

WISCONSIN



DWD

Worker Misclassification Task Force Report Update: 10 YEARS OF PROGRESS IN WC

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Division of Worker 's Compensation

- **Mission:** Promotion of healthy, safe work environments for the benefit of employers and workers by maintaining a balanced system of services to ensure compliance with Wisconsin Worker's Compensation (WC) Act
 - **WI passed nation's first constitutionally valid WC Act in 1911**, based on 'grand bargain' → Workers give up right to sue for negligence & employers pay for economic costs of injuries regardless of fault
- **Responsibilities:** monitoring of payments to injured workers, dispute resolution, investigations, enforcement, supplemental pay to certain injured workers, promotion of workplace safety and self-insurance regulation
- **Budget/Staffing:** \$12.3M annually (no GPR funding), 70 FTE
- **Bureaus of Insurance Programs, Claims Management and Legal Services**
- Supports **Worker's Compensation Advisory Council, Self-Insurers Council, Health Care Provider Advisory Committee**



WC & Worker Misclassification Task Force

- **Worker Misclassification Task Force:** Established in 2008 by DWD Secretary Gassman
- **Membership Included WC Division Administrator:** Was chaired by UI Administrator
- **Task Force Report submitted in June 2009:** Included summary of ongoing practices and recommendations
- **Practices in WCD Division (2009):**
 - Employer Education
 - Investigation of Complaints & Complaint Referrals to UI Division
 - Utilized 9-Point Test to Determine Employee or Independent Contractor
 - Collaboration and Data-Sharing with other DWD Divisions, State Agencies



WC & Worker Misclassification Task Force

- **Legislative Changes since 2009**

- **Section 102.07 (8) (d), created by 2009 Wis. Act 28:** provided for a fine of \$25,000 for each violation of employers who willfully and with the intent to evade any requirement of Ch. 102, Wis. Stats. for misclassifying an individual who is an employee as a non-employee.
 - Section was **amended by 2009 Wis. Act 288** to include employers engaged in painting or drywall finishing of buildings/other structures.
- **Section 102.07 (6), was repealed by 2015 Wis. Act 180:** Eliminated the statutory definition of persons selling or distributing newspapers or magazines on the street or door to door as employees, and required these persons to meet all elements of s. 102.07 (8) (b) to be independent contractors for worker's compensation purposes.
- **Section 102.04 (2r) was created by 2015 Wis. Act 203:** Excluded franchisors as employers of franchisees unless certain conditions are met.



WC & Worker Misclassification Task Force

- **Legislative Changes since 2009 (continued)**
 - **Section 102.125 (2) was created by 2015 Wis. Act 180:** Authorized DWD to request that DOJ assist with investigation and prosecution of suspected fraudulent activity on the part of an employer, employee, insurer, health care provider or any other person related to worker's compensation.

The image shows two overlapping browser windows. The top window displays the DWD website's 'How to Report Worker's Compensation Fraud' page, which includes contact information for the Workers' Compensation Bureau of Claims Management. The bottom window shows a 'Worker's Compensation Fraud Allegation' form with the following fields:

Worker's Compensation Fraud Allegation

* NOTE: Providing your name, phone number and email address are optional, but very helpful. You may remain anonymous by not completing those items.

* Your name, phone and email:

Name:

Phone Numbers:

Email:

Please provide any known information on the alleged fraudulent case below:

To be sure that we are able to adequately investigate your allegation, be sure to include as much of the following information as possible. If you do not know the answer, don't worry, just tell us what you do know. Due to confidentiality requirements, we will not be able to provide you with any information regarding our investigation into the fraud allegation.

- Act also provided for DWD to fund one (1) FTE position at DOJ to assist with the investigation and prosecution of fraud.
- DWD debuted online form in 2016 to collect reports of suspected WC fraud from public for possible referral to DOJ.



