

Each week, they were handed a simple check from Sabas Galeana and his company. The employees say Martin's Bricklaying has not been providing tax forms at year's end so they can pay their own taxes.

Three weeks ago, days after The N&O inquired about Martin's Bricklaying with the state Revenue Department and the Division of Employment Security, Martin withheld taxes in a paycheck to at least one worker.

Tax revenue lost

By any test of applicable laws, Martin's workers are direct employees, not subcontractors. They report to jobs he arranges, use his equipment and take breaks when supervisors allow it, workers say.

Not treating them as employees is a big savings of time, money and paperwork. Employers must withhold and pay state and federal taxes for direct, or W-2, employees, pay unemployment insurance and provide workers' compensation insurance.

All told, that's about a \$110 cost for a single mason working a 40-hour week, according to a review of Burton's payroll. The cost increases significantly if the laborer logs overtime.

For that same worker, if no taxes were paid by the employer or the worker, the government missed \$223 in state and federal taxes for a workweek, or about \$11,600 a year.

Martin, a Mexican native who has become a U.S. citizen, is one of at least three masonry company owners around the Triangle that Hispanic masons say skim on taxes.

Repeated attempts to speak with Martin failed. Two letters, delivered by certified mail, were not answered. Martin's wife and an assistant said they would give him a message, but he did not respond.

Burton said he finally figured out Martin's operating methods in February 2011. His brother, who is also in

Playing by the rules

Doug Burton, owner of Whitman Masonry, is having difficulty competing with firms that classify their workers as subcontractors rather than direct employees. Here's the cost difference for a laborer paid \$15 an hour for a normal 40-hour work week, according to Whitman's payroll data.

Subcontractor:
40 hours X \$15 = \$600

W-2 employee:
40 hours X \$15 = \$600 gross wages

Employer with holdings paid by employee:

Federal income tax	\$75
State income tax	\$36
Social Security/Medicare	\$34
Total deductions	\$145

Employer contributions:

Social Security/Medicare match	\$34
Federal unemployment	\$3
State unemployment	\$41
Workers' comp insurance	\$32
Total contributions	\$110

Whitman's voluntary benefits:

Health insurance	\$61
401(k)	\$24
Total contributions	\$85

Cost increase for required employer contributions ...+18.3%

Cost increase if employee works 14 hours overtime for a total of 54 hours ...+31%

The News & Observer

the masonry business, ran into an old employee who was doing work for Martin's Bricklaying at Kenan Stadium. The worker's pay stub was basic and simple: a 54-hour workweek netted an \$810 check, with no withholding, no overtime pay, no details.

"It was so obvious, right there in the open," Burton said.

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Laborers stay silent

Martin's business has been fed by contracts with established companies such as Joyner Masonry Works of Greenville and Moxley Masonry of Youngsville. These companies secure multimillion-dollar bids for projects, then contract with Martin to bring laborers to supplement their small crews.

In part, Martin's business methods are undetected because his workers don't complain. Nearly all are workers from Mexico who are here illegally.

Employers are required to pay unemployment tax and other withholding on workers here illegally, though those workers are not entitled to collect the benefits.

Facing a shortfall of more than \$2 billion in unemployment taxes, state Division of Employment Security officials have ramped up efforts in recent years to detect businesses that misclassify or pay employees off the books. But because Martin's employees wouldn't likely come in to apply for benefits they can't collect, employment security officials miss an important flag.

There is no record of employment security officials or state or federal tax collectors investigating or penalizing Martin's Bricklaying since 2008. Employment security officials as well as the state Department of Revenue and IRS are prohibited by law from saying whether they are investigating or have investigated Martin's Bricklaying.

Martin's workers interviewed for this story say they have no interest in drawing attention to their situation by alerting state agencies that could investigate Martin's practices.

"We don't ask questions," said André, one of Martin's former employees who is not being fully identified because he's here illegally. "We don't complain."

Such fear is common, said Carol Brooke, a workers' rights attorney for the N.C. Justice Center.

"It's a huge problem within the immigrant workforce,

story continues on next page



SHAWN ROCCO-srocco@newsobserver.com

A worker lays brick at the new addition to Vidant Medical Center, where Martin's company worked. A review of several employees' recent pay stubs showed that Martin routinely fails to withhold state and federal taxes.

Cheating employers make it tough to compete: First in a series

By Mandy Locke

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story continued from previous page

“Brooke said. “There’s a lot of fear about reporting it. It’s just a way of marginalizing the workforce.”

The labor broker’s patrons

While his workers fly beneath the radar, Martin has enhanced his business’ visibility.

Last year, his company was certified as a historically underutilized business because he is Hispanic. The designation is awarded by the state Department of Administration and enables him to get preference for bids on state contracts.

The process focuses solely on the owner’s ethnicity or gender, not business operations or performance, said Jill Lucas, spokeswoman for the agency that administers the certification.

As part of Martin’s application, his business associates, Gary Joyner, president of Joyner Masonry Works, and Pat Finegan, a project manager at Moxley Masonry, wrote letters of recommendation. In those letters, both bragged about Martin, saying that they couldn’t be more pleased with his services.

Joyner could not be reached for comment.

Russ Moxley, owner of Moxley Masonry, said he’s sore about having to depend on labor brokers such as Martin. Moxley said he has had to rely on Martin’s workforce to help him complete larger jobs for the price general contractors are willing to pay.

Moxley said the entire construction industry has turned a blind eye to businesses that cut corners.

“There are hundreds of Martins,” Moxley said.

Moxley said he wasn’t aware that Martin’s business methods may be a foul of the law.

“If I knew, I wouldn’t hire” him, Moxley said. “We ask if he’s legit, and he tells us he is.”

Businessman seeks justice

Burton won a few bids this year that let him bring back some of his old employees. He studies his books daily, seeking the cash flow to restore the 8 percent pay cut he imposed on employees in December 2010.

Business seems too fickle, Burton said, and as long as his competitors cut corners, he has no guarantee that his business will rebound.

In the evenings, Burton researches misclassification and how it plagues the construction industry.

At meetings of the N.C. Masonry Contractors Association, where he is a past president, he implores his colleagues to stop using labor brokers such as Martin. Over dinner with his closer associates, he tells them they are killing the business.

Last year, Burton began reaching out to state agencies that could investigate Martin. He tried to file complaints on behalf of a Martin employee at the state Department of Labor and the state Department of Revenue.

“No taxes, no Social Security match, no fed or state unemployment is being withheld,” says his Revenue Department complaint.

He wrote letters to members of Congress. A few sent polite responses; none offered assurances.

“It’s almost like no one sees this as their problem,” Burton said.

The government is not completely inactive, however. In July, an official from the Division of Employment Security contacted Burton - to tell him that his tax withholding would be the subject of an audit.

He passed.

*Staff writer Chris Kudialis and news researchers Peggy Neal and Brooke Cain contributed to this report.
Tomorrow: A wreck changes everything.*

Locke: 919-829-8927

Cheating employers make it tough to compete: First in a series

By Mandy Locke

Published August 19, 2012 in The News & Observer

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AUGUST 19, 2012 newsobserver.com

The Ghost Workers: HONEST BUSINESSES SUFFER

Cheating employers make it tough to compete



Mauricio's hands have laid bricks for many of North Carolina's major buildings. When one of his bosses was breaking tax laws, Mauricio needed the work, so he didn't ask questions.

Struggling to stay in U.S., he feels invisible

Employer's practices frustrate effort to live here legally

By Manny Lopez
 When Mauricio paid a smuggler to sneak him over the border of Mexico, he knew he'd live a quiet life in America. He didn't know he would be invisible. Mauricio, 27, is part of North Carolina's underground economy. He is one of those scores of workers here illegally who find jobs with employers who cut corners by avoiding payment of taxes, insurance and overtime.

“When you spend money, you don't ask questions,” said Mauricio, who is being only partly identified because of his immigration status. North Carolina has grown, in part, on his back. Mauricio's fingerprints are all over some of the most prominent and celebrated structures around the Triangle to the coast: Kenan Stadium, PNC Arena, Carter-Finley Stadium. He can rattle through a list of schools and dormitories and office buildings he has helped build. For most of those projects, Mauricio worked for Martin Bricklaying, a masonry company formed nine years ago as an

■ OFF THE BOOKS AND UNDER THE TABLE, SOME COMPANIES SKIRT EMPLOYMENT RULES

First of three parts
 by Manny Lopez

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Burton strictly follows rules, and until 2009, he made a good living doing it.

As the economy faltered and he found his competitors flouting for scarce projects, Burton lost his footing. Time and again, his company, Whittman Masonry, got beat on bids, often by a better margin.

At the end of 2010, he had a hard time. He had a hard time more than he had a hard time. He couldn't figure out what he was doing wrong.

