
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1549 Session of
2021

INTRODUCED BY HARKINS, ISAACSON, SCHLOSSBERG, FREEMAN, DELLOSO,
SANCHEZ, GALLOWAY, PISCIOTTANO, SONNEY, A. DAVIS, CIRESI,
GUZMAN, NEILSON AND WARREN, JUNE 7, 2021

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, JUNE 7, 2021

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:

20 (1) investigate and ascertain wages paid to an employee;

1 (2) enter and inspect a worksite or place of business at
2 any reasonable time to examine and inspect records and
3 conditions of employment that are necessary and appropriate
4 to the enforcement of this act;

5 (3) copy or compel the production of records, contracts
6 and other documents that are necessary and appropriate to the
7 enforcement of this act; and

8 (4) require statements from the employer or individuals
9 present at a worksite, in person or in writing.

10 * * *

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

22 * * *

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

25 Section 6. Administrative penalties.

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

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

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

5 (2) The seriousness of the violation.

6 (3) The good faith of the employer.

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

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

16 Section 7. Stop-work orders.

17 (a) Issuance of order.--

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

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

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

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

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

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

29 (3) The order shall remain in effect until released by
30 the department or a court of competent jurisdiction.

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

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

6 (ii) is engaged in construction.

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

11 (c) Penalty.--The court shall assess a penalty of [\$1,000]
12 \$2,500 per day against an employer for each day that the
13 employer conducts business operations that are in violation of a
14 stop-work order issued under this section.

15 Section 9. Certain agreement prohibited.

16 * * *

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

21 Section 12. Use of penalty funds.

22 Any sum collected as a penalty under:

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

27 (2) Sections 6, 7 and 9 for a violation of section 4(a)
28 (2) shall be [paid into] divided equally between the Special
29 Administration Fund created under section 601.1 of the
30 Unemployment Compensation Law and the department for costs

1 related to enforcement.

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

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