Employees pay the price of workers’ comp neglect

By Mandy Locke and David Raynor
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Tens of thousands of North Carolina businesses are putting their employees at risk by failing to buy workers’ compensation insurance, a violation of the law that’s driving some injured workers to destitution and businesses into bankruptcy.

Though the state has the power to crack down on these businesses, it doesn’t act until a worker is hurt and left without a paycheck and with mounting medical bills. The state Industrial Commission rarely enforces penalties, and efforts to collect money for health care can drag on for years.

The Industrial Commission, charged with overseeing workers’ compensation claims and enforcing that employers keep coverage, has never tried to figure out which businesses are shirking their responsibility.

A News & Observer analysis of the N.C. Rate Bureau’s database of policies written for companies required to have workers’ compensation found that the problem is widespread. Insurance carriers writing policies in North Carolina reported that they covered 140,472 businesses. Another 117 large companies are certified as self-insured.

The N.C. Department of Commerce says as many as 170,000 companies with four or more employees operate in the state. Dun & Bradstreet, a reputable business tracking organization, counts about 172,000 businesses headquartered in North Carolina with at least three employees; that doesn’t count the branches of businesses in the state that are headquartered elsewhere.

Businesses with three or more employees are required to buy insurance or certify with the state that they can cover the costs of employees’ injuries.

Since the 1930s, state law has put the burden of any workplace injuries on employers and the insurance they purchase. To make sure injured workers get the care they need quickly, the state has established laws to specify exactly how much is owed for degrees of disability and missed wages.

By law, employers are required to certify with the Industrial Commission that they have insurance, but the commission doesn’t ask for that information. Instead, it contracts with the Rate Bureau to provide a database of businesses that have purchased insurance.

The commission makes no effort to figure out which employers don’t have protection. It only learns of non-compliant companies when a worker has been hurt and appeals for help.

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At his mobile home in Hillsborough, Danny Allred stretches his back, which was injured in 2006. Allred’s employer had canceled its workers’ comp insurance, and Allred has so far been unable to collect the money that the Industrial Commission says he deserves.

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No easy fix?

From July 2010 to July 2011, 378 cases involving employers without workers’ compensation had to be scheduled for a hearing by a judge at the Industrial Commission, which means that attempts to settle the claim failed.

Many of the employees worked in dangerous jobs, such as construction or roofing. Some of the companies were small and struggling; others acknowledged they needed the insurance but decided against it to cut costs.

Many of the workers suffered debilitating injuries that will forever keep them from the manual labor on which they built their livelihood. Sometimes, the claim is simple: a teenager who needed her finger stitched after an accident with a meat slicer at the sandwich shop where she worked.

Last session, the state legislature, in a sweeping bipartisan effort, rewrote portions of the workers’ compensation law. Lawmakers trimmed amounts and length of

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payments due to workers to help drive down the cost of workers’ compensation insurance. The changes did not address employers who don’t buy insurance.

Speaker Pro Tem Dale Folwell, a Winston-Salem Republican who helped push the bill, said he was startled by the apparent number of uninsured employers and said it must be addressed.

“This highlights that there’s a lot of work to do,” said Folwell, who noted that the businesses that don’t buy insurance have a competitive advantage over those who do. “Our challenge is to make the cheating less rewarding.”

Mike Carpenter, executive vice president of the N.C. Homebuilders Association, said his group has worked for years to try to clamp down on those in the construction industry without workers’ compensation. Homebuilders pushed successfully for a law in 1992 that requires builders to show proof of insurance to get a building permit.

“It’s been a problem for a long time, and if there were an easy fix, I have to believe it would have been fixed a long time ago,” Carpenter said.

The head of the Industrial Commission’s fraud unit, charged with investigating cases of uninsured employers, said the unit focuses on collecting money for injured workers instead of punishing employers.

“What I’d say is we make a good-faith effort given the resources we have,” said Sam Constance, chief investigator for the unit.

Industrial Commission Chairwoman Pam Young, appointed by former Gov. Mike Easley to head the commission in 2007, declined requests to be interviewed.

Unable to work

Danny Allred made his living roofing, mulching and hauling loads of debris since he dropped out of high school. Now, at age 59, Allred’s back is so warped he cannot bend over to tie his shoes.

Allred’s doctors and a deputy commissioner at the Industrial Commission have declared him permanently unable to work since he was crushed by a load of gravel during a work-related crash in 2006.

Earlier that year, Allred said a member of his Hillsborough church, Ted Wright, offered him a job with his landscaping crew. Allred put Wright’s business card in his wallet and said a prayer of thanks for his luck finding a job. On the card, right under T&J Services, are the words “fully insured.”

Wright and business partner John Summey, however, had canceled their workers’ compensation policy months before Allred started. The company did not offer health insurance.

“It was bad timing,” Summey said in an interview. “We both knew we needed insurance ... but we were scraping it together to make ends meet.”

Deputy Commissioner James Gillen ruled in 2011 that the company owners owe Allred $211 a week in wages from the time of the accident until he can work again.
Enforcement is lax

The Industrial Commission had the power to try to put Summey and Wright behind bars. Knowingly failing to carry workers’ comp insurance is a Class H felony. The commission’s six-person fraud team opened a case against the men, as it did with hundreds that year. After presenting the case to a local prosecutor, the fraud team closed the case without charges.

Jim Woodall, district attorney in Orange County, said his assistant believed the owners accidentally let the policy lapse and were seeking another. The business owners had testified before the commission that they canceled the policy because they couldn’t afford it.

Since January 2011, three uninsured employers have been arrested. About 200 of the criminal investigations were closed in this time, while 95 were cleared because the employer paid the injured worker or bought insurance.

Employers without workers’ compensation can be fined $100 for each day they are without coverage and can also be ordered to pay in fines the same amount they owe the employee and medical providers.

But the commission collects little. Of the 225 uninsured employer cases the fraud unit pursued since January 2011, it collected $30,500, amounting to an average of $135 per case. The commission can, and most often does, waive the penalty if the employer settles with the injured worker.

Tracy Curtner, an assistant attorney general assigned to the fraud unit from 2006 to 2011, said the commission was loath to pursue collection of payments and fines.

“There are drawers full of uncollected judgments going back for years, “ said Curtner, now in private practice.

