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# **ADMINISTRATION AND ENFORCEMENT OF THE CONSTRUCTION WORKPLACE MISCLASSIFICATION ACT**

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INDUSTRY

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COMMONWEALTH OF PENNSYLVANIA  
Department of Labor & Industry

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The Construction Workplace Misclassification Act, 43 P.S. §§ 933.1– 933.17 (Act 72 or Act), went into effect on February 10, 2011. The Act prohibits employers from misclassifying construction workers, who do not satisfy all the definitional criteria of an independent contractor, as independent contractors. It also establishes the definition of independent contractor in Pennsylvania for purposes of workers’ compensation, unemployment compensation, and Act 72.

Act 72 grants administrative enforcement powers to the Secretary of Labor & Industry (Secretary). The Department of Labor & Industry’s (Department) Bureau of Labor Law Compliance (BLLC or Bureau) enforces the Act on behalf of the Secretary. The Office of Attorney General and local district attorneys have concurrent jurisdiction for the prosecution of the Act’s criminal provisions.

Act 72 provides for the imposition of criminal and administrative penalties against employers, or officers or agents thereof, which are found to have committed violations by misclassifying workers. Additionally, the Act empowers the Secretary to petition a court to issue a stop-work order mandating the partial or complete cessation of work at the site of an ongoing intentional misclassification.

Section 14 of the Act requires the department to submit annually, by March 1, a report to Pennsylvania’s General Assembly “detailing, to the maximum extent possible, data on the previous calendar year’s administration and enforcement of [Act 72].” The Department is permitted to include in the report all relevant facts and statistics that it believes to be necessary.

Section 17 of the Act provides that “[t]he department shall not be required to enforce this Act until adequate funding is appropriated.” The Bureau continues to enforce the provisions of Act 72, and collect penalties, despite never receiving any additional funding for the administration of the Act.

### **Bureau of Labor Law Compliance (BLLC) Overview**

BLLC enforces and administers the following 13 laws:

1. Construction Workplace Misclassification Act (Act 72)
2. Prevailing Wage Act
3. Wage Payment and Collection Law
4. Minimum Wage Act
5. Child Labor Act
6. Apprenticeship and Training Act regulations
7. Prohibition of Excessive Overtime in Health Care Act (Act 102),
8. Seasonal Farm Labor Act
9. Industrial Homework Law
10. Personnel File Inspection Act

- 11. Employer to Pay Employment Medical Examination Fee Act
- 12. Equal Pay Law
- 13. The Construction Industry Employee Verification Act (Act 75)

**Current BLLC Complement**

The Bureau has a staff complement of 37.

The director’s office includes the director, deputy director, two program managers, and two clerical supports. The Bureau has a complement of five investigative supervisors to oversee five regional offices.

Currently, the Bureau has 27 investigators on staff located throughout the Commonwealth; each is responsible for handling caseloads across all 13 labor laws. The staff complement breakdown is as follows:

<b>ALL STAFF BY OFFICE</b>	<b>TOTAL</b>	<b>FILLED</b>	<b>VACANT</b>
Director's	6	5	1
Altoona	5	5	0
Harrisburg	5	5	0
Philadelphia	8	8	0
Pittsburgh	6	6	0
Scranton	8	8	0
<b>TOTAL</b>	<b>38</b>	<b>37</b>	<b>1</b>

<b>INVESTIGATOR STAFF ONLY BY OFFICE</b>	<b>TOTAL</b>	<b>FILLED</b>	<b>VACANT</b>
Altoona investigators	4	4	0
Harrisburg investigators	4	4	0
Philadelphia investigators	7	7	0
Pittsburgh investigators	5	5	0
Scranton investigators	7	7	0
<b>TOTAL INVESTIGATORS</b>	<b>27</b>	<b>27</b>	<b>0</b>

## **Enforcement Overview**

Act 72 prohibits contractors from treating construction employees as independent contractors. The Act provides that for a worker to be deemed an independent contractor, the worker must:

- (1) have a written contract to perform services;
- (2) be free from control or direction over the performance of work under contract; and
- (3) be customarily engaged in an independently established trade or business.

There are six factors that establish an independent trade or business:

- (1) worker possesses his/her own essential tools and equipment;
- (2) worker realizes profit or loss through services;
- (3) worker has a proprietary interest in business through which services are performed;
- (4) worker has a business location separate from the location where services are provided;
- (5) worker previously performed similar services for others, holds himself/herself out to do work for others, and is free from direction or control of the contractor; and
- (6) worker maintains liability insurance of at least \$50,000.

