

It's Everybody's
Business

Don't be a victim

Employee vs.
Contractor?

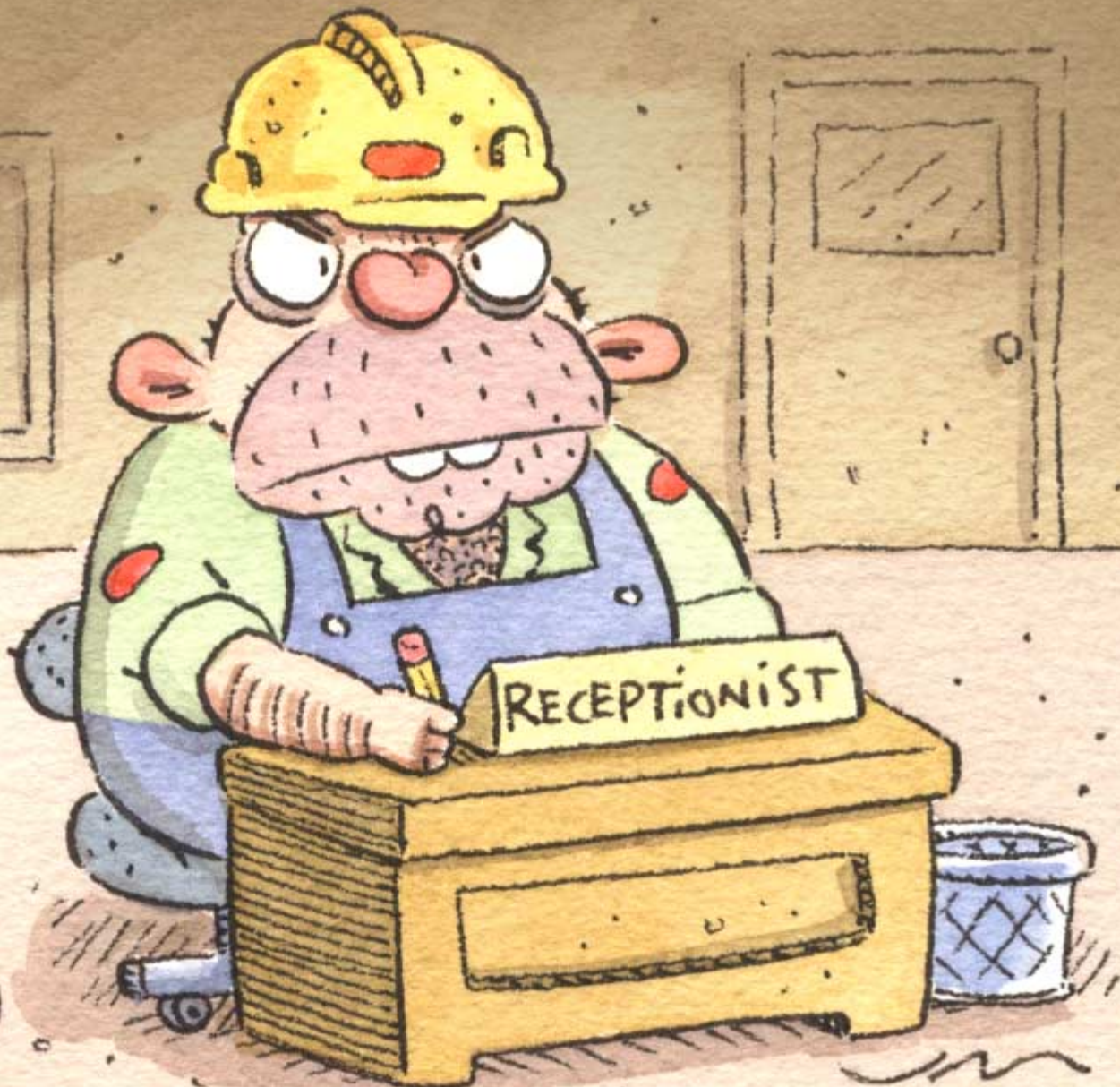
What You
Should Know

The Difference
Between Fraud
and Abuse

Twenty-Factor
Self Test

PREMIUM FRAUD

Who Really Pays the Price?



PRESIDENT'S MESSAGE



Dear Members,

In a previous issue of this newsletter, we addressed the topic of claimant fraud. Although this type fraud is very significant, it accounts for only a fraction of the abuse that plagues our workers' compensation system. The major culprit: premium fraud.


In our years of supporting local businesses, we have learned that many cases of workers' compensation abuse result from a lack of clear information, rather than the intention to defraud. That's why we have chosen to tackle this sensitive issue head-on with straight-forward explanations and guidelines to help you stay in compliance.