Finally, it just dawned on him. “My competitors were cheating.”

Some of the other bidders were subcontracting their labor needs to middlemen who called their workers independent contractors — or



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DOUG BURTON

cheating, not his business.

Burton added his employees to state and federal tax rolls and never accepted a bid. A single employer cut Burton nearly 20 percent more to pay state and federal taxes, unemployment taxes and workers' compensation insurance.

Those in the construction industry say the scheme is now prevalent across the triad. A News & Observer review of state industrial commission decisions, in which arbitrators sort through workers' compensation claims, shows the practice is common and has penetrated other industries.

The end is huge in unpaid medical bills for injured workers, uncollected business and personal taxes, and payments not made to a dedicated state unemployment reserve.

As honest businesses struggle to compete, North Carolina officials have barely paid attention.

SEE CHEATING, PAGE 2A

The News & Observer

THE GHOST WORKERS

Sunday, August 19, 2012 7A

CHEATING

CONTINUED FROM PAGE 1

The state's labor laws have increased requirements on business owners through the years, requiring them to buy workers' comp insurance, pay taxes and unemployment insurance, and maintain a safe work place. But state regulators work in the shadows, often operating, rarely by sharing information that would enable investigators to detect businesses determined to cheat.

As a result, those who play by the rules say they struggle to stay afloat while facing cutthroat markets if they are hurt on the job and financial hardship if they get laid off.

“There is no risk in running this game,” Burton said. “It seems they never get caught.”

‘They wash their hands of it’

Burton, 54, learned to be exacting as a young man, studying engineering at Virginia Military Institute.

The trait served him well when a business associate offered him a chance to invest in a masonry company in the North Triangle market.

Burton took to the job, troubleshooting renovations, training and firing workers, getting involved in the professional associations in 1990. He bought half of Whittman Masonry, and when founder Mackie Williams retired in 2008, Burton took over.

Through the years, Burton's crews have helped build schools and banks or office buildings. At his height, Whittman Masonry had a crew of 75 workers building multi-million-dollar projects.

But as the recession raged the building industry and job dried up, Burton wanted to hang on to his crew. Meanwhile, his competitors shed workers in favor of subcontractors who provided laborers as needed.

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in the masonry business, ran into an old employee who was doing work for Martin Bricklaying at Kenan Stadium. The worker's pay stub was basic and simple: a 54-hour workweek listed as 80.00 check, with no deductions, no overtime pay, no withholding.

“It was so obvious, right there in the open,” Burton said.

Laborers stay silent

Martin's business has been fed by contracts with established companies such as Joyce Masonry Works of Greenville and Mosley Masonry of Greenville. These companies secure multi-million-dollar bids for projects, then contract with Martin to bring laborers to supplement their small crews.

In part, Martin's business methods are untested because his workers don't complain. North all are workers from Mexico who are here illegally.

Employers are required to pay unemployment tax and other benefits and holding on workers here illegally, though those workers are not entitled to collect the benefits.

Being a sheltered area with less than \$2 billion in unemployment taxes, state Division of Employment Security officials have ramped up efforts in recent years to detect businesses that unethically or pay employees off the books. But because Martin's employees wouldn't likely come in to apply for benefits they can't collect, unemployment security officials miss an important flag.

There is no record of employer security officials or state or federal tax collection investigating or penalizing Martin's Bricklaying because of revenue and IRS are prohibited by law from saying whether they are investigating or have investigated Martin's Bricklaying.

Martin's workers interviewed for this story say they have no interest in drawing attention to their situation by alerting state agencies that could investigate Martin's practices.

“We don't ask questions,” said Andre, one of Martin's former employees who is being fully identified because he's here illegally. “We don't talk.”

Such fear is common, said Carol Brooks, a worker's rights attorney for the N.C. Justice Center.

“It's a huge problem within the immigrant workforce,” Brooks said. “There's a lot of fear about reporting it. It's just a cry of frustration among the workers.”

The labor broker's patrons

While his workers fly beneath the radar, Martin has enhanced his business's visibility. Last year, his company was certified as a historically disadvantaged business because he is Hispanic. The designation is awarded by the state Department of Administration and enables him to get preference for jobs on state contracts.

The process focuses solely on the owner's ethnicity or gender, not business operations or performance, said Jill Lucas, spokeswoman for the agency that administers the certification.

As part of Martin's application, his business associates, Guy Royce, president of Joyce Masonry Works, and Pat Tringoli, a project manager at Mosley Masonry, wrote letters of recommendation. In those letters, both lauded about Martin, saying that they couldn't be more pleased with his services.

Repeated attempts to speak with Royce failed. Two letters, delivered certified mail, were not answered. Martin's wife and an assistant said they didn't give him a message, but he did not respond.

Burton said he finally gave out Martin's operating methods in February 2011. His brother, who is also

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Cheating employers make it tough to compete: First in a series
 By Mandy Locke
 Published August 19, 2012 in The News & Observer

Struggling to stay in U.S., he feels invisible

Employer's practices frustrate effort to live here legally

By MANDY LOCKE
mlocke@newsobserver.com

When Mauricio paid a smuggler to sneak him over the border of Mexico, he knew he'd live a quiet life in America.

He didn't know he would be invisible.

Mauricio, 27, is part of North Carolina's underground economy. He is one of thousands of workers here illegally who find jobs with employers who cut corners by avoiding payment of taxes, insurance and overtime.

"When you need money, you don't ask questions," said Mauricio, who is being only partly identified because of his immigration status.

North Carolina has grown, in part, on his back. Mauricio's fingerprints are all over some of the most prominent and celebrated structures from the Triangle to the coast: Kenan Stadium, PNC Arena, Carter-Finley Stadium. He can rattle through a list of schools and dormitories and office buildings he has helped build.

For most of those projects, Mauricio worked for Martin's Bricklaying, a masonry company formed nine years ago as the building industry grew quickly in North Carolina. During at least some of that time, owner Sabas Martin Galeana has violated several state and federal laws, failing to withhold taxes and provide workers with the forms they need to settle their own obligations.

The News & Observer reviewed Mauricio's pay stubs from the spring of 2012. The N&O talked to other former and current employees of Martin's Bricklaying and reviewed more pay stubs, including some submitted as part of a pending workers' compensation claim. Three times, Martin has violated state or federal requirements to pay unemployment insurance on his workers; he settled the last of three liens in 2009. All told, he owed more



SHAWN ROCCO-srocco@newsobserver.com

Mauricio's hands have laid bricks for many of North Carolina's major buildings. When one of his bosses was breaking tax laws, Mauricio needed the work, so he didn't ask questions.

than \$70,600 in taxes and penalties.

Martin's business practices have gone largely undetected. He has prospered, living in a spacious Nash County home. Martin did not respond to several interview requests.

Business owners, state officials and policy advocates say businesses such as Martin's have gained an edge by breaking the law.

Though undocumented workers can't collect benefits such as Social Security or unemployment, employers are required to pay those taxes on their behalf. Because many of the workers wrongly classified or paid off the books are in the country illegally, normal triggers used to detect those who don't pay taxes often fail.

"I may as well not even exist as far as they know," Mauricio said.

story continues on next page

Struggling to stay in U.S., he feels invisible

By Mandy Locke

Published August 19, 2012 in The News & Observer

Struggling to stay in U.S., he feels invisible

story continued from previous page

In America seeking work

Mauricio was just a scrawny teenager when he came to America for a job with a steady paycheck that could help support his family.

Mauricio followed leads all the way to North Carolina, touted as a promised land: more jobs than the workforce could handle with few questions asked. He settled into a trailer with 15 other laborers and slept when a bed was available.

He soon found work as an assistant on a masonry crew. He learned quickly, and, in just a few years, became a full mason. Mauricio began to lay down roots and imagine a lifetime in America.

Around 2003, he said, he was working for Joyner Masonry Works, a Greenville firm. Near the end of the project, one of the supervisors pulled him aside and said they had no more work for him.

Gary Joyner, president of Joyner Masonry, could not be reached for comment.

The workers with a permit to work in the U.S. kept their jobs with Joyner, Mauricio said. Those without work permits were told to go see Martin, a fellow Mexican who was starting a masonry firm.

Where's the W-2?

Mauricio feels like a ghost when he works for Martin's Bricklaying. He said he has never provided any identification to Martin nor filled out an employment application.

"He doesn't even know my address," Mauricio said. "He's never asked."

Mauricio simply signed his name on a sheet of paper at the beginning and end of each shift with Martin's; that's how hours were tracked.

Once, his last name was spelled incorrectly on his paycheck. The clerk at a grocery store near his home cashed it anyway.

Mauricio is married to an American; the couple had a



SHAWN ROCCO-srocco@newsobserver.com

Mauricio, a mason, has an American wife and daughter. He wants to pay his taxes so that he might become a U.S. citizen some day. But one boss rebuffed his request for proper tax forms.

daughter two years ago. He desperately wants to become a citizen.