## **How the Department Enforces Act 72**

Alleged violations are assigned to an investigator who interviews the contractor and workers and requests all pertinent documentation, such as a copy of the contract or the insurance certificate. If there is evidence of a violation, the Bureau will first try to finalize the case through a settlement agreement. If a settlement agreement is not feasible, the case is referred to the department's Office of Chief Counsel for prosecution. If there is no conclusive evidence of a violation, the investigation may be closed after review by a supervisor.

Additionally, BLLC is referred cases from both Office of Unemployment Compensation Tax Services (OUCTS) and the Bureau of Workers Compensation (BWC) through an internal workgroup. Referrals received in this manner may result in administrative penalties issued by BLLC. The Bureau also refers cases to OUCTS and BWC in instances it discovers probable misclassification in the construction industry. Non-construction cases are also referred to these other offices when the issue of misclassification arises by complaint or during an investigation.

The following graphics represent an historical accounting of Act 72 cases BLLC has investigated since the inception of the law in February 2011 through 2022:

<b>YEAR</b>	<b>CASES</b>
2011	27
2012	9
2013	25
2014	50
2015	297
2016	185
2017	211

2018	182
2019	192
2020	72
2021	88
2022	267
<b>TOTAL</b>	<b>1605</b>

### **Cases filed with BLLC in 2022**

This is a listing of counties assigned to district offices within BLLC:

- **The Altoona District Office** is comprised of Armstrong, Bedford, Blair, Cambria, Cameron, Centre, Clearfield, Clarion, Clinton, Elk, Forest, Fulton, Huntingdon, Indiana, Jefferson, McKean, Mifflin, Potter, Somerset, and Warren Counties.
- **The Harrisburg District Office** is comprised of Adams, Cumberland, Dauphin, Franklin, Juniata, Lancaster, Lebanon, Perry, and York Counties.
- **The Pittsburgh District Office** is comprised of Allegheny, Beaver, Butler, Crawford, Erie, Fayette, Green, Lawrence, Mercer, Venango, Washington, and Westmoreland Counties.
- **The Philadelphia District Office** is comprised of Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties.
- **The Scranton District Office** is comprised of Berks, Bradford, Carbon, Columbia, Lackawanna, Lehigh, Luzerne, Lycoming, Monroe, Montour, Northampton, Northumberland, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, and Wyoming Counties.

A regional breakdown of Act 72 cases filed in 2022 is as follows:

- Altoona District Office: **19 cases**
- Harrisburg District Office: **38 cases**
- Philadelphia District Office: **116 cases**
- Pittsburgh District Office: **44 cases**
- Scranton District Office: **50 cases**

### **2022 Construction Site Visits**

The Bureau utilizes site visits for in-person interviews, document review, visual observation of work being performed, and auditing, when applicable. In 2022, the Bureau conducted 240 on-site investigations of construction sites. This included both publicly and privately funded job sites. During visits, BLLC investigators distributed educational materials, interviewed workers, and reviewed payroll information.

When necessary, the Bureau conducts site inspections with OUCTS tax agents and the BWC

to further joint compliance efforts. This is one of the many favorable outcomes that is the result of an internal task force. The task force has regular meetings to share information, initiate and further task force investigations, and discuss strategies.

### **Unemployment Compensation Tax Services**

OUCTS routinely performs unemployment compensation tax audits on all Pennsylvania businesses. The office has data sharing agreements with the Internal Revenue Service, Pennsylvania Department of Revenue, and Pennsylvania Compensation Rating Bureau that provide an avenue to cross-match data to identify employers that may not be registered or identify employers reporting different employment levels to different agencies during the same timeframe.

In 2022, OUCTS found 220 construction employers had misclassified 1,658 employees as independent contractors, representing \$27,918,895 in underreported wages.<sup>1</sup>

Once OUCTS has concluded its audit on construction employers and received either payment from the employer for its misclassification or a final determination from an adjudicator that an employer misclassified its workers, the information is given to BLLC for Act 72 enforcement.

