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Commissioner's Message

Tom Douse, VDOL Deputy Commissioner and Acting Commissioner

Workers' Compensation and Fraud

Fraud is the term used to describe an intentional lie that is made in order to obtain a benefit. Fraud does not occur with great frequency in the Vermont workers' compensation system, but it does occur. When the department is presented evidence of fraud, the matter is investigated and a penalty may be issued. Legislative reform in 2004 served to bolster the department's stance on fraud. H.632 Section 16 reinforced the allowable penalties for fraud. This article provides an overview of fraud: what it is, how it may be investigated and the penalties that may be issued.

Potential for Fraud

Workers' compensation is a statutory benefit system that imposes costs on employers and insurance carriers and provides monetary and other benefits to employees. With such a cost/benefit system, there exists the potential for an individual to attempt to sway the process. With that recognition, workers' compensation laws and rules are in place to redress fraudulent acts.

Parties to Fraud

Fraud may be committed by any party or interest to a workers' compensation policy or claim. This includes but is not limited to the following: an injured worker, employer, physician, adjuster, insurance agent, vocational counselor, or any other individual who has an opportunity to influence a workers' compensation insurance policy or claim.

Fraud Defined

One dictionary describes "fraud" as: "deceit or breach of confidence used to gain unfair or dishonest advantage."^[1] In workers' compensation, the term "fraud" is used to describe intentional lying or false statement made in order to obtain a workers' compensation benefit.

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The Edge

Workers' Compensation Investigations Case Studies

Investigation of Employee

An employee was injured at work. Her physician took her out of work and she began receiving temporary total disability benefits. Her employer learned that while out of work and receiving temporary total disability benefits, the employee was working at two other jobs. The employer then told the employee that she must report any current or future employment. The employee lied to the employer by stating that she was not currently employed and earning money.

The Vermont Department of Labor investigator interviewed the employee and had the employee execute a signed, sworn statement. The employee admitted that she had never reported her earnings at one job. However, the employee lied under oath by stating to the investigator and writing in her sworn statement that she had not earned any money at the second job while she was receiving temporary total disability benefits. She claimed that she was just volunteering her time. Three weeks later, while under oath, the employee admitted

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There are three elements to fraud:

- 1) Must be willful; **intentional** or **deliberate**; *and*
- 2) Involves a **misrepresentation** or **lie**; *and*
- 3) Made for the purpose of obtaining a **benefit**.

It is necessary for *all* three elements to be met in order for action to rise to the level of "fraud".

Fraud Examples

Employer:

An employer or agent of an employer intentionally under-reports payroll or misclassifies employees' job descriptions in order to minimize the workers' compensation insurance premium.

Employee:

An injured worker performs part-time work while receiving Temporary Total Disability (TTD) benefits. An employer, physician, or attorney asks the employee if they are working and they deny it.

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to the state investigator and in a second signed, sworn statement, that she had lied previously to the state investigator when she claimed that she had not been working for pay at the second job while she was receiving temporary total disability benefits. She stated that she was willing to repay any money to which she was not entitled.

The Vermont Department of Labor cited the employee on June 28, 2004 and levied a penalty of \$1,000. The employee paid the \$1,000 penalty to the Vermont Department of Labor.

Investigation of Employer

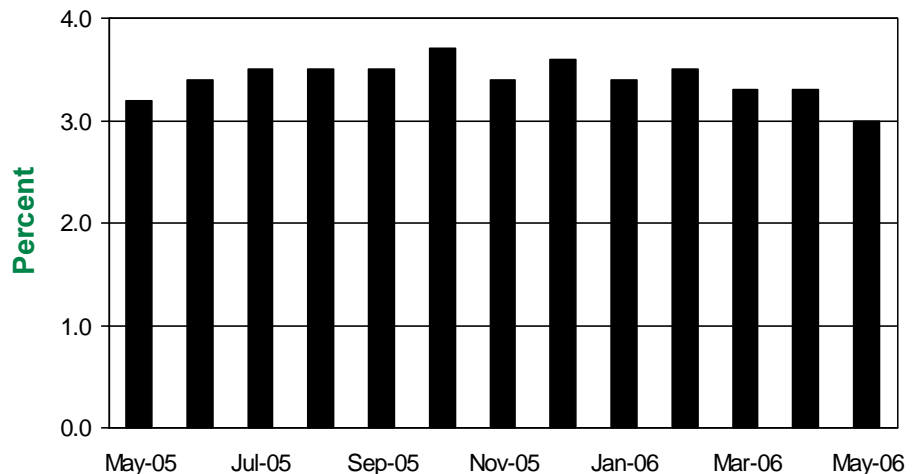
On March 8, 2004 Vermont Department of Labor received an anonymous complaint that a landscape company never had workers' compensation insurance. A letter was sent to the company. The company replied that it did not need workers' compensation insurance because it did not have employees.

