

**Cindy Buchko**  
**General Counsel**  
**Construction Business Group**

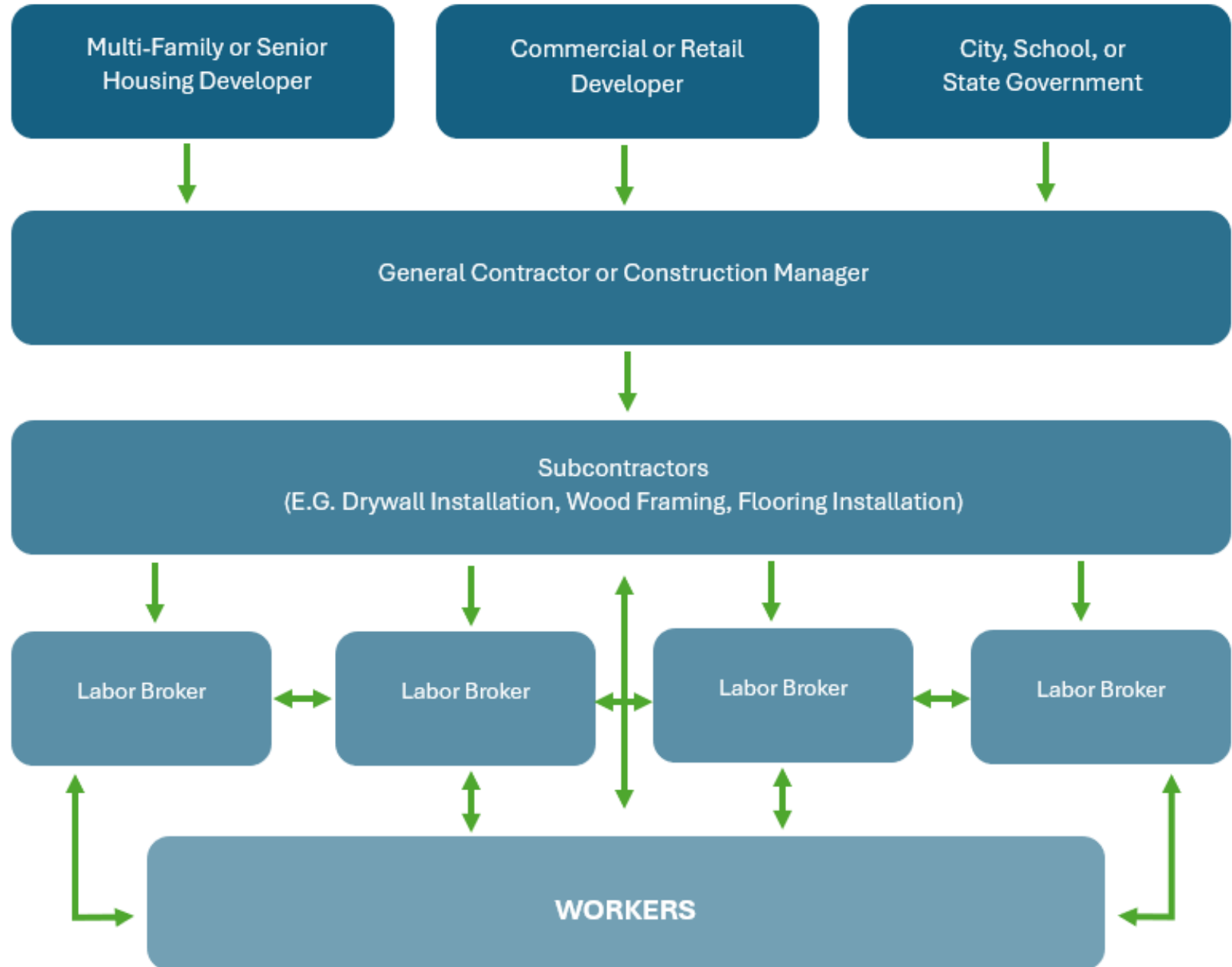
Cynthia (Cindy) Buchko is the General Counsel of Construction Business Group. Prior to joining CBG in 2014, she spent 15 years in private practice and was a shareholder and Vice President of Legal Services of a leading Wisconsin law firm where her practice was concentrated on regulatory approvals for large infrastructure and other construction projects. Cindy is also active in the legal and nonprofit communities. She is a past Board Chair and past board member of the Construction Law section of the Wisconsin State Bar and a current board member of the YWCA of Madison Foundation. Cindy graduated Summa Cum Laude with a Bachelor of Arts from University of Wisconsin-Milwaukee and then graduated Cum Laude from University of Wisconsin Law School.

