

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 577 Session of 2023

INTRODUCED BY KANE, TARTAGLIONE, L. WILLIAMS, FONTANA, KEARNEY, HUGHES, COLLETT, HAYWOOD, COSTA, DILLON, CAPPELLETTI, SANTARSIERO, STREET AND ROBINSON, APRIL 19, 2023

SENATOR ROBINSON, LABOR AND INDUSTRY, AS AMENDED, OCTOBER 4, 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 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 <--

16 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 * * *

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 PUBLIC WORK PROJECTS and other State procurement <--
5 contracts for a specified period or permanently. NOT TO EXCEED <--
6 THREE YEARS FOR THE FIRST OFFENSE AND FIVE YEARS FOR A SECOND OR
7 SUBSEQUENT OFFENSE. The debarment will include all divisions or
8 other organizational elements of a contractor or subcontractor
9 unless limited by its terms to specific divisions or
10 organizational elements. The debarment may apply to affiliates
11 or other individuals or entities associated with the contractor,
12 subcontractor or individual if they are specifically named and
13 given written notice of the debarment and an opportunity to
14 appeal.

15 * * *

16 "PUBLIC WORK." THE TERM SHALL HAVE THE MEANING GIVEN TO IT <--
17 IN SECTION 2 OF THE ACT OF AUGUST 15, 1961 (P.L.987, NO.442),
18 KNOWN AS THE PENNSYLVANIA PREVAILING WAGE ACT.

19 * * *

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

22 Section 4. Improper classification of employees.

23 * * *

24 (c) Order to show cause.--

25 * * *

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

29 * * *

30 (d) Enforcement.--

1 (1) If, subsequent to issuing an order to show cause
2 under subsection (c), the secretary finds ~~probable cause~~ <--
3 that an employer has ~~committed a criminal violation of this~~ <--
4 ~~act, the secretary shall refer the matter to the Office of~~
5 ~~Attorney General for investigation or]~~ ~~that an employer has~~ <--
6 ~~violated the Workers' Compensation Act~~ VIOLATED THIS ACT, the <--
7 ~~secretary shall~~ impose administrative penalties under section
8 6.

9 (2) In addition to imposing penalties under paragraph
10 (1), the secretary may refer the matter to the Attorney
11 General for criminal investigation. The secretary shall make
12 a referral if the employer has previously been found in
13 violation of this act in another matter. The Attorney General
14 has jurisdiction under section 5 to initiate an investigation
15 or prosecution of criminal violations of this act regardless
16 of whether a referral has been made.

17 (e) Acting in concert with other parties.--A party that does
18 not meet the definition of "employer" in section 2, but which
19 [~~intentionally~~] contracts with an employer [~~knowing the employer~~
20 ~~intends to misclassify~~] to supply labor for construction knowing
21 the employer will misclassify the supplied employees in
22 violation of this act, shall be subject to the same penalties,
23 remedies or other actions as the employer found to be in
24 violation of this act.

25 * * *

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

28 Section 5. Criminal penalties.

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

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

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

6 (1) A misdemeanor of the ~~first~~ SECOND degree if the <--
7 employer has no prior offense under section 4(a).

8 ~~(2) A felony of the third degree if the employer has one~~ <--
9 ~~or more prior offenses under section 4(a).~~

10 (2) A MISDEMEANOR OF THE FIRST DEGREE IF THE EMPLOYER <--
11 HAS ONE PRIOR OFFENSE UNDER SECTION 4(A).

12 (3) A FELONY OF THE THIRD DEGREE IF THE EMPLOYER HAS TWO
13 OR MORE PRIOR OFFENSES UNDER SECTION 4(A).

14 * * *

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

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

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

23 (a) General rule.--An employee who has been misclassified in
24 violation of this act, or has been discharged, threatened or has
25 otherwise suffered retaliation, discrimination or other adverse
26 action as a result of participating in an investigation or
27 reporting a violation of this act may bring a private right of
28 action in a court of common pleas in accordance with established
29 civil procedures of this Commonwealth.

30 (b) Time.--The action must be brought within three years

1 from the date that the employee knew of the violation,
2 retaliation or discrimination.

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

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

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

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

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

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

16 Section 6. Administrative penalties.

17 (a) General rule.--When the secretary finds that a person
18 has violated this act, the secretary [may {assess}]: <--

19 (1) Assess SHALL ASSESS and collect [civil] <--
20 ADMINISTRATIVE penalties of not more than \$1,000 for the
21 first violation, and not more than \$2,500 for each subsequent
22 violation.

23 (2) Order MAY ORDER a financial audit or tax audit of <--
24 the person.

25 * * *

26 (c) Intentional violation.--If the secretary determines that
27 a violation of this act was intentional, the secretary shall
28 debar, for a set period or permanently, a contractor, <--
29 subcontractor or individual from bidding on or participating in
30 State supervised construction and other State procurement

1 ~~contracts.~~ THE EMPLOYER.

2 Section 10. Retaliation for action prohibited.

3 (a) General rule.--It shall be unlawful for an employer, or
4 officer or agent of an employer, to [~~discriminate in any manner~~
5 ~~or take adverse action against any person in retaliation for~~
6 ~~exercising rights protected under this act. Rights protected~~
7 ~~under this act include, but are not limited to, the right to~~
8 ~~file a complaint or inform any person about an employer's~~
9 ~~noncompliance with this act.] discharge, threaten or otherwise
10 retaliate or discriminate in any manner against an employee
11 regarding compensation or other terms or conditions of
12 employment because the employee:~~

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

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

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

21 * * *

22 Section 6. Sections 11 and 17 of the act are amended to
23 read:

24 Section 11. Availability of information.

25 The department shall create a poster [~~for job sites~~] which
26 outlines the requirements and penalties under this act and shall
27 make the poster available on its Internet website. Every
28 employer subject to this act shall keep a summary of this act
29 and any regulations issued under this act applicable to the
30 employer, posted in a conspicuous place where employees normally

1 pass and can read it, both on job sites and in all places of
2 business. At the discretion of the secretary, a toll-free
3 hotline telephone number may be established to receive alleged
4 violations.

5 Section 17. Funding.

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

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

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