This newsletter will also help you identify signs that a competitor, sub-contractor or affiliate may not be abiding by workers' compensation laws, and may therefore have an illegal advantage, or may make you a target for prosecution or litigation.

The sad and simple truth is that fraud, in any form, takes a toll on everyone. Businesses that commit fraud punish honest employers. And they deny employees raises and benefits by diverting money to premiums that spiral out of control.

Workers' compensation laws were established to protect employees and their families from financial devastation caused by workplace injury, and to protect employers from tort liability arising from workplace injury. Businesses with fraudulent practices are not only breaking the law, they are cheating those who value the goals of this legislation.

If Hawaii is to thrive as an economic community, we must participate in the protection of fair employment practices and fair competition. By working together, we can make Hawaii a better place in which to live and work.

SINCERELY,

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QUESTIONS & COMMENTS

Are there questions and ideas you'd like to share? Please write us at HEMIC Connection P.O. Box 3376, Honolulu, Hawai'i 96801 or send email to info@hemic.com.

Last month, he was a carpenter. This month, he's the secretary.

**Preventing premium fraud
 is everybody's business.**

From an employer's view, it's easy to see the negative financial impact caused by claimant fraud. If an employee makes false statements regarding the circumstances or seriousness of an injury, the fraudulent claim can result in lost productivity and higher premiums—consequences that directly affect your bottom line.

Premium fraud can be much less obvious—and even more financially devastating.

For example, let's say you own a construction business. Your success relies upon your ability to provide competitive estimates for each job you bid on. If you payroll a crew of 15 journeymen, you'll pay workers' compensation premiums according to their job responsibilities. These premiums are included in your cost of doing business.

Now, let's imagine that your competitor, Company X, also has a crew of 15 journeymen—but on his payroll, he classifies five members of his construction crew as office workers—job classifications that carry less risk and therefore lower workers' compensation premiums. Competitor X then uses his illegal "savings" to underbid you and secure the contracts.

By committing premium fraud, Competitor X not only hurts your business, he cheats all the legitimate businesses with whom he



competes. As a result, you may have to lay-off workers. What's more, if Competitor X requires his workers to participate in a "bogus" independent contractor scheme, he puts them at risk by denying their right to medical and disability coverage.

Should you care that your competitor is cutting corners? Should you be concerned about the way he treats his employees? The answer is yes. Workers' compensation fraud hurts honest businesses. It jeopardizes employment and employees. And it hurts everyone's ability to compete in a fair and open marketplace.

WC Factoid

According to the Hawaii State Department of Labor and Industrial Relations, work-related injuries in 1998 cost Hawaii employers \$233,224,525 and the loss of 17 lives.

REPORTED CASES:	30,727
PROCESSED CASES WITH COST:	45,910
TOTAL COST:	\$233,224,525
COST PER CASE:	\$5,080
DAYS LOST:	1,160,365
REPORTED FATALITY:	17

source: <http://www.state.hi.us/dlir/rs/loihi/OMI/WC/INTRO98.HTM>

What You Should Know About Premium Fraud.

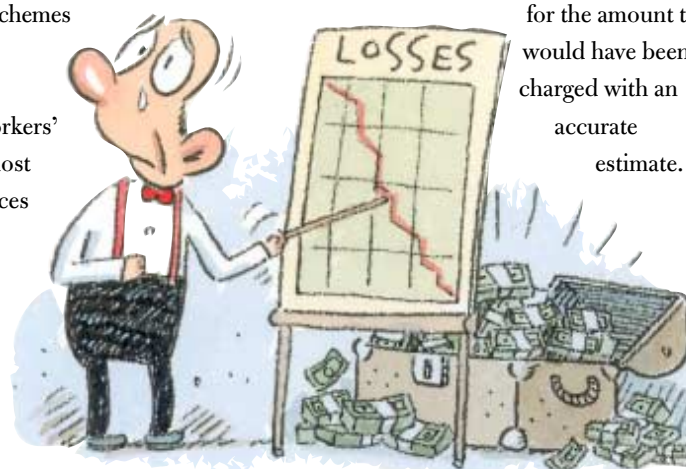
UNTIL RECENT YEARS, *premium fraud has been a relatively invisible crime. It has been underreported by the media, and to a great extent, ignored by the business community at large. However, the impact of premium fraud on your business is very real.*

Premium fraud is a crime. It jeopardizes workers' rights to health care. It fosters unfair competition. And by raising premiums, it punishes employers who play by the rules. Here's how you can identify premium fraud and what you can do about it.



What is premium fraud?

According to the Labor Research Association in New York*, for every \$1 that is lost in claimant fraud, at least \$4 to \$5 are lost through premium fraud. Premium fraud includes a number of schemes used by employers to reduce the cost of premiums paid for workers' compensation. The most common illegal practices are underreporting payroll, misclassifying employees' occupations and misrepresenting their claims experience.



