
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1751 Session of
2023

INTRODUCED BY DONAHUE, KAZEEM, MADDEN, PIELLI, McNEILL,
HOHENSTEIN, SCHLOSSBERG, BRENNAN, DELLOSO, HADDOCK, OTTEN,
GIRAL, SANCHEZ, HILL-EVANS, BOYD AND CIRESI, OCTOBER 13, 2023

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, OCTOBER 13, 2023

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 for fines and
9 penalties; further providing for administrative penalties,
10 for retaliation for action prohibited, for availability of
11 information and for funding; and imposing penalties.

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

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

22 "Debar." As follows:

1 (1) Action taken by the secretary to prohibit a
2 contractor, subcontractor or person from contracting with or
3 participating in contracts for public work for a period of at
4 least three years.

5 (2) The debarment shall include all divisions or other
6 organizational elements of a contractor or subcontractor
7 unless limited by its terms to specific divisions or
8 organizational elements.

9 (3) The debarment may apply to affiliates or other
10 persons associated with the contractor, subcontractor or
11 individual if they are specifically named and given written
12 notice of the debarment and an opportunity to appeal.

13 (4) The debarment shall apply to a successor entity. An
14 entity shall be a successor entity if it:

15 (i) has one or more of the same principals or
16 officers as the employer against whom the order was
17 issued;

18 (ii) performs similar work within the same
19 geographical area;

20 (iii) occupies the same premises;

21 (iv) shares the same telephone number or facsimile
22 number;

23 (v) has the same email address or Internet website;

24 (vi) employs substantially the same workforce or
25 administrative employees, or both;

26 (vii) utilizes the same tools, equipment or
27 facilities;

28 (viii) employs or engages the services of any person
29 or persons involved in the direction or control of the
30 other; or

1 (ix) lists substantially the same work experience.

2 * * *

3 "Public work." As defined in section 2(5) of the act of
4 August 15, 1961 (P.L.987, No.442), known as the Pennsylvania
5 Prevailing Wage Act.

6 * * *

7 Section 2. Section 4(d) and (e) of the act are amended to
8 read:

9 Section 4. Improper classification of employees.

10 * * *

11 (d) Enforcement.--

12 (1) If, subsequent to issuing an order to show cause
13 under subsection (c), the secretary finds [probable cause
14 that an employer has committed a criminal violation of this
15 act, the secretary shall refer the matter to the Office of
16 Attorney General for investigation or] that an employer has
17 failed to properly classify an individual as an employee for
18 the purposes of this act, the secretary shall impose
19 administrative penalties under section 6.

20 (2) In addition to imposing penalties under paragraph
21 (1), the secretary may refer the matter to the Attorney
22 General for criminal investigation. The secretary shall make
23 a referral if the employer has previously been found in
24 violation of this act in another matter. The Attorney General
25 has jurisdiction under section 5 to initiate an investigation
26 or prosecution of criminal violations of this act regardless
27 of whether a referral has been made.

28 (e) Acting in concert with other parties.--A party that does
29 not meet the definition of "employer" in section 2, but which
30 [intentionally] contracts or renews a contract with an employer

1 [knowing the employer intends to misclassify] to supply labor
2 for construction knowing the employer will misclassify the
3 supplied employees in violation of this act, shall be subject to
4 the same penalties, remedies or other actions as the employer
5 found to be in violation of this act.

6 * * *

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

9 Section 5. Criminal penalties.

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

12 (1) A misdemeanor of the third degree for a first
13 offense.

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

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

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

21 * * *

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

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

28 Section 4. The act is amended by adding sections to read:

29 Section 5.1. Private right of action.

30 (a) General rule.--An employee who has been misclassified in

1 violation of this act, or has been discharged, been threatened
2 or has otherwise suffered retaliation, discrimination or other
3 adverse action as a result of participating in an investigation
4 or reporting a violation of this act, may bring a private right
5 of action in a court of common pleas in accordance with
6 established civil procedures of this Commonwealth.

7 (b) Time.--An action under this section must be brought
8 within three years from the date that the employee knew of the
9 violation, retaliation or discrimination.

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

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

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

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

19 (4) Other legal and equitable relief the court deems
20 appropriate to make the employee whole.

21 Section 5.2. Fines and penalties.

22 In addition to other fines and penalties under this act, the
23 secretary may impose fines and penalties for violations under
24 this act.

25 Section 5. Sections 6(a) and 10(a) of the act are amended
26 and the sections are amended by adding subsections to read:

27 Section 6. Administrative penalties.

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

30 (1) Shall assess and collect [civil] administrative

1 penalties of not more than \$1,000 for the first violation,
2 and not more than \$2,500 for each subsequent violation.

3 (2) May order a financial audit or tax audit of any
4 relevant prospective records of the person.

5 * * *

6 (c) Intentional violation.--If the secretary determines that
7 a violation of this act was intentional, the secretary shall
8 debar, for a period of at least three years, a contractor,
9 subcontractor or person from bidding on or participating in a
10 public work project, which shall include grants and loans to
11 private entities that perform construction on behalf of a State
12 contract.

13 Section 10. Retaliation for action prohibited.

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

24 (1) participates in an investigation, hearing or inquiry
25 by the secretary or any governmental authority; or

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

29 (a.1) Action.--An employee who suffers retaliation or
30 discrimination in violation of this section may bring a private

1 right of action under section 5.1.

2 * * *

3 Section 6. Sections 11 and 17 of the act are amended to
4 read:

5 Section 11. Availability of information.

6 The department shall create a poster [for job sites] which
7 outlines the requirements and penalties under this act and shall
8 make the poster available on its Internet website. Every
9 employer subject to this act shall keep a summary of this act
10 and any regulations issued under this act applicable to the
11 employer, posted in a conspicuous place where employees normally
12 pass and can read it, both on job sites and in all places of
13 business. At the discretion of the secretary, a toll-free
14 hotline telephone number may be established to receive alleged
15 violations.

16 Section 17. Funding.

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

19 (b) Recovery of fees and costs.--The department, Office of
20 Attorney General or a district attorney's office shall be
21 entitled to recover attorney fees and costs associated with the
22 investigation of construction worker misclassification from
23 employers who violate the provisions of this act.

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