

CONSTRUCTION WORKPLACE MISCLASSIFICATION ACT ACT 72

On Feb. 10, 2011, the Construction Workplace Misclassification Act (Act 72) took effect. Misclassification of employees as independent contractors is illegal for *all* commercial and residential construction in Pennsylvania. The Pennsylvania Department of Labor & Industry enforces Act 72.

OVERVIEW AND REQUIREMENTS

Act 72 contains a narrow definition of “independent contractor.” No individual may be classified as an independent contractor *unless* the individual:

- A. Has a written contract to perform construction services with the business or person,
- B. Is free from control or direction over the performance of these services, and
- C. Is customarily engaged in an independently established trade, occupation, profession or business.

An individual is “customarily engaged in an independently established trade, occupation, profession or business” only if:

1. The individual possesses the essential tools to perform the services independent of the business for which the services are performed.
2. The individual must realize a profit or suffer a loss for the project.
3. The individual must have a proprietary interest in their business.
4. The individual must have a business location separate from the business or person for whom the services are being performed.
5. The individual independently performed the same services for another person, or was available and able to independently perform these services for another person and represented that these services could be independently performed for another person.
6. The individual must maintain liability insurance of at least \$50,000 during the term of the contract.

The following is also prohibited:

1. An employer may not retaliate against any person who exercises rights under the law, including the filing of a complaint or informing another about an employer’s noncompliance with the Act.
2. An employer may not require or demand that an individual enter into an agreement or sign a document which results in the improper classification of that individual as an independent contractor.
3. An employer may not intentionally contract with another employer knowing that the employer intends to misclassify employees.

VIOLATIONS AND PENALTIES

Under Act 72, a company or its officer or agent may be subject to penalties if the business fails to properly classify an individual as an employee under the Pennsylvania Workers' Compensation Act or the Unemployment Compensation Law or fails to provide workers' compensation coverage or make unemployment compensation contributions on behalf of an individual who should be classified as an "employee" under those laws.

Each individual misclassification by an employer is a separate violation of the law and constitutes grounds for separate penalties.

Following the filing of charges and the opportunity for a hearing, the Pennsylvania Department of Labor & Industry may assess civil penalties of up to \$1,000 for the first violation and up to \$2,500 for each subsequent violation. Labor & Industry may also seek a stop-work order from a court for intentional violations. Violations of stop work orders also constitute grounds for additional fines of \$1,000 per day.

The Department may also refer intentional or negligent violations to the Attorney General for criminal prosecution. An intentional violation is a criminal misdemeanor and a negligent misclassification is a criminal summary offense.

Labor & Industry may also take legal action for misclassification and underpayment of wages under other laws, including: the Unemployment Compensation Law, the Workers' Compensation Act, the Minimum Wage Act, Wage Payment and Collection Law, Prevailing Wage Act and Child Labor Law.

ACT 72 INFORMATION

Labor & Industry has Act 72 information, including a workplace poster and complaint form, at its website: www.dli.state.pa.us.

Information, workplace posters and complaint forms are also available:

Bureau of Labor Law Compliance
651 Boas Street, Room 1301
Harrisburg, PA 17121
1-800-932-0665

*Auxiliary aids and services are available upon request to individuals with disabilities.
Equal Opportunity Employer/Program*