A lawyer told him to hope the laws change to allow more leniency for workers who came here illegally. His advice for the interim: Obey the law and pay taxes.

story continues on next page

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Mauricio met with an accountant to try to figure out how to pay taxes for work done with Martin, he said. The accountant told him that he needed a W-2 or 1099 form.

Mauricio said he called Martin's Bricklaying to ask for one but was told nothing like that existed for him.

The job at Kenan Stadium

Mauricio would rather work for a company that withholds taxes, but such jobs have been hard to win since 2010.

Each time he's laid off from one of his preferred companies, Mauricio calls Martin's Bricklaying to ask for work.

His plea is always met with a yes.

Martin's company does steady business. Right now, the company is building a school north of Raleigh as well as a children's hospital expansion at Vidant Medical Center in Greenville, which is affiliated with East Carolina University.

Over the winter of 2010, Mauricio worked for Martin's Bricklaying on the \$70 million renovation of UNC-Chapel Hill's Kenan Stadium. Mauricio says he worked 13-hour days, seven days a week to keep the project on schedule. After two months, he felt like a stranger to his infant daughter.

The Educational Foundation, also known as the Rams Club, funded the project and hired general contractor T.A. Loving to manage it and vet the subcontractors. John Montgomery, executive director of the foundation, said that Martin's employees didn't work directly for the foundation and that it had no way of knowing of any problems.

"We don't have anything to say one way or another," Montgomery said.

Mauricio shakes his head when asked whether he had ever thought of reporting Martin's business methods to state officials.

EMPLOYEE VS. CONTRACTOR

The federal government estimates that employers who inappropriately classify employees as contractors cost as much as \$2.72 billion in lost tax revenue in 2006.

Determining whether a worker can be considered a subcontractor (classified in tax code as a 1099 worker) is based on a list of questions that deal with the employment relationship. While some agencies that examine whether a worker is properly classified may have particular standards, many use a 20-question test compiled by the Internal Revenue Service.

Questions that would help determine whether a worker is a W-2 employee deal mostly with the employer's control over the person. Answers that indicate more autonomy generally mean the worker can be treated as an independent contractor.

Among the questions:

Does the employer tell the person when and where to go for work and how to do the work?

Did the employer train or have another employee train the new worker?

Did the employer provide tools and other supplies needed to complete the job?

Is this a continuous or expected to be a continuous working relationship?

Does the employer dictate hours and approve time off?

Is the worker expected to devote full time or substantially full time to the work?

Is the worker required to submit regular or written reports to the employer?

Is the worker paid by the hour or by the job?

Does the employer pay travel expenses for the worker?

Does the worker gain profits or suffer losses as employer does?

Does the worker work for others as well?

"I don't want to have no problems," he said. "When there's nothing else out there, you have to keep food on the table and your head down."

Staff writer Chris Kudialis contributed.

Locke: 919-829-8927

Struggling to stay in U.S., he feels invisible

By Mandy Locke

Published August 19, 2012 in The News & Observer

UP TO \$109 IN COUPONS
How to find a life-changing job
Work & Money

ECU grad on life after porn
CHECK OUT JOE GIGLIO'S TOP 25 Sports

Cheating employers make it tough to compete



Mauricio's hands have laid bricks for many of North Carolina's major buildings. When one of his bosses was breaking tax laws, Mauricio needed the work, so he didn't ask questions.

Struggling to stay in U.S., he feels invisible

Employer's practices frustrate effort to live here legally

By Mandy Locke
mlocke@newsobserver.com

When Mauricio paid a stranger to sneak him over the border of Mexico, he knew he'd live a quiet life in America. He didn't know he would be invisible. Mauricio, 27, is part of North Carolina's underground economy. He is one of those sons of workers here illegally who find jobs with employers who cut corners by avoiding payment of taxes, insurance and overtime.

"When you need money, you don't ask questions," said Mauricio, who is being

only partly identified because of his immigration status.

North Carolina has grown, in part, on his back. Mauricio's fingerprints are all over some of the most prominent and celebrated structures from the Triangle to the coast: Kenan Stadium, PNC Arena, Carter-Finley Stadium. He can rattle through a list of schools and dormitories and office buildings he has helped build.

For most of those projects, Mauricio worked for Martin's Bricklaying, a masonry company formed nine years ago as an

offshoot of another masonry company. He counts bricks to calculate estimates. He knows each of his laborers by first and last name. He has memorized exactly what he'll owe in taxes on an additional worker and knows how to work so he can afford it.

Barton strictly follows rules, and until 2009, he made a good living doing it.

As the economy faltered and his bid competitors looked for scarce projects, Barton lost his footing. Time and again, his company, Whittman Masonry, got beat on bids, often by a better bidder.

At the end of 2010, he realized he had shined more than he had lit the labor force. He couldn't figure out what he was doing wrong.

"Finally, it just dawned on me," Barton said. "My competitors were cheating."

Some of the other bidders were subcontracting their labor needs to middlemen who called their work "independent contractors" — or jobs, paid under the table and never acknowledged. A single employer could employ 20 percent more to pay state and federal taxes, unemployment taxes and workers' compensation insurance.

Those in the construction industry say the scheme is now prevalent across the trades. A News & Observer review of state Industrial Commission decisions, in which arbitrators sort through workers' compensation claims, shows the practice is common and has penetrated other industries.

The end is huge in unpaid medical bills for injured workers, uncollected business and personal taxes, and payments not made to a depleted state unemployment system.

As home businesses have struggled to compete, North Carolina officials have barely paid attention.

■ OFF THE BOOKS AND UNDER THE TABLE. SOME COMPANIES SKIRT EMPLOYMENT RULES

First of three parts
By Mandy Locke
mlocke@newsobserver.com

BENSON As a commercial masonry contractor, Doug Barton prides himself on being exact.

He counts bricks to calculate estimates. He knows each of his laborers by first and last name. He has memorized exactly what he'll owe in taxes on an additional worker and knows how to work so he can afford it.

Barton strictly follows rules, and until 2009, he made a good living doing it.

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DOUG BARTON
CHIEF, WHITTMAN MASONRY

Inside Holes in the system

- Wake County Detention Center subcontractor broke the law. **6A**
- The difference between an employee and a subcontractor. **6A**
- How a legitimate worker's wages look. **7A**

Between two transcripts, a decade of questions

By J. ANDREW COLLINS
and Dan Kane
acollins@newsobserver.com
dkane@newsobserver.com

The academic scandal at UNC-Chapel Hill is marred, more than anything, by the disclosure of parts of two academic transcripts for high-profile athlete. One was football star Marvin Austin, who was kicked off the team in 2010 and now plays in the NFL for the New York Giants. The other belonged to two-sport star Salim Pappas, an All-American in football who was a key reserve on the 2010 Final Four basketball team.

What would a deeper review of the transcripts show?

Chancellor Holden Thorp said in an interview that the university has

ongoing questions about the rigor and type of education UNC has offered athletes, who bring in millions every year for the university with their on-the-field performance.

What would a deeper review of the transcripts show?

Chancellor Holden Thorp said in an interview that the university has

That review was completed months after an unrelenting NCAA investigation found that a tutor engaged in "academic fraud" by writing parts of papers, conducting research and doing other work for three football players.

They would not be more specific about what kinds of transcripts were reviewed.

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Layers of contractors hide scofflaw

Wage jail was built brick by brick with untaxed labor

By Mandy Locke
mlocke@newsobserver.com

In 2010 and 2011, Martin's Bricklaying supplied 76,000 hours of labor to help build the \$125 million Wake County Detention Center on Hammond Road.

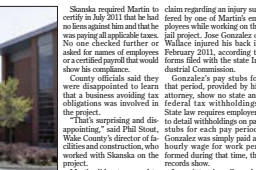
The business earned \$1,066,536 for this work, reports show.

The company's owner, Sabas Martin Galera, has run out of state and federal tax obligations in years past, court records show; he settled the last of those items in 2009. A review of several employees' recent pay stubs shows that Martin has failed to withhold state and federal taxes as recently as July.

The workers say he didn't provide them with the tax forms they needed to verify their own obligations.

Practices went undetected on the jail project.

Public projects such as the jail are bid in phases under the direction of a single general contractor, which in this case is Martin's company as a subcontractor.



Construction of the new Wake jail on Hammond Road in Raleigh involved a subcontractor who has not withheld taxes for workers.

USA, a large and prestigious company that operates across the country, was the bid to manage the detention center project.

Skanska solicited bids from subcontractors to do more specialized work such as masonry work. The firm's own masonry work was awarded to Joyce Masury Works of Greenville, which in turn hired Martin's company as a subcontractor.