Uninsured employers have been a problem at least since 1997, said state Sen. Doug Berger, a Democrat from Youngsville and a former deputy commissioner.

The commission has worked some over the years to address the problem, Berger said. But he said it has done nothing to ensure that employers carry insurance before an accident happens.

Berger said that he routinely used his power as a deputy
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By Mandy Locke and David Raynor
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commissioner to hold an employer in contempt of court until it paid. Sometimes that meant the threat of jail.

Buck Lattimore, chairman of the commission from 2000 to 2007, said the commission backed away from using contempt as a tool to order businesses to pay up after he stepped down as chairman.

“I thought we should use every tool we had to get payment,” he said. “But, some (commissioners) thought we were overstepping our bounds.”

Contempt statistics over the years are unavailable, but the fraud unit did collect more civil penalties against uninsured companies in many of the years in Lattimore’s tenure, records show. The commission rarely uses its authority to enforce payment now, plaintiffs’ lawyers say.

Lattimore said compelling businesses to buy insurance is tough.

“How do you even find these people?” Lattimore asked. “The people who skip out on insurance aren’t the people who are in plain sight. They don’t buy business licenses or pay their taxes.”

Failing to check

When Summey and Wright, owners of the landscaping company where Allred worked in 2006, canceled their workers’ compensation insurance on Sept. 7, 2005, they mailed a letter to Liberty Mutual Insurance.

Liberty Mutual was then obliged to alert the N.C. Rate Bureau. The Rate Bureau then provided the information to the Industrial Commission, as it does with every workers’ comp policy written, renewed or canceled.

While the commission uses the database to find the proper insurer when a claim is filed, no one at the Industrial Commission monitors the cancellations, even when it’s a company it has previously threatened with fines and discipline to purchase insurance.

“I’m sure we could do a query in our system to come up with a list of all policies that have been canceled,” said Sue Taylor, director of insurance operations for the bureau. “We’ve not been asked to do that.”

Lawyers who represent uninsured employees wish the state would do more to send a message to employers.

“The commission doesn’t seem to want to enforce its orders and use the power it has,” said Bob Bollinger, a Charlotte lawyer who represents several injured workers who have not been paid despite orders by the commission.

Some states have done more to help cover workers employed by uninsured businesses. In South Carolina, insurance companies pay into a fund used to cover costs for such cases. In New York, state officials in 2008 raided construction sites and stopped work by companies without insurance.

In North Carolina, these workers are often on their own to collect payments from their old bosses. The order from the Industrial Commission is simply a sheet of paper.

To get money, unless it’s handed over voluntarily, the worker must get a judgment issued in state court or persuade the Industrial Commission to hold the company in contempt and demand payment. Collecting is often a futile effort, attorneys say.

Summey, the landscaping company owner, said he has nothing to offer Allred, even if he loses on appeal and is ordered to pay. Summey, who parted ways with Wright soon after Allred’s accident, said he’ll likely end up bankrupt.

Summey said that he has taken a minimum wage job with the city of Durham and that nothing he owns is worth much.

“It’s not a happy situation at my house, either,” Summey said. “I just hope we can put this behind us.”

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By Mandy Locke and David Raynor

Thousands of businesses fail to purchase insurance, but the state stands idle

What is workers’ comp?

Workers’ compensation started as a way for workers who were injured on the job to receive benefits even if they had been responsible for the accident. Today the system is designed to help cover the costs of workplace injuries and illnesses.

In North Carolina, businesses with three or more employees are required to buy insurance or certify with the state Industrial Commission, charged with overseeing workers’ compensation claims and penalties. When an employer doesn’t buy this insurance, businesses are still liable to pay what workers are due for their injuries.

In 2006, the state had the power to crack down on these businesses, but it didn’t. The state Industrial Commission rarely enforces penalties, and efforts to collect money for the state from these businesses have been minimal. Thousands of businesses fail to purchase insurance, but the state stands idle.

Employees pay the price

In North Carolina, businesses are putting their employees at risk. While it’s too late for most injured workers to collect damages, the state and its agencies are not doing enough to prevent workplace accidents.

In 2006, 12 tons of epoxy on a highway tunnel in North Carolina failed, and the state let the business owner escape without paying the cost of the workers who were injured. Though the state has the power to crack down on these businesses, it doesn’t.

What's the problem?

In North Carolina, businesses with four or five employees are not required to buy insurance, but the state Industrial Commission doesn’t take action until a worker is hurt and left without a paycheck and with mounting medical bills. The state Industrial Commission only collects penalties and orders businesses to pay the medical bills of workers who are injured.

What can you do?

Contact the state Industrial Commission, the agency that regulates workers’ compensation insurance, to report a business that isn’t paying for workers’ compensation.

Carbonell & Company, a Phoenix-based consulting firm, calculated that North Carolina businesses are losing $1 billion in workers’ compensation insurance, and the state Industrial Commission is failing to collect penalties.

In 2007, the state Industrial Commission collected $52 million in penalties and fees from businesses, but it didn’t do enough. The state Industrial Commission has the power to crack down on these businesses, but it doesn’t.

What can you do?

Contact the state Industrial Commission to report a business that isn’t paying for workers’ compensation.

Online

For more information on workers’ compensation, visit the state Industrial Commission’s website at www.ncic.state.nc.us.

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By Mandy Locke and David Raynor
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Cheating employers make it tough to compete

Off the books and under the table, some companies skirt employment rules

BY MANDY LOCKE
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BENSON As a commercial masonry contractor, Doug Burton prides himself on being exact.
He counts bricks to calculate estimates. He knows each of his laborers by first and last name. He has memorized exactly what he’ll owe in taxes if he takes on an additional worker and knows week to week whether he can afford it.

Burton strictly follows rules, and until 2009, he made a good living doing it.

As the economy faltered and he and his competitors fought for scarce projects, Burton lost his footing. Time and again, his company, Whitman Masonry, got beat on bids, often by a hefty margin.

As the end of 2010 neared, he had shed more than half his labor force. He couldn’t figure out what he was doing wrong.

“Finally, it just dawned on me, “ Burton said. “My competitors were cheating.”