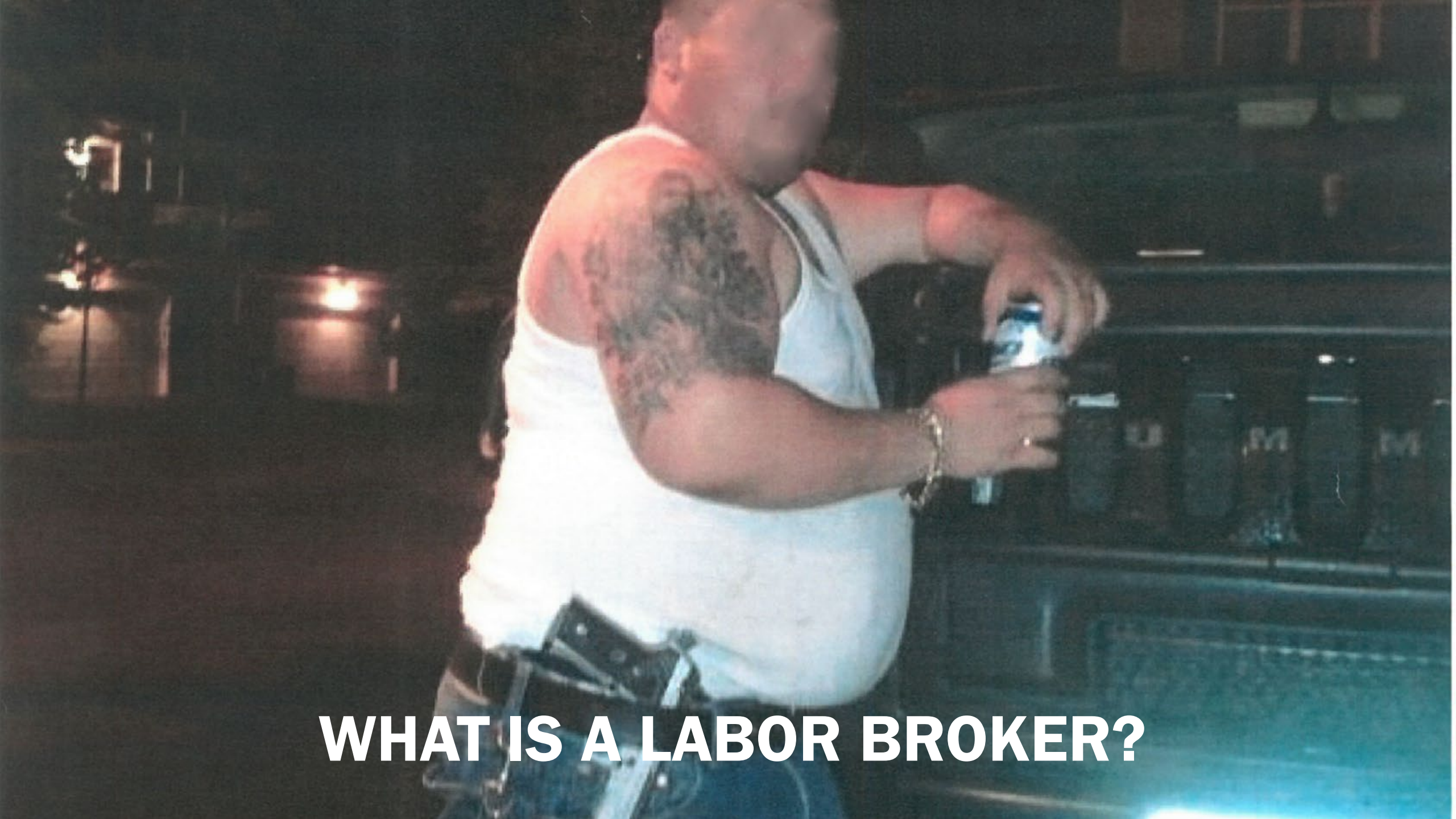
- Employee v. Independent Contractor Misclassification
  - Employer misclassifies a worker as an independent contractor
  - Pays employee cash off the books (most common)
- Three Main Components (All Criminal)
  - Wage theft
    - Failure to pay some or all of work time
    - Failure to pay OT
  - Tax evasion/fraud
  - Insurance fraud
    - No (or insufficient) unemployment insurance payments
    - Underreported payroll for worker's compensation insurance, i.e., premium fraud



