
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2411 Session of
2024

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PARKER, ROZZI, O'MARA AND DALEY, JUNE 12, 2024

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, JUNE 12, 2024

AN ACT

1 Providing for criteria for independent contractors and for
2 powers and duties of the Department of Labor and Industry and
3 the Secretary of Labor and Industry; and imposing penalties.

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7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Short title.

10 This act shall be known and may be cited as the Workplace
11 Misclassification Act.

12 Section 2. Definitions.

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

16 "Construction." As defined in section 2 of the act of
17 October 13, 2010 (P.L.506, No.72), known as the Construction
18 Workplace Misclassification Act.

19 "Debar." As follows:

20 (1) Action taken by the secretary to prohibit a
21 contractor, subcontractor or person from contracting with or
22 participating in contracts for public work or providing
23 services to any State or local government entity for a period
24 of at least three years.

25 (2) The debarment shall include all divisions or other
26 organizational elements of a contractor or subcontractor
27 unless limited by its terms to specific divisions or
28 organizational elements.

29 (3) The debarment may apply to affiliates or other
30 persons associated with the contractor, subcontractor or

1 person if they are specifically named and given written
2 notice of the debarment and an opportunity to appeal.

3 (4) The debarment shall apply to a successor entity. An
4 entity shall be a successor entity if it:

5 (i) has one or more of the same principals or
6 officers as the employer against whom the order was
7 issued;

8 (ii) performs similar work within the same
9 geographical area;

10 (iii) occupies the same premises;

11 (iv) shares the same telephone number or facsimile
12 number;

13 (v) has the same email address or Internet website;

14 (vi) employs substantially the same workforce or
15 administrative employees, or both;

16 (vii) utilizes the same tools, equipment or
17 facilities;

18 (viii) employs or engages the services of any person
19 or persons involved in the direction or control of the
20 other; or

21 (ix) lists substantially the same work experience.

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

24 "Employee." Either of the following:

25 (1) In relation to workers' compensation, the term shall
26 have the meaning given to it in section 104 of the Workers'
27 Compensation Act.

28 (2) In relation to unemployment compensation, the term
29 shall have the meaning given to it in section 4(i) of the
30 Unemployment Compensation Law.

1 "Employer." Either of the following:

2 (1) In relation to workers' compensation, the term shall
3 have the meaning given to it in section 103 of the Workers'
4 Compensation Act.

5 (2) In relation to unemployment compensation, the term
6 shall have the meaning given to it in section 4(j) of the
7 Unemployment Compensation Law.

8 "Public work." As defined in section 2(5) of the act of
9 August 15, 1961 (P.L.987, No.442), known as the Pennsylvania
10 Prevailing Wage Act.

11 "Secretary." The Secretary of Labor and Industry of the
12 Commonwealth or the secretary's authorized representative.

13 "Unemployment Compensation Law." The act of December 5, 1936
14 (2nd Sp.Sess., 1937 P.L.2897, No.1), known as the Unemployment
15 Compensation Law.

16 "Workers' Compensation Act." The act of June 2, 1915
17 (P.L.736, No.338), known as the Workers' Compensation Act.
18 Section 3. Independent contractors.

19 (a) General rule.--For purposes of workers' compensation,
20 unemployment compensation and improper classification of
21 employees, an individual who performs services in any industry
22 other than construction for remuneration is an independent
23 contractor only if:

24 (1) The individual has a written contract that is
25 project-specific and contains a particular scope of work and
26 definitive time period to perform the services.

27 (2) The individual is free from control or direction
28 over performance of services both under the contract of
29 service and in fact.

30 (3) As to services, the individual is customarily

1 engaged in an independently established trade, occupation,
2 profession or business.

3 (b) Criteria.--An individual is customarily engaged in an
4 independently established trade, occupation, profession or
5 business with respect to services the individual performs only
6 if:

7 (1) The individual possesses the essential tools,
8 equipment and other assets necessary to perform the services
9 independent of the person for whom the services are
10 performed.

11 (2) The individual's arrangement with the person for
12 whom the services are performed is such that the individual
13 shall realize a profit or suffer a loss as a result of
14 performing the services.

15 (3) The individual performs the services through a
16 business in which the individual has a proprietary interest.

17 (4) The individual maintains a business location that is
18 separate from the location of the person for whom the
19 services are being performed.