WC & Worker Misclassification Task Force

- **Legislative Changes since 2009 (continued)**
 - **Section 102.078 was created by 2015 Wis. Act 258:** Provided real estate brokers and salespersons are not employees of a real estate firm, unless the firm elects coverage, when there is a written agreement that provides the broker or salesperson shall not be treated as an employee for federal and state tax purposes and 75% or more of compensation was from brokerage services performed on behalf of the firm.
 - **Section 102.07 (8) (d) was repealed by 2015 Wis. Act 334, and s. 108.221 (2) was created:** To establish a new administrative penalty for construction employers who coerce individuals to adopt independent contractor status.
 - **The penalty is \$1,000 per employee coerced with a maximum penalty of \$10,000 per employer per year.**



WC & Worker Misclassification: 10 Years Later

- **WCD conducts investigations to make sure that employers subject to the WC Act have worker's compensation insurance coverage.**

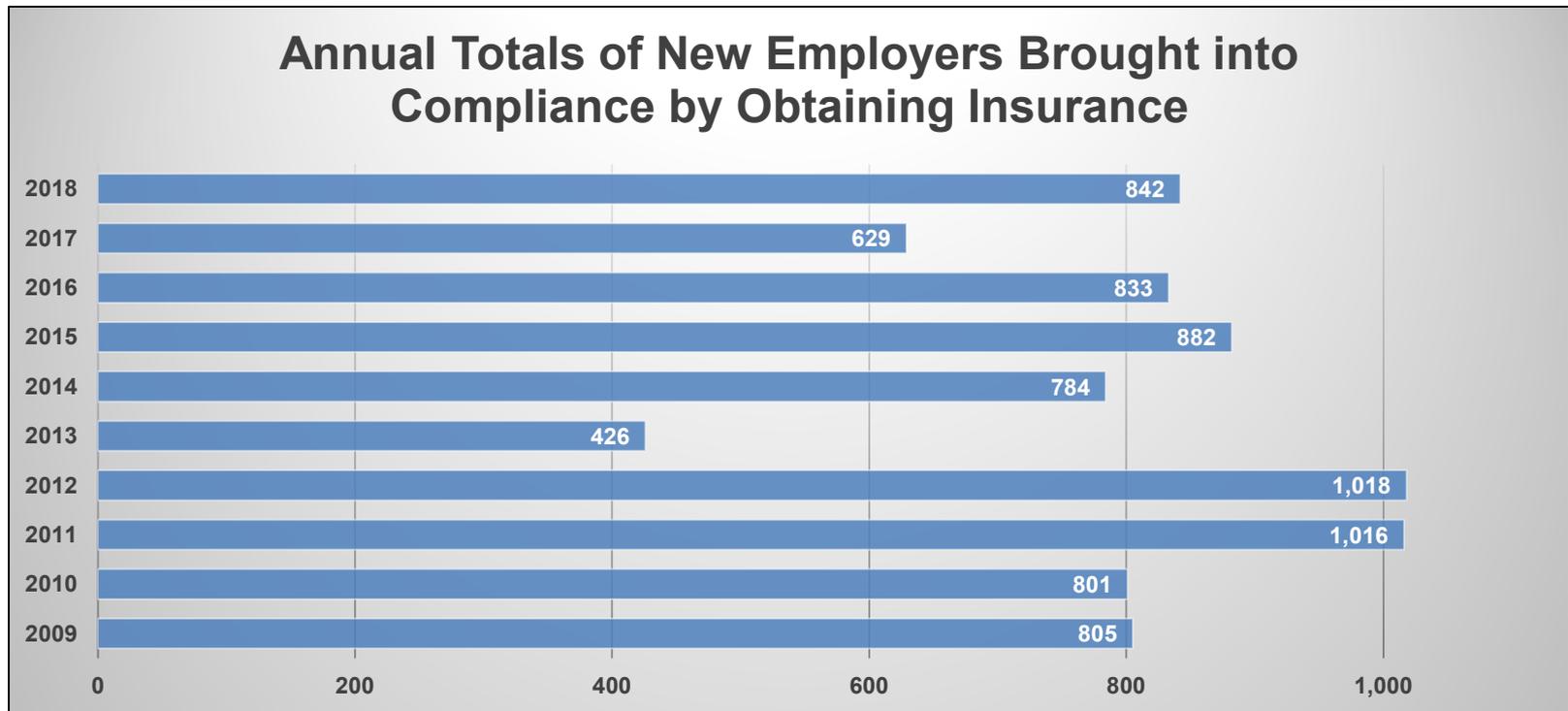


- **A WC insurance policy covers all workers who are determined to be employees of the employer** regardless of whether the employer claims them as employees.
- Employers who misclassify their employees to its worker's compensation insurance carrier to avoid premiums are subject to **audits by the insurer and will be required by the insurer to pay the proper premiums.**
- WCD has metrics on **investigative activities and performance.**