Some of the other bidders were subcontracting their labor needs to middlemen who called their workers independent contractors - or treated them like ghosts, paid under the table and never acknowledged. A single employee cost Burton nearly 20 percent more to pay state and federal taxes, unemployment taxes and workers’ compensation insurance.

Those in the construction industry say the scheme is now prevalent across the trades. A News & Observer review of state Industrial Commission decisions, in which arbitrators sort through workers’ compensation claims, shows the practice is common and has penetrated other industries.

The cost is huge in unpaid medical bills for injured workers, uncollected business and personal taxes, and payments not made to a depleted state unemployment reserve.

As honest businesses have struggled to compete, North Carolina officials have barely paid attention.

The state’s leaders have imposed requirements on business owners through the years, requiring them to buy workers’ comp insurance, pay taxes and unemployment insurance, and maintain a safe workplace. But state regulators work in the silos of their own agencies, rarely sharing information that would enable investigators to detect businesses determined to cheat.

As a result, those who play by the rules say they struggle to stay afloat while competitors who break the law profit. And their workers are left vulnerable, facing untreated injuries.

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injuries if they are hurt on the job and financial hardship if they get laid off.

“There is no risk in running this game,” Burton said. “It seems they never get caught.”

“They wash their hands of it’

Burton, 54, learned to be exacting as a young man, studying engineering at Virginia Military Institute.

The trait served him well when a business associate offered him a chance to invest in a masonry company in the fertile Triangle market.

Burton took to the field: troubleshooting renovation plans, training and hiring workers, getting involved in the professional association. In 1990, he bought half of Whitman Masonry, and when founder Mackie Whitman retired in 2008, Burton took over.

Through the years, Burton’s crews have helped build schools and banks and office buildings. At its height, Whitman Masonry had a crew of 75 workers building multimil-

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lion-dollar projects.

But as the recession rocked the building industry and jobs dried up, Burton worked hard to hang on to his crew. Meanwhile, his competitors shed workers in favor of subcontractors who promised laborers as needed.

“They wash their hands of it and (don’t) know what’s going on, “ Burton said.

Burton resisted the trend. But as the economy limped in 2009, so did his company.

“We’d come to work Monday feeling good because we had two jobs to bid, “ Burton said. Days later, he said, they were deflated, having lost the jobs.

Burton started trimming. He gave up Hurricanes hockey tickets. He eliminated dental insurance and the 401(k) match for employees. He cut his salary by a third and laid off a few dozen laborers. Just before Christmas in 2010, Burton called the remaining crew together for a meeting.

“I told them we simply couldn’t compete, “ Burton said.

Burton explained why as best he could. He ticked through all the taxes he pays for employees and the workers’ compensation insurance he buys. He told them he suspected other bosses weren’t swallowing those costs.

Burton asked his employees to name names.

Workers without withholding

Sabas Martin Galeana and his crew have helped build some of the most significant construction projects in the Triangle and counties to the east.

His masonry company, Martin’s Bricklaying, has built university dormitories, renovated N.C. State University’s Carter-Finley Stadium and, in 2010, Kenan Stadium at UNC-Chapel Hill. He has built schools, hospitals and grocery stores from Roanoke Rapids to Wilmington.

And in 2010 and 2011, his crews did much of the masonry work at Wake County’s $125 million detention center on Hammond Road.

Martin’s business, however, appears to have violated state and federal laws.

The N&O interviewed four of Martin’s past and current employees, some of whom have worked for him for eight years. A reporter reviewed about 30 pay stubs for several workers from 2006 through 2012, including some collected for a workers’ compensation claim filed for a member of Martin’s crew who worked on the Wake County Detention Center.

Martin appears to have appropriately withheld state and federal taxes in 2006 and 2007 for at least one employee, pay stubs show. In 2007, however, the agency now known as the state Division of Employment Security filed a lien against Martin for unpaid unemployment taxes.

The Internal Revenue Service also came down on Martin between 2003 and 2009, court records show. The agency filed two separate tax liens against him amounting to $70,600 in unpaid unemployment tax, federal taxes and penalties. He settled the last of those liens in 2009.

Pay stubs as recent as July for several of Martin’s employees show that Martin did not withhold any state or federal taxes. State laws say that employers must provide
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detailed deduction information each pay period when wages are withheld.

Each week, they were handed a simple check from Sabas Galeana and his company. The employees say Martin’s Bricklaying has not been providing tax forms at year’s end so they can pay their own taxes.

Three weeks ago, days after The N&O inquired about Martin’s Bricklaying with the state Revenue Department and the Division of Employment Security, Martin withheld taxes in a paycheck to at least one worker.

**Tax revenue lost**

By any test of applicable laws, Martin’s workers are direct employees, not subcontractors. They report to jobs he arranges, use his equipment and take breaks when supervisors allow it, workers say.

Not treating them as employees is a big savings of time, money and paperwork. Employers must withhold and pay state and federal taxes for direct, or W-2, employees, pay unemployment insurance and provide workers’ compensation insurance.

All told, that’s about a $110 cost for a single mason working a 40-hour week, according to a review of Burton’s payroll. The cost increases significantly if the laborer logs overtime.

For that same worker, if no taxes were paid by the employer or the worker, the government missed $223 in state and federal taxes for a workweek, or about $11,600 a year.

Martin, a Mexican native who has become a U.S. citizen, is one of at least three masonry company owners around the Triangle that Hispanic masons say skimp on taxes.

Repeated attempts to speak with Martin failed. Two letters, delivered by certified mail, were not answered. Martin’s wife and an assistant said they would give him a message, but he did not respond.

Burton said he finally figured out Martin’s operating methods in February 2011. His brother, who is also in the masonry business, ran into an old employee who was doing work for Martin’s Bricklaying at Kenan Stadium. The worker’s pay stub was basic and simple: a 54-hour workweek netted an $810 check, with no withholding, no overtime pay, no details.

“It was so obvious, right there in the open,” Burton said.

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Laborers stay silent

Martin’s business has been fed by contracts with established companies such as Joyner Masonry Works of Greenville and Moxley Masonry of Youngsville. These companies secure multimillion-dollar bids for projects, then contract with Martin to bring laborers to supplement their small crews.

In part, Martin’s business methods are undetected because his workers don’t complain. Nearly all are workers from Mexico who are here illegally.