# PAYROLL FRAUD IN THE CONSTRUCTION INDUSTRY

## PAYROLL FRAUD IN A CONSTRUCTION PROJECT





**WHAT IS A LABOR BROKER?**

- Pay for first two weeks of drywall installation but fail to pay the last three weeks of the job
- Withholding all payment in a week if late for work one day
- Withholding payment on Job A (finished) until agree to work and commence work on Job B

- Deductions from check or cash payment
  - Inferior work, even when it's not
  - Materials, even though the first-tier sub provided the materials
  - Insurance (more on this one shortly)



- Benefits rather than pay
  - Housing
    - Sleep at the jobsite
    - 10-15 people per apartment
    - Not to code (no hot water, no working bathrooms, etc.)
  - Vehicle “loan”
- Threats, intimidation, and coercion

- Insurance “sale” or deduction
  - Labor broker owns/controls multiple LLCs
    - Cut Corners, LLC
    - Don’t Pay You, LLC
    - Will Cheat, LLC
  - LLCs have minimum general liability and worker’s compensation insurance (e.g., one office worker)
  - Workers told that they are “independent contractors” and must have insurance
  - First-tier sub pays labor broker’s LLC
  - Labor broker pays workers cash and deducts “insurance costs”

**RECEIPT**

No. **268128**

DATE 3-28-17

FROM [Redacted] Construction

\$ 900

WC Policy

DOLLARS

FOR RENT

FOR \_\_\_\_\_

ACCT.		
PAID		
DUE		

- CASH
- CHECK
- MONEY ORDER
- CREDIT CARD

FROM \_\_\_\_\_ TO \_\_\_\_\_

BY ME

A-2501  
T-46820

**COMMON TACTICS (CONTINUED)**

The receipt is:

- a. A valid sale of insurance
- b. Not a valid sale of insurance
- c. A joke, there is no way someone passed that off as proof of the sale of insurance

- Background on the Owner
  - Known labor broker
  - From 2017 – 2023, he owned and operated at least 5 different entities
  - Labor broker and his entities have \$2.26M in tax warrants/liens from the DWD and DOR
  - 2023 federal criminal tax fraud conviction with \$550,000 in unpaid federal tax
- Insurer
  - WC and GL coverages
  - Application listed only one employee with an estimated annual payroll of \$30,000

- Insurance Agent Records
  - 35 recorded calls of requests for certificates of insurance for the LLC
  - 44 certificates of insurance were issued to contractors for drywall projects in a single year
- Audit questionnaire for second year of coverage never responded to so the insurer assessed \$8,000 in additional premium
- Premium never paid and labor broker went on to a new insurer

- No payroll records
  - Employees paid cash off the books
  - Cash payments often sent to a wire house
- LLC
  - Ownership and control easy to disguise
  - Easy to set up and discard
- Lack of claims history—“no harm no foul” attitude
- Lack of centralized insurance fraud prosecution in Wisconsin
  - Local law enforcement lacks resources and expertise
  - Insurers expected to investigate and pursue civil remedies on their own
- Premium audits are “after the fact”

WC Premium Fraud in Wisconsin results in what amount premium loss annually to the insurance industry?

