

Pennsylvania Legislature Implements New Measures to Curb Independent Contractor Misclassification by Construction Firms

Independent contractors are widely utilized in the construction business to help reduce costs and bring in valuable outside expertise. For employers, using independent contractors means employment tax savings and the avoidance of certain labor laws. But, problems arise when employers start calling regular employees “independent contractors.”

Misclassified workers miss out on a number of benefits, including workers’ compensation rights, unemployment insurance, and the ability to collectively bargain. In the construction industry, misclassification of employees as independent contractors is thought to be rampant. But, a new Pennsylvania law targets construction employers who misclassify workers, and it could mean a range of expanded benefits for many of the state’s carpenters, plumbers, and electricians.

Provisions of the Law

The Construction Workplace Misclassification Act (“CWMA”), 43 P.S. §§ 933.1-933.17, took effect on February 10. Unless a construction worker meets all three prongs of the test the CWMA sets forth, he or she cannot be classified as an independent contractor.

The first prong is relatively straightforward: an independent contractor must have a written contract to perform services. Second, an independent contractor is “free from control or

direction over performance” of those services both under the terms set forth in the contract and in practice. This means that under the CWMA, if a task is being closely supervised and directed, the worker is an employer, not a contractor.

Finally, a contractor “is customarily engaged in an independently established trade, occupation, profession or business” to provide their services. A number of factors are set out by the CWMA to determine whether a worker meets the third prong; for example, a contractor must possess the essential tools of the trade, maintain a separate business premise, and carry at least \$50,000 worth of liability insurance during the contract period.

Penalties and Remedies

Any construction company that fails to properly classify a worker as an employee (and fails to make the [workers' compensation](#) or unemployment insurance contributions that accompany that designation) violate the CWMA. Violations can result in fines of up to \$2,500 per violation, a stop-work order from a court, or even criminal liability (an intentional violation of CWMA is a misdemeanor). A provision prohibiting retaliation against employees for exercising CWMA rights is also included. If you are worried you may be misclassified as a contractor, contact an attorney to explore your options.