Employers are required to pay unemployment tax and other withholding on workers here illegally, though those workers are not entitled to collect the benefits.

Facing a shortfall of more than $2 billion in unemployment taxes, state Division of Employment Security officials have ramped up efforts in recent years to detect businesses that misclassify or pay employees off the books. But because Martin’s employees wouldn’t likely come in to apply for benefits they can’t collect, employment security officials miss an important flag.

There is no record of employment security officials or state or federal tax collectors investigating or penalizing Martin’s Bricklaying since 2008. Employment security officials as well as the state Department of Revenue and IRS are prohibited by law from saying whether they are investigating or have investigated Martin’s Bricklaying.

Martin’s workers interviewed for this story say they have no interest in drawing attention to their situation by alerting state agencies that could investigate Martin’s practices.

“We don’t ask questions, “ said André, one of Martin’s former employees who is not being fully identified because he’s here illegally. “We don’t complain.”

Such fear is common, said Carol Brooke, a workers’ rights attorney for the N.C. Justice Center.

“It’s a huge problem within the immigrant workforce,

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“Brooke said. “There’s a lot of fear about reporting it. It’s just a way of marginalizing the workforce.”

The labor broker’s patrons

While his workers fly beneath the radar, Martin has enhanced his business’ visibility.

Last year, his company was certified as a historically underutilized business because he is Hispanic. The designation is awarded by the state Department of Administration and enables him to get preference for bids on state contracts.

The process focuses solely on the owner’s ethnicity or gender, not business operations or performance, said Jill Lucas, spokeswoman for the agency that administers the certification.

As part of Martin’s application, his business associates, Gary Joyner, president of Joyner Masonry Works, and Pat Finegan, a project manager at Moxley Masonry, wrote letters of recommendation. In those letters, both bragged about Martin, saying that they couldn’t be more pleased with his services.

Joyner could not be reached for comment.

Russ Moxley, owner of Moxley Masonry, said he’s sore about having to depend on labor brokers such as Martin. Moxley said he has had to rely on Martin’s workforce to help him complete larger jobs for the price general contractors are willing to pay.

Moxley said the entire construction industry has turned a blind eye to businesses that cut corners.

“There are hundreds of Martins,” Moxley said.

Moxley said he wasn’t aware that Martin’s business methods may be afoul of the law.

“If I knew, I wouldn’t hire” him, Moxley said. “We ask if he’s legit, and he tells us he is.”

Burton won a few bids this year that let him bring back some of his old employees. He studies his books daily, seeking the cash flow to restore the 8 percent pay cut he imposed on employees in December 2010.

Business seems too fickle, Burton said, and as long as his competitors cut corners, he has no guarantee that his business will rebound.

In the evenings, Burton researches misclassification and how it plagues the construction industry.

At meetings of the N.C. Masonry Contractors Association, where he is a past president, he implores his colleagues to stop using labor brokers such as Martin. Over dinner with his closer associates, he tells them they are killing the business.

Last year, Burton began reaching out to state agencies that could investigate Martin. He tried to file complaints on behalf of a Martin employee at the state Department of Labor and the state Department of Revenue.

“No taxes, no Social Security match, no fed or state unemployment is being withheld,” says his Revenue Department complaint.

He wrote letters to members of Congress. A few sent polite responses; none offered assurances.

“It’s almost like no one sees this as their problem,” Burton said.

The government is not completely inactive, however. In July, an official from the Division of Employment Security contacted Burton - to tell him that his tax withholding would be the subject of an audit.

He passed.

Staff writer Chris Kudialis and news researchers Peggy Neal and Brooke Cain contributed to this report.

Tomorrow: A wreck changes everything.

Locke: 919-829-8927
Cheating employers make it tough to compete

By Mandy Locke
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Struggling to stay in U.S., he feels invisible

Employer’s practices frustrate effort to live here legally

BY MANDY LOCKE
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When Mauricio paid a smuggler to sneak him over the border of Mexico, he knew he’d live a quiet life in America.

He didn’t know he would be invisible.

Mauricio, 27, is part of North Carolina’s underground economy. He is one of thousands of workers here illegally who find jobs with employers who cut corners by avoiding payment of taxes, insurance and overtime.

“When you need money, you don’t ask questions,“ said Mauricio, who is being only partly identified because of his immigration status.

North Carolina has grown, in part, on his back. Mauricio’s fingerprints are all over some of the most prominent and celebrated structures from the Triangle to the coast: Kenan Stadium, PNC Arena, Carter-Finley Stadium. He can rattle through a list of schools and dormitories and office buildings he has helped build.

For most of those projects, Mauricio worked for Martin’s Bricklaying, a masonry company formed nine years ago as the building industry grew quickly in North Carolina. During at least some of that time, owner Sabas Martin Galeana has violated several state and federal laws, failing to withhold taxes and provide workers with the forms they need to settle their own obligations.

The News & Observer reviewed Mauricio’s pay stubs from the spring of 2012. The N&O talked to other former and current employees of Martin’s Bricklaying and reviewed more pay stubs, including some submitted as part of a pending workers’ compensation claim. Three times, Martin has violated state or federal requirements to pay unemployment insurance on his workers; he settled the last of three liens in 2009. All told, he owed more than $70,600 in taxes and penalties.

Martin’s business practices have gone largely undetected. He has prospered, living in a spacious Nash County home. Martin did not respond to several interview requests.

Business owners, state officials and policy advocates say businesses such as Martin’s have gained an edge by breaking the law.

Though undocumented workers can’t collect benefits such as Social Security or unemployment, employers are required to pay those taxes on their behalf. Because many of the workers wrongly classified or paid off the books are in the country illegally, normal triggers used to detect those who don’t pay taxes often fail.

“I may as well not even exist as far as they know,“ Mauricio said.

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Mauricio was just a scrawny teenager when he came to America for a job with a steady paycheck that could help support his family.

Mauricio followed leads all the way to North Carolina, touted as a promised land: more jobs than the workforce could handle with few questions asked. He settled into a trailer with 15 other laborers and slept when a bed was available.

He soon found work as an assistant on a masonry crew. He learned quickly, and, in just a few years, became a full mason. Mauricio began to lay down roots and imagine a lifetime in America.