- A. \$2 million
- B. \$15 million
- C. \$26 million



- Recent study by Midwest Economic Policy Institute
  - Concluded at least 10% of Wisconsin's construction industry is off the books
  - Concluded construction industry payroll underreported by \$179M annually
  - Concluded that lost WC premium is \$26 million annually

<https://midwestepi.files.wordpress.com/2020/10/mepi-ilepi-costs-of-payroll-fraud-in-wi-mn-il-final.pdf>

- Recent national study by the Coalition Against Insurance Fraud
  - Concluded 20.5% of all U.S. construction workers are not properly classified as employees
  - Concluded WC premium loss of **\$25 Billion** annually in the U.S.

<https://insurancefraud.org/wp-content/uploads/2023-Workers-Comp-report.pdf>

- Construction company with no construction worker payroll
- Recently formed LLC
- Applicant that changes insurers often
- Entity that has UI, WC, DOR or IRS liability (publicly available information is online)
- Frequent requests for certificates of insurance





**Paul C. Riegel**  
Riegel Law, S.C.

Paul Riegel represents and counsels employers and insurers in Wisconsin workers compensation matters. Before establishing Riegel Law, S.C. in March of 2005, Paul was a partner in the Milwaukee law firms of Borgelt, Powell, Peterson & Frauen S.C., and Michael Best & Friedrich LLP. He has been the legal counsel for the Wisconsin Compensation Rating Bureau since 1992. Paul is a frequent speaker at local and national seminars. He has been a guest lecturer at Marquette University's School of Law. Paul was inducted as a fellow in The College of Workers Compensation Lawyers in 2009 and appointed to its Board of Directors in 2019. Paul has represented employers and insurers before the Wisconsin Workers Compensation Division, the Office of Workers Compensation Hearings, the Labor and Industry Review Commission and the appellate courts in the State of Wisconsin since 1989.

- Section 102.125, stats. requires an insurer to report fraud in a workers compensation claim.
- Typically, this is a fraudulent claim made by an employee.
- This could also be fraud committed by an employer for failing to include statutory employees in coverage.
- It could also be failure by an employer to report an injury to an employee as required by Admin Code Section DWD 80.02(1).

- Report the fraud to the DWD when it will not impede the ability to defend the claim.
- You can report the claim by email to the DWD:  
<https://dwd.wisconsin.gov/WCFraudComplaint>
- Report the name, address and information available on the fraudulent activity.
- You can report fraud to the DWD anonymously.

# WHAT DOES THE DWD DO WITH THE REPORT

- The DWD will review the report.
- The DWD can require the insurer to investigate the report.
- The DWD will send the investigation information to the Department of Justice for review.
- The DOJ has an assistant attorney general assigned to assist the DWD in fraud investigation.



- You can email information about a misclassified worker to the DWD: [workermisclass@dwd.wisconsin.gov](mailto:workermisclass@dwd.wisconsin.gov)
- You can call the DWD to provide the information from a job site: (608) 261-5835.
- You can provide the information anonymously.
- You can write the DWD to report misclassification.
- **ANYONE** can report misclassified employees.

- The field auditors work in the Unemployment Insurance Department.
- They conduct routine periodic examinations of employer records.
- They are also sent to construction worksites to investigate compliance with Section 103.06, stats.
- They have access to employer's records for reported employees.
- They can determine from those records who is being reported as an employee, and who is not.

- UI can assess fines of up to \$500 for each employee who is misclassified not to exceed \$7,500 per occurrence. Section 108.18 and 108.221, stats.
- These fines can be leveled based on a field investigation at a worksite for construction, painting and drywalling employers.
- If the employer has been caught before, or knowingly and intentionally provides false information to the auditor, the fines double.
- The UI auditor can refer the violations to the DOJ for criminal prosecution.