### **Stop-Work Orders under the Act**

The process for the Secretary to shut down a job site is as follows:

- (1) the department must receive information that there is a potential violation;
- (2) BLLC must investigate the allegation;
- (3) the department must issue an administrative Order to Show Cause;
- (4) the employer is afforded 20 days to file an answer in writing;
- (5) the employer is then provided notice and a hearing is conducted;
- (6) if evidence presented at the hearing establishes the finding of a violation, the Secretary may petition a court of competent jurisdiction for a Stop-Work Order; and
- (7) the employer must be served the Stop-Work Order so it may take effect. This order remains in effect until a Court releases the order or there is a finding that the employer is no longer violating the Act.

As of December 31, 2022, there have been no proceedings to issue a shut-down order on a job site.

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<sup>1</sup> The data reflects overall Act 72 results and includes those cases pending appeal or individuals removed later due to classification error. Actual results may be lower as a result.

**Adjudications of Act 72 Complaints**

There were two Secretary’s Orders issued in 2022 totaling \$15,000 in fines. The orders were filed against Chris L. Beiler DBA Integrity Mechanical and Della General Contracting Inc.

**Administrative Penalties**

The Bureau collected \$ 263,251.60 from 93 contractors in Act 72 violations in 2022. The total fines collected from 2011 through 2022 are \$3,003,692.41.

<b>YEAR</b>	<b>FINES COLLECTED</b>
2011	\$ -
2012	\$ -
2013	\$ -
2014	\$12,500.00
2015	\$217,450.00
2016	\$383,033.28
2017	\$360,359.98
2018	\$566,845.16
2019	\$531,874.73
2020	\$324,229.60
2021	\$344,148.06
2022	\$263,251.60
<b>TOTAL</b>	<b>\$3,003,692.41</b>

**Contractors in Violation**

<b>YEAR</b>	<b>CONTRACTORS VIOLATION</b>	<b>IN</b>
2011	0	
2012	0	
2013	0	
2014	15	
2015	105	
2016	143	
2017	117	
2018	185	
2019	163	
2020	64	
2021	42	
2022	93	
<b>TOTAL</b>	<b>927</b>	

## ADDENDUM

<b>CONTRACTOR</b>	<b>PENALTY PAID</b>	<b>OFFICE</b>
AGV Services LLC	\$ 1,500.00	Philadelphia
Ahyan Construction LLC	\$ 750.00	Philadelphia
AJ's Carpentry	\$ 5,364.60	Harrisburg
Allentown Construction & Property Management	\$ 750.00	Scranton
Altieris Home Services Inc	\$ 3,000.00	Philadelphia
American Tile & Marble Inc	\$ 2,250.00	Philadelphia
Ameripro Construction Services Inc	\$ 750.00	Philadelphia
Angelilli Services LLC	\$ 1,000.00	Harrisburg
Apagia Construction	\$ 3,750.00	Scranton
AW Painting & General Contracting Inc	\$ 1,500.00	Philadelphia
Barry Claycomb Jr, BC Construction	\$ 4,500.00	Altoona
Beals-McMahon Painting LLC	\$ 1,500.00	Pittsburgh
Berts Painting	\$ 4,500.00	Pittsburgh
Bill Jones Home Improvements LLC	\$ 1,500.00	Pittsburgh
Bird House Enterprses LLC	\$ 3,000.00	Philadelphia
Blinov Construction	\$ 15,250.00	Pittsburgh
Bucci Custom Drywall LLC	\$ 3,000.00	Philadelphia
Buck Hill Exteriors II LLC	\$ 6,000.00	Harrisburg
Built 2 Last Inc	\$ 750.00	Scranton
Bull Electrical Services Inc	\$ 4,500.00	Philadelphia
C Brennan Construction Inc	\$ 1,800.00	Scranton
C3 Roofing & Remodeling	\$ 1,500.00	Harrisburg
Carranza Roofing & Siding Inc	\$ 1,500.00	Philadelphia
Cavallo & Son Builders LLC	\$ 750.00	Philadelphia
Chase Construction	\$ 4,800.00	Philadelphia
CMC Masonry Inc	\$ 6,000.00	Philadelphia
Corrado Custom Homes Inc	\$ 750.00	Scranton
Crown General Contracting Inc	\$ 3,000.00	Scranton
Dave White & Son Building and Remodling LLC	\$ 750.00	Harrisburg
Definite Dynamics LLC	\$ 1,500.00	Philadelphia
Dennis Heinle Masonry	\$ 2,250.00	Altoona
Dream Home Services Inc, Dream Team PA	\$ 750.00	Philadelphia
Dynasty Custom Homes Inc	\$ 750.00	Scranton
Elijah LLC	\$ 400.00	Harrisburg
Fine Cut Interiors Inc	\$ 7,500.00	Harrisburg



