

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1387 Session of 2021

INTRODUCED BY E. NELSON, PICKETT, R. MACKENZIE, DAVANZO, KEEFER, B. MILLER, WHEELAND, RYAN AND SILVIS, MAY 14, 2021

AS REPORTED FROM COMMITTEE ON LABOR AND INDUSTRY, HOUSE OF REPRESENTATIVES, AS AMENDED, MAY 26, 2021

AN ACT

1 Amending the act of June 2, 1915 (P.L.736, No.338), entitled "An
2 act defining the liability of an employer to pay damages for
3 injuries received by an employe in the course of employment;
4 establishing an elective schedule of compensation; providing
5 procedure for the determination of liability and compensation
6 thereunder; and prescribing penalties," in Uninsured
7 Employers Guaranty Fund, further providing for claim
8 petition.

9 The General Assembly of the Commonwealth of Pennsylvania

10 hereby enacts as follows:

11 Section 1. Section 1604 of the act of June 2, 1915 (P.L.736,
12 No.338), known as the Workers' Compensation Act, is amended to
13 read:

14 Section 1604. Claim petition.

15 (a) Authorization.--If a claim for compensation is filed
16 under this article and the claim is not voluntarily accepted as
17 compensable, the employee may file a claim petition naming both
18 the employer and the fund as defendants. Failure of the
19 uninsured employer to answer a claim petition shall not serve as
20 an admission or otherwise bind the fund under section 416.

1 (b) Amount of wages.--In a proceeding under this article,
2 the fund shall not be liable for wage loss payments unless the
3 amount of wages the employee earned at the time of injury is
4 established by one of the following:

5 (1) A check, check stub or payroll record.

6 (2) A tax return. This paragraph includes IRS form W-2
7 and form 1099, and successors to those forms.

8 (3) Unemployment compensation records, including form
9 UC-2A.

10 (4) Bank statements or records showing regular and
11 recurring deposits.

12 (5) Written documentation created contemporaneously with
13 the payment of wages.

14 (6) Testimony of the uninsured employer presented under
15 oath at a hearing or deposition.

16 (7) Testimony of the claimant, if found credible by the
17 judge, ~~which is provided in addition to one or more of the~~ <--
18 ~~items listed in paragraphs (1), (2), (3), (4), (5) and (6).~~

19 †(c) Limitation on wage loss payments.--If a judge accepts <--
20 testimony and finds it to be credible under subsection (b) (7) as
21 the sole basis for determining wage loss payments, without
22 supporting evidence established in subsection (b) (1), (2), (3),
23 (4), (5) or (6), the wage loss payment rate shall be 66.6% of
24 the average weekly wage for the claimant's occupation. The judge
25 may reduce the average weekly wage loss payment upon the
26 submission of evidence indicating a lesser wage amount or based
27 on the claimant's length of employment with the employer. For
28 the purposes of this subsection, the term "average weekly wage"
29 is the average weekly wage for the claimant's occupation by
30 metropolitan statistical area, as determined by the United

1 States Department of Labor for the calendar year prior to the
2 year in which the claimant's injury occurred, and shall be based
3 on the metropolitan statistical area in which the claimant's
4 injury occurred.†

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5 (d) Reports.--

6 (1) If the department has reasonable cause to suspect
7 that a claimant or uninsured employer has not reported, has
8 underreported or is delinquent in the payment of any Federal
9 or State tax, the department shall make a report within 30
10 days to the United States Internal Revenue Service, the
11 Department of Revenue or any other applicable Federal or
12 State agency. The department shall cooperate with an
13 investigation initiated as the result of a report made under
14 this subsection.

15 (2) If the department has reasonable cause to suspect
16 that an uninsured construction industry employer has
17 misclassified a claimant in violation of the act of October
18 13, 2010 (P.L.506, No.72), known as the Construction
19 Workplace Misclassification Act, the department shall make a
20 report to the Bureau of Labor Law Compliance for an
21 investigation into the potential misclassification of the
22 claimant.

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