

Prosecutor: State should act on employee misclassification

In February 2011, Pennsylvania lawmakers enacted new protections for construction workers. Act 72 defines when a construction worker can be considered an independent contractor. The law was enacted as a way to deal with employee misclassification in the construction industry.

Three years later, a district attorney says the law has not been used effectively. As reported by "The Morning Call," the Northampton County District Attorney called Act 72 a "toothless tiger" during a recent press conference. He said he has never received a referral from Department of Labor and Industry, and he says that anecdotal evidence leads him to believe that possible cases have not been investigated. The prosecutor and two state senators are calling for the Department of Labor and Industry to more aggressively prosecute employers under the law.

In general an independent contractor is a worker with a contract to provide a particular service. The worker should not be under the employer's control other than as provided in the contract. There are several tests to determine whether an employee is an independent contractor. Employees who are misclassified as contract workers may not be eligible for certain benefits and rights, including workers' compensation if they are injured.

Construction companies in particular are accused of skirting labor laws by labeling workers as independent contractors, which is why legislators enacted Act 72. It requires workers who are labeled as independent contractors to meet specific criteria. Each violation could come with a \$2,500 fine, and the Department of Labor and Industry could cease work on a project as the result of a substantiated violation. Labor and

Industry says local district attorneys also have the power to investigate and prosecute violations of the act.

Source: For more information on worker misclassification, see our recent article, “Worker misclassification: how job titles affect workers’ comp and other benefits.”[□](#)