Gessler Construction Inc	\$	1,500.00	Philadelphia
Ginnona Electric Inc	\$	9,000.00	Philadelphia
GL General Contractor LLC	\$	6,000.00	Philadelphia
GML Contracting Inc	\$	750.00	Philadelphia
Green Team Contracting Inc	\$	1,250.00	Scranton
H&L Concrete Contracting	\$	750.00	Altoona
Halo Hauling Inc, Martirano & Sons, Rooter Man, Wamart	\$	1,500.00	Scranton
Harpel's Contracting & Remodeling	\$	1,500.00	Altoona
Heckman LLC	\$	1,550.00	Scranton
Heritage Stone Inc	\$	750.00	Harrisburg
Hollywood III Construction Inc	\$	750.00	Philadelphia
J&N Electric	\$	3,750.00	Harrisburg
JDP Construction Inc	\$	2,250.00	Pittsburgh
Jeoah Electric LLC	\$	750.00	Scranton
Jeremy J. Reichert Construction	\$	900.00	Harrisburg
John Parichuk LLC	\$	750.00	Harrisburg
JS General Contracting Inc	\$	9,000.00	Altoona
K&Y Flooring Conshohocken Inc	\$	5,250.00	Philadelphia
Karl L Peachey, Peachey's Drywall	\$	1,000.00	Harrisburg
Karl Phalf Roofing & Sheet Metal Inc	\$	750.00	Philadelphia
Kitner Modular Homes Inc	\$	2,250.00	Scranton
Knight Builders Inc	\$	2,250.00	Harrisburg
Latuch Construction LLC	\$	750.00	Pittsburgh
Liz & Limey Painting LLC	\$	3,150.00	Philadelphia
Luis Tello LLC	\$	19,537.00	Philadelphia
M&T Interiors Inc	\$	750.00	Philadelphia
MC Manus Electric Inc	\$	1,500.00	Philadelphia
McCoubrey Overholser Inc	\$	1,500.00	Philadelphia
McCoy Drywall Inc, Aliquippa	\$	5,250.00	Pittsburgh
Mergen Company Inc	\$	2,250.00	Philadelphia
Miller Rogers & Sons LLC	\$	12,000.00	Harrisburg
New Market Builders LLC	\$	350.00	Philadelphia
NHSG LLC, National Home Services Group	\$	6,000.00	Harrisburg
Otis Masonry LLC	\$	2,250.00	Pittsburgh
PA Asphalt LLC	\$	750.00	Harrisburg
Peter S Doukas Painting Contractor	\$	2,250.00	Philadelphia
PGRC LLC	\$	750.00	Altoona
Phoenix Construction & Management Inc	\$	5,250.00	Philadelphia
Pro Sport Construction Inc	\$	3,000.00	Philadelphia
Rand Lepley Building Contractor Inc	\$	750.00	Scranton
Rash General Contracting LLC, Ricky Rash	\$	3,400.00	Pittsburgh

RC Grady Construction Inc	\$ 750.00	Scranton
Ryan & Sons General Contracting Inc	\$ 1,500.00	Philadelphia
Savercool & Son Contracting, Sayre PA	\$ 2,250.00	Scranton
Sheckler Contracting Inc	\$ 2,250.00	Altoona
Snyder's Custom Fencing, York	\$ 2,250.00	Harrisburg
Sosa Home Improvements LLC	\$ 6,750.00	Scranton
Square One Contracting LLC	\$ 500.00	Altoona
Sunrise Plumbing Heating & Cooling LLC	\$ 250.00	Philadelphia
Theo's Painting LLC	\$ 4,500.00	Pittsburgh
Thnoonan Inc, Certa Pro Painters	\$ 3,000.00	Philadelphia
Top Choice Roofing Service LLC	\$ 4,500.00	Pittsburgh
Victor Electro Inc	\$ 750.00	Philadelphia
Wallingford Builders LLC	\$ 750.00	Scranton
Williamson Construction, McMurray PA	\$ 3,500.00	Pittsburgh
WR Friel Excavating	\$ 750.00	Philadelphia
Y&M Construction LLC	\$ 3,750.00	Pittsburgh
Yellow Barrel Inc	\$ 500.00	Harrisburg
Total	\$ 263,251.60	