
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2215 Session of
2020

INTRODUCED BY BURGOS, TOOHL, DELLOSO, KENYATTA, HOHENSTEIN,
SCHLOSSBERG, OTTEN AND MALAGARI, JANUARY 14, 2020

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, JANUARY 14, 2020

AN ACT

1 Providing for criteria for independent contractors in the
2 application-based service industry and for the powers and
3 duties of the Department of Labor and Industry and the
4 Secretary of Labor and Industry; and imposing penalties.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Application-
9 Based Company Worker Misclassification Act.

10 Section 2. Definitions.

11 The following words and phrases when used in this act shall
12 have the meanings given to them in this section unless the
13 context clearly indicates otherwise:

14 "Application-based company." A person operating on a
15 computer application-based or mobile application-based platform
16 to provide services through employees engaged in the performance
17 of short-term tasks. The term includes a commercial business
18 model in which:

19 (1) a person provides, for a fee, a mobile application

1 that suppliers and customers use to buy and sell goods or
2 services; or

3 (2) a person relies on individuals who rent or share
4 real or personal property or services such as cars, homes and
5 personal time to other individuals in a peer-to-peer fashion.

6 "Department." The Department of Labor and Industry of the
7 Commonwealth.

8 "Employee." Either of the following:

9 (1) In relation to workers' compensation, shall have the
10 meaning given to it in section 104 of the Workers'
11 Compensation Act.

12 (2) In relation to unemployment compensation, shall have
13 the meaning given to it in section 4(i) of the Unemployment
14 Compensation Law.

15 "Employer." An application-based company that:

16 (1) In relation to workers' compensation, meets the
17 definition of "employer" in section 103 of the Workers'
18 Compensation Act.

19 (2) In relation to unemployment compensation, meets the
20 definition of "employer" in section 4(j) of the Unemployment
21 Compensation Law.

22 "Secretary." The Secretary of Labor and Industry of the
23 Commonwealth.

24 "Unemployment Compensation Law." The act of December 5, 1936
25 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment
26 Compensation Law.

27 "Workers' Compensation Act." The act of June 2, 1915
28 (P.L.736, No.338), known as the Workers' Compensation Act.
29 Section 3. Employee determination.

30 A person providing labor or services for remuneration to an

1 application-based company shall be considered an employee rather
2 than an independent contractor unless the application-based
3 company demonstrates that all of the following conditions are
4 satisfied:

5 (1) The person is free from the control and direction of
6 the application-based company in connection with the
7 performance of the work, both under the contract for the
8 performance of the work and in fact.

9 (2) The person performs work that is outside the usual
10 course of the application-based company's business.

11 (3) The person is customarily engaged in an
12 independently established trade, occupation or business of
13 the same nature as that involved in the work performed.

14 Section 4. Improper classification of employees.

15 (a) Violation.--An employer, or an officer or agent of an
16 employer, shall be in violation of this act and shall be subject
17 to the penalties, remedies and actions contained in this act if
18 the employer, officer or agent:

19 (1) fails to properly classify an individual as an
20 employee for purposes of the Workers' Compensation Act and
21 fails to provide the coverage required under the Workers'
22 Compensation Act; or

23 (2) fails to properly classify an individual as an
24 employee for purposes of the Unemployment Compensation Law
25 and fails to pay contributions, reimbursements or other
26 amounts required to be paid under the Unemployment
27 Compensation Law.

28 (b) Separate offenses.--Each individual who is not properly
29 classified as an employee shall be the basis of a separate
30 violation of this section.

1 (c) Order to show cause.--

2 (1) If the secretary receives information indicating
3 that a person has violated this act, the secretary may
4 investigate the matter and issue an order to show cause why
5 the person should not be found in violation of this act.

6 (2) A person served with an order to show cause shall
7 have a period of 20 days from the date the order is served to
8 file an answer in writing.

9 (3) If the person fails to file a timely and adequate
10 answer to the order to show cause, the secretary may,
11 following notice and hearing, do any of the following:

12 (i) petition a court of competent jurisdiction to
13 issue a stop-work order; or

14 (ii) immediately assess penalties as provided under
15 section 6.

16 (d) Enforcement.--If, subsequent to issuing an order to show
17 cause under subsection (c), the secretary finds probable cause
18 that an employer has committed a criminal violation of this act,
19 the secretary shall refer the matter to the Office of Attorney
20 General for investigation or impose administrative penalties
21 under section 6.