Employers deliberately and materially underestimate payroll projections at the beginning of the premium year and essentially receive an interest-free loan from the insurance company for the amount that would have been charged with an accurate estimate.

Underreporting payroll

Employers reduce their premiums by not reporting parts of the work force, paying workers off the books or creating a companion corporation to hide a portion of the employees.

Independent contractors

Employers avoid premium payments for employees by classifying them as independent contractors even though they are legally employees.

Misclassifying workers

Employers intentionally misrepresent job risks to put employees in less hazardous occupational categories and reduce premiums.

Misrepresenting claims experience

Employers hide previous claims by classifying employees as independent contractors or leased employees, or creating a new company on paper.

Misrepresenting company ownership

Employers misrepresent company ownership in order to hide dangerous practices or poor safety records, or to avoid a bad experience modifier.

Underestimating workforce

Employers deliberately and materially underestimate payroll projections at the beginning of the premium year and essentially receive an interest-free loan from the insurance company

Discouraging employee claims

Employers knowingly misrepresent employees' entitlement to benefits to discourage employees from filing a claim, telling employees that they are an independent contractor, that workers' compensation benefits are only available if he or she has been employed for six months, or firing workers who attempt to file a claim.

There are also reports of employers who instruct injured employees to seek medical treatment from their group medical plan rather than through workers' compensation.

In addition to premium fraud, employers often fail to purchase workers' compensation insurance, despite state laws mandating that they do so.

How does employer fraud affect you?

1. Employer fraud hampers your ability to compete by giving your competitor an unfair advantage.
2. If the "abuser" is a subcontractor, it could make your company vulnerable to prosecution as well as a potential target for lawsuits filed by injured employees.

3. Fraud increases the cost of workers' compensation premiums state-wide, which leads to higher costs and less profit for your business.
4. By causing higher premiums, fraud also lessens the amount of remuneration or benefits you can offer your employees, thereby reducing your ability to secure the most qualified workers.

What can you do about it?

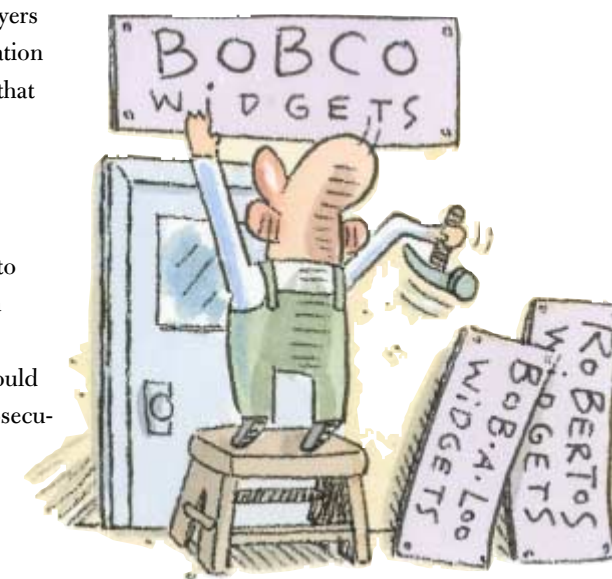
If you have difficulty interpreting the workers' compensation law or are concerned that you may be committing a violation, call your HEMIC representative or your agent.

If you suspect that another employer is committing these violations, do not address the employer yourself. Instead, call the HEMIC Fraud Hotline (see back cover) or call your representative. If necessary, refer your report to the Department of Labor or local or state prosecutors. All reports are strictly confidential.

Reporting fraud is everyone's business

When you report unfair, dishonest labor practices, you help to promote fair competition, which in turn strengthens our economy and makes Hawaii a better place in which to live and work.

*Labor Research Association, Workers' Compensation Fraud: The Real Story, June 1998



Don't Be a Victim.

The best price may not always be the best value. Select business partners with established track records and a solid reputation in the business community.

Attorney Fraud

Attorney/licensed representative knowingly participates in misrepresentation of the truth in order to either secure or deny compensation for their clients and/or themselves.

Examples include knowingly assisting a client in pursuing a false claim and soliciting a person to file a false claim.



Health Care Provider Fraud

Includes any verbal or written lie that forms the basis of any billing for services or benefits in the workers' compensation system. Health Care Provider Fraud can be perpetrated by any provider in the system, such as doctors, rehabilitation counselors, pharmacists, or chiropractors.

Examples of Provider Fraud are billing for exams of patients who were never examined, or for treatment never rendered. Duplicate billing and/or receiving payment from different insurance carriers for the same treatment — and not making restitution.