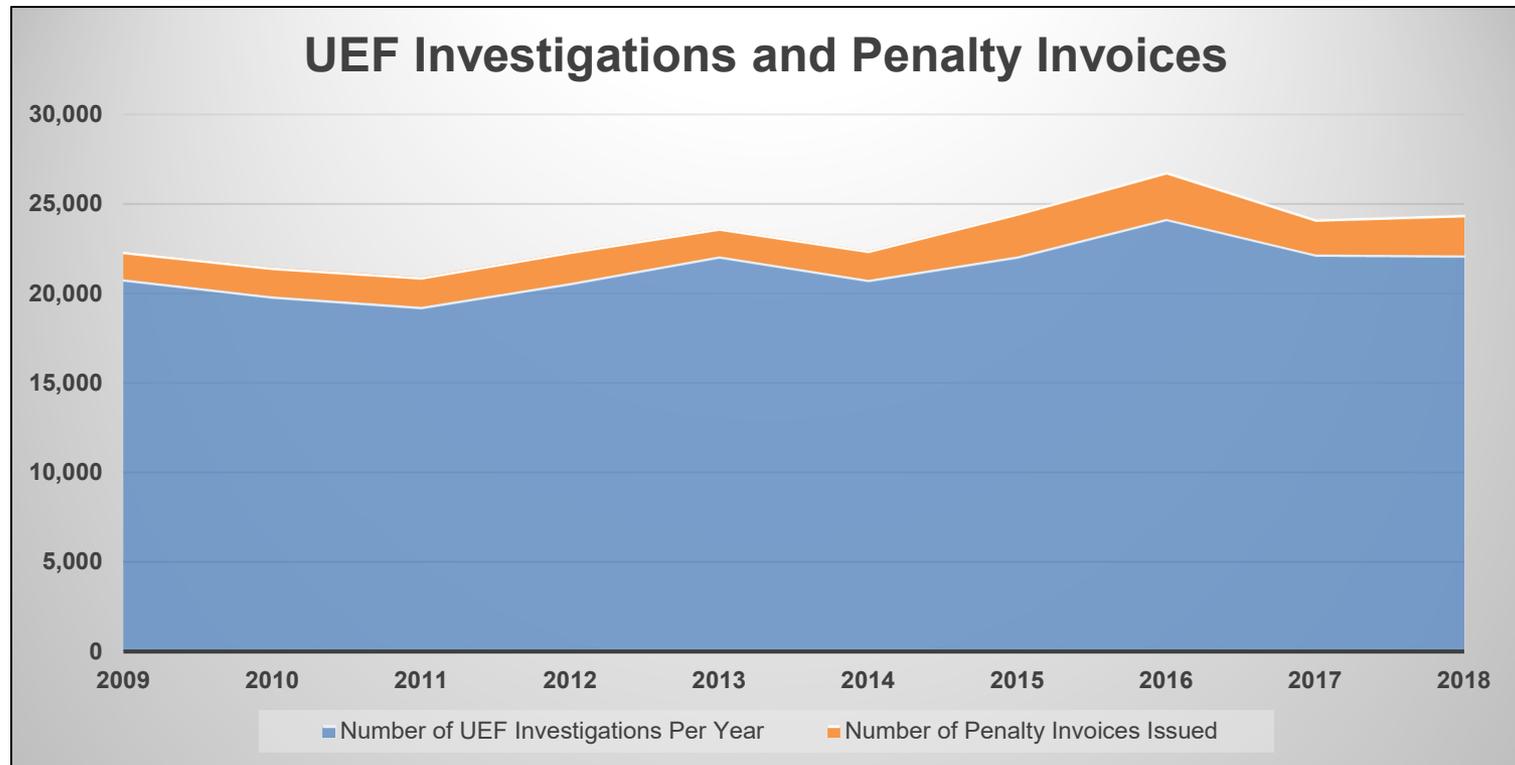
WC & Worker Misclassification: 10 Years Later

- **WC Investigators Hold Employers Accountable:** Validating proof of WC insurance on front-end can prevent issues later



