

A Handful of Apparently Misclassified Workers Illustrate Big State Problem

By: [ANNA BOIKO-WEYRAUCH](#) | June 13, 2016

<http://inewsnetwork.org/2016/06/13/a-handful-of-apparently-misclassified-workers-illustrate-big-state-problem/>

Joe Mahoney/Rocky Mountain PBS News

Construction workers walk in the entrance to the SkyHouse condo development site in downtown Denver February 10, 2016.



The SkyHouse is a 26-story luxury condo development at 1776 Broadway in Denver that touts such features as a “rooftop resort-style pool,” a “Yoga/Crossfit studio” and a “pet spa” on its website.

The massive construction project is led by joint venture contractors, with numerous subcontractors and their subcontractors.

It also appears to be one example of where worker misclassification occurred, according to a Rocky Mountain PBS News review of five workers’ pay stubs – part of a broader analysis that found that Colorado has lost about \$23 million dollars a year since 2011 to businesses that failed to pay unemployment premiums.

The underlying problem is when businesses misclassify employees as independent contractors and thus not subject to payroll taxes, unemployment insurance premiums, or overtime pay. That problem appears to be growing, the analysis found.

The Department of Labor and Employment has never fined a company for skirting the laws by misclassifying employees, although a 2009 statute set up a schedule of fines for the offense.

In most instances, said Jeff Fitzgerald, director of the unemployment insurance program for the department, misclassification is just a mistake. Labor laws are complicated and a lack of understanding creates most problems, he said.

The SkyHouse site is also the subject of a lawsuit filed June 2 alleging illegally unpaid wages stemming from worker misclassification and gender and ethnic discrimination.

The companies involved say they play by the rules or would not comment. Colorado labor authorities said the law prohibits them from providing information on any company’s unemployment insurance status.

At the SkyHouse project the general contractors, Georgia-based Batson-Cook Construction and Swinerton Builders, headquartered in California with an Arvada office, oversee the highest level of

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construction as a joint venture while various sub-contractors and *their* sub-subcontractors focus on more specialized areas such as electrical, plumbing and drywall.

“Our subcontractor agreements require every subcontractor to comply with all applicable labor laws, and we expect them to honor that responsibility,” according to a written statement issued by the joint venture. “If the Joint Venture learns of any legal non-compliance on its worksite, including and with respect to the complex areas of worker classification, statutory employment, and wage payment, we will take prompt and appropriate measures.”

Rocky Mountain PBS interviewed five employees from the SkyHouse project who appear to have been improperly classified as independent contractors, exempting them from overtime pay. They estimate they are missing a total of around \$9,000 in unpaid wages and overtime. The workers are part of a group that filed a claim on the property, notifying potential condo buyers they are trying to recover money from the buildings’ owners.

One worker, Violeta Solis installed drywall and swept the floor at the SkyHouse condo for a month last fall.

“I enjoyed working with the contractor, but then the problems started,” she said.



Joe Mahoney/Rocky Mountain PBS News

Violeta Solis installed drywall and swept the floor at the SkyHouse condo for a month last fall until she hurt her back on the job and was fired the same day, she said. She has filed various claims to get what she says she’s owed, including a civil lawsuit, worker’s compensation claims and complaints to state and federal labor regulators.

In November, 2015 she hurt her back on the job and was fired the same day, she said. She filed a claim for \$1,451 in unpaid wages with Colorado labor investigators.

Solis’ says she is unable to work and takes eight tablets of Ibuprofen a day for pain. She moves constantly about her house, unable to sit, stand or lay down for very long.

“Night is when the pain hits me most,” she said.

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Former drywall worker Aaron Salas said he's owed roughly \$1,520 in unpaid wages and overtime from working at SkyHouse. He said he routinely spent 10 to 12 hours at work, six days a week. At first he thought the wage shortage was an honest mistake.

"We asked a lot about our money," he said. "They told us that they had a very big company that they had thousands of people across the United States and lots of projects, that the secretary made a mistake and they were going to fix it but they never did."

The bills started to pile up: car payments, food, rent.

When they got to work at 7 a.m. each day, Jeff Musto, superintendent of Alpharetta, Georgia-based subcontractor, The Circle Group, told the group of workers what to do. He said most of the directions they got "came from my mouth."

"I'm the superintendent," Musto said. "I'm the man who makes the final decisions. I direct everyone in my scope of work what they need to do."

But Solis' and Salas' paychecks show no local, state or federal tax withholding. That means the workers appear to have been paid as independent contractors when in fact a supervisor determined their hours and dictated their tasks – two factors that would qualify a worker as an employee, subject to overtime and payroll taxes, including unemployment insurance premiums.

Musto said Solis and Salas are lying about their unpaid wages and Solis is lying about getting hurt on the job.

"Any hour that anybody ever complained to me about, we went back and they got paid," Musto said.

The Circle Group's founder Jerry Marchelletta Sr. and his son and company president Jerry Marchelletta Jr. have been accused of dodging their responsibilities to the government before. In 2007 the Marchellettas were convicted of tax evasion in federal court. Jerry Marchelletta Jr. was sentenced to three years in prison but the government dropped all charges in 2012 following a legal battle.

Solis filed a claim for worker's compensation from The Circle Group. Musto said The Circle Group is not responsible for compensating her.

In fact, the workers with claims against The Circle Group were not the company's employees, even though their jobs were directed by that company, he said.

Instead Solis and Salas were employed by another subcontractor called LA Drywall, in charge of supplying sites with manpower, Musto said. The company operates by paying workers as independent contractors, he said.

"That's the way their business is set up," Musto said.

In 2013, LA Drywall's website featured a logo of an eagle holding the American and Mexican flags and the motto, "We speak three languages: English, Spanish and DRYWALL!"

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The company was registered to do business from towns on the outskirts of Orlando and Atlanta. Under the name LA Drywall, the company accrued over \$1 million in unpaid federal taxes and penalties by June 2015, according to public records. The company was recently dissolved by the secretaries of state of Florida and Georgia. However, the company is also incorporated under the name L.A.G. Drywall in Florida.

The company operated without a Denver drywall contractor's license when Solis and Salas worked at SkyHouse. LAG Drywall obtained the proper license in December, 2015 following an inquiry by Denver Community Planning and Development.

The Occupational Safety and Health Administration is currently investigating LAG Drywall for alleged discrimination in Solis' case.

Officers of LAG Drywall did not return repeated calls for comment.

Meanwhile, the paychecks of five workers interviewed by Rocky Mountain PBS News feature the name Gulf Coast Construction, Inc., which business records show was incorporated in Georgia in 2014 but never licensed for business in Colorado.

Gulf Coast Construction also lacks a Denver contractor license and Colorado worker's compensation insurance and is under investigation by the U.S. Department of Labor for Solis' allegedly unpaid wages.

Repeated phone calls to Gulf Coast Construction were not returned.