On October 25, 2005 the Vermont Department of Labor investigator was stopped in traffic at a site where the company was working in full view of the investigator. The investigator observed 4 or 5 individuals engaged in the work of the business.

Two days later the investigator interviewed the owner of the business and was told that his workers were subcontractors, not employees. When told that the investigator had observed his workers two days prior, the employer said that he would immediately contact his insurance company and obtain workers' compensation insurance. The following day an insurance company faxed to the Vermont Department of Labor a workers' compensation policy binder for the landscape company.

Vermont Department of Labor did not cite the employer because he promptly obtained insurance when directed to do so.

Vermont Seasonally Adjusted Unemployment Rate



Vermont Unemployment Estimates Statewide *(Seasonally Adjusted)*

	May '06	Apr. '06	May '05	Changes from:	
				Apr. '06	May '05
TOTAL LABOR FORCE¹	361,300	360,300	354,000	1,000	7,300
EMPLOYED	350,600	348,300	342,700	2,300	7,900
UNEMPLOYED	10,700	12,000	11,300	-1,300	-600
RATE (%)	3.0	3.3	3.2	-0.3	-0.2

¹Includes proprietors, professionals, and unpaid family workers.

Labor Market Areas By Residence *(Not Seasonally Adjusted)*

AREA	Total Labor Force	Number Employed	Number Unemployed	May-06 Rate (%)	Apr-06 Rate (%)	May-05 Rate (%)
Barre-Montpelier	29,550	28,700	850	2.9	4.2	3.1
Bennington	12,550	12,250	350	2.6	3.5	3.4
Bradford	5,250	5,100	150	2.9	4.2	3.0
Brattleboro	24,500	23,700	800	3.3	4.0	3.5
Burlington-South Burlington	114,800	111,950	2,850	2.5	3.4	2.7
Hartford	19,250	18,950	300	1.6	2.1	1.8
Manchester	11,900	11,550	400	3.2	4.4	3.7
Middlebury	18,100	17,700	400	2.3	3.6	2.7
Morristown-Stowe	20,300	19,700	600	2.8	4.5	3.2
Newport	14,450	13,900	500	3.6	5.8	4.0
Randolph	8,350	8,100	250	2.9	4.5	3.1
Rutland	28,150	27,050	1,050	3.8	4.1	4.0
Springfield	11,750	11,350	400	3.6	4.7	4.1
St. Johnsbury	15,050	14,650	400	2.6	4.1	3.0
Swanton-Enosburg	14,350	13,900	450	3.2	5.2	3.6
Warren-Waitsfield	4,200	4,100	100	2.5	3.2	2.7
Woodstock	3,650	3,600	50	1.9	2.6	2.6
Vermont Total	358,400	348,400	9,950	2.8	3.9	3.1

AREAS FROM ADJOINING STATES INCLUDING VERMONT TOWNS *(Not Seasonally Adjusted)*

Colebrook, NH-VT	3,350	3,200	150	4.6	6.0	6.8
Lebanon, NH-VT	45,250	44,350	850	1.9	2.3	2.1
Littleton, NH-VT	15,200	14,750	450	3.1	3.9	3.2
North Adams, MA-VT	16,900	16,100	800	4.8	5.3	4.8

Monthly estimates are preliminary and subject to revision. Detail may not add to totals due to rounding.