22 (e) Acting in concert with other parties.--A party that does
23 not meet the definition of "employer" in section 2, but that
24 intentionally contracts with an employer knowing the employer
25 intends to misclassify employees in violation of this act, shall
26 be subject to the same penalties, remedies or other actions as
27 the employer found to be in violation of this act.

28 (f) Defense.--It shall be a defense to an alleged violation
29 of this section if the company for which the services are
30 performed in good faith believed that the individual who

1 performed the services qualified as an independent contractor at
2 the time the services were performed.

3 Section 5. Criminal penalties.

4 (a) Grading.--An employer, or officer or agent of an
5 employer, that intentionally violates section 4(a) commits:

6 (1) A misdemeanor of the third degree for a first
7 offense.

8 (2) A misdemeanor of the second degree for a second or
9 subsequent offense.

10 (b) Summary offense.--An employer, or officer or agent of an
11 employer, that negligently fails to properly classify an
12 individual as an employee under section 4(a) commits a summary
13 offense and shall, upon conviction, be sentenced to pay a fine
14 of not more than \$1,000. Evidence of a prior conviction under
15 this subsection shall be admissible as evidence of intent under
16 subsection (a).

17 (c) Concurrent jurisdiction.--

18 (1) The Attorney General shall have concurrent
19 prosecutorial jurisdiction with the district attorney of the
20 appropriate county for violations under this section and any
21 offense arising out of the activity prohibited by this
22 section.

23 (2) No person charged with a violation of this section
24 by the Attorney General may have standing to challenge the
25 authority of the Attorney General to prosecute the case, and,
26 if a challenge is made, the challenge shall be dismissed. No
27 relief shall be available in the courts of this Commonwealth
28 to the person making the challenge.

29 Section 6. Administrative penalties.

30 (a) General rule.--When the secretary finds that a person

1 has violated this act, the secretary may assess and collect
2 civil penalties of not more than \$1,000 for the first violation,
3 and not more than \$2,500 for each subsequent violation.

4 (b) Factors to be considered.--When determining the amount
5 of the penalty to be imposed, the secretary shall consider
6 factors, including, but not limited to:

7 (1) The history of previous violations by the employer.

8 (2) The seriousness of the violation.

9 (3) The good faith of the employer.

10 (4) The size of the employer's business.

11 Section 7. Procedure.

12 (a) Hearings.--Actions taken under sections 4(c) and 6 shall
13 be subject to the provisions of 2 Pa.C.S. (relating to
14 administrative law and procedure).

15 (b) Subpoena powers.--The department shall have the power to
16 subpoena witnesses, administer oaths, examine witnesses and take
17 testimony or compel the production of documents. The secretary
18 may petition the Commonwealth Court to enforce any order or
19 subpoena issued under this act.

20 Section 8. Certain agreement prohibited.

21 (a) Violation.--No person may require or demand that an
22 individual enter into an agreement or sign a document which
23 results in the improper classification of that individual as an
24 independent contractor.

25 (b) Penalty.--A violation of subsection (a) shall be
26 punishable by an administrative fine of not less than \$1,000 and
27 not more than \$2,500. Each violation shall be considered a
28 separate offense under this section.

29 Section 9. Retaliation for action prohibited.

30 (a) General rule.--It shall be unlawful for an employer, or

1 officer or agent of an employer, to discriminate in any manner
2 or take adverse action against any person in retaliation for
3 exercising rights protected under this act. Rights protected
4 under this act include, but are not limited to, the right to
5 file a complaint or inform any person about an employer's
6 noncompliance with this act.

7 (b) Good faith allegations of noncompliance.--Any person who
8 in good faith alleges noncompliance with this act shall be
9 afforded the rights provided by this act, notwithstanding the
10 person's failure to prevail on the merits.

11 (c) Rebuttable presumptions.--Taking adverse action against
12 a person within 90 days of the person's exercise of rights
13 protected under this act shall raise a rebuttable presumption of
14 having done so in retaliation for the exercise of those rights.
15 Section 10. Rules and regulations.

16 The department may promulgate rules and regulations necessary
17 to implement this act.

18 Section 11. Effective date.

19 This act shall take effect in 120 days.