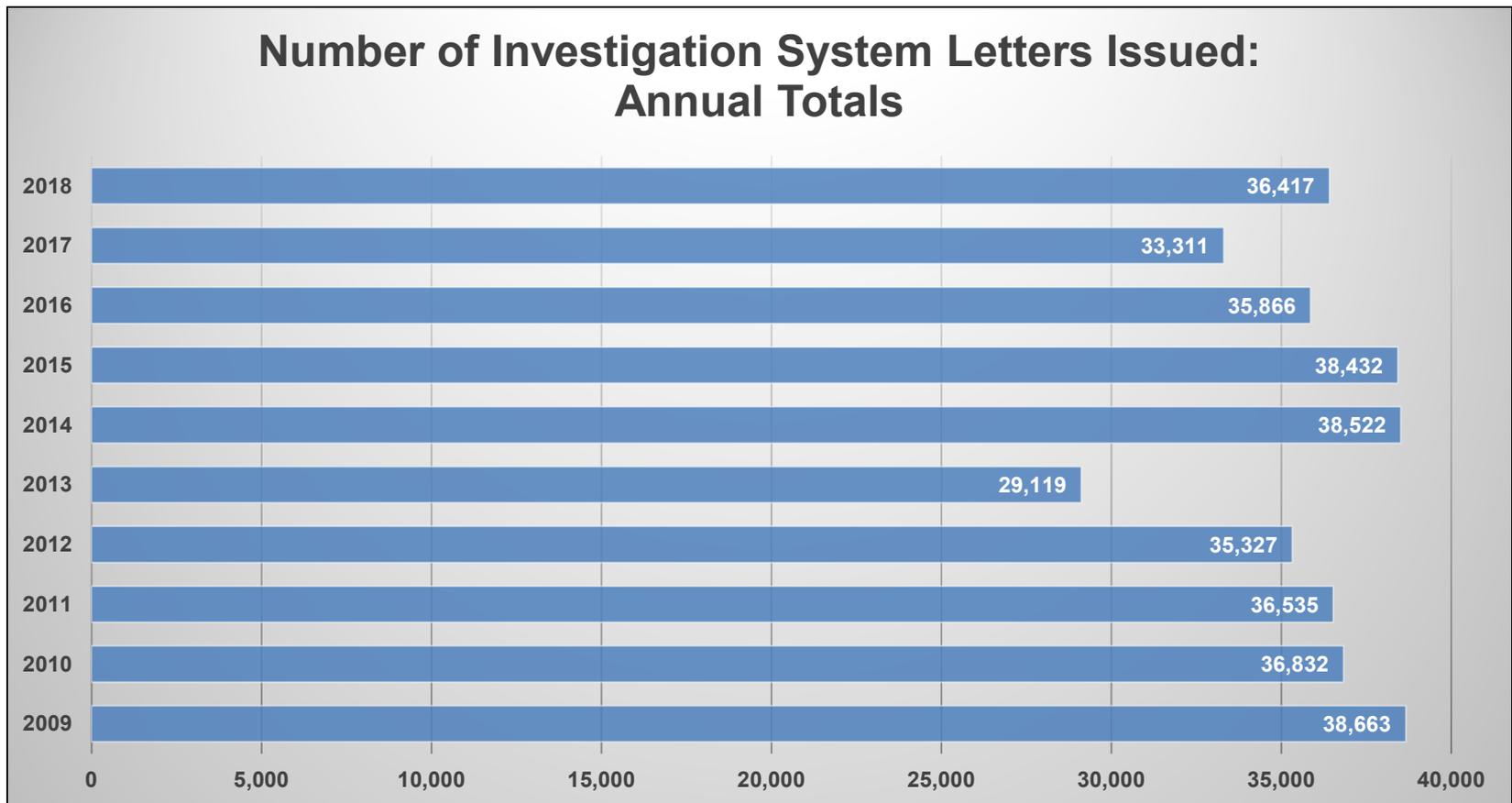
WC & Worker Misclassification: 10 Years Later

- **Uninsured Employers Fund (UEF)** investigations have increased in volume from 2009-18, along with penalty invoices against illegally uninsured employers



