

Contractors seek changes in employment law

By Julián Aguilar, Texas Tribune

Updated 8:35 p.m., Monday, November 19, 2012

Although immigration reform is largely deemed a federal issue, construction moguls in Texas are confident that amending employment laws here can be a catalyst for nationwide change.

Stan Marek, president and CEO of the [Marek Family](#) of Companies, an interior contracting company that has offices across the state, testified before the [Texas Workforce Commission](#) in advance of the agency's final preparations for its legislative agenda on what he said is a rampant problem in the construction industry.

Marek said employers purposely misclassify employees as subcontractors, or “1099” workers, so named because of the federal employment form they fill out, to avoid paying payroll taxes, workers' compensation and overtime, Marek said. But it's also done to avoid knowing their workers' legal status.

He's among leaders of Texas construction companies pushing for new legislation to make such actions illegal.

Marek has raised the issue before, but after the election, he said the writing is on the wall.

Hispanics showed their disapproval with the [Republican Party](#) by overwhelmingly supporting the [Democratic Party](#), and Republicans are considering immigration reform anew as a result.

A state law to ensure better treatment of immigrant workers, Marek said, would be a significant step forward.

“We have to get an immigration bill, (because) people are being misclassified and most are undocumented,” Marek said. “They aren't getting workmen's comp, (they are) getting paid less. They are denied all their rights.”

The practice also leads to undercutting business owners who play by the rules, industry leaders said, because employers who pay lower wages can offer more competitive bids for contracts.

Construction Citizen, an industry newsletter, reported that [Michael White](#), with the [Texas Construction Association](#), told commissioners that some TCA members have been underbid by about 25 percent by companies that misclassify their workers as independent contractors.

Immigrations and Customs Enforcement has increased inspections of I-9 forms, the federal employment eligibility verification form.

But Marek said in September that the misconception is that the workers are deported if found to be in the country illegally. Instead, he said, many go into the “underground economy,” working for employers who will classify them as independent contractors.

Texas Workforce Commission spokeswoman [Lisa Givens](#) said the agency's legislative agenda has yet to be finalized and that the worker classification issue will be addressed again at a meeting today.

She said the commission already tries to ensure that all taxes are paid and that penalties are assessed when necessary.

The commission “is charged with auditing businesses to ensure that employee wages are being reported and that proper taxes are being paid on those wages,” she said in an email. “When TWC determines that an individual who has been classified as an independent contractor is really an employee, then back taxes, penalties and interest are assessed.”

She said the commission takes steps to increase detection of worker misclassification through the strengthening of audit procedures that look at the percentage of employers audited, the percentage of wages changed as a result of the audit, the percentage of the state's total wages that were audited and the average number of misclassified workers discovered per audit.

Marek, a member of the [Greater Houston Partnership](#)'s task force on immigration reform, said even a change affecting the construction industry alone would have a big effect and would trickle down.

“I am ready to get it all done now because what it would do, if employers had to all of sudden call their workers ‘employees,’ it would force them to advocate what I am advocating for, which is sensible immigration reform,” he said.

The Hispanic Leadership Network, a conservative-leaning think tank whose advisory committee members include former Florida Gov. [Jeb Bush](#) and U.S. Rep. [Francisco “Quico” Canseco](#), R-San Antonio, also urged a moderate approach to reform in a statement last week after learning that some Republicans said it was time for a new dialogue.

“It's a step in the right direction” that after the election, “conservatives are beginning to take the necessary steps toward fixing our broken immigration system,” [Jennifer Korn](#), executive director of the leadership network, said in the statement. “Now is the time for conservative leaders to speak out — and continue speaking out — about the immigration reforms they are for, rather than against. Introduce a guest worker program; overhaul our visa system; truly secure our borders — all of which are conservative policies.”

The progressive pro-reform organization America's Voice appeared to agree that Republicans could make progress if they changed their tune.

“One in five Latinos who voted for President Obama in 2012 (19.8 percent) said that they would be open to voting for Republicans if the party came to the table on immigration,” the group said

in a post-election analysis. “Combining this subset of Obama voters with the 23 percent of Latinos who voted for [Mitt Romney](#), a pro-immigration reform Republican Party would be poised to again achieve the 40 percent threshold of Latino support that [George W. Bush](#) received in 2004.”

<http://www.mysanantonio.com/business/article/Contractors-seek-changes-in-employment-law-4044478.php#ixzz2CoAOI7ZU>