Vermont Seasonally Adjusted Nonfarm Employment in Thousands

BY NAICS	Prelim.	Revised	Revised	Changes From:	
	May '06	Apr. '06	May '05	Apr. '06	May '05
Total - All Industries	308.3	307.1	305.2	1.2	3.1
Private Industries	255.2	253.9	252.3	1.3	2.9
Construction	17.5	17.0	16.8	0.4	0.6
Manufacturing	36.6	36.7	36.8	-0.1	-0.2
Trade, Transportation & Utilities	59.9	59.9	59.4	0.0	0.5
Retail Trade *	40.8	41.0	40.6	-0.2	0.2
Financial Activities	13.2	13.1	13.2	0.1	0.0
Professional & Business Services	22.2	22.3	21.7	-0.1	0.5
Education & Health Care	55.3	55.0	54.2	0.3	1.1
Private Ed. Services*	12.7	12.6	12.6	0.1	0.1
Health Care & Social Assistance*	42.4	42.5	41.8	-0.1	0.6
Leisure & Hospitality	33.3	32.7	33.2	0.6	0.1
Other Services	10.0	10.0	10.1	0.0	-0.1
Total Government	53.1	53.2	52.9	-0.1	0.2

*These estimates are not endorsed by the U.S Bureau of Labor Statistics.

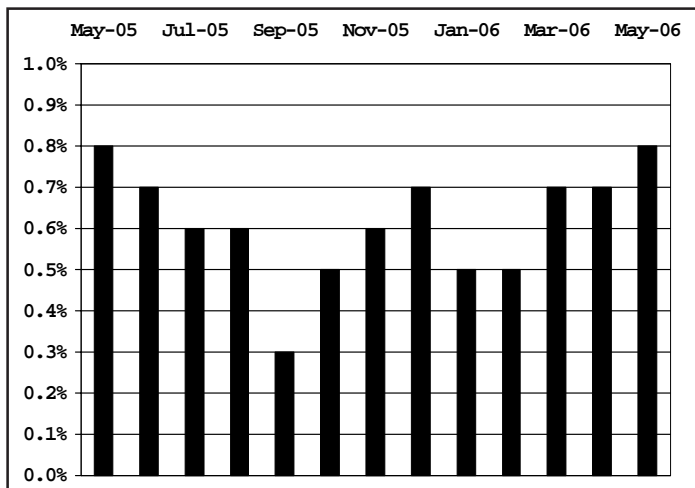
Note: Total - All Industries estimate is seasonally adjusted independently.

All seasonal adjustment performed with X12-ARIMA. Seasonal factors available from VDOL/LMI on request.

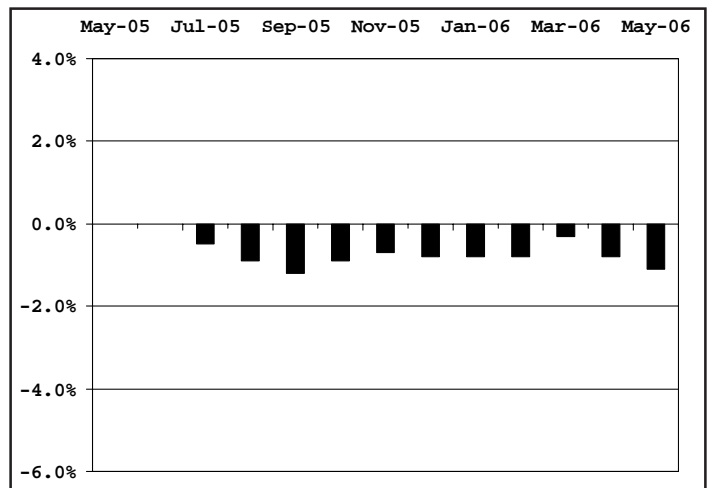
Produced by the Vermont Department of Labor in cooperation with the U.S Bureau of Labor Statistics, unless otherwise noted.

Vermont Annual Job Growth Not Seasonally Adjusted Data

All Industries



Manufacturing



Nonfarm Employment In Vermont *(Not Seasonally Adjusted)*

Compiled by the Vermont Department of Labor in cooperation with the Bureau of Labor Statistics, U.S. Department of Labor