- An employee is every person in the service of another under a contract of hire, express or implied.
- Independent contractors must meet a 9-point test to be considered NOT an employee.
- The critical points for identifying independent contractors:
  - Having a FEIN number.
  - Having separate business contracts with others.
  - Having a separate business.
  - Being paid per contract, job or by competitive bid.
  - Being in a position to succeed or fail if business expense exceeds income.

- Penalty for twice the amount of premium not paid. Section 102.82(2) (a), stats.
- Penalty of \$100 a day for each day not insured. Section 102.82 (2) (ag), stats.
- The DWD can close the business until the employer buys a policy. Section 102.28(4), stats.
- The DWD can collect all benefits paid to or on behalf of an employee from the uninsured employer. Section 102.28(5) stats.

- If the DWD determines that the fraud should be turned over to the local DA or the DOJ, the employer can be charge with a crime. Potential criminal charges include, but are not limited to, the following:
- Theft under section 943.20, stats. greater than \$2,500 is a felony.
- Fraudulent writings under section 943.39, stats. are falsified documents submitted by an employer and is a class H felony.
- Fraudulent destruction of writings under Section 943.40, stats. is the destruction of company records with the intent to defraud and is a class H felony.

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# Wisconsin Compensation Rating Bureau

# WORKERS' COMPENSATION PREMIUM FRAUD

**MIKE LESTER**  
Managing Partner

**Lindgren, Lester & Associates, LLP**





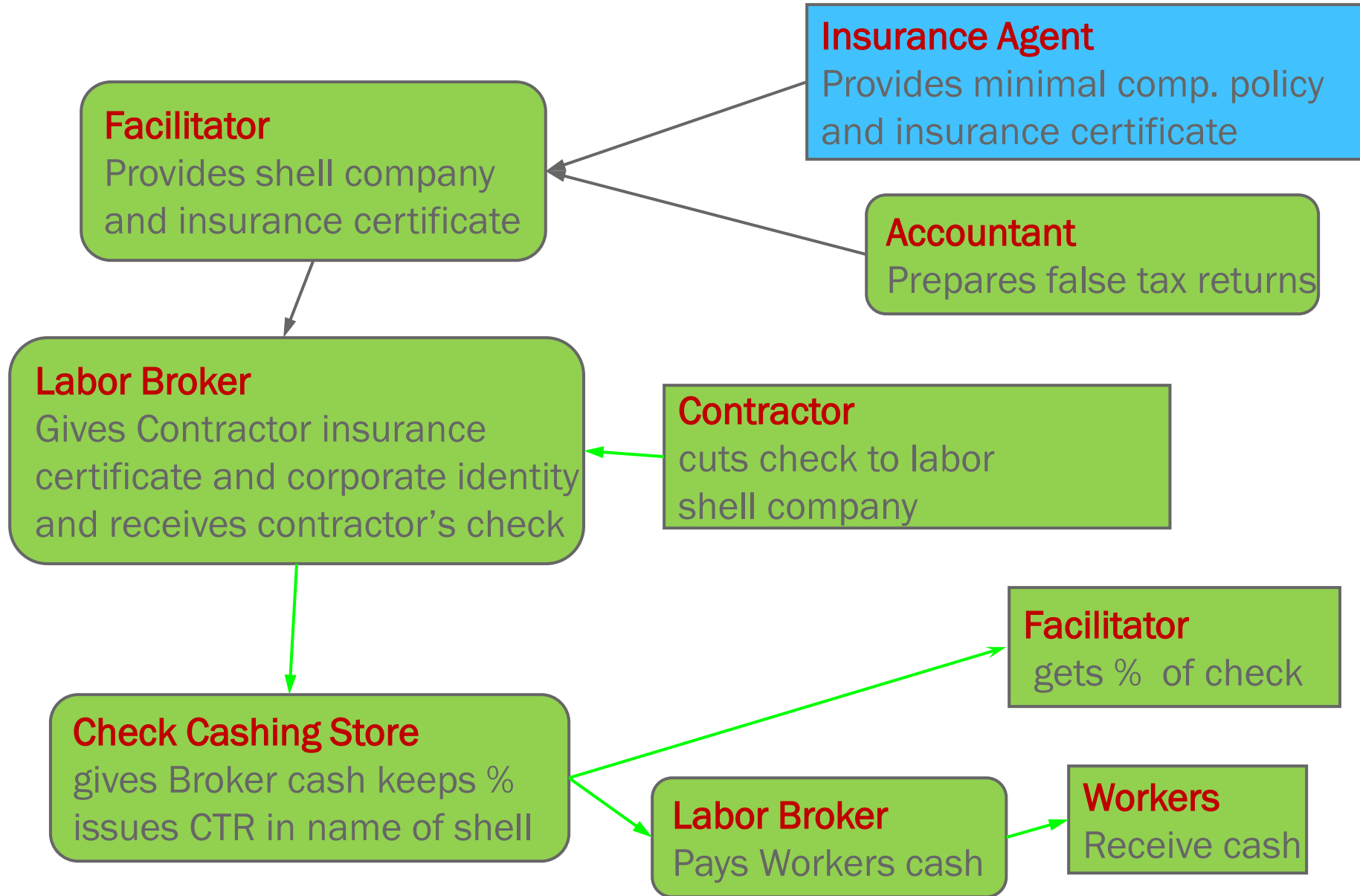


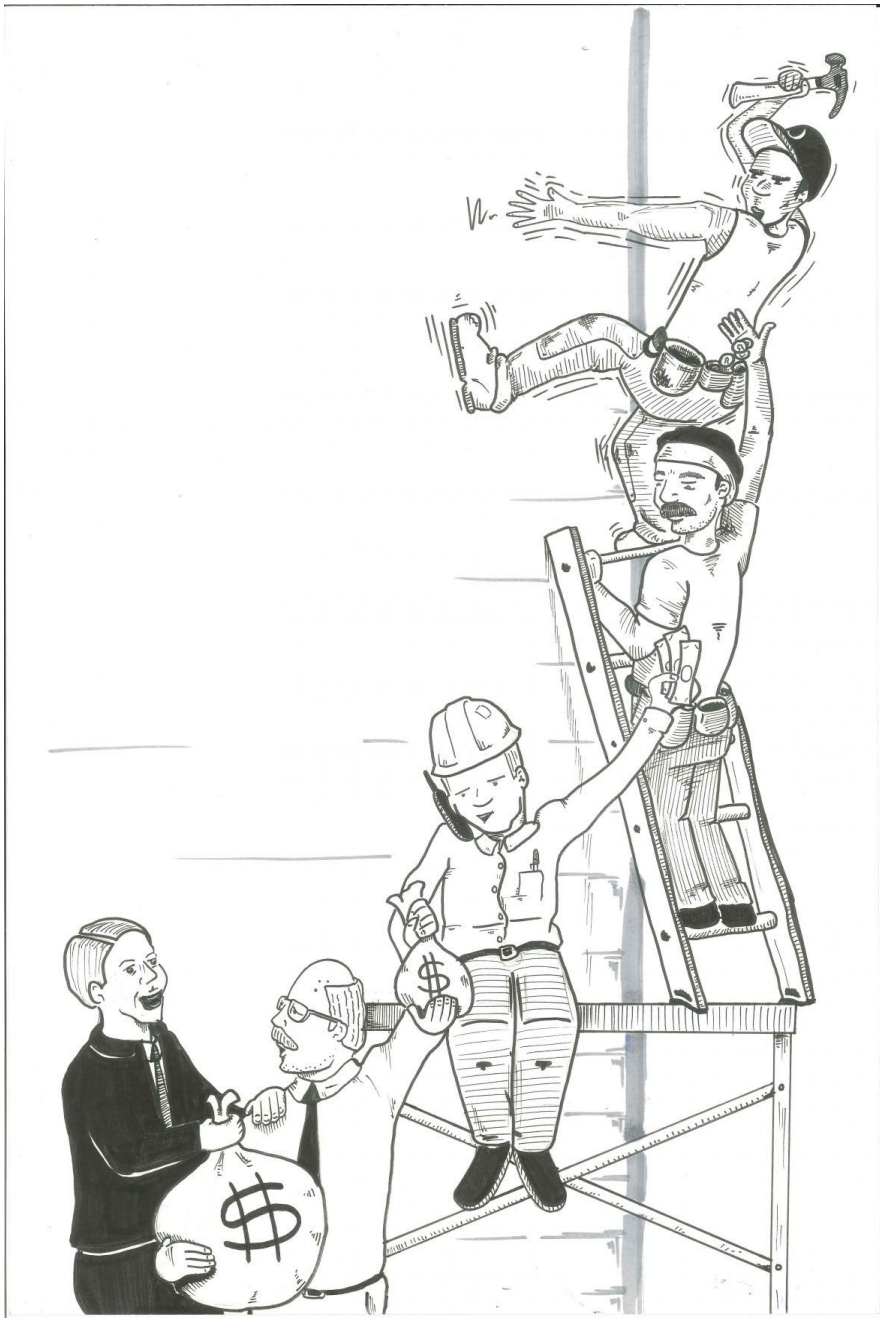
**Mike Lester, CPA  
Managing Partner  
Lester & Associates, LLP**

