

Payroll Fraud and the Use of Labor Brokers in the Construction Industry: How Joint Employment Helps

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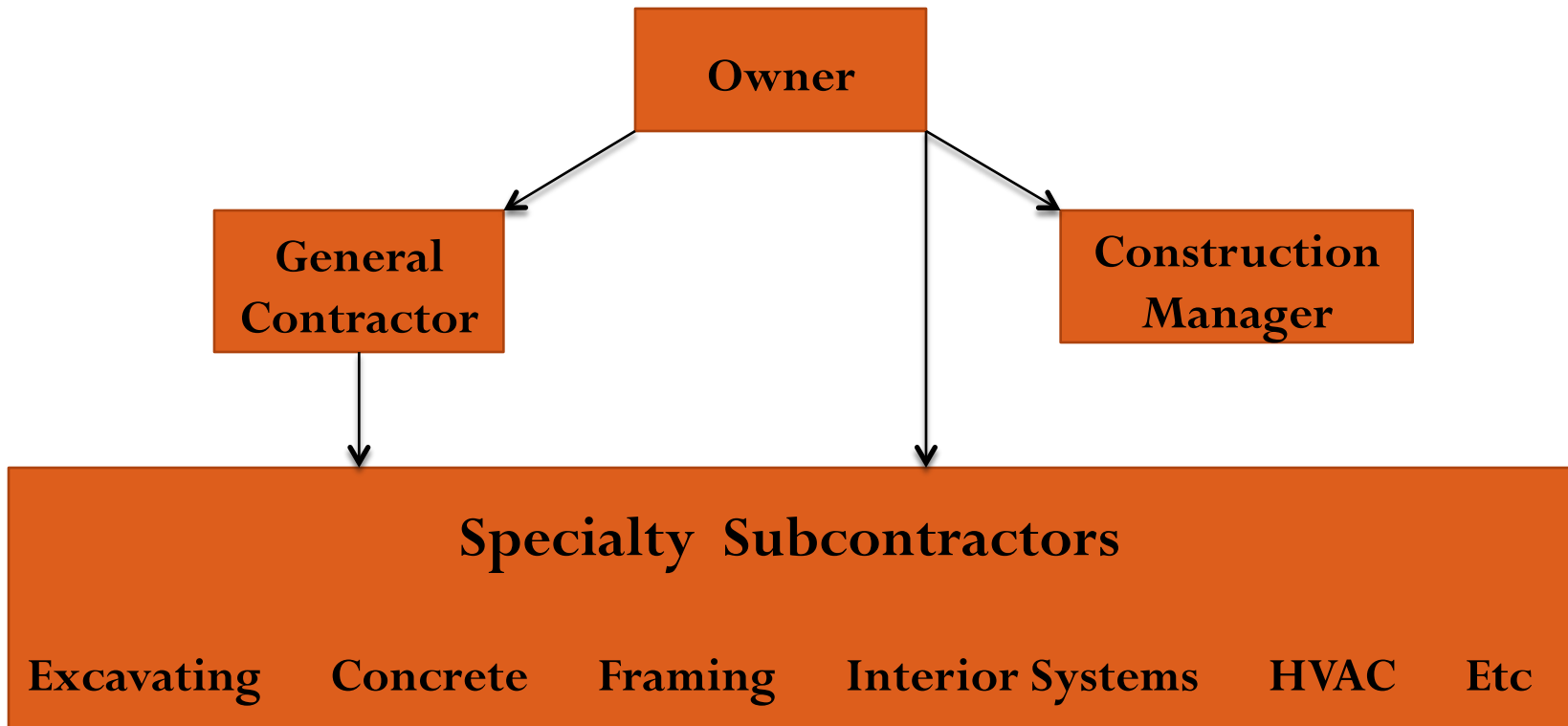
Representative of the General President

United Brotherhood of Carpenters and Joiners

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Structure of the Construction Industry Built on Subcontracting



Jobs Won on Competitive Bidding

Materials/Equipment

Overhead

Profit

Wages

**Employment taxes and workers'
compensation insurance**

Construction and the Fissured Workplace

Specialty
Contractor



Labor
Subcontractor



Employees

So, who is the
employer?

Much Too Common.....

A Florida insurance broker issued 450 workers' compensation certificates of insurance for a labor broker claiming \$43,000 in payroll for four workers.

The labor broker was actually paid over \$11 million in 15 months.

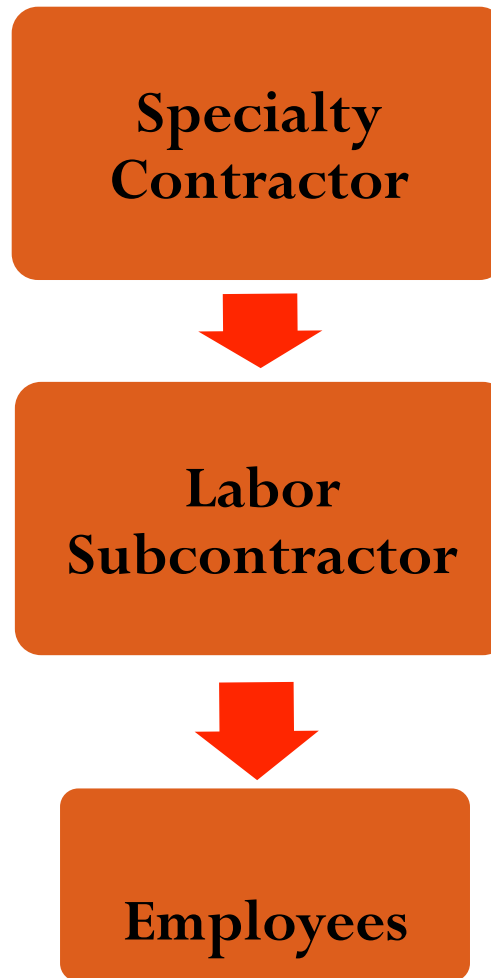
Fraud Dominate in Construction

- More workers are paid off-the-books than wrongly classified as 1099 independent contractors
- California construction industry
 - From 1972 to 2012 a 400% increase
 - 143,900 construction workers
 - 39,800 wrongly classified as independent contractors
 - **104,100 received unreported compensation**

Who loses

- ◆ Federal, state and local governments lose tax revenue
- ◆ Workers cheated out of wages, overtime pay, unemployment benefits, workers' compensation protection and Social Security and Medicare unless they pay their bosses' portion of employment taxes
- ◆ Workers' compensation insurers lose premiums
- ◆ Law abiding employers lose work

The Fraud Mechanism



USDOL Wage & Hour Division

Administrator's Interpretations

Misclassification and Employment No. 2015-1

Joint Employment No. 2016-1

FLSA Economic Reality Test

- Is the work an integral part of the employer's business
- Does the workers, managerial skill affect the worker's opportunity for profit or loss?
- How does the workers' relative investment compare to the employer's?
- Does the work performed require special skill and initiative?
- Is the relationship between the worker and the employer permanent or indefinite?
- What is the nature and degree of the employer's control?

Joint Employment

National Labor Relations Act

- Share or codetermine matters governing essential terms and conditions of employment.
 - Is there a common-law employment relationship
- Does the putative joint employer possess sufficient control over employee's essential terms and conditions of employment to permit meaningful collective bargaining.
- Does a joint-employment finding serve the purposes of the NLRA.

Browning-Ferris Industries of California, Inc. (2015)

UBC Resources

- UBC Information Web Site:
 - PayrollFraud.net
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