Skanska expects Joyce to set its own subcontractors, making sure they abide by federal regulations.



Tejaprasad got the job as a subcontractor, but he hid his boss' tax status.

About this series

In fact, the NCD reported that at least 3,000 North Carolina businesses had not bought workers' compensation coverage, as required by law. After that report, we heard from workers, lawyers and business owners about deeper problems surrounding laborers and businesses, particularly in the construction industry.

To report this series, we reviewed thousands of pages of documents and court records and conducted dozens of interviews. To illustrate how the practices and cost involved we focused on masonry, though the practice is also common in other trades.

INVISIBLE

Mauricio feels like a ghost. His employer never required identification or an application.

CONTINUED FROM PAGE 6A

building industry grew quickly in North Carolina. During at least some of that time, owner Sabas Martin Galera has violated several state and federal laws, failing to withhold taxes and provide workers with the forms they need to set their own obligations.

The News & Observer reviewed Mauricio's pay stubs from the spring of 2012. The NCD failed to identify former and current employees of Martin's Bricklaying and reviewed more pay stubs, including some submitted as part of a pending workers' compensation claim.

Three times, Martin has violated state or federal requirements to pay unemployment insurance on his workers; he settled the last of three fines in 2009. All told, he owed more than \$700,000 in taxes and penalties.

Martin's business practices have largely gone undetected. He has prospered, living in a spacious Nash County home. Martin did not respond to several interview requests.

Business owners, state officials and policy advocates say businesses such as Martin's have gained an edge by breaking the law.

Unemployed workers can't collect benefits such as Social Security or unemployment. They are required to pay those taxes on their behalf. Because many of the workers wrongly classified or paid off the books are in the country illegally, mental health issues tend to fester those who don't pay taxes often said.

"They as well as even exist as far as they know," Mauricio said.



Mauricio is married to an American, the couple had a daughter two years ago. He desperately wants to become a citizen.

A lawyer told him to hope the law changes to allow more leniency for workers who came here illegally.

Mauricio was with an accountant to try to figure out how to pay taxes for work done with Martin, he said.

The accountant told him that he needed a W-2 for 1099 form.

Mauricio said he called Martin's Bricklaying to ask for one but was told nothing like that existed for him.

The job at Kenan Stadium

Mauricio would rather work for a company that withholds taxes, but such jobs have been hard to win since 2011.

Each time he's had off from one of his preferred companies, Mauricio calls Martin's Bricklaying to ask for work.

The plan is always met with a yes. Martin's company does steady business. Right now, the company is building a school north of Raleigh as well as a children's hospital expansion at Vidant Medical Center in Greenville, which is affiliated with East Carolina University.

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Employee vs. contractor

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AMONG THE QUESTIONS:

- Does the employer tell the person when and where to go for work and how to do the work?
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- Does the worker gain profits or suffer losses as employer does?
- Does the worker work for others as well?

Injured worker pays for employer's gamble

Jimmy Worrell used a common insurance scheme to get work on the cheap. But now Clementé Gonzalez must fight for the medical care he needs.

BY MANDY LOCKE

mlocke@newsobserver.com

WILSON Jimmy Worrell knew how to play the game.

General contractors who hired him and his framing crew always demanded proof of workers' compensation insurance. Without it, he'd have been shut out of work.

So Worrell turned to a scheme that has persisted for decades in the construction and insurance industries. He told his insurance agent that he had no employees and would exclude himself from the policy, his right as a sole proprietor. He declared that the crew of five he managed was made up of independent contractors instead of employees; the policy he bought covered a "ghost," an unknown employee who might unexpectedly join him to work during the year.

The bargain-basement workers' comp coverage, known simply as a ghost policy, was his ticket to work. He paid \$850 for the year, a far cry from the roughly \$30,000 annual premium needed to fully cover him and his five-man crew. The certificate looked the same as the more expensive one, with no place to list the number of employees covered.

Now, Worrell's decision is haunting dozens of people and costing hundreds of thousands in litigation as lawyers and the courts try to untangle the scheme and its implications for one of Worrell's employees.

Clementé Hernandez Gonzalez, a longtime employee of Worrell Construction Co., severely injured his spinal cord in March 2009 after another employee fell asleep at the wheel and wrecked the company vehicle. Gonzalez feels nearly nothing from the chest down; experts predict a lifetime of care will cost nearly \$8 million.

Gonzalez, 39, has yet to receive a single check. More than a quarter-million dollars in medical bills at Pitt Memorial Hospital in Greenville have not been paid. If the policies had been clear and complete, the insurer would have likely settled within months instead of litigating for years, and Gonzalez would have gotten needed care quickly.

North Carolina law requires businesses with three or more employees to buy insurance to cover workplace
story continues on next page



SHAWN ROCCO - srocco@newsobserver.com

The spinal cord of Clementé Hernandez Gonzalez, 38, was injured in 2009 when he was in a wreck in the Worrell's Construction company vehicle. Owner Jimmy Worrell didn't have an adequate workers' comp policy, only a "ghost policy," which hasn't yet paid his bills.

Injured worker pays for employer's gamble: Second in a series

By Mandy Locke

Published August 20, 2012 in The News & Observer

Injured worker pays for employer's gamble

What's the difference?

These two insurance policies look relatively similar. But Worrell Construction Company's policy cost \$850 and technically covers no one. Whitman Masonry's policy covers dozens of employees and cost roughly \$45,000.

Minimum premium policies, known in the insurance industry as ghost policies, offer the most basic coverage possible. For that cost, employers get little or no coverage, but they get a big break: a certificate to present in order to secure jobs. Some employers lie about the scope of their business, saying they have no employees, in order to buy one of these policies. Because some pay their workers under the table, detecting those who lie can be tough in annual audits by insurance firms.

INSURED		INSURERS AFFORDING COVERAGE				NAIC #
Worrell Construction 10619 Christian Rd Wilson, NC 28695		INSURER A: Erie Insurance Group				
		INSURER B:				
		INSURER C:				
		INSURER D:				
		INSURER E: Charnell Insurance Company				

CLASS	DESCRIPTION	RETENTION \$	START DATE	END DATE	STATE	TYPE	AGGREGATE	PER OCCURRENCE
E	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE/OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	8C28UB-0815C68-6-05	07/15/05	07/15/08	NC	WORKERS COMPENSATION	\$ 100	\$ 100
	OTHER						\$ 500	

INSURED		INSURERS AFFORDING COVERAGE				NAIC #
Whitman Masonry, Inc. PO Box 250		INSURER A: Penn National Security Ins Co				
		INSURER B: Stonewood Insurance Company				
		INSURER C: Rockhill Insurance Company				
		INSURER D:				
		INSURER E:				

CLASS	DESCRIPTION	RETENTION \$	START DATE	END DATE	STATE	TYPE	AGGREGATE	PER OCCURRENCE
A	AGGREGATE						\$ 5,000,000	
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE/OFFICER/MEMBER EXCLUDED? (Mandatory in NC) If yes, describe under DESCRIPTION OF OPERATIONS below	13,980	8/16/2011	8/16/2012	NC	WORKERS COMPENSATION	\$ 1,000,000	\$ 1,000,000
C	Pollution Liability Includes Mold Coverage		12/2/2011	12/2/2012		Aggregate	\$2,000,000	\$2,000,000

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injuries; in the construction trade, even smaller firms are often required by general contractors to purchase insurance. Even so, a News & Observer investigation this spring showed that more than 30,000 businesses in North Carolina failed to have required coverage.

Others, such as Worrell, manipulate the law. They buy a ghost policy, a package designed only for one-person operations with no employees as a fail-safe in case they hire someone during the course of the year. The state Industrial Commission, which decides disputed workers' compensation cases, sees these policies for how they're more commonly used: a way to pretend coverage exists when it doesn't.

In a 2009 decision, a deputy commissioner wrote that "this practice is common in the insurance industry" but found it "to be inequitable."

'It is mind-boggling'

It's unclear how many of the roughly 140,000 policies sold to North Carolina businesses each year are these bare-bones policies. No one keeps official count, but the North Carolina Rate Bureau knows of about 16,000 of the ghost policies written for high-risk employers that couldn't buy workers' compensation insurance on the open market.

That's more than half of the assigned-risk policies in the state. Some are legitimately used for one-person operations, but the Rate Bureau, which represents insurance companies to assess and monitor rates, has no way of knowing how many are used improperly.

A review of these types of claims shows that insurance companies often fight them. Injured workers are forced to engage in costly and time-consuming battles that sometimes drag to the state's highest court with no promise of payout.

The ghost policy is one of several mechanisms that some business owners have been able to use to gain an edge in North Carolina's struggling economy. By classi-



SHAWN ROCCO-srocco@newsobserver.com

Jimmy Worrell, 48, closed his contracting business the day Clementé Gonzalez suffered a spinal injury in a wreck in a company van. Worrell did not properly cover Gonzalez for workplace injury.

fying laborers as contractors, some also avoid paying Social Security, unemployment and insurance on behalf of the workers, The N&O has found, and government has done little to detect and punish the lawbreakers.