Around 2003, he said, he was working for Joyner Masonry Works, a Greenville firm. Near the end of the project, one of the supervisors pulled him aside and said they had no more work for him.

Gary Joyner, president of Joyner Masonry, could not be reached for comment.

The workers with a permit to work in the U.S. kept their jobs with Joyner, Mauricio said. Those without work permits were told to go see Martin, a fellow Mexican who was starting a masonry firm.

Where’s the W-2?

Mauricio feels like a ghost when he works for Martin’s Bricklaying. He said he has never provided any identification to Martin nor filled out an employment application.

“He doesn’t even know my address, “ Mauricio said. “He’s never asked.”

Mauricio simply signed his name on a sheet of paper at the beginning and end of each shift with Martin’s; that’s how hours were tracked.

Once, his last name was spelled incorrectly on his paycheck. The clerk at a grocery store near his home cashed it anyway.

Mauricio is married to an American; the couple had a daughter two years ago. He desperately wants to become a citizen.

A lawyer told him to hope the laws change to allow more leniency for workers who came here illegally. His advice for the interim: Obey the law and pay taxes.
Struggling to stay in U.S., he feels invisible

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Mauricio met with an accountant to try to figure out how to pay taxes for work done with Martin, he said. The accountant told him that he needed a W-2 or 1099 form.

Mauricio said he called Martin’s Bricklaying to ask for one but was told nothing like that existed for him.

The job at Kenan Stadium

Mauricio would rather work for a company that withholds taxes, but such jobs have been hard to win since 2010.

Each time he’s laid off from one of his preferred companies, Mauricio calls Martin’s Bricklaying to ask for work. His plea is always met with a yes.

Martin’s company does steady business. Right now, the company is building a school north of Raleigh as well as a children’s hospital expansion at Vidant Medical Center in Greenville, which is affiliated with East Carolina University.

Over the winter of 2010, Mauricio worked for Martin’s Bricklaying on the $70 million renovation of UNC-Chapel Hill’s Kenan Stadium. Mauricio says he worked 13-hour days, seven days a week to keep the project on schedule. After two months, he felt like a stranger to his infant daughter.

The Educational Foundation, also known as the Rams Club, funded the project and hired general contractor T.A. Loving to manage it and vet the subcontractors. John Montgomery, executive director of the foundation, said that Martin’s employees didn’t work directly for the foundation and that it had no way of knowing of any problems.

“We don’t have anything to say one way or another,” Montgomery said.

Mauricio shakes his head when asked whether he had ever thought of reporting Martin’s business methods to state officials.

EMPLOYEE VS. CONTRACTOR

The federal government estimates that employers who inappropriately classify employees as contractors cost as much as $2.72 billion in lost tax revenue in 2006. Determining whether a worker can be considered a subcontractor (classified in tax code as a 1099 worker) is based on a list of questions that deal with the employment relationship. While some agencies that examine whether a worker is properly classified may have particular standards, many use a 20-question test compiled by the Internal Revenue Service.

Questions that would help determine whether a worker is a W-2 employee deal mostly with the employer’s control over the person. Answers that indicate more autonomy generally mean the worker can be treated as an independent contractor.

Among the questions:

- Does the employer tell the person when and where to go for work and how to do the work?
- Did the employer train or have another employee train the new worker?
- Did the employer provide tools and other supplies needed to complete the job?
- Is this a continuous or expected to be a continuous working relationship?
- Does the employer dictate hours and approve time off?
- Is the worker expected to devote full time or substantially full time to the work?
- Is the worker required to submit regular or written reports to the employer?
- Is the worker paid by the hour or by the job?
- Does the employer pay travel expenses for the worker?
- Does the worker gain profits or suffer losses as employer does?
- Does the worker work for others as well?

“I don’t want to have no problems,” he said. “When there’s nothing else out there, you have to keep food on the table and your head down.”

Staff writer Chris Kudialis contributed.

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Struggling to stay in U.S., he feels invisible
By Mandy Locke
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Cheating employers make it tough to compete

**Struggling to stay in U.S., he feels invisible**

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Mauricio, a bricklayer from Mexico, had been working for Martin Galeana in Chapel Hill, N.C., for several years. He had a good job and was happy with his life. But when he applied for a work permit, he was told he was not eligible. He felt invisible and alone.

Mauricio was one of the many undocumented workers who are essential to the construction industry in the U.S. They are often paid less than $10 an hour and work long hours in dangerous conditions. They are also at risk of deportation and separation from their families.

Business owners and government officials say that these workers are the backbone of the construction industry. But they also say that the illegal status of these workers makes it difficult for employers to compete.

Mauricio is married to an American woman and has a U.S. citizen daughter. He wants to stay in the U.S. and work legally. But he is afraid of deportation and the separation of his family.

Mauricio and other undocumented workers are fighting for change. They are demanding better wages, safer working conditions, and the right to work legally.

In 2012, the U.S. House of Representatives passed a bill that would have made it easier for undocumented workers to stay in the U.S. and work legally. But the bill was never voted on by the Senate.

Mauricio and other undocumented workers continue to fight for change. They are demanding better wages, safer working conditions, and the right to work legally.

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Jimmy Worrell knew how to play the game. General contractors who hired him and his framing crew always demanded proof of workers' compensation insurance. Without it, he'd have been shut out of work.

So Worrell turned to a scheme that has persisted for decades in the construction and insurance industries. He told his insurance agent that he had no employees and would exclude himself from the policy, his right as a sole proprietor. He declared that the crew of five he managed was made up of independent contractors instead of employees; the policy he bought covered a "ghost," an unknown employee who might unexpectedly join him to work during the year.

The bargain-basement workers' comp coverage, known simply as a ghost policy, was his ticket to work. He paid $850 for the year, a far cry from the roughly $30,000 annual premium needed to fully cover him and his five-man crew. The certificate looked the same as the more expensive one, with no place to list the number of employees covered.

Now, Worrell’s decision is haunting dozens of people and costing hundreds of thousands in litigation as lawyers and the courts try to untangle the scheme and its implications for one of Worrell’s employees.

Clementé Hernandez Gonzalez, a longtime employee of Worrell Construction Co., severely injured his spinal cord in March 2009 after another employee fell asleep at the wheel and wrecked the company vehicle. Gonzalez feels nearly nothing from the chest down; experts predict a lifetime of care will cost nearly $8 million.

