

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, CIRESI, NEILSON, STEELE, FIEDLER, DALEY, KRAJEWSKI, CERRATO AND KHAN, OCTOBER 13, 2023

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, NOVEMBER 15, 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, FOR USE OF PENALTY FUNDS and for funding; and
12 imposing penalties.

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

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

18 Section 2. Definitions.

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

1 * * *

2 "Debar." As follows:

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

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

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

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

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

20 (ii) performs similar work within the same
21 geographical area;

22 (iii) occupies the same premises;

23 (iv) shares the same telephone number or facsimile
24 number;

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

26 (vi) employs substantially the same workforce or
27 administrative employees, or both;

28 (vii) utilizes the same tools, equipment or
29 facilities;

30 (viii) employs or engages the services of any person

1 or persons involved in the direction or control of the
2 other; or

3 (ix) lists substantially the same work experience.

4 * * *

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

8 * * *

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

11 Section 4. Improper classification of employees.

12 * * *

13 (d) Enforcement.--

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

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

30 (e) Acting in concert with other parties.--A party that does

1 not meet the definition of "employer" in section 2, but which
2 [intentionally] contracts or renews a contract with an employer
3 [knowing the employer intends to misclassify] to supply labor
4 for construction knowing the employer will misclassify the
5 supplied employees in violation of this act, shall be subject to
6 the same penalties, remedies or other actions as the employer
7 found to be in violation of this act.

8 * * *

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

11 Section 5. Criminal penalties.

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

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

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

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

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

23 * * *

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

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

30 Section 4. The act is amended by adding ~~sections~~ A SECTION <--

1 to read:

2 Section 5.1. Private right of action.

3 (a) General rule.--An employee who has been misclassified in
4 violation of this act, or has been discharged, been threatened
5 or has otherwise suffered retaliation, discrimination or other
6 adverse action as a result of participating in an investigation
7 or reporting a violation of this act, may bring a private right
8 of action in a court of common pleas in accordance with
9 established civil procedures of this Commonwealth.

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

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

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

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

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

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

24 Section 5.2. Fines and penalties.

<--

25 ~~In addition to other fines and penalties under this act, the~~
26 ~~secretary may impose fines and penalties for violations under~~
27 ~~this act.~~

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

30 Section 6. Administrative penalties.

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

3 (1) Shall assess and collect [civil] administrative
4 penalties of not more than \$1,000 for the first violation,
5 and not more than \$2,500 for each subsequent violation.

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

8 * * *

9 ~~(c) Intentional violation. If the secretary determines that~~ <--

10 ~~(C) INTENTIONAL VIOLATION.--~~ <--

11 (1) IF THE SECRETARY DETERMINES THAT a violation of this
12 act was intentional, the secretary shall debar, for a period
13 of at least three years, a contractor, subcontractor or
14 person from bidding on or participating in a public work
15 project, which shall include grants and loans to private
16 entities that perform construction on behalf of a State
17 contract.

18 (2) A DEBARMENT UNDER PARAGRAPH (1) SHALL APPLY TO THE <--
19 FOLLOWING:

20 (I) FUTURE PROJECTS AND CONTRACTS NOT BEGUN OR
21 ENTERED INTO ON OR BEFORE THE DATE OF THE DEBARMENT.

22 (II) CURRENT PROJECTS AND CONTRACTS ALREADY ENTERED
23 INTO BUT ON WHICH THE DEBARRED CONTRACTOR, SUBCONTRACTOR
24 OR PERSON HAS NOT BEGUN WORK AS OF THE DATE OF THE
25 DEBARMENT.

26 Section 10. Retaliation for action prohibited.

27 (a) General rule.--It shall be unlawful for an employer, or
28 officer or agent of an employer, to [discriminate in any manner
29 or take adverse action against any person in retaliation for
30 exercising rights protected under this act. Rights protected

1 under this act include, but are not limited to, the right to
2 file a complaint or inform any person about an employer's
3 noncompliance with this act.] discharge, threaten or otherwise
4 retaliate or discriminate in any manner against an employee
5 regarding compensation or other terms or conditions of
6 employment because the employee:

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

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

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

15 * * *

16 Section 6. Sections 11, 12 and 17 of the act are amended to <--
17 read:

18 Section 11. Availability of information.

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

29 SECTION 12. USE OF PENALTY FUNDS AND RECOVERED FEES AND COSTS. <--

30 [ANY SUM COLLECTED AS A PENALTY UNDER:

1 (1) SECTIONS 6, 7 AND 9 FOR A VIOLATION OF SECTION 4(A)
2 (1) SHALL BE PAID INTO THE WORKERS' COMPENSATION
3 ADMINISTRATION FUND.

4 (2) SECTIONS 6, 7 AND 9 FOR A VIOLATION OF SECTION 4(A)
5 (2) SHALL BE PAID INTO THE SPECIAL ADMINISTRATION FUND
6 CREATED UNDER SECTION 601.1 OF THE UNEMPLOYMENT COMPENSATION
7 LAW.

8 (3) SECTION 9 FOR A VIOLATION OF ANY OTHER PROVISION OF
9 THIS ACT SHALL BE DIVIDED EQUALLY BETWEEN THE WORKERS'
10 COMPENSATION ADMINISTRATION FUND AND THE SPECIAL
11 ADMINISTRATION FUND.] NOTWITHSTANDING ANY OTHER PROVISION OF
12 LAW TO THE CONTRARY, ANY SUM COLLECTED AS A PENALTY,
13 RECOVERED ATTORNEY FEE OR COST ASSOCIATED WITH ANY
14 INVESTIGATION OR ENFORCEMENT ACTION UNDER THIS ACT SHALL BE
15 DEPOSITED INTO A RESTRICTED REVENUE ACCOUNT CREATED IN THE
16 GENERAL FUND. MONEY DEPOSITED INTO THE RESTRICTED REVENUE
17 ACCOUNT IS APPROPRIATED TO THE DEPARTMENT AND SHALL BE USED
18 FOR FUTURE ENFORCEMENT OF THIS ACT.

19 Section 17. Funding.

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

22 (b) Recovery of fees and costs.--The department, Office of
23 Attorney General or a district attorney's office shall be
24 entitled to recover attorney fees and costs associated with the
25 investigation of construction worker misclassification, ALONG <--
26 WITH ANY RESULTING ENFORCEMENT ACTION, from employers who
27 violate the provisions of this act.

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