Officials at the Industrial Commission have seen the ghost policies for years, but they have not asked the legis-

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story continued from previous page

lature to address the practice. And when they see insurance agents sell ghost policies in improper circumstances, they rarely, if ever, report the problems to the Department of Insurance, which regulates agent conduct.

Such failure to communicate among state agencies has enabled business owners who break the law to flourish, while those following the law say they are increasingly shut out of work because of the high costs of doing business legally.

State Insurance Commissioner Wayne Goodwin said he wishes someone at the Industrial Commission had flagged these problem cases for his fraud investigators. The two agencies share the same building on Salisbury Street in Raleigh.

"This is the first I've heard of this," Goodwin said. "As a former legislator and an agency head, it is mind-boggling when you realize that there are many problems that can be resolved through enhanced communications."

No employees?

For years, Worrell rode the construction wave that washed across the Triangle to the coast.

Houses went up faster than anyone could count, let alone watch over the people building them.

Worrell, 48, first heard of a ghost policy 15 years ago when he opened his framing business. An insurance agent mentioned it as way to get around costly premiums.

"Everyone here (in the trades) uses these ghost policies," Worrell said. "Insurance companies are very lax about letting you use them."

But Worrell figured he needed full coverage. For years, he paid tens of thousands in annual premiums to cover his workers.

Then a fellow tradesman let him in on a secret: If Worrell treated his workers as subcontractors, he could save on workers' comp.

When Worrell went to buy a ghost policy in 2006, he told the agent he had no employees.



SHAWN ROCCO-srocco@newsobserver.com

Though Clementé Gonzalez can't feel anything when his wife touches his arms, they ache constantly. "When I am by myself, I really know how bad I am," Gonzalez said.

He had decided to treat all his workers as contractors. Such misclassification is common in the construction industry, but it is illegal. If an employer has a certain amount of control of his workers, state and federal laws say they must be treated as direct employees.

To cover his bases and ensure his laborers' claims did not come back on his policy, Worrell took them to buy a ghost policy. Worrell paid for the policies and insisted any paperwork associated with the policies should be sent to him. Gonzalez, a native of Mexico, signed the application but didn't realize he and his crewmates were declaring themselves "sole proprietors" and agreeing to go without coverage.

Patrick Lamm wasn't clued in, either. Lamm used Worrell and his crew to frame the custom homes he built on Lake Gaston.

Lamm was advised by attorneys not to speak for this report, but he testified before the Industrial Commission that he had no way of knowing Worrell's policy was worthless. He didn't know what the certificate really meant: No one helping frame the houses was covered by the policy.

story continues on next page

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story continued from previous page

"I know he directed them, and I hired him - Mr. Worrell - and the guys showed up and did the job," Lamm testified. "Now, whether they are employees, I do not know - did not know."

Who will pay?

When lawyer Albert Thomas Jr. first heard of Gonzalez's predicament, he was sure someone involved in the construction project must have had valid coverage. But the web of policies was like nothing Thomas had ever encountered.

"The more we dug, the stranger it became," said Thomas, a former Court of Appeals judge who practices in Wilson.

All the insurance certificates suggested each employer followed the law. Yet no one was accepting responsibility for the costly claim.

But Worrell's case involved a few hiccups that enabled Thomas and fellow lawyer Paul Blake III to prevail upon the Industrial Commission to order payment.

For starters, Worrell had inappropriately treated Gonzalez and others as subcontractors instead of direct employees, the commission ruled. And though Cincinnati Insurance had tried to cancel coverage for Worrell for failing to comply with an audit, the insurance company couldn't prove it had notified him of that cancellation.

A deputy commissioner ordered Cincinnati to pay and also required Lamm's insurer, Builders Mutual, to bear some responsibility. The full commission later relieved Builders Mutual unless Cincinnati defaults. In June, the Court of Appeals upheld the decision.

Cincinnati Insurance has asked the state Supreme Court to reconsider its liability, but the court is not obligated to hear the case.

The \$850 policy meant for a ghost could force a payout estimated at \$7.8 million.

THE SKINNY ON WORKERS' COMP

Workers' compensation came about in the 1930s to ensure that businesses were responsible for workers hurt on the job. The states put limits on what could be paid to workers for injuries and absences.

In North Carolina, businesses with three or more employees are required to buy insurance or certify with the Department of Insurance that they have enough assets to be self-insured. Most cases are readily settled, but when there is disagreement or complications, the N.C. Industrial Commission settles disputes.

Some business people have been trying to skirt the workers' compensation requirements by buying a "ghost policy." The policies are designed for a business owner who has no employees and cover someone who may be hired in the coming year. These bargain policies, which now cost about \$1,000 per year, look no different from other policies, however, and are tough, if not impossible, for those hiring the company to detect.

No safety net

For Gonzalez, each day is an endless blur of impossibilities.

He cannot clench his fist to hold a spoon. He urinates through a tube. Sometimes, when he slouches too much, he falls out of his wheelchair, rendered helpless.

Though he can't feel anything when his wife touches his arms, they ache constantly.

"When I am by myself, I really know how bad I am," Gonzalez said.

Gonzalez is stoic, rarely uttering a complaint as Cherry, his wife of 13 years, helps bathe him. She turns him over every two hours during the night to prevent bed sores.

When he was a young man, Gonzalez came to the U.S. illegally looking for work. The social safety network that typically catches poor people who are severely injured is unavailable to him. He cannot receive benefits such as Medicaid while he is pursuing permanent residency in the U.S.

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His wife and web of extended family band together to provide the care that the government cannot. They meet in the mornings and in the evenings to get him in and out of bed. While they know that better beds and physical therapy might help Gonzalez's condition, those luxuries are out of reach until his workers' compensation claim is settled.

Troubleshooting ghosts

Stuart Powell, an executive with the Independent Insurers Association of North Carolina, is an expert in insurance errors and loopholes that get carriers and their customers in trouble.

Ghost policies are on the top of his watch list.

"It's been a thorn in the side of insurance agents for a long time," Powell said. "It puts them in the crossfire, because sometimes the employer is not honest with them."

Powell would like to see ghost policies banned.

Mike Carpenter, general counsel of the N.C. Home Builders Association, also says ghost policies ought to be outlawed. He knows the move wouldn't be popular with many of his members, but he says the risk these policies pose is simply too great.

"People ought not get advantages in the marketplace by not complying with the law," Carpenter said. "That's what is happening now. It's very real."

The N.C. Rate Bureau doesn't track ghost policies, and even if it had the information, privacy concerns would keep it from sharing the information with general contractors or employees calling to check on the scope of a policy. Sometimes, a diligent contractor calls the agent who sold the policy to inquire further. But that's rare, agents say.

Darrin Rankin owns an insurance company in Huntersville, near Charlotte. He said he writes about 45 ghost policies a year, but only about once a year will a general contractor call to verify that a policy is good. No one asks

an obvious question: Whom does it cover?

Rankin said he tries to talk customers who ask for a ghost policy out of buying them. He prepares two quotes: one for the ghost policy and another for a fuller policy that would cover the owner. He says no one ever chooses the more expensive policy.

"It's in plain sight, but people refuse to understand or comprehend," Rankin said.

'It wracks my nerves'

Worrell learned a stiff lesson.

He closed his business the day Gonzalez got hurt and says he hasn't worked since. He said the Industrial Commission warned him that if he kept operating, it would charge him with criminal fraud.

"I took a risk that has ruined my life," said Worrell, who now collects disability because of a heart condition.

He feels badly for Gonzalez and his new life of limitations.

"It tears me up to know he's paralyzed from the neck down," Worrell said. "It wracks my nerves."

It's hard for Gonzalez to accept a life bound to a wheelchair.

Four years ago, he remodeled his house and tended an orchard of fruit trees behind his home. He and his wife were on track to adopt a relative's three children from foster care.

Gonzalez now talks about his former life as if it was a lifetime ago; he and Cherry lost their home as bills piled high. Social Services placed the children elsewhere after his accident.

When he thinks of those children and the life he meant to give them, he lifts his hand toward his face, unable to wipe away a tear.

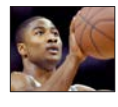
*News researchers Brooke Cain,
Peggy Neal and David Raynor contributed to this report.
Tomorrow: A failure to communicate*

Locke: 919-829-8927

Injured worker pays for employer's gamble: Second in a series

By Mandy Locke

Published August 20, 2012 in The News & Observer



The News & Observer

MONDAY, AUGUST 20, 2012

newsobserver.com

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 newsobserver.com for updates.
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 Newsobserver.com and on
 Twitter @newsobserver.