INDUSTRY BY NAICS	Prelim. May '06	Revised Apr. '06	Revised May '05	Changes From:	
				Apr. '06	May '05
TOTAL NONFARM	307,500	304,250	305,050	3,250	2,450
TOTAL PRIVATE	252,100	248,550	250,100	3,550	2,000
GOODS PRODUCING	55,000	53,050	54,950	1,950	50
MANUFACTURING	36,450	36,400	36,850	50	-400
Durable Goods	26,450	26,400	26,500	50	-50
Computer & Electrical Equipment Mfg.	9,400	9,350	9,150	50	250
Fabricated Metal Products Mfg.	3,050	3,100	2,950	-50	100
Machinery Mfg.	3,050	3,050	3,050	0	0
Transportation Equipment Mfg.	2,400	2,450	2,450	-50	-50
Furniture & Related Product Mfg.	1,900	1,950	2,100	-50	-200
Non-Durable Goods	10,000	10,000	10,350	0	-350
Food Mfg.	3,600	3,600	3,650	0	-50
CONSTRUCTION	17,800	15,900	17,250	1,900	550
NATURAL RESOURCES & MINING	750	750	850	0	-100
SERVICE-PROVIDING	252,500	251,200	250,100	1,300	2,400
TRADE, TRANSPORTATION AND UTILITIES	59,600	59,150	59,150	450	450
Wholesale Trade	10,100	10,050	10,000	50	100
Retail Trade	40,550	40,200	40,350	350	200
Food & Beverage Stores	9,500	9,450	9,450	50	50
General Merchandise Store	2,700	2,650	2,850	50	-150
Transportation, Warehousing and Utilities	8,950	8,900	8,800	50	150
Utilities	1,700	1,700	1,700	0	0
Transportation & Warehousing	7,250	7,200	7,100	50	150
INFORMATION	6,350	6,400	6,200	-50	150
FINANCIAL ACTIVITIES	13,200	13,100	13,150	100	50
Finance & Insurance	9,950	9,950	9,950	0	0
Real Estate, Rental & Leasing	3,250	3,150	3,200	100	50
PROFESSIONAL AND BUSINESS SERVICES	22,400	22,050	22,000	350	400
Professional, Scientific and Technical	12,950	13,100	12,700	-150	250
Administrative, Support and Waste	9,150	8,700	8,950	450	200
EDUCATIONAL AND HEALTH SERVICES	55,400	55,400	54,600	0	800
Educational Services	12,900	13,000	12,750	-100	150
College, Universities and Professional	6,850	7,000	6,900	-150	-50
Health Care and Social Assistance	42,500	42,400	41,850	100	650
Ambulatory Health Care Services	15,700	15,600	15,900	100	-200
Hospitals	10,800	10,750	10,500	50	300
Nursing and Residential Care Facilities	6,700	6,700	6,750	0	-50
LEISURE AND HOSPITALITY	30,150	29,500	30,000	650	150
Arts, Entertainment and Recreation	3,950	3,150	3,950	800	0
Accommodation and Food Services	26,200	26,350	26,050	-150	150
Accommodations	8,100	8,750	8,100	-650	0
Hotel & Motels	7,150	7,900	7,100	-750	50
Food Services and Drinking Places	18,100	17,600	17,950	500	150
OTHER SERVICES	10,000	9,900	10,050	100	-50
GOVERNMENT	55,400	55,700	54,950	-300	450
Federal Government	5,950	5,950	6,100	0	-150
State Government Education	8,000	8,800	7,800	-800	200
Local Government Education	24,850	24,500	24,700	350	150
Other State Government	9,650	9,550	9,400	100	250
Other Local Government	6,950	6,900	6,950	50	0



Business Continuation Plan

Unfortunately, since September 11, 2001, we have heard news stories of natural, human, and technological disasters on an almost monthly basis. During this time, government, businesses, and universities have begun the process of developing *Business Continuation Plans*, also referred to as Emergency Plans, Recovery Plans, and other related titles. These plans cover small family owned companies as well as large multi-national corporations, and all that lie between. There are several groups who offer materials to initiate creating such a plan, including Michigan State University, Purdue University, American Red Cross, CDC NIOSH, OSHA and FEMA.

Many companies think or hope that the odds are against them ever having to deal with an emergency that could disrupt business. However, the threats in Vermont are real and have impacted companies in the past. Floods, fires, ice storms, and computer viruses have all had significant impact on productivity and the financial health of firms. The newest threat is the possibility of an outbreak of Avian Flu. Many manufactures not related to the agricultural market may not realize the potential impact to their companies. How could this impact a wood working facility or a construction company? If Avian Influenza (H5N1) Virus does hit Vermont and the US, can it impact your company? If H5N1 becomes a pandemic virus able to spread human to human, how will your facility be able to conduct business and/or even function?

