

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2243 Session of 2020

INTRODUCED BY HARKINS, DiGIROLAMO, MILLARD, MULLERY,
 SCHLOSSBERG, CALTAGIRONE, ZABEL, PASHINSKI, FLYNN, McNEILL,
 HOHENSTEIN, MERSKI, DeLUCA, KINSEY, HILL-EVANS, FREEMAN,
 MALAGARI, READSHAW, GALLOWAY, MARKOSEK, SCHWEYER, ROEBUCK,
 FRANKEL, DEASY, ISAACSON, NEILSON, BIZZARRO, THOMAS, MATZIE
 AND KAUFER, JANUARY 22, 2020

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, JANUARY 22, 2020

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 for administrative penalties, for stop-work orders, for
 8 certain agreement prohibited and for use of penalty funds.

9 The General Assembly of the Commonwealth of Pennsylvania

10 hereby enacts as follows:

11 Section 1. Section 4(e) of the act of October 13, 2010
 12 (P.L.506, No.72), known as the Construction Workplace
 13 Misclassification Act, is amended and the section is amended by
 14 adding a subsection to read:

15 Section 4. Improper classification of employees.

16 * * *

17 (c.1) Investigations.--If the secretary receives information
 18 indicating that a person has violated this act, the secretary
 19 may investigate the matter. The secretary may:

- 1 (1) investigate and ascertain wages paid to an employee;
2 (2) enter and inspect a worksite or place of business at
3 any reasonable time to examine and inspect records and
4 conditions of employment that are necessary and appropriate
5 to the enforcement of this act;
6 (3) copy or compel the production of records, contracts
7 and other documents that are necessary and appropriate to the
8 enforcement of this act; and
9 (4) require statements from the employer or individuals
10 present at a worksite, in person or in writing.

11 * * *

12 (e) Acting in concert with other parties.--[A party that
13 does not meet the definition of "employer" in section 2, but
14 which intentionally contracts with an employer knowing the
15 employer intends to misclassify employees in violation of this
16 act, shall be subject to the same penalties, remedies or other
17 actions as the employer found to be in violation of this act.] A
18 general contractor or any other party that does not meet the
19 definition of "employer" in section 2 and that contracts with an
20 employer who misclassifies employees in violation of this act
21 may be subject to the same penalties, remedies or other actions
22 as the employer found to be in violation of this act.

23 * * *

24 Section 2. Sections 6, 7, 9(b) and 12 of the act are amended
25 to read:

26 Section 6. Administrative penalties.

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

1 violation.

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

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

6 (2) The seriousness of the violation.

7 (3) The good faith of the employer.

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

9 (c) Debarment.--In the event that the secretary determines,
10 after notice and hearing as required under this act, that a
11 person has intentionally violated this act, the secretary shall
12 notify all public bodies of the names of those persons. No
13 public body may award a contract to the person or to a business,
14 corporation or partnership in which the person has an interest
15 until three years have elapsed from the date of the notice to
16 the public bodies.

17 Section 7. Stop-work orders.

18 (a) Issuance of order.--

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

1 effective date of the order.

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

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

13 (b) Applicability of orders and penalties.--Stop-work orders
14 under subsection (a) and penalties under subsection (c) shall be
15 in effect against any successor corporation or business entity
16 that has one or more of the same principals or officers as the
17 employer against whom the stop-work order was issued or
18 penalties imposed and which is engaged in the same or equivalent
19 trade or activity.] If the department determines that that an
20 employer, or officer or agent of the employer, has intentionally
21 failed to properly classify an individual as an employee under
22 section 4(a), the department may issue an order requiring the
23 cessation of construction. The following applies to the stop-
24 work order:

25 (1) The order may require satisfaction of conditions
26 necessary to ensure that the employer complies with this act.

27 (2) The order shall take effect when served upon the
28 employer by first class mail or posting at the employer's
29 worksite.

30 (3) The order shall remain in effect until released by

1 the department or a court of competent jurisdiction.

2 (4) The order shall be effective against a successor
3 entity that:

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

7 (ii) is engaged in construction.

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

13 (c) Penalty.--The court shall assess a penalty of [\$1,000]
14 \$2,500 per day against an employer for each day that the
15 employer conducts business operations that are in violation of a
16 stop-work order issued under this section.

17 Section 9. Certain agreement prohibited.

18 * * *

19 (b) Penalty.--A violation of subsection (a) shall be
20 punishable by an administrative fine of not less than [\$1,000]
21 \$2,500 and not more than [\$2,500] \$5,000. Each violation shall
22 be considered a separate offense under this section.

23 Section 12. Use of penalty funds.

24 Any sum collected as a penalty under:

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

29 (2) Sections 6, 7 and 9 for a violation of section 4(a)
30 (2) shall be [paid into] divided equally between the Special

1 Administration Fund created under section 601.1 of the
2 Unemployment Compensation Law and the department for costs
3 related to enforcement.

4 (3) Section 9 for a violation of any other provision of
5 this act shall be divided equally between the Workers'
6 Compensation Administration Fund [and], the Special
7 Administration Fund and the department for costs related to
8 enforcement.

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