Paterno' book hits bookstores Tuesday
 The book "Paterno" by Joe Paterno will be officially released Tuesday. The biography describes the career of the longtime Penn State football coach and the sex-abuse scandal that engulfed him shortly before his death at age 85 in January.

Ryan to visit Raleigh for fundraiser
 Republican vice presidential candidate Paul Ryan will be in Raleigh on Wednesday for a fundraiser at the home of real estate developer John Kane. The event is the first fundraiser in North Carolina for Ryan since he was named as Mitt Romney's vice presidential pick.

German, French leaders to meet on economy
 European economy will be back in the news Thursday when German Chancellor Angela Merkel meets French President Francois Hollande in Berlin for talks about the euro-zone crisis. On Friday, Merkel meets with Greek Prime Minister Antonis Samaras to discuss Greece's public debt crisis.

NASA set to launch space weather probes
 NASA's two Radiation Belt Storm Probes are set to launch about a rocket on Thursday from Cape Canaveral. The probes will explore space weather - changes in Earth's space environment caused by the sun - that can disable satellites, create power grid failures and disrupt GPS service.

Hot ticket
 American Aquarium, one of the most reliably sold mid-range acts, has an ambitious new album coming out - "Burn, Fucker, Die." - produced by singer-songwriter Jason Isbell. The band unveils it with a hometown show Saturday night at Raleigh's Lincoln Theatre. See lincolntheatre.com for details.

Caution during housing crisis may hurt Obama

Critics say it's a case of too little too late

By **BYRON AVILA**, New York Times
WASHINGTON After inheriting the worst economic crisis since the Depression, President Barack Obama found vast amounts of money to offer to stabilize the financial system, rescue the auto industry and revive the economy. But he didn't spend billions of dollars Congress approved for struggling homeowners, hoping that his more limited program and an improving economy would clean up the housing crisis, housing millions of Americans lost their homes, and the recovery stalled. "They were not aggressive in taking the steps that could have been taken," said Rep. Zoe Lofgren, many more to the president's aid.

Blacksmith hopes to hook DNC set

COLFAX From his diner blacksmith's shop, Don Dillon hammers a red-hot iron bar into the shape of a comically exaggerated male - his nose jutting out like a quail. His ears bend and waving like a bug's antenna.

In a work-a-day, Dillon can turn out 40 of these donkeys in about an hour. "This is my business program," said the 70-year-old smith, fingers smeared black. "A male tends to fit a customer, so I don't have to be perfect."

For 30 years, Dillon has earned a living by beating iron over an anvil and bending them into over a dozen different shapes.



Don Dillon hammers a red-hot iron bar into the shape of a comically exaggerated male - his nose jutting out like a quail. His ears bend and waving like a bug's antenna.

Today's weather

83° / 67°
 Detailed forecast on 88

News 30
 Index 30
 Weather 30
 Sports 30
 Local 30
 Classified 30

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GHOST

What's the difference? These two insurance policies look relatively similar. But Worrell Construction Company's policy cost \$850 and technically covers no one. Whinn Masonry's policy covers dozens of employees and cost roughly \$45,000.

Charlotte Hernandez Gonzalez, a longtime employee of Worrell Construction Co., revealed his fatal spinal cord injury in March 2009 after another employee fell asleep at the wheel and wrecked the company vehicle. Gonzalez feels mortally wounded from the chest down, expects a lifetime of care will cost nearly \$5 million.

Gonzalez, 39, has yet to receive a single check. More than a quarter-million dollars in medical bills at Pitt Memorial Hospital in Greenville have not been paid. If the policy had been correct and complete, the insurer would have likely settled within months instead of litigating for years, and Gonzalez would have gotten needed care quickly.

North Carolina law requires businesses with three or more employees to buy insurance to cover work-related injuries in the construction trade, even smaller firms are often required by general contractors to purchase insurance. Even so, a News & Observer investigation this spring showed that more than 30,000 businesses in North Carolina failed to have required coverage.

Others, such as Worrell, manipulate the law. They buy a ghost policy, a package designed only for persons operating with no employees as a fall-in case they are not doing the construction of the year. The state Industrial Commission, which decides disputed workers' compensation cases, sees these policies when they do not commonly used: a way to pretend to be an employer when they aren't.

In a 2009 decision, a deputy commissioner wrote that "this practice is common in the insurance industry but found it to be impermissible."

It's unclear how many of the roughly 16,000 policies sold by North Carolina businesses are for ghost policies. Some are legitimately used for construction projects, but the State Bar, which represents insurance companies to assess and monitor rates, has no way of knowing how many are used improperly.

A review of these types of claims revealed that the companies that are not paying benefits are often those that are not paying benefits. Injured workers are often those who are not paying benefits. In some cases, the companies that are not paying benefits are those that are not paying benefits.

The ghost policy is one of several mechanisms that some business owners have been able to use to gain an edge in North Carolina's struggling economy. By classifying themselves as subcontractors instead of employees, the commission avoids paying Social Security, unemployment and insurance on the workers. The N&O has found a way to get around the law that is to detect and punish the lawbreakers.

Officials at the Industrial Commission have seen the ghost policies for years. But they have not asked the legislature to address the practice. And when they see insurance agents sell ghost policies in improper circumstances, they rarely, if ever, report the problems to the Department of Insurance, which regulates agent conduct.

Such failures to communicate among state agencies has enabled business owners who break the law to flourish, while those following the law say they are increasingly shut out of work because of the high costs of doing business legally.

State Insurance Commissioner Wayne Goodwin said he wishes Congress at the Industrial Commission had flagged these problem cases for his fraud investigators. The two agencies share the same building on Salisbury Street in Raleigh.

"This is the first I've heard of this," Goodwin said. "As a former legislator and an agency head, it is mind-boggling when you realize that there are many problems that could be solved through enhanced communications."

No employees?

For years, Worrell rode the construction wave that washed across the Triangle to the coast. Houses went up faster than any other commodity, let alone work over the 15 years when he opened his framing business. An insurance agent mentioned it as way to get around costly premiums.

"Everyone here (in the trades) uses these ghost policies," Worrell said. "Insurance companies are very lax about letting you use them."

But Worrell figured he needed full coverage. For years, he paid tens of thousands in annual premiums to cover his workers.

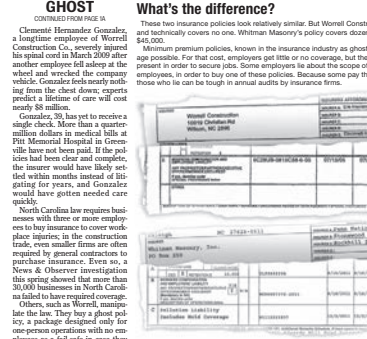
Then a fellow tradesman let him

on a secret: If Worrell treated his workers as subcontractors, he could save on workers' comp. When Worrell went to buy a ghost policy in 2006, he told the agent he had no employees.

He had decided to treat all his workers as contractors. Such misclassification is common in the construction industry, but it is illegal. If an employer has a certain amount of control of his workers, state and federal laws say they must be treated as direct employees.

To cover his bases and ensure his workers' claims did not come back on his policy, Worrell took them to buy a ghost policy. Worrell paid for the policies and insisted any paper work associated with the policies should be sent to him. Gonzalez, a native of Mexico, signed the application but didn't realize he and his crewmates were declaring themselves "sole proprietors" and agreeing to go without coverage.

Patrick Lamm went straight to the Lamm used Worrell and his



PHOTOS BY SHARON KOCCO

Troubleshooting photos

Shawn Powell, an executive with the Independent Insurers Association of North Carolina, is an expert on the rules and regulations that get carriers and their customers in trouble.

"It's been a burn in the side of insurance agents for a long time," Powell said. "It puts them in the crossfire, because sometimes the carrier is not honest with them." Powell would like to see ghost policies go.

Mike Carpenter, general counsel of the N.C. Home Builders Association, also says ghost policies ought to be outlawed. He knows the more would be popular with many of his members, but he says the risk these policies pose is simply too great.

"People ought not get advantages in the marketplace by not complying with the law," Carpenter said. "That's what is happening now. It's very bad."

The N.C. Rate Bureau doesn't have the information, privacy concerns would keep it from sharing the information with general contractors or employers calling to check on the scope of a policy. Sometimes, a diligent contractor calls the agent who sold the policy to inquire further. But that's rare, says Powell.

Darrin Rankin owns an insurance company in Huntersville, near Charlotte. He said he writes about a ghost policy a year, but only about once a year will he get a contract call to verify that a policy is in force. Whinn does not cover any policy. Whinn does not cover any policy.

When lawyer Albert Thomas Jr. first heard of Gonzalez's predicament, he was sure someone involved in the construction project must have had valid coverage. He said the law of policies was like solving a puzzle that had never encountered.

