
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1436 Session of
2017

INTRODUCED BY CALTAGIRONE, MILLARD, SCHLOSSBERG, PASHINSKI AND
DeLUCA, MAY 24, 2017

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, MAY 24, 2017

AN ACT

1 Amending the act of October 13, 2010 (P.L.506, No.72), entitled
2 "An act providing for the criteria for independent
3 contractors in the construction industry and for the powers
4 and duties of the Department of Labor and Industry and the
5 Secretary of Labor and Industry; and imposing penalties,"
6 further providing for improper classification of employees
7 and for criminal penalties.

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

10 Section 1. Sections 4 and 5 of the act of October 13, 2010
11 (P.L.506, No.72), known as the Construction Workplace
12 Misclassification Act, are amended to read:

13 Section 4. Improper classification of employees.

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

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

1 Compensation Act; [or]

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

7 (3) is convicted of an offense under 18 Pa.C.S. § 4107
8 (relating to deceptive or fraudulent business practices)
9 reasonably related to a violation under paragraph (1) or (2).

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

13 (c) Order to show cause.--

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

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

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

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

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

28 (d) Enforcement.--If, subsequent to issuing an order to show
29 cause under subsection (c), the secretary finds probable cause
30 that an employer has committed a criminal violation of this act,

1 the secretary shall refer the matter to the Office of Attorney
2 General for investigation or impose administrative penalties
3 under section 6.

4 (e) Acting in concert with other parties.--A party that does
5 not meet the definition of "employer" in section 2, but which
6 intentionally contracts with an employer knowing the employer
7 intends to misclassify employees in violation of this act, shall
8 be subject to the same penalties, remedies or other actions as
9 the employer found to be in violation of this act.

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

15 Section 5. Criminal penalties.

16 (a) Grading.--An employer, or officer or agent of an
17 employer, that intentionally violates section 4(a) (1) or (2)
18 commits:

19 (1) A misdemeanor of the [third] second degree for a
20 first offense.

21 (2) A misdemeanor of the [second] first degree for a
22 second or subsequent offense.

23 [(b) Summary offense.--An employer, or officer or agent of
24 an employer, that negligently fails to properly classify an
25 individual as an employee under section 4(a) commits a summary
26 offense and shall, upon conviction, be sentenced to pay a fine
27 of not more than \$1,000. Evidence of a prior conviction under
28 this subsection shall be admissible as evidence of intent under
29 subsection (a).]

30 (b.1) Debarment.--A person sentenced under subsection (a)

1 shall be prohibited from contracting with or in any manner doing
2 business with the Commonwealth for a period of five years.

3 (c) Concurrent jurisdiction.--

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

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

15 Section 2. This act shall apply to offenses committed and
16 sentences imposed on and after the effective date of this
17 section.

18 Section 3. This act shall take effect in 60 days.