If you have not drafted a policy to keep your company operational during such an outbreak and being able to recover from the impact, now is the time to do so. These plans do not have to be specific to Avian Flu, but should address all types of hazards.

To start, establish a planning team to analyze capabilities and hazards. Review internal plans and policies that include items such as evacuation plans, fire protection, safety and health policies, environmental guidelines, security, insurance, finance, and plant closing documents. Review any employee manuals, hazardous materials plans, and mutual aid agreements. It is important to meet with outside groups that include government agencies, utilities, and community action groups. Identify codes and regulations that cover your type of company. You should also identify critical products, services, and operations you will need to assess the impact of potential emergencies. What do you have for internal resources and capabilities? These include staff on fire brigades, hazardous materials teams, first aid equipment, fire

suppression tools, and toxic gas analyzers to name a few. Also consider listing back up systems for payroll, communication, customer service, emergency power, and recovery support. Identify external resources that may be of help, such as hospitals, fire departments, police, utilities, and insurance carriers. Perform an insurance review to assess the coverage you have and whether it covers both internal and external emergency situations. Make a list of the different types of potential emergencies you may need to face. Then assess the kinds of impact on your business an emergency might have. Consider loss of market share, long or short-term disruption, employees being unable to get to the work location, and how you will deal with shipping and receiving.

Next develop a plan and implement it. Review and document emergency management functions including, direction and control, communications, life safety, property protection, community outreach, recovery and restoration, administration, and logistics. Next on the list should be hazard-specific information. This is the same process as a job hazard analysis, sometimes called a vulnerability analysis. Include fire, hazardous materials incidents, floods and flash floods, severe wind, rain, ice, heavy snowstorms, and technological emergencies. Develop an information source for state and federal resources, including insurance and private sector assistance.

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Adjuster:

An insurance adjuster misinforms a company physician that an injured worker has a prior history of the current medical problem.

Physician:

A doctor treats a patient for an injury. The patient has no health insurance coverage. The patient does not indicate work caused the injury but the doctor states in his note that work caused the injury in order to ensure bill payment.

Allegation and Investigation

When the department is notified of fraud and provided with supporting evidence, the Workers' Compensation Investigator conducts an investigation into the matter. An investigation may include any of the following: collection and review of evidence, meeting with parties, witnesses and interests to the claim, reviewing medical, payroll or other information, reviewing surveillance tapes, reviewing other investigative reports and/or gathering or reviewing other information. If investigation confirms that fraudulent activity occurred, an administrative citation is prepared that specifies the fraud violation and the penalty. An individual that is cited for fraud has twenty days to contest the citation and may request a hearing.

Penalties

Workers' compensation laws and rules detail fraud penalties generally and provide specific guidelines concerning fine limits

and specific fraudulent acts. For complete rules see Rule 45, Rules for Administrative Citations and Penalties. These penalties can have serious and far-reaching consequences.

In summary, fraud can result in the following:

- **Monetary fine**
- **Imprisonment**
- **Repayment of benefits received**
- **Forfeiture of future benefits**
- **Order or injunctive relief**

Penalty guidelines allow for a reduction in a penalty in extenuating circumstances. For example, a penalty may be reduced if some or all of the benefit obtained is repaid. There are, however, some acts of fraud for which the penalty may not be reduced: falsification of medical records, false sworn testimony, or a false statement made to establish compensability.

Stiffer Penalties

Legislation passed in 2004 raised the criminal penalties for workers' compensation fraud. The law change provides for a higher monetary fine than what existed previously and now allows for imprisonment. The criminal punishment guidelines specify:

- For fraud involving \$10,000.00 or more, fine of not more than \$100,000.00 or imprisonment not more than three years, or both.

- For fraud involving less than \$10,000.00, fine of not more than \$10,000.00 or imprisonment not more than two years, or both.

Reporting Fraud

The Vermont Department of Labor will investigate allegations of fraud that are supported with some objective evidence. A phone call alone reporting an allegation of fraud is not sufficient credible evidence to launch an investigation. A letter and evidence may be presented to either of the following department staff:

June Jensen, Investigator
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¹¹ *Random House Dictionary*