Insurance Carrier Fraud

This type of fraud occurs when a claims representative purposely misrepresents the truth in order to either deny or support a claim; or offers or accepts any form of consideration for the referral or settlement of a claim.

Examples of Carrier Fraud include accepting a gift from a doctor's office in exchange for an implied promise of patient referrals, or altering the evidence in a claim in order to support a denial of benefits.

What is the Difference Between Fraud and Abuse?

In the simplest terms, insurance fraud occurs when someone knowingly and with intent to defraud, presents or causes to be presented, any written or oral statement that is materially false and misleading to obtain some benefit or advantage, or to cause some benefit that is due to be denied.

The deciding factor between fraud and abuse is defined as the presence or absence of a provable lie.

Fraud occurs if:

- There is a false representation - the lie,
- The lie is intentional or knowingly made,
- The lie must be made for the purpose of

obtaining a benefit the claimant is not due, denying a benefit that is due, or obtaining insurance at less than the proper rate,

The lie must be material, that is, it must make a difference: "If the truth had been told, would you have done anything differently?"

What about kickbacks?

Though not legally a fraud, offering or accepting kickbacks for the referral or settlement of cases is a reportable and highly prosecutable crime.

Kickbacks indirectly feed the problem of fraud and as a result, cause damage to our society and our economy.

Employee vs. Contractor? Can you tell the difference?

Workers' Compensation, unemployment insurance, the IRS... They all must make determinations regarding whether workers are employees or independent contractors. Different tests are used by the various organizations, but they all have a common theme. The bottom line is that if a preponderance of the information indicates the worker is an employee it doesn't matter what title has been assigned by the employer. An employee, by any name, is still an employee.

ABC Test

Handbook for Employers on Unemployment Insurance, DLIR 11/97

- A. An individual must be free from control or direction; and
- B. Service must be performed outside the usual course of business or place of business; and
- C. Individual must be customarily engaged in an independent occupation, trade, profession, or business of the same nature as that involved in the contract of service.

Twenty-Factor Test

ISSUE	EMPLOYEE	INDEPENDENT CONTRACTOR
1 Instructions	Required to comply with employer's instructions as to how to do the job.	Follows own instructions.
2 Training	Required to be trained by employer how to do the job.	Does not require training from employer.
3 Integration	Services are fully integrated into employer's business, which is significantly dependent upon them.	Services not integrated into employer's business.
4 Personal	Required to perform services personally.	Not required to perform services personally.
5 Assistants	Assistants are hired, supervised and paid by employer.	Generally hires own assistants.
6 Continuity	A continuing economic relationship which may include work at recurring but irregular intervals.	No assumption of continuing relationship.
7 Hours of work	Required to perform within set hours of work specified by employer.	Free to establish own hours of work.
8 Time required	Usually devotes full-time to employer's business, may be restricted from performing work for others.	May work at any time and for whom he chooses.
9 Work location	Performs work on employer's premises. (Importance dependent on nature of work and requirement, if any, of employer.)	Work may be performed anywhere, often at worker's office or location.
10 Sequence of work	Follows orders or sequence of work set by employer.	Free to accomplish work in any sequence.
11 Reports	Generally makes regular or periodic, either oral or written, reports to employer.	Not necessarily required to submit regular reports.
12 Payment	Is generally paid by time, i.e. hour, week or month.	Is generally paid by result or straight commission.
13 Expenses	Is generally reimbursed for business-related expenses, implying right of regulation and direction by employer.	Generally covers own expenses and expenses may be included in total payment.
14 Tools and materials	Tools and materials needed for job are provided by employer.	Uses his own tools and materials to accomplish work.
15 Facility investment	Generally has no investment in facilities required to accomplish work, indicating dependence on employer's facilities.	Has an investment in facilities, such as an office rented from third party.
16 Profit or loss	Cannot realize a profit or loss on his services.	Has an exposure to economic gain or loss on services.
17 Simultaneous Work	Performs work under a single financial arrangement.	Performs work simultaneously for multiple, entities.
18 General Public	Does not make services available to general public.	Regularly makes services available to general public.
19 Discharge	Employer can fire and thereby control nature and pace of work through threat of firing.	Cannot be discharged so long as result is satisfactory.
20 Termination	Can quit at any time without liability.	Can terminate with risk of breach of contract liability.

And, don't forget. Even if a worker is not an employee the employer will be charged workers' compensation premium if the worker creates exposure under the insurance policy.




HEMIC FRAUD HOTLINE

If you suspect an employee or co-worker is receiving workers' compensation benefits due to a fraudulent claim, call the hotline today. All calls are strictly confidential.

On Oahu Call
522-5279

Neighbor Islands Toll Free
1-888-522-5295



**Protect your business and your employees.
Report all injuries within 24-hours.**



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