20 (5) The individual:

21 (i) previously performed the same or similar
22 services for another person in accordance with paragraphs
23 (1), (2), (3) and (4) while free from direction or
24 control over performance of the services both under the
25 contract of service and in fact; or

26 (ii) holds themselves out to other persons as
27 available and able and is available and able to perform
28 the same or similar services in accordance with
29 paragraphs (1), (2), (3) and (4) while free from
30 direction or control over performance of the services.

1 (c) Factors not to be considered.--The failure to withhold
2 Federal or State income taxes or pay unemployment compensation
3 contributions or workers' compensation premiums with respect to
4 an individual's remuneration shall not be considered in
5 determining whether the individual is an independent contractor
6 for purposes of the Workers' Compensation Act or the
7 Unemployment Compensation Law.

8 (d) Workers' compensation.--

9 (1) An individual who is an independent contractor as
10 determined under this section is not an employee for purposes
11 of the Workers' Compensation Act. For purposes of this
12 section, each employment relationship shall be considered
13 separately.

14 (2) Nothing in this act shall be construed to affect
15 section 321(2) of the Workers' Compensation Act.

16 (e) Unemployment compensation.--

17 (1) For purposes of section 4(1)(2)(B) of the
18 Unemployment Compensation Law, an individual is customarily
19 engaged in an independently established trade, occupation,
20 profession or business only if the criteria in subsection (b)
21 are satisfied.

22 (2) Except as provided in paragraph (1), nothing in this
23 act shall be construed to affect any exclusion from
24 employment as defined in the Unemployment Compensation Law.

25 Section 4. Improper classification of employees.

26 (a) Violation.--An employer or officer or agent of an
27 employer shall be in violation of this act and shall be subject
28 to the penalties, remedies and actions contained in this act if
29 the employer, officer or agent:

30 (1) fails to properly classify an individual as an

1 employee for purposes of the Workers' Compensation Act and
2 fails to provide the coverage required under the Workers'
3 Compensation Act; or

4 (2) fails to properly classify an individual as an
5 employee for purposes of the Unemployment Compensation Law
6 and fails to pay contributions, reimbursements or other
7 amounts required to be paid under the Unemployment
8 Compensation Law.

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

12 (c) Order to show cause.--

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

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

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

23 (i) petition a court of competent jurisdiction to
24 issue a stop-work order as provided in section 7; or

25 (ii) immediately assess penalties as provided in
26 section 6.

27 (d) Enforcement.--The following shall apply:

28 (1) If, subsequent to issuing an order to show cause
29 under subsection (c), the secretary finds that an employer
30 has failed to properly classify an individual as an employee

1 for the purposes of this act, the secretary shall impose
2 administrative penalties under section 6.

3 (2) In addition to imposing penalties under paragraph
4 (1), the secretary may refer the matter to the Attorney
5 General for criminal investigation. The secretary shall make
6 a referral if the employer has previously been found in
7 violation of this act in another matter. The Attorney General
8 has jurisdiction under section 5 to initiate an investigation
9 or prosecution of criminal violations of this act regardless
10 of whether a referral has been made.

11 (e) Acting in concert with other parties.--A party that does
12 not meet the definition of "employer" in section 2, but which
13 intentionally contracts or renews a contract with an employer to
14 supply labor to an employer knowing the employer will
15 misclassify the supplied employees in violation of this act,
16 shall be subject to the same penalties, remedies or other
17 actions as the employer found to be in violation of this act.

18 (f) Defense.--It shall be a defense to an alleged violation
19 of this section if the person for whom the services are
20 performed in good faith believed that the individual who
21 performed the services qualified as an independent contractor at
22 the time the services were performed.

23 Section 5. Criminal penalties.

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

26 (1) A misdemeanor of the first degree if the employer
27 has no prior offense under section 4(a).

28 (2) A felony of the third degree if the employer has one
29 or more prior offenses under section 4(a).

30 (b) Summary offense.--An employer or officer or agent of an

1 employer that negligently fails to properly classify an
2 individual as an employee under section 4(a) commits a summary
3 offense and shall, upon conviction, be sentenced to pay a fine
4 of not more than \$1,000. Evidence of a prior conviction under
5 this subsection shall be admissible as evidence of intent under
6 subsection (a).

