

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2443 Session of 2018

INTRODUCED BY GALLOWAY, THOMAS, W. KELLER, DAVIS, CALTAGIRONE, PASHINSKI, WATSON, BULLOCK, NEILSON, HARKINS, KINSEY, KORTZ, BARBIN, D. MILLER, McCLINTON, WARREN, STURLA, BRIGGS, RABB, SCHLOSSBERG, KRUEGER-BRANEKY, DiGIROLAMO, SNYDER, J. McNEILL, TAI, GOODMAN, BOYLE, MULLERY, GAINEY, D. COSTA AND MUSTIO, SEPTEMBER 5, 2018

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, SEPTEMBER 5, 2018

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 independent contractors, for improper
 7 classification of employees, for administrative penalties,
 8 for stop-work orders, for certain agreement prohibited and
 9 for use of penalty funds.

10 The General Assembly of the Commonwealth of Pennsylvania
 11 hereby enacts as follows:

12 Section 1. Sections 3(a), 4, 6, 7(c), 9 and 12 of the act of
 13 October 13, 2010 (P.L.506, No.72), known as the Construction
 14 Workplace Misclassification Act, are amended to read:

15 Section 3. Independent contractors.

16 (a) General rule.--For purposes of workers' compensation,
 17 unemployment compensation and improper classification of
 18 employees provided herein, an individual who performs services
 19 in the construction industry for remuneration is an independent

1 contractor only if:

2 (1) The individual has a written contract [to perform
3 such services] that is project-specific and contains a
4 particular scope of work and definitive time period to
5 perform the services.

6 (2) The individual is free from control or direction
7 over performance of such services both under the contract of
8 service and in fact.

9 (3) As to such services, the individual is customarily
10 engaged in an independently established trade, occupation,
11 profession or business.

12 * * *

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'
21 Compensation Act; or

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

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

30 (b.1) Complaint.--If the secretary receives a written

1 complaint indicating that any person has violated this act, the
2 secretary shall within 15 days of the receipt of the complaint
3 respond in writing to the person who filed the complaint that
4 the complaint has been received.

5 (c) [Order] Investigation and order to show cause.--

6 (1) If the secretary receives a written complaint or
7 information indicating that any person has violated this act,
8 the secretary [may] shall, unless the complaint appears to be
9 frivolous, investigate the matter and issue an order to show
10 cause why the person should not be found in violation of this
11 act.

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

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

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

20 (ii) immediately assess penalties as provided in
21 section 6.

22 (d) Enforcement.--If, subsequent to issuing an order to show
23 cause under subsection (c), the secretary finds probable cause
24 that an employer has committed a criminal violation of this act,
25 the secretary shall refer the matter to the Office of Attorney
26 General for investigation or impose administrative penalties
27 under section 6.

28 (e) Acting in concert with other parties.--A party that does
29 not meet the definition of "employer" in section 2, but which
30 intentionally contracts with an employer knowing the employer

1 intends to misclassify employees in violation of this act, shall
2 be subject to the same penalties, remedies or other actions as
3 the employer found to be in violation of this act.

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

9 Section 6. Administrative penalties.

10 (a) General rule.--When the secretary finds that a person
11 has violated this act, the secretary may assess and collect
12 civil penalties of not more than [\$1,000] \$2,500 for the first
13 violation, and not more than [\$2,500] \$5,000 for each subsequent
14 violation.

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

- 18 (1) The history of previous violations by the employer.
- 19 (2) The seriousness of the violation.
- 20 (3) The good faith of the employer.
- 21 (4) The size of the employer's business.

22 Section 7. Stop-work orders.

23 * * *

24 (c) Penalty.--The court shall assess a penalty of [\$1,000]
25 \$2,500 per day against an employer for each day that the
26 employer conducts business operations that are in violation of a
27 stop-work order issued under this section.

28 Section 9. Certain agreement prohibited.

29 (a) Violation.--No person shall require or demand that an
30 individual enter into an agreement or sign a document which

1 results in the improper classification of that individual as an
2 independent contractor.

3 (b) Penalty.--A violation of subsection (a) shall be
4 punishable by an administrative fine of not less than [\$1,000]
5 \$2,500 and not more than [\$2,500] \$5,000. Each violation shall
6 be considered a separate offense under this section.

7 Section 12. Use of penalty funds.

8 Any sum collected as a penalty under:

9 (1) Sections 6, 7 and 9 for a violation of section 4(a)
10 (1) shall be [paid into] divided equally between the Workers'
11 Compensation Administration Fund and the department for costs
12 related to enforcement.

13 (2) Sections 6, 7 and 9 for a violation of section 4(a)
14 (2) shall be [paid into] divided equally between the Special
15 Administration Fund created under section 601.1 of the
16 Unemployment Compensation Law and the department for costs
17 related to enforcement.

18 (3) Section 9 for a violation of any other provision of
19 this act shall be divided equally between the Workers'
20 Compensation Administration Fund [and], the Special
21 Administration Fund and the department for costs related to
22 enforcement.

23 Section 2. This act shall take effect in 60 days.