"The more you dig, the stranger it becomes," said Thomas, a former Court of Appeals judge who practices in Winston-Salem.

All the insurance certificates signed each employer followed the law. Yet no one was accepting responsibility for the costly claim. But Worrell's case involved a few things that enabled Thomas and his lawyer Paul Dike III to get involved with the Industrial Commission.

For starters, Worrell had inappropriately treated Gonzalez and others as subcontractors instead of direct employees, the commission ruled. And though Cincinnati Mutual had tried to cancel coverage for Worrell for failing to comply with its audit, the insurance company could not prove it had notified him of the cancellation.

A deputy commissioner ordered Cincinnati to pay and also required Lamm's insurer, Builders Mutual, to bear some responsibility. The full commission later relieved Builders Mutual unless Cincinnati defaults. In June, the Court of Appeals upheld the decision.

Cincinnati Mutual has asked the state Supreme Court to reconsider its liability, but the court is not obligated to hear the case.

The \$850 policy meant for a ghost policy for a total estimate of \$7.5 million.

No safety net

For Gonzalez, each day is an endless blur of impossibilities. He cannot check his list to hold a spoon. He urinates through a tube. Sometimes, when he shakes too much, he falls out of his wheelchair, rendered helpless.

Though he can't feel anything when his wife touches his arm, she acts constantly. "When I am by myself, I really know how bad I am," Gonzalez said.

Gonzalez is stock, rarely after a complaint at Cherry, his wife of 13 years, helps him. She turns him over every two hours during the night to prevent bed sores.

When he was a young man, Gonzalez came to the U.S. illegally to work for the social safety net that typically shields poor people who are severely injured or disabled. He cannot receive benefits such as Medicaid while he is pursuing permanent residency in the U.S.

His wife and web of extended family band together to provide the care that the government cannot. They meet in the morning and in the evenings to get him in and out of bed. While they know that better beds and physical therapy might help Gonzalez's condition, those luxuries are out of reach all his workers' compensation claim is settled.

Employers pay the price of workers' comp coverage

Newsobserver.com

About this series

In April, the N&O reported that at least 30,000 North Carolina businesses had not bought workers' compensation coverage, as required by law, after that report, we heard from workers, lawyers and business owners about deeper problems surrounding shoring and business owners' inaction in the construction industry.

To report stories, we reviewed thousands of pages of documents and computer records and contacted dozens of interviewees.

Inept bureaucracy lets unlawful businesses win

By sharing data, North Carolina agencies could level the playing field for honest employers

BY MANDY LOCKE AND DAVID RAYNOR

mlocke@newsobserver.com, draynor@newsobserver.com

Every day, the state Department of Labor dispatches workplace inspectors to check for proper emergency exits, ample fire extinguishers, active safety training programs and dozens of other items needed to keep North Carolina workers safe on the job.

One thing they're not asked to look for: proof of workers' compensation coverage for injured employees.

That check could be valuable, a News & Observer analysis of other available data shows. The N&O, matching data of workers' compensation policies from the N.C. Rate Bureau and the labor department's 4,900 safety inspections last year, found 300 businesses whose workers' comp coverage appeared to be expired at the time of the inspection.

It's a simple cross-check of databases easily available to state officials and could serve as a starting place for bureaucrats charged with ensuring that businesses buy insurance to protect workers.

But no one in state government has bothered to do it. Not the Department of Labor, which is responsible for workplace safety. And not the state Industrial Commission, which oversees disputed workers' compensation claims - and often encounters businesses without insurance.

North Carolina's state agencies operate in silos. They each tend to their specific set of laws and rarely share information with counterparts who may detect other violations.

Business owners who break the rules are pocketing as profit what they are required to spend on taxes and insurance.

"It's one of those things where everybody's turning a blind eye," said Roger Baker, who, along with his brother,



SHAWN ROCCO - srocco@newsobserver.com

Pam Young, chairwoman of the Industrial Commission, says an outdated computer system makes it hard for agencies to share data. But she also says it's not the commission's job to alert other agencies about businesses that might be cheating.

er, Donnie, runs Southern Metal Systems in Wendell. The brothers say their commercial roofing company has struggled in recent years as they compete against companies shirking insurance and tax obligations.

"People will police themselves if they start cracking down," Donnie Baker said.

If only they knew

The missed opportunities for enforcement are glaring: When the Industrial Commission encounters an employer who is paying workers under the table, it doesn't inform the state Department of Revenue. The commission also has no policy or mechanism to alert its counterparts at the state Department of Insurance when it

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encounters an agent who misrepresented a workers' compensation policy to a business owner.

When the state Department of Labor's Wage and Hour Division investigates a complaint that an employee hasn't been paid appropriate overtime, no one flags the case for the state Department of Revenue to check on whether the business pays required withholding taxes.

While the Department of Revenue gives the Division of Employment Security a list of new businesses, it doesn't send that information to the Industrial Commission so it can check for workers' compensation coverage.

There's little communication between these agencies and the State Construction Office or the Historically Underutilized Businesses program. Coordination could prevent businesses that break the law from working on public projects.

"We just suck at synchronizing things that are supposed to be helping people," said state Rep. Dale Folwell, a Winston-Salem Republican who has studied uninsured employers. "None of this surprises me, but it disappoints me."

Obstacles for sharing data

Agency heads offer plenty of excuses. All blame limited resources and say they are focused on their own agency's mission. State Revenue Secretary David Hoyle said he's prohibited by law from sharing revenue data, which includes federal tax information.

Labor Commissioner Cherie Berry says checking for workers' compensation insurance is not the job of her agency.

"We're not set up as a state to have a place that's a repository for that information so that it could be taken to the next level," said Berry, a former state legislator. She said telling the Industrial Commission would have limited effect: "Their system is so antiquated, what are they going to do with it?"

At the Industrial Commission, chairwoman Pam Young said her agency's computer system is so outdated



SHAWN ROCCO-srocco@newsobserver.com

After a penalty enforcement hearing at the Industrial Commission in May, Assistant Attorney General Marc Sneed talks about employers' financial obligations. Hundreds of employers who had failed to provide workers' comp were told to pay or face the possibility of jail.

that it prevents the commission from easily sharing information with others, even statistical data that the law requires it to provide to the state Department of Labor about workplace injuries. She blames limited resources for floundering efforts to detect compliance.

The commission's system dates back to the 1970s and is in the process of being replaced, though it probably won't be completed until 2015. The Industrial Commission keeps part of its fees to replace its system, and since 2006 it has collected nearly \$8 million for the job.

Legislators appear to be interested in the potential for agencies to share data. Last year, they directed the state controllers office to survey agencies' database and fraud-detection capabilities. A report is due to the legislature in October.

Audits show problems

Businesses skirting laws is not a new problem. But as the economy faltered, it became more glaring, business owners say. That's when business owners who follow the

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laws started seeing competitors submitting mysteriously low bids.

“We had all the work we could handle four years ago,” said Donnie Baker, the roofing company owner. “... Suddenly, anything goes.”

Some businesses classify employees as contractors to avoid paying for workers’ comp insurance, overtime and unemployment taxes.

Ted Brinn, head of tax enforcement at the state Division of Employment Security, said his office started hearing more about employers inappropriately treating workers as contractors when the economy faltered and the state’s unemployment reserve emptied.

The agency audits 1 percent of businesses annually and tries to make educated guesses about the industries most likely to be evading taxes. Of the 2,627 audits the division performed last year, about 40 percent of the companies had misclassified employees, which amounted to more than \$70 million in unreported payroll.

Examiners found misclassification in an additional 3,000 cases through tips and problems when workers applied for benefits.

The agency’s scope “needs to be bigger than it is,” Brinn said.

The Division of Employment Security looks into other complaints, too, but Brinn suspects his office is hearing little from undocumented workers, who aren’t entitled to collect unemployment benefits even though employers are required to pay taxes on them.