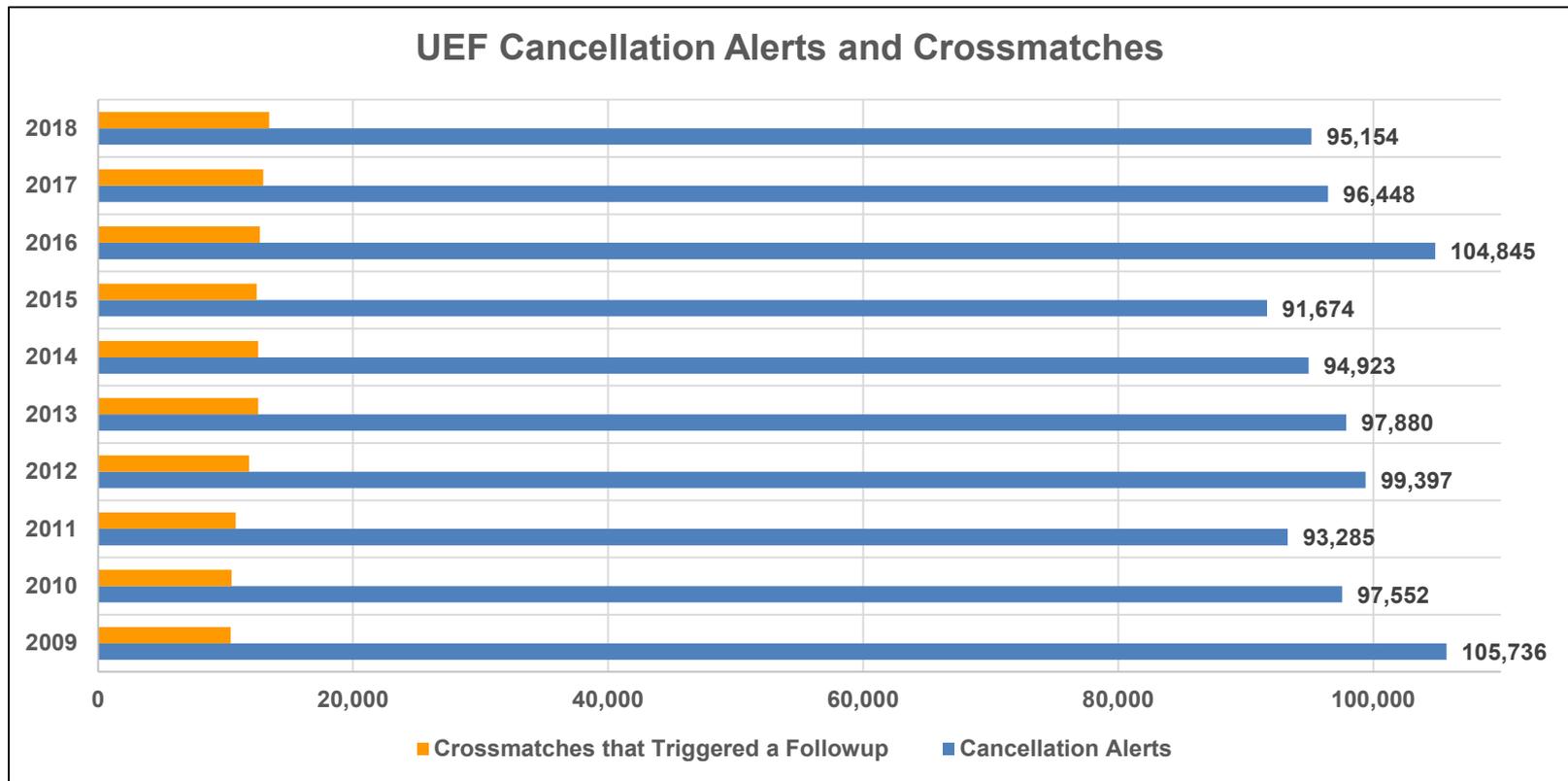
WC & Worker Misclassification: 10 Years Later

- UEF Investigators **Issue Tens of Thousands** of Letters Annually



WC & Worker Misclassification: 10 Years Later

- **Annual Employer Cancellation Notices & Crossmatch Activities** show increase in crossmatch “hits,” sustained cancellation notices prompting follow-up investigation and education



Questions?

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