Gonzalez, 39, has yet to receive a single check. More than a quarter-million dollars in medical bills at Pitt Memorial Hospital in Greenville have not been paid. If the policies had been clear and complete, the insurer would have likely settled within months instead of litigating for years, and Gonzalez would have gotten needed care quickly.

North Carolina law requires businesses with three or more employees to buy insurance to cover workplace injuries. The story continues on next page.
Injured worker pays for employer's gamble: Second in a series
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Injuries; in the construction trade, even smaller firms are often required by general contractors to purchase insurance. Even so, a News & Observer investigation this spring showed that more than 30,000 businesses in North Carolina failed to have required coverage.

Others, such as Worrell, manipulate the law. They buy a ghost policy, a package designed only for one-person operations with no employees as a fail-safe in case they hire someone during the course of the year. The state Industrial Commission, which decides disputed workers’ compensation cases, sees these policies for how they’re more commonly used: a way to pretend coverage exists when it doesn’t.

In a 2009 decision, a deputy commissioner wrote that “this practice is common in the insurance industry” but found it “to be inequitable.”

'It is mind-boggling'

It’s unclear how many of the roughly 140,000 policies sold to North Carolina businesses each year are these bare-bones policies. No one keeps official count, but the North Carolina Rate Bureau knows of about 16,000 of the ghost policies written for high-risk employers that couldn’t buy workers’ compensation insurance on the open market.

That’s more than half of the assigned-risk policies in the state. Some are legitimately used for one-person operations, but the Rate Bureau, which represents insurance companies to assess and monitor rates, has no way of knowing how many are used improperly.

A review of these types of claims shows that insurance companies often fight them. Injured workers are forced to engage in costly and time-consuming battles that sometimes drag to the state’s highest court with no promise of payout.

The ghost policy is one of several mechanisms that some business owners have been able to use to gain an edge in North Carolina’s struggling economy. By classifying laborers as contractors, some also avoid paying Social Security, unemployment and insurance on behalf of the workers, The N&O has found, and government has done little to detect and punish the lawbreakers.

Officials at the Industrial Commission have seen the ghost policies for years, but they have not asked the legis-

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lature to address the practice. And when they see insurance agents sell ghost policies in improper circumstances, they rarely, if ever, report the problems to the Department of Insurance, which regulates agent conduct.

Such failure to communicate among state agencies has enabled business owners who break the law to flourish, while those following the law say they are increasingly shut out of work because of the high costs of doing business legally.

State Insurance Commissioner Wayne Goodwin said he wishes someone at the Industrial Commission had flagged these problem cases for his fraud investigators. The two agencies share the same building on Salisbury Street in Raleigh.

“This is the first I’ve heard of this, “ Goodwin said. “As a former legislator and agency head, it is mind-boggling when you realize that there are many problems that can be resolved through enhanced communications.”

No employees?

For years, Worrell rode the construction wave that washed across the Triangle to the coast.

Houses went up faster than anyone could count, let alone watch over the people building them.

Worrell, 48, first heard of a ghost policy 15 years ago when he opened his framing business. An insurance agent mentioned it as way to get around costly premiums.

“Everyone here (in the trades) uses these ghost policies, “ Worrell said. “Insurance companies are very lax about letting you use them.”

But Worrell figured he needed full coverage. For years, he paid tens of thousands in annual premiums to cover his workers.

Then a fellow tradesman let him in on a secret: If Worrell treated his workers as subcontractors, he could save on workers’ comp.

When Worrell went to buy a ghost policy in 2006, he told the agent he had no employees.

He had decided to treat all his workers as contractors. Such misclassification is common in the construction industry, but it is illegal. If an employer has a certain amount of control of his workers, state and federal laws say they must be treated as direct employees.

To cover his bases and ensure his laborers’ claims did not come back on his policy, Worrell took them to buy a ghost policy. Worrell paid for the policies and insisted any paperwork associated with the policies should be sent to him. Gonzalez, a native of Mexico, signed the application but didn’t realize he and his crewmates were declaring themselves “sole proprietors” and agreeing to go without coverage.

Patrick Lamm wasn’t clued in, either. Lamm used Worrell and his crew to frame the custom homes he built on Lake Gaston.

Lamm was advised by attorneys not to speak for this report, but he testified before the Industrial Commission that he had no way of knowing Worrell’s policy was worthless. He didn’t know what the certificate really meant: No one helping frame the houses was covered by the policy.

Though Clementé Gonzalez can’t feel anything when his wife touches his arms, they ache constantly. “When I am by myself, I really know how bad I am,” Gonzalez said.

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“I know he directed them, and I hired him - Mr. Worrell - and the guys showed up and did the job," Lamm testified. “Now, whether they are employees, I do not know - did not know.”

Who will pay?
When lawyer Albert Thomas Jr. first heard of Gonzalez's predicament, he was sure someone involved in the construction project must have had valid coverage. But the web of policies was like nothing Thomas had ever encountered.

“The more we dug, the stranger it became, “ said Thomas, a former Court of Appeals judge who practices in Wilson.

All the insurance certificates suggested each employer followed the law. Yet no one was accepting responsibility for the costly claim.

But Worrell’s case involved a few hiccups that enabled Thomas and fellow lawyer Paul Blake III to prevail upon the Industrial Commission to order payment.

For starters, Worrell had inappropriately treated Gonzalez and others as subcontractors instead of direct employees, the commission ruled. And though Cincinnati Insurance had tried to cancel coverage for Worrell for failing to comply with an audit, the insurance company couldn’t prove it had notified him of that cancellation.

A deputy commissioner ordered Cincinnati to pay and also required Lamm’s insurer, Builders Mutual, to bear some responsibility. The full commission later relieved Builders Mutual unless Cincinnati defaults. In June, the Court of Appeals upheld the decision.

Cincinnati Insurance has asked the state Supreme Court to reconsider its liability, but the court is not obligated to hear the case.

The $850 policy meant for a ghost could force a payout estimated at $7.8 million.

THE SKINNY ON WORKERS’ COMP

Workers’ compensation came about in the 1930s to ensure that businesses were responsible for workers hurt on the job. The states put limits on what could be paid to workers for injuries and absences.