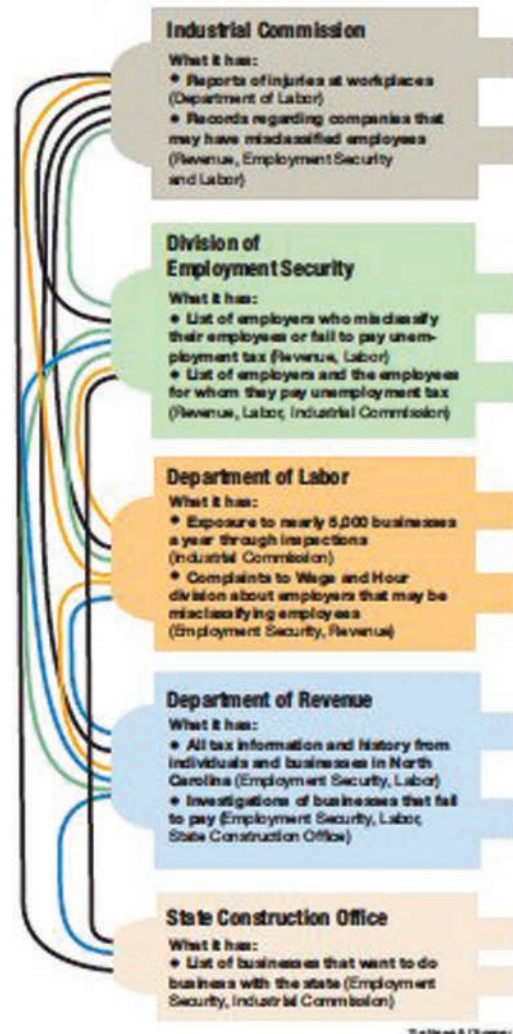
Some states tackle problem

Other states, driven largely by plummeting revenues, have tried to account for missed tax dollars in a more complete way.

A 2009 report by the federal Government Accountability Office found that independent contractor misclassification cost the federal government approximately \$2.72 billion in 2006. In Connecticut, 42 percent of audited employers had misclassified workers; that had

Disconnected government

State agencies have information that their counterparts could use, but each works in an information silo and rarely shares. As a result, businesses that cheat – classifying workers as contractors to avoid taxes and insurance – rarely get caught. No one is in charge; some agency heads are elected, and others are appointed by the governor. In some cases, the legislature would need to change the laws that now prohibit sharing of some information. Here’s what each could share (and with whom):



cost the state \$65 million in unpaid state income tax and \$17 million in unemployment tax. In California, nearly a third of audited businesses erroneously treated workers as subcontractors; so far the state has collected \$137 mil-

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lion in state income tax from those businesses.

The federal Department of Labor, too, has been targeting the misclassification problem since 2010. States that have both unemployment tax investigators and wage and hour investigators in the same department were invited to enter into an information-sharing agreement to help detect problems.

But North Carolina's unemployment tax division is under the Department of Commerce. Wage and Hour investigators are within the state Department of Labor.

Berry, the labor commissioner, said businesses that break the law shouldn't be allowed to prosper. But even if she had been asked to sign on with the federal initiative, she would have been reluctant.

"If it didn't deal with our mission of safety and health, we probably would have said no," she said.

Half-hearted starts

State officials in Louisiana realized several years ago that their agencies' efforts to regulate businesses were too fragmented.

They spent \$4 million on a database that would collect all the information various agencies collected. So far, they have tackled common schemes such as corporations creating various shell companies to hide employees to lower their unemployment insurance burdens.

In just six months last year, the state collected \$1.2 million in unpaid unemployment tax from several companies involved in the scheme.

Leaders in North Carolina say there is occasional chatter about sharing information among state agencies. Those talks usually dissolve quickly as agencies get back to their own responsibilities.

Last year, a bill that would provide a remedy for workers who've been misclassified never left a House committee.

"It did not resonate (with legislators)," said Rep. Rick Glazier, a Fayetteville Democrat and one of the bill's sponsors. Glazier said he'll try harder next session.



Berry



Benton



Hoyle



Goodwin



Young

WHO'S IN CHARGE?

Department of Labor: Cherie Berry

Division of Employment Security: Dempsey Benton

Department of Revenue: David Hoyle

Department of Insurance: Wayne Goodwin

Industrial Commission: Pam Young

ABOUT THE ANALYSIS

To check on businesses that don't have workers' compensation coverage, The News & Observer matched a database of workers' comp policies from the N.C. Rate Bureau with a database of 2011 workplace safety inspections from the state Department of Labor. Of 4,900 inspections, we were able to match 1,800 business names.

Three hundred of those 1,800 - or 17 percent - appeared to have workers' compensation policies that had expired at the time of the inspection. It's not clear how many of the 3,100 businesses that didn't match had no coverage at all because of variations in the way names of businesses were entered into the two databases. Some businesses also may not have three or more employees, the threshold for needing workers' comp.

North Carolina is seen nationally as being behind the curve in addressing misclassification, said Catherine Ruckelshaus, a policy analyst with the National Employ-

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ment Law Project, a nonprofit that studies trends and policy efforts related to employment.

About half the states are trying. North Carolina is not.

“There are ways to go about this without re-creating the wheel, but there has to be political will ..., “ Ruckelshaus said. “They don’t need new laws. They don’t need (more) authority. ... It’s (being) in your face if you are doing that.”

Compliance goes slowly

Since a News & Observer investigation in April revealed that at least 30,000 businesses required to carry workers’ compensation insurance don’t, the Industrial Commission has struggled to create a compliance program.

Commission leaders have said many who don’t carry insurance are small, fly-by-night operations.

Yet The N&O found that many of the uninsured employers were on the radar of another state agency. One had registered a fleet of trailers at the Division of Motor Vehicles. One had been before the commission before

with an uninsured claim. The commission scolded him for failing to keep insurance but never followed up.

The commission did step up efforts to collect on old uninsured cases. It resurrected hundreds of old cases in which commissioners had ordered an uninsured employer to pay but never followed up. In 48 cases, the commission has forced payments to injured workers or collected penalties for failure to buy insurance.

Young awaits recommendations from a legislative study commission appointed this summer to study employers without workers’ compensation coverage.

But Young, who was appointed by Gov. Mike Easley and whose term ends in 2014, insists that it’s not the commission’s job to alert other agencies about businesses that might be cheating.

“The Industrial Commission’s role, as I see it, is to ensure that there is coverage for employees who are injured on the job, “ Young. “Whether or not that business is competing fairly or unfairly, we don’t get into that debate because that’s not our charge.”

Locke: 919-829-8927

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Published August 22, 2012 in The News & Observer

GIRLS MORE PRONE TO TORN ACLs

Garcia outshoots Clark to win Wyndham Sports

The News & Observer

Augusta National ends its ban on women

Famed golf club admits Condoleezza Rice, Darla Moore

By Ron Garsky... After a decade of criticism over its all-male membership...

"This is a historic occasion," Augusta National Chairman Bill Payne said in a statement...

Former club chairman Hiram Johnson reportedly ended what had been a no-women debate about the club's membership...

You know, some of the 'nuts that go to the state capital'...

The Ghost Workers: FAILURE TO COMMUNICATE

Inept bureaucracy lets unlawful businesses win



Pam Young, chairman of the Industrial Commission, says an outdated computer system makes it hard for agencies to share data...

BY SHARING DATA, NORTH CAROLINA AGENCIES COULD LEAD THE PLAYING FIELD FOR HONEST EMPLOYERS

Last of three parts... In Mandy Locke and David Raynor's column...

Every day, the state Department of Labor dispatches workplace inspectors to check for proper emergency exits...

It's one of those things where everybody's turning a blind eye, said Roger Baker, who along with his brother, Dennis, runs Southern Metal Systems in Wendell...

They're not set up as a state to have a place that's a monopoly for that information...

Some businesses classify employees as contractors to avoid paying for workers' comp insurance...

Businesses shirking laws is not a new problem. But as the economy falters, it became more glaring...

States use SAS to find unpaid tax money

In Mandy Locke's column, we reported on the computer program that states use to identify missing tax revenue...

What is it? The federal Department of Labor's Bureau of Labor Statistics...

What it is for: Reports of injuries at workplaces (Department of Labor)...

What it is for: List of employers who misclassify their employees or fail to pay unemployment tax...

What it is for: List of employees and the employers for whom they have unpaid wages...

What it is for: Department of Labor... Exposed to nearly 500,000 businesses a year through inspections...

What it is for: Department of Revenue... All tax information and history from individuals and businesses in North Carolina...

What it is for: State Construction Office... List of businesses that want to do business with the state Department of Transportation...

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NCSU to curb traffic on Dan Allen Drive

Road warrior Bruce Siofiell

Raleigh Just when you thought you'd figured out how to drive around NC, State University after the city rezoned its redesign of Hillsborough Street...

Den Allen Drive carries as many as 19,000 vehicles a day north and south through the main campus...

It's a simple cross-check of databases easily available to state officials and could serve as a starting place for lawmakers charged with ensuring that businesses buy insurance to protect workers...

It's one of those things where everybody's turning a blind eye, said Roger Baker, who along with his brother, Dennis, runs Southern Metal Systems in Wendell...

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Outrageous, influential comic

Phyllis Diller dies

The 93-year-old actress died of a heart attack...

She was best known for her role in the film 'Harvey'...

She was a member of the Screen Actors Guild...

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Doggy food truck with pet snacks hits

Furth's infant dies of whopping cough

The 11-month-old boy died of a severe cough...

He was born in the city of Los Angeles...

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Today's weather

Weather forecast: 81° High, 65° Low, Partly cloudy...

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