
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1056 Session of
2022

INTRODUCED BY KANE, TARTAGLIONE, L. WILLIAMS, HUGHES, HAYWOOD,
COMITTA, SANTARSIERO, COLLETT, KEARNEY, STREET, FLYNN,
FONTANA AND CAPPELLETTI, FEBRUARY 14, 2022

REFERRED TO LABOR AND INDUSTRY, FEBRUARY 14, 2022

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 definitions, for improper
7 classification of employees and for criminal penalties;
8 providing for private right of action; and further providing
9 for administrative penalties, for retaliation for action
10 prohibited, for availability of information and for funding.

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

13 Section 1. Section 2 of the act of October 13, 2010
14 (P.L.506, No.72), known as the Construction Workplace
15 Misclassification Act, is amended by adding a definition to
16 read:

17 Section 2. Definitions.

18 The following words and phrases when used in this act shall
19 have the meanings given to them in this section unless the
20 context clearly indicates otherwise:

21 * * *

1 "Debar." Action taken by the secretary to prohibit a
2 contractor, subcontractor or individual from contracting with or
3 participating in contracts for State-supervised or State-funded
4 construction and other State procurement contracts for a
5 specified period or permanently. The debarment will include all
6 divisions or other organizational elements of a contractor or
7 subcontractor unless limited by its terms to specific divisions
8 or organizational elements. The debarment may apply to
9 affiliates or other individuals or entities associated with the
10 contractor, subcontractor or individual if they are specifically
11 named and given written notice of the debarment and an
12 opportunity to appeal.

13 * * *

14 Section 2. Section 4(c)(2), (d) and (e) of the act are
15 amended to read:

16 Section 4. Improper classification of employees.

17 * * *

18 (c) Order to show cause.--

19 * * *

20 (2) A person served with an order to show cause shall
21 have a period of [20] 10 days from the date the order is
22 served to file an answer in writing.

23 * * *

24 (d) Enforcement.--If, subsequent to issuing an order to show
25 cause under subsection (c), the secretary finds [probable cause
26 that an employer has committed a criminal violation of this act,
27 the secretary shall refer the matter to the Office of Attorney
28 General for investigation or] that an employer has violated the
29 Workers' Compensation Act, the secretary shall impose
30 administrative penalties under section 6. In addition, the

1 secretary may refer the matter to the Attorney General for
2 criminal investigation. The secretary shall make a referral if
3 the employer has previously been found in violation of this act
4 in another matter. The Attorney General has jurisdiction under
5 section 5 to initiate an investigation or prosecution of
6 criminal violations of this act regardless of whether a referral
7 has been made.

8 (e) Acting in concert with other parties.--A party that does
9 not meet the definition of "employer" in section 2, but which
10 [intentionally] contracts with an employer [knowing the employer
11 intends to misclassify] to supply labor for construction knowing
12 the employer will misclassify the supplied employees in
13 violation of this act, shall be subject to the same penalties,
14 remedies or other actions as the employer found to be in
15 violation of this act.

16 * * *

17 Section 3. Section 5(a) of the act is amended and the
18 section is amended by adding a subsection to read:

19 Section 5. Criminal penalties.

20 (a) Grading.--[An employer, or officer or agent of an
21 employer, that intentionally violates section 4(a) commits:

22 (1) A misdemeanor of the third degree for a first
23 offense.

24 (2) A misdemeanor of the second degree for a second or
25 subsequent offense.] An employer, or officer or agent of an
26 employer who knowingly violates section 4(a) commits:

27 (1) A misdemeanor of the first degree if the employer
28 has no prior offense under section 4(a).

29 (2) A felony of the third degree if the employer has one
30 or more prior offenses under section 4(a).

1 * * *

2 (d) Definitions.--As used in this section, the following
3 words and phrases shall have the meanings given to them in this
4 subsection unless the context clearly indicates otherwise:

5 "Prior offense." A conviction of a violation of section 4,
6 if the judgment of sentence was imposed before the defendant is
7 sentenced for a separate violation of section 4.