Michael (Mike) Lester is a Certified Public Accountant and the Managing Partner of Lindgren, Lester & Associates, LLP, a CPA firm with locations in Fond du Lac, WI and Cedarburg, WI. Prior to joining LLA in 2022, he spent 36+ years working for EMC Insurance Companies of Des Moines, Iowa where he worked in many capacities completing his career as the Assistant Vice President in charge of Field Audit Operations nationwide. He has served on the Wisconsin Compensation Rating Committee for over 17 years and currently serves as one of the employer representatives appointed by the Governor to serve on both the WCRB Rating Committee as well as the Governing Board. Mike graduated from the University of Wisconsin-Milwaukee with a Bachelor of Business Administration in Accounting and is a member of the American Institute of Certified Public Accountants as well as the Wisconsin Institute of Certified Public Accountants.

- WC Premium Fraud overview
  - What does it look like?
  - Who are the players?
- Prevention strategies
  - During the Application Process
    - How do we identify a potential WC fraud applicant?
    - Additional document requests from the producer
    - Additional verification requests from the potential insured.
  - During the Underwriting Process
    - Policy has been issued.... Now what!
    - What triggers should we be looking for that would require further investigation
    - Deadlines for agency / insured requests. Do you have them? Are they enforced?
  - During the Audit Process
    - The Preliminary audit – valuable tool.
    - Physical audit – are you serious about enforcing non-compliance.
    - Virtual audits – not on these cases
- Case Studies

# Complex Fraud Scheme





- Shell related schemes result in billions of lost Workers Compensation premiums
  - Contribute to higher WC premiums for all businesses
  - Discovered when workers present claims – often tragic
    - Question – When does an uninsured worker become an employee?
- Shell scheme usually have these illicit goals
  - Hide payroll to avoid WC premiums, State and Federal payroll taxes, and overtime pay.
  - Covertly allow cheap cash-paid labor onto work sites.
  - Creates a fraudulent layer of insurance coverage between the employer and injured workers.
  - Allow contractors to under-bid honest competitors.
  - Labor Brokers are the key to the dishonest schemes.

- Application Process
  - Classes of business with a history of premium fraud.
    - Refer to “special categories” listed in the WCRB manual.
  - Special attention to minimum premium / small premium exposures
  - LLC applications with many LLC Members
  - Multiple MP applications from one agency or producer.
- Underwriting Process
  - Multiple certificates of insurance requests for a MP policy.
    - Do you allow your agency force to issue the certificates?
  - Multiple endorsement requests in the officer exclusion area.
  - Sales revenue does not match the possible production of the owner.
    - Doesn't hurt to ask for sales revenue information.

