

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 AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, JUNE 14, 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.]~~

5 (7) TESTIMONY OF THE CLAIMANT, IF FOUND CREDIBLE BY THE <--
6 JUDGE[.], WHICH IS PROVIDED IN ADDITION TO ONE OR MORE OF THE
7 ITEMS LISTED IN PARAGRAPHS (1), (2), (3), (4), (5) AND (6).

8 (8) TESTIMONY OF THE CLAIMANT, IF FOUND CREDIBLE BY THE
9 JUDGE, WHICH IS PROVIDED IN ADDITION TO AN AFFIDAVIT FROM THE
10 CLAIMANT SWEARING TO ALL OF THE FOLLOWING:

11 (I) THE CLAIMANT WORKED FOR THE UNINSURED EMPLOYER
12 FOR FEWER THAN 30 DAYS.

13 (II) THE CLAIMANT'S OCCUPATION, AMOUNT OF WAGES AND
14 HOURS WORKED FOR THE UNINSURED EMPLOYER.

15 (III) THE REASONS THAT THE CLAIMANT CANNOT PROVIDE
16 ANY ADDITIONAL EVIDENCE OF THE AMOUNT OF THE CLAIMANT'S
17 WAGES.

18 (IV) INFORMATION ABOUT THE UNINSURED EMPLOYER,
19 INCLUDING THE NAME OF THE EMPLOYER AND THE NAMES OF ANY
20 INDIVIDUALS KNOWN TO THE CLAIMANT WHO SUPERVISED OR
21 MANAGED THE CLAIMANT'S WORK, ALONG WITH ANY OTHER
22 IDENTIFYING INFORMATION FOR THOSE INDIVIDUALS OF WHICH
23 THE CLAIMANT IS AWARE.

24 (C) LIMITATION ON WAGE LOSS PAYMENTS.--IF A JUDGE ACCEPTS
25 TESTIMONY AND FINDS IT TO BE CREDIBLE UNDER SUBSECTION [(B) (7)]
26 (B) (8) AS THE SOLE BASIS FOR DETERMINING WAGE LOSS PAYMENTS,
27 WITHOUT SUPPORTING EVIDENCE ESTABLISHED IN SUBSECTION (B) (1),
28 (2), (3), (4), (5) OR (6), THE WAGE LOSS PAYMENT RATE SHALL BE
29 66.6% OF THE AVERAGE WEEKLY WAGE FOR THE CLAIMANT'S OCCUPATION.
30 THE JUDGE MAY REDUCE THE AVERAGE WEEKLY WAGE LOSS PAYMENT UPON

1 THE SUBMISSION OF EVIDENCE INDICATING A LESSER WAGE AMOUNT OR
2 BASED ON THE CLAIMANT'S LENGTH OF EMPLOYMENT WITH THE EMPLOYER.
3 FOR THE PURPOSES OF THIS SUBSECTION, THE TERM "AVERAGE WEEKLY
4 WAGE" IS THE AVERAGE WEEKLY WAGE FOR THE CLAIMANT'S OCCUPATION
5 BY METROPOLITAN STATISTICAL AREA, AS DETERMINED BY THE UNITED
6 STATES DEPARTMENT OF LABOR FOR THE CALENDAR YEAR PRIOR TO THE
7 YEAR IN WHICH THE CLAIMANT'S INJURY OCCURRED, AND SHALL BE BASED
8 ON THE METROPOLITAN STATISTICAL AREA IN WHICH THE CLAIMANT'S
9 INJURY OCCURRED.

10 (d) Reports.--

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

20 (2) If the department has reasonable cause to suspect
21 that an uninsured construction industry employer has
22 misclassified a claimant in violation of the act of October
23 13, 2010 (P.L.506, No.72), known as the Construction
24 Workplace Misclassification Act, the department shall make a
25 report to the Bureau of Labor Law Compliance for an
26 investigation into the potential misclassification of the
27 claimant.

28 (3) THE DEPARTMENT SHALL INVESTIGATE THE INFORMATION
29 PROVIDED IN AN AFFIDAVIT PROVIDED UNDER SUBSECTION (B) (8).
30 THE FOLLOWING SHALL APPLY:

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1 (I) IF THE DEPARTMENT FINDS EVIDENCE OF MATERIAL
2 MISSTATEMENTS BY THE CLAIMANT, THE DEPARTMENT SHALL
3 SUBMIT THE EVIDENCE TO THE WORKERS' COMPENSATION JUDGE
4 AND MAKE A REPORT TO THE APPROPRIATE DISTRICT ATTORNEY.

5 (II) IN ADDITION TO ANY REPORTS REQUIRED UNDER
6 PARAGRAPHS (1) AND (2), IF THE DEPARTMENT HAS REASONABLE
7 CAUSE TO SUSPECT THAT THE UNINSURED EMPLOYER HAS VIOLATED
8 ANY OTHER FEDERAL OR STATE LAW, THE DEPARTMENT SHALL MAKE
9 A REPORT WITH THE APPLICABLE FEDERAL OR STATE AGENCY.

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