In North Carolina, businesses with three or more employees are required to buy insurance or certify with the Department of Insurance that they have enough assets to be self-insured. Most cases are readily settled, but when there is disagreement or complications, the N.C. Industrial Commission settles disputes.

Some business people have been trying to skirt the workers’ compensation requirements by buying a “ghost policy.” The policies are designed for a business owner who has no employees and cover someone who may be hired in the coming year. These bargain policies, which now cost about $1,000 per year, look no different from other policies, however, and are tough, if not impossible, for those hiring the company to detect.

No safety net
For Gonzalez, each day is an endless blur of impossibilities.

He cannot clench his fist to hold a spoon. He urinates through a tube. Sometimes, when he slouches too much, he falls out of his wheelchair, rendered helpless.

Though he can’t feel anything when his wife touches his arms, they ache constantly.

“When I am by myself, I really know how bad I am, “ Gonzalez said.

Gonzalez is stoic, rarely uttering a complaint as Cherry, his wife of 13 years, helps bathe him. She turns him over every two hours during the night to prevent bed sores.

When he was a young man, Gonzalez came to the U.S. illegally looking for work. The social safety network that typically catches poor people who are severely injured is unavailable to him. He cannot receive benefits such as Medicaid while he is pursuing permanent residency in the U.S.

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His wife and web of extended family band together to provide the care that the government cannot. They meet in the mornings and in the evenings to get him in and out of bed. While they know that better beds and physical therapy might help Gonzalez’s condition, those luxuries are out of reach until his workers’ compensation claim is settled.

Troubleshooting ghosts

Stuart Powell, an executive with the Independent Insurers Association of North Carolina, is an expert in insurance errors and loopholes that get carriers and their customers in trouble.

Ghost policies are on the top of his watch list.

“It’s been a thorn in the side of insurance agents for a long time, “ Powell said. “It puts them in the crossfire, because sometimes the employer is not honest with them.”

Powell would like to see ghost policies banned.

Mike Carpenter, general counsel of the N.C. Home Builders Association, also says ghost policies ought to be outlawed. He knows the move wouldn’t be popular with many of his members, but he says the risk these policies pose is simply too great.

“People ought not get advantages in the marketplace by not complying with the law, “ Carpenter said. “That’s what is happening now. It’s very real.”

The N.C. Rate Bureau doesn’t track ghost policies, and even if it had the information, privacy concerns would keep it from sharing the information with general contractors or employees calling to check on the scope of a policy. Sometimes, a diligent contractor calls the agent who sold the policy to inquire further. But that’s rare, agents say.

Darrin Rankin owns an insurance company in Huntersville, near Charlotte. He said he writes about 45 ghost policies a year, but only about once a year will a general contractor call to verify that a policy is good. No one asks an obvious question: Whom does it cover?

Rankin said he tries to talk customers who ask for a ghost policy out of buying them. He prepares two quotes: one for the ghost policy and another for a fuller policy that would cover the owner. He says no one ever chooses the more expensive policy.

“It’s in plain sight, but people refuse to understand or comprehend, “ Rankin said.

‘It wracks my nerves’

Worrell learned a stiff lesson.

He closed his business the day Gonzalez got hurt and says he hasn’t worked since. He said the Industrial Commission warned him that if he kept operating, it would charge him with criminal fraud.

“I took a risk that has ruined my life, “ said Worrell, who now collects disability because of a heart condition.

He feels badly for Gonzalez and his new life of limitations.

“It tears me up to know he’s paralyzed from the neck down, “ Worrell said. “It wracks my nerves.”

It’s hard for Gonzalez to accept a life bound to a wheelchair.

Four years ago, he remodeled his house and tended an orchard of fruit trees behind his home. He and his wife were on track to adopt a relative’s three children from foster care.

Gonzalez now talks about his former life as if it was a lifetime ago; he and Cherry lost their home as bills piled high. Social Services placed the children elsewhere after his accident.

When he thinks of those children and the life he meant to give them, he lifts his hand toward his face, unable to wipe away a tear.
Injured worker pays for employer’s gamble: Second in a series

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Every day, the state Department of Labor dispatches workplace inspectors to check for proper emergency exits, ample fire extinguishers, active safety training programs and dozens of other items needed to keep North Carolina workers safe on the job.

One thing they’re not asked to look for: proof of workers’ compensation coverage for injured employees.

That check could be valuable, a News & Observer analysis of other available data shows. The N&O, matching data of workers’ compensation policies from the N.C. Rate Bureau and the labor department’s 4,900 safety inspections last year, found 300 businesses whose workers’ comp coverage appeared to be expired at the time of the inspection.

It’s a simple cross-check of databases easily available to state officials and could serve as a starting place for bureaucrats charged with ensuring that businesses buy insurance to protect workers.

But no one in state government has bothered to do it. Not the Department of Labor, which is responsible for workplace safety. And not the state Industrial Commission, which oversees disputed workers’ compensation claims - and often encounters businesses without insurance.

North Carolina’s state agencies operate in silos. They each tend to their specific set of laws and rarely share information with counterparts who may detect other violations.

Business owners who break the rules are pocketing as profit what they are required to spend on taxes and insurance.

“It’s one of those things where everybody’s turning a blind eye,” said Roger Baker, who, along with his brother, Donnie, runs Southern Metal Systems in Wendell. The brothers say their commercial roofing company has struggled in recent years as they compete against companies shirking insurance and tax obligations.

“People will police themselves if they start cracking down,” Donnie Baker said.

The missed opportunities for enforcement are glaring: When the Industrial Commission encounters an employer who is paying workers under the table, it doesn’t inform the state Department of Revenue. The commission also has no policy or mechanism to alert its counterparts at the state Department of Insurance when it
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encounters an agent who misrepresented a workers’ compensation policy to a business owner.

When the state Department of Labor’s Wage and Hour Division investigates a complaint that an employee hasn’t been paid appropriate overtime, no one flags the case for the state Department of Revenue to check on whether the business pays required withholding taxes.

While the Department of Revenue gives the Division of Employment Security a list of new businesses, it doesn’t send that information to the Industrial Commission so it can check for workers’ compensation coverage.

There’s little communication between these agencies and the State Construction Office or the Historically Underutilized Businesses program. Coordination could prevent businesses that break the law from working on public projects.