7 (c) Concurrent jurisdiction.--

8 (1) The Attorney General shall have concurrent
9 prosecutorial jurisdiction with the district attorney of the
10 appropriate county for violations under this section and any
11 offense arising out of the activity prohibited by this
12 section.

13 (2) No person charged with a violation of this section
14 by the Attorney General shall have standing to challenge the
15 authority of the Attorney General to prosecute the case, and
16 if a challenge is made, the challenge shall be dismissed and
17 no relief shall be available in the courts of this
18 Commonwealth to the person making the challenge.

19 (d) Definitions.--As used in this section, the following
20 words and phrases shall have the meanings given to them in this
21 subsection unless the context clearly indicates otherwise:

22 "Prior offense." A conviction of a violation of section 4 if
23 the judgment of sentence was imposed before the defendant was
24 sentenced for a separate violation of section 4.

25 Section 6. Private right of action.

26 (a) General rule.--An employee who has been misclassified in
27 violation of this act, or has been discharged, been threatened
28 or has otherwise suffered retaliation, discrimination or other
29 adverse action as a result of participating in an investigation
30 or reporting a violation of this act, may bring a private right

1 of action in a court of common pleas in accordance with
2 established civil procedures of this Commonwealth.

3 (b) Time.--An action under this section must be brought
4 within three years from the date that the employee knew of the
5 violation, retaliation or discrimination.

6 (c) Relief.--If an employee prevails in an action commenced
7 under this section, the employee shall be entitled to the
8 following relief:

9 (1) Reinstatement of the employee without a loss in
10 seniority status, if applicable.

11 (2) Restitution equal to three times the amount of the
12 employee's wages and fringe benefits calculated from the date
13 of the violation, retaliation or discrimination.

14 (3) Reasonable attorney fees and costs of the action.

15 (4) Other legal and equitable relief the court deems
16 appropriate to make the employee whole.

17 Section 7. Administrative penalties.

18 (a) General rule.--When the secretary finds that a person
19 has violated this act, the secretary:

20 (1) Shall assess and collect civil penalties of not more
21 than \$1,000 for the first violation and not more than \$2,500
22 for each subsequent violation.

23 (2) May order a financial audit or tax audit of any
24 relevant prospective records of the person.

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

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

29 (2) The seriousness of the violation.

30 (3) The good faith of the employer.

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

2 (c) Intentional violation.--The following shall apply:

3 (1) If the secretary determines that a violation of this
4 act was intentional, the secretary shall debar, for a period
5 of at least three years, a contractor, subcontractor or
6 person from bidding on or participating in a public work
7 project or providing services to any State or local
8 government entity, which shall include grants and loans to
9 private entities that perform work on behalf of a State or
10 local contract.

11 (2) A debarment under paragraph (1) shall apply to the
12 following:

13 (i) Future projects and contracts not begun or
14 entered into on or before the date of the debarment.

15 (ii) Current projects and contracts already entered
16 into but on which the debarred contractor, subcontractor
17 or person has not begun work as of the date of the
18 debarment.

19 Section 8. Stop-work orders.

20 (a) Issuance of order.--

21 (1) If the secretary determines, subsequent to the
22 issuance of an order to show cause under section 4(c), that
23 an employer or officer or agent of an employer has
24 intentionally failed to properly classify an individual as an
25 employee under section 4(a), the secretary may petition a
26 court of competent jurisdiction to issue a stop-work order
27 requiring the cessation of work by individuals who are
28 improperly classified within 24 hours of the effective date
29 of the order, or in the event that a majority of individuals
30 working at a site are improperly classified, requiring the

1 cessation of all business operations of that employer at each
2 site at which a violation occurred within 24 hours of the
3 effective date of the order.

4 (2) The order shall take effect when served upon the
5 employer, or for a particular employer worksite, when served
6 at the worksite. The order shall remain in effect until the
7 court issues an order releasing the stop-work order or upon
8 finding that the employer or officer or agent of the employer
9 is no longer in violation of this act.

10 (3) An order releasing a stop-work order may include a
11 requirement that the employer file with the department
12 periodic reports for a probationary period that shall not
13 exceed two years demonstrating the employer's continued
14 compliance with this act.