8 Section 4. The act is amended by adding a section to read:
9 Section 5.1. Private right of action.

10 (a) General rule.--An employee who has been misclassified in
11 violation of this act, or has been discharged, threatened or has
12 otherwise suffered retaliation, discrimination or any other
13 adverse action as a result of participating in an investigation
14 or reporting a violation of this act may bring a private right
15 of action in a court of common pleas in accordance with
16 established civil procedures of this Commonwealth.

17 (b) Time.--The action must be brought within three years
18 from the date the employee knew of the violation, retaliation or
19 discrimination.

20 (c) Relief.--If an employee prevails in an action commenced
21 under this section, the employee shall be entitled to the
22 following relief:

23 (1) Reinstatement of the employee without a loss in
24 seniority status, if applicable.

25 (2) Restitution equal to three times the amount of the
26 employee's wages and fringe benefits calculated from the date
27 of the violation, retaliation or discrimination.

28 (3) Reasonable attorney fees and costs of the action.

29 (4) Any other legal and equitable relief as the court
30 deems appropriate to make the employee whole.

1 Section 5. Section 6(a) of the act is amended and the
2 section is amended by adding a subsection to read:

3 Section 6. Administrative penalties.

4 (a) General rule.--When the secretary finds that a person
5 has violated this act, the secretary may [assess]:

6 (1) Assess and collect civil penalties of not more than
7 \$1,000 for the first violation, and not more than \$2,500 for
8 each subsequent violation.

9 (2) Order a financial audit or tax audit of the person.

10 * * *

11 (c) Intentional violation.--If the secretary determines that
12 a violation of this act was intentional, the secretary shall
13 debar, for a set period or permanently, a contractor,
14 subcontractor or individual from bidding on or participating in
15 State-supervised construction and other State procurement
16 contracts.

17 Section 6. Sections 10, 11 and 17 of the act are amended to
18 read:

19 Section 10. Retaliation for action prohibited.

20 (a) General rule.--It shall be unlawful for an employer, or
21 officer or agent of an employer, to [discriminate in any manner
22 or take adverse action against any person in retaliation for
23 exercising rights protected under this act. Rights protected
24 under this act include, but are not limited to, the right to
25 file a complaint or inform any person about an employer's
26 noncompliance with this act.] discharge, threaten or otherwise
27 retaliate or discriminate in any manner against an employee
28 regarding compensation or other terms or conditions of
29 employment because the employee:

30 (1) participates in an investigation, hearing or inquiry

1 by the secretary or any governmental authority; or

2 (2) reports or makes a complaint regarding the violation
3 of this act to a construction industry employer or any
4 governmental authority.

5 (a.1) Action.--An employee who suffers retaliation or
6 discrimination in violation of this section may bring a private
7 right of action under section 5.1.

8 (b) Good faith allegations of noncompliance.--Any person who
9 in good faith alleges noncompliance with this act shall be
10 afforded the rights provided by this act, notwithstanding the
11 person's failure to prevail on the merits.

12 (c) Rebuttable presumptions.--Taking adverse action against
13 a person within 90 days of the person's exercise of rights
14 protected under this act shall raise a rebuttable presumption of
15 having done so in retaliation for the exercise of those rights.
16 Section 11. Availability of information.

17 The department shall create a poster [for job sites] which
18 outlines the requirements and penalties under this act and shall
19 make the poster available on its Internet website. Every
20 employer subject to this act shall keep a summary of this act
21 and any regulations issued thereunder applicable to the
22 employer, posted in a conspicuous place where employees normally
23 pass and can read it, both on job sites and in any and all
24 places of business. At the discretion of the secretary, a toll-
25 free hotline telephone number may be established to receive
26 alleged violations.

27 Section 17. Funding.

28 (a) Enforcement.--The department shall not be required to
29 enforce this act until adequate funding is appropriated.

30 (b) Recovery of fees and costs.--The department, Office of

1 Attorney General or a district attorney's office shall be
2 entitled to recover attorney fees and costs associated with the
3 investigation of construction worker misclassification from
4 employers who violate the provisions of this act.

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