“We just suck at synchronizing things that are supposed to be helping people,” said state Rep. Dale Folwell, a Winston-Salem Republican who has studied uninsured employers. “None of this surprises me, but it disappoints me.”

Obstacles for sharing data

Agency heads offer plenty of excuses. All blame limited resources and say they are focused on their own agency’s mission. State Revenue Secretary David Hoyle said he’s prohibited by law from sharing revenue data, which includes federal tax information.

Labor Commissioner Cherie Berry says checking for workers’ compensation insurance is not the job of her agency.

“We’re not set up as a state to have a place that’s a repository for that information so that it could be taken to the next level,” said Berry, a former state legislator. She said telling the Industrial Commission would have limited effect: “Their system is so antiquated, what are they going to do with it?”

At the Industrial Commission, chairwoman Pam Young said her agency’s computer system is so outdated that it prevents the commission from easily sharing information with others, even statistical data that the law requires it to provide to the state Department of Labor about workplace injuries. She blames limited resources for floundering efforts to detect compliance.

The commission’s system dates back to the 1970s and is in the process of being replaced, though it probably won’t be completed until 2015. The Industrial Commission keeps part of its fees to replace its system, and since 2006 it has collected nearly $8 million for the job.

Legislators appear to be interested in the potential for agencies to share data. Last year, they directed the state controllers office to survey agencies’ database and fraud-detection capabilities. A report is due to the legislature in October.

Audits show problems

Businesses skirting laws is not a new problem. But as the economy faltered, it became more glaring, business owners say. That’s when business owners who follow the
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laws started seeing competitors submitting mysteriously low bids.

“We had all the work we could handle four years ago,” said Donnie Baker, the roofing company owner. “... Suddenly, anything goes.”

Some businesses classify employees as contractors to avoid paying for workers’ comp insurance, overtime and unemployment taxes.

Ted Brinn, head of tax enforcement at the state Division of Employment Security, said his office started hearing more about employers inappropriately treating workers as contractors when the economy faltered and the state’s unemployment reserve emptied.

The agency audits 1 percent of businesses annually and tries to make educated guesses about the industries most likely to be evading taxes. Of the 2,627 audits the division performed last year, about 40 percent of the companies had misclassified employees, which amounted to more than $70 million in unreported payroll.

Examiners found misclassification in an additional 3,000 cases through tips and problems when workers applied for benefits.

The agency’s scope “needs to be bigger than it is,” Brinn said.

The Division of Employment Security looks into other complaints, too, but Brinn suspects his office is hearing little from undocumented workers, who aren’t entitled to collect unemployment benefits even though employers are required to pay taxes on them.

Some states tackle problem

Other states, driven largely by plummeting revenues, have tried to account for missed tax dollars in a more complete way.

A 2009 report by the federal Government Accountability Office found that independent contractor misclassification cost the federal government approximately $2.72 billion in 2006. In Connecticut, 42 percent of audited employers had misclassified workers; that had cost the state $65 million in unpaid state income tax and $17 million in unemployment tax. In California, nearly a third of audited businesses erroneously treated workers as subcontractors; so far the state has collected $137 mil-

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lion in state income tax from those businesses.

The federal Department of Labor, too, has been targeting the misclassification problem since 2010. States that have both unemployment tax investigators and wage and hour investigators in the same department were invited to enter into an information-sharing agreement to help detect problems.

But North Carolina’s unemployment tax division is under the Department of Commerce. Wage and Hour investigators are within the state Department of Labor.

Berry, the labor commissioner, said businesses that break the law shouldn’t be allowed to prosper. But even if she had been asked to sign on with the federal initiative, she would have been reluctant.

“If it didn’t deal with our mission of safety and health, we probably would have said no,” she said.

Half-hearted starts

State officials in Louisiana realized several years ago that their agencies’ efforts to regulate businesses were too fragmented.

They spent $4 million on a database that would collect all the information various agencies collected. So far, they have tackled common schemes such as corporations creating various shell companies to hide employees to lower their unemployment insurance burdens.

In just six months last year, the state collected $1.2 million in unpaid unemployment tax from several companies involved in the scheme.

Leaders in North Carolina say there is occasional chatter about sharing information among state agencies. Those talks usually dissolve quickly as agencies get back to their own responsibilities.

Last year, a bill that would provide a remedy for workers who’ve been misclassified never left a House committee.

“It did not resonate (with legislators),” said Rep. Rick Glazier, a Fayetteville Democrat and one of the bill’s sponsors. Glazier said he’ll try harder next session.

North Carolina is seen nationally as being behind the curve in addressing misclassification, said Catherine Ruckelshaus, a policy analyst with the National Employ-
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ment Law Project, a nonprofit that studies trends and policy efforts related to employment.

About half the states are trying. North Carolina is not.

“There are ways to go about this without re-creating the wheel, but there has to be political will ..., “ Ruckelshaus said. “They don’t need new laws. They don’t need (more) authority. ... It’s (being) in your face if you are doing that.”

Compliance goes slowly

Since a News & Observer investigation in April revealed that at least 30,000 businesses required to carry workers’ compensation insurance don’t, the Industrial Commission has struggled to create a compliance program.

Commission leaders have said many who don’t carry insurance are small, fly-by-night operations.

Yet The N&O found that many of the uninsured employers were on the radar of another state agency. One had registered a fleet of trailers at the Division of Motor Vehicles. One had been before the commission before with an uninsured claim. The commission scolded him for failing to keep insurance but never followed up.

The commission did step up efforts to collect on old uninsured cases. It resurrected hundreds of old cases in which commissioners had ordered an uninsured employer to pay but never followed up. In 48 cases, the commission has forced payments to injured workers or collected penalties for failure to buy insurance.

Young awaits recommendations from a legislative study commission appointed this summer to study employers without workers’ compensation coverage.

But Young, who was appointed by Gov. Mike Easley and whose term ends in 2014, insists that it’s not the commission’s job to alert other agencies about businesses that might be cheating.

“The Industrial Commission’s role, as I see it, is to ensure that there is coverage for employees who are injured on the job, “ Young. “Whether or not that business is competing fairly or unfairly, we don’t get into that debate because that’s not our charge.”

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