- Additional possible procedural requirements
  - Create guidelines for WC insurers and agents to conduct audits immediately when
    - A Minimum Premium policy requests more than 10 certificates of insurance.
    - Claims are reported – detailed first report of injury.

- A. Conduct Preliminary/Interim Audits on all “special category” accounts.
  - 1. Conduct **all** audits at the insured’s office with the principals.
  - 2. Conduct the audit within 90 days of the inception of the policy, if possible.
  - 3. Uncooperative insureds should develop an estimated audit within the first 3 months of policy term.
- B. Review claim history before each audit.
- C. Request sales revenue on **all** audits, especially voluntary audits.
- D. Accounting opportunities
  - 1. Review 1099 submissions on all accounts.
  - 2. Review financial statements / disbursements ledger for cash payments.
- E. Insurance certificate review standards.



Midwest Economic Policy Institute 2021 Study

**“The Costs of Wage Theft and Payroll Fraud in the Construction Industries of Wisconsin, Minnesota, and Illinois.”**

Unscrupulous contractors who misclassify workers or illegally pay their employees in cash commit payroll fraud that costs taxpayers millions of dollars per year. • Wisconsin annually loses \$40 million in state tax revenues due to construction payroll fraud– including \$8 million in income taxes, \$6 million in unemployment insurance contributions, and **\$26 million in workers’ compensation premiums.**

Minnesota annually loses \$136 million in state tax revenues due to construction payroll fraud– including \$65 million in income taxes, \$13 million in unemployment insurance contributions, and **\$58 million in workers’ compensation premiums.** • Illinois annually loses \$186 million in state tax revenues due to construction payroll fraud– including \$60 million in income taxes, \$23 million in unemployment insurance contributions, and \$103 million in workers’ compensation premiums.

<https://midwestepi.org/wp-content/uploads/2020/10/mepi-ilepi-costs-of-payroll-fraud-in-wi-mn-il-final.pdf>

A Wisconsin drywall contractor was sentenced to 18 months in federal prison (08/17/23) for tax evasion. This case was handled by Timothy M. O’Shea, United States Attorney for the Western District of Wisconsin. Mr. Reyes was tried on charges of ripping off state and federal taxpayers to the tune of more than a half-million dollars. Mr. Reyes pleaded guilty to this charge on May 24, 2023.

There are also 20 liens for a total of \$2.3 million against Reyes or his businesses, operating under several different names, for failure to pay state income taxes and unemployment insurance premiums and **workers compensation premiums**.

<https://www.justice.gov/usao-wdwi/pr/drywall-contractor-sentenced-18-months-tax-evasion>

In 2018, the Hennepin county attorney, the Minneapolis-area prosecutor, brought a case that sparked greater attention to abuses by labor brokers. [Ricardo Batres was accused of not paying overtime](#) even though he sometimes forced people to work 70-hour weeks and was accused of forcing workers to live in overcrowded housing with no hot water. The indictment also accused him of threatening to deport and even kill workers if they complained to public authorities. When a worker severely hurt his back, Batres ordered him to tell hospital officials he wasn’t injured on the job. Batres ultimately pleaded guilty to labor trafficking and [was sentenced to 270 days in prison](#)

“Misclassification is a very serious problem when it comes to construction,” said Keith Ellison, Minnesota’s attorney general. “A lot of these companies are pushing the costs and risks on to individual workers and reaping the financial benefits for themselves.” By misclassifying workers, employers [can cut costs per worker by 30%](#) by not paying overtime or social security and Medicare taxes or unemployment insurance and workers’ comp premiums.

## SIMPLE DEFINITION – DIFFICULT TO ENFORCE

Employer Subjectivity. The definition of “employer” is amended to clarify that every person who at any time employs three (3) or more employees in Wisconsin is subject to ch. 102, Wis Stats. (Wisconsin Workers’ Compensation Act) on the day on which the person employs three (3) or more employees in this state. S. 102.04.(1) (b) 1.

# Questions?