15 (b) Applicability of orders and penalties.--Stop-work orders
16 under subsection (a) and penalties under subsection (c) shall be
17 in effect against any successor corporation or business entity
18 that has one or more of the same principals or officers as the
19 employer against whom the stop-work order was issued or
20 penalties imposed and which is engaged in the same or equivalent
21 trade or activity.

22 (c) Penalty.--The court shall assess a penalty of \$1,000 per
23 day against an employer for each day that the employer conducts
24 business operations that are in violation of a stop-work order
25 issued under this section.

26 Section 9. Procedure.

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

30 (b) Subpoena powers.--The department shall have the power to

1 subpoena witnesses, administer oaths, examine witnesses and take
2 testimony or compel the production of documents. The secretary
3 may petition Commonwealth Court to enforce any order or subpoena
4 issued under this act.

5 Section 10. Certain agreements prohibited.

6 (a) Violation.--No person shall require or demand that an
7 individual enter into an agreement or sign a document which
8 results in the improper classification of that individual as an
9 independent contractor.

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

14 Section 11. Retaliation for action prohibited.

15 (a) General rule.--It shall be unlawful for an employer or
16 officer or agent of an employer to discharge, threaten or
17 otherwise retaliate against an employee regarding compensation
18 or other terms or conditions of employment because the employee:

19 (1) participates in an investigation, hearing or inquiry
20 by the secretary or any governmental authority; or

21 (2) reports or makes a complaint regarding the violation
22 of this act to an employer or any governmental authority.

23 (b) Action.--An employee who suffers retaliation or
24 discrimination in violation of this section may bring a private
25 right of action under section 6.

26 (c) Good faith allegations of noncompliance.--A person who
27 in good faith alleges noncompliance with this act shall be
28 afforded the rights provided by this act, notwithstanding the
29 person's failure to prevail on the merits.

30 (d) Rebuttable presumptions.--Taking adverse action against

1 a person within 90 days of the person's exercise of rights
2 protected under this act shall raise a rebuttable presumption of
3 having done so in retaliation for the exercise of those rights.

4 Section 12. Availability of information.

5 The department shall create a poster for job sites which
6 outlines the requirements and penalties under this act and shall
7 make the poster available on the department's publicly
8 accessible Internet website. Every employer subject to this act
9 shall keep a summary of this act and any regulations issued
10 under this act applicable to the employer, posted in a
11 conspicuous place where employees normally pass and can read it,
12 both on job sites and in all places of business. At the
13 discretion of the secretary, a toll-free telephone number may be
14 established to receive alleged violations.

15 Section 13. Use of penalty funds and recovered fees and costs.

16 Notwithstanding any other provision of law to the contrary,
17 any sum collected as a penalty, recovered attorney fee or cost
18 associated with any investigation or enforcement action under
19 this act shall be deposited into a restricted revenue account
20 created in the General Fund. Money deposited into the restricted
21 revenue account is appropriated to the department and shall be
22 used for future enforcement of this act.

23 Section 14. Rules and regulations.

24 The department may promulgate rules and regulations necessary
25 to implement this act.

26 Section 15. Annual report required.

27 The department shall submit an annual report to the General
28 Assembly by March 1 of the year following the first full year in
29 which this act is in effect, and each year thereafter,
30 detailing, to the maximum extent possible, data on the previous

1 calendar year's administration and enforcement of this act. The
2 department may include any relevant facts and statistics that it
3 believes necessary in the content of the report.

4 Section 16. Severability.

5 The provisions of this act are severable. If any provision of
6 this act or its application to any individual or circumstance is
7 held invalid, the invalidity shall not affect other provisions
8 or applications of this act which can be given effect without
9 the invalid provision or application.

10 Section 17. Construction of law.

11 Nothing contained in this act shall be construed to impair or
12 affect in any manner the ability of the department and secretary
13 to carry out the powers and duties prescribed by the laws of
14 this Commonwealth.

15 Section 18. Funding.

16 (a) Enforcement.--The department shall not be required to
17 enforce this act until adequate funding is appropriated.

18 (b) Recovery of fees and costs.--The department, Office of
19 Attorney General or a district attorney's office shall be
20 entitled to recover attorney fees and costs associated with the
21 investigation of employee misclassification, along with any
22 resulting enforcement action, from employers who violate the
23 provisions of this act.

24 Section 19. Effective date.

25 This act shall take effect in 120 days.