ADMINISTRATION AND ENFORCEMENT OF THE CONSTRUCTION WORKPLACE MISCLASSIFICATION ACT

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MARCH 1, 2024
COMMONWEALTH OF PENNSYLVANIA
Department of Labor & Industry

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 as independent contractors who do not satisfy all the definitional criteria of an independent contractor. The Act establishes a definition of independent contractor 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. 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 "The 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:

- Construction Workplace Misclassification Act (Act 72),
- Prevailing Wage Act,
- Wage Payment and Collection Law,
- Minimum Wage Act,
- Child Labor Act,
- Apprenticeship and Training Act regulations,
- Prohibition of Excessive Overtime in Health Care Act (Act 102),
- Seasonal Farm Labor Act,
- Industrial Homework Law,
- Personnel File Inspection Act,
- Employer to Pay Employment Medical Examination Fee Act,
- Equal Pay Law,
- The Construction Industry Employee Verification Act. (Act 75)

Current BLLC Complement

The Bureau has a staff complement of 38.

The Director's office includes the director, deputy director, two program managers, and two persons in clerical support. The Bureau has a compliment of five investigative supervisors.

The Bureau currently has 23 investigators on staff and 4 vacancies; each is responsible for all 13 labor and safety laws. The staff complement breakdown is as follows:

ALL STAFF BY OFFICE	TOTAL	FILLED	VACANT
Director's Office	6	6	0
Altoona	5	5	0
Harrisburg	5	4	1
Philadelphia	8	7	1
Pittsburgh	6	4	2
Scranton	8	7	1
TOTAL	**38**	**33**	**5**

INVESTIGATOR STAFF *ONLY* BY OFFICE	**TOTAL**	**FILLED**	**VACANT**
Altoona investigators	4	4	0
Harrisburg investigators	4	3	1
Philadelphia investigators	7	7	0
Pittsburgh investigators	5	3	2
Scranton investigators	7	6	1
TOTAL INVESTIGATORS	**27**	**23**	**4**

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

Act 72 is enforced by BLLC, which has 23 current investigators in five district offices throughout the Commonwealth.

Alleged violations may be 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.

Investigators will engage in discussions to resolve the investigation with the contractor whenever there is evidence of a violation. If the settlement negotiations are unsuccessful, the case is referred to the Department's Office of Chief Counsel for prosecution.

If there is not conclusive evidence of a violation, the investigation may be closed after review and approval by a supervisor.

Additionally, BLLC receives referrals for misclassification from both Office of Unemployment Compensation Tax Services (OUCTS) and the Bureau of Workers Compensation (BWC) through an internal Department workgroup. Those referrals may result in administrative penalties issued by BLLC. The Bureau also refers cases to OUCTS and BWC upon findings of probable misclassification in the construction industry.

Historical accounting of Act 72 cases BLLC investigated:

YEAR	CASES
2011	27
2012	9
2013	25
2014	50
2015	297
2016	185
2017	211
2018	182
2019	192
2020	46
2021	88
2022	267
2023	249
TOTAL	**1828**

Counties assigned to BLLC District Offices:

- **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

Regional breakdown of Act 72 cases filed in 2023:

- Altoona District Office: **31 cases**
- Harrisburg District Office: **28 cases**
- Philadelphia District Office: **87 cases**
- Pittsburgh District Office: **55 cases**
- Scranton District Office: **48 cases**

2023 Construction Site Visits:

The Bureau utilizes site visits for in-person interviews, document review, visual observation of work being conducted, and auditing.

In 2023, the Bureau documented 114 on-site investigations of construction sites. This included both publicly and privately funded job sites. Not all of the cases filed or referred to the Bureau result with a site visit, as often work has concluded by the time the case arrives at the Bureau for investigation.

During visits, BLLC investigators distributed educational materials, interviewed workers on the construction sites, and reviewed payroll information.

When appropriate, the Bureau conducts site inspections in partnership with OUCTS tax agents and the BWC in joint compliance efforts.

In an effort to maximize resources, BLLC established an internal working group with the department's OUCTS and BWC.

Unemployment Compensation Tax Services

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

In 2023, OUCTS found 296 construction employers had misclassified 3,062 employees as independent contractors, representing $56,776,081.42 in underreported wages.

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 conduct an investigation into 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 stop work order or there is a finding that the employer is no longer violating the Act.

As of December 31, 2023, the Secretary has not initiated proceedings to issue a shut-down order on a job site.

Adjudications of Act 72 Complaints

There were no Secretary's Orders in 2023.

Since 2018, 33 Secretary's Orders have been issued, totaling $340,500 in fines.

Administrative Penalties

The Bureau collected $414,398.73 from 138 contractors in Act 72 violations in 2023.

The total fines collected from 2011 through 2023 are $3,418,091.14.

YEAR	FINES COLLECTED
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
2023	$414,398.73
TOTAL	**$3,418,091.14**

Contractors in Violation

YEAR	CONTRACTORS IN VIOLATION
2011	0
2012	0
2013	0
2014	15
2015	105
2016	143
2017	117
2018	185
2019	163
2020	64
2021	42
2022	93
2023	138
TOTAL	**1065**

Analysis and Conclusions:

The Bureau will continue to work to ensure a level playing field for law abiding contractors and to ensure construction workers are classified properly through investigations and educational efforts. BLLC proactively engages with stakeholders in industry organizations and workers through informative presentations.

The Bureau will continue its cooperative interagency collaboration with OUCTS and BWC. Those partnerships have already led to BLLC collecting $53,462 from 33 contractors in calendar year 2024.

ADDENDUM

CONTRACTOR	PENALTY PAID	DISTRICT OFFICE	DATE REPORTED
AAC Heating & Cooling LLC	$ 750.00	Philadelphia	10/30/2023
AB Brothers Construction Inc	$ 3,750.00	Pittsburgh	10/30/2023
Able Building & Contracting	$ 750.00	Pittsburgh	2/6/2023
ACE Builders, Alum Bank	$ 1,500.00	Pittsburgh	8/14/2023
Affinity Technologies Inc, Affinity One Inc	$ 750.00	Philadelphia	12/13/2023
All States Wrecking CO	$ 750.00	Pittsburgh	3/27/2023
Armor Sealcoat, McLellandown PA	$ 750.00	Pittsburgh	12/12/2023
Atchison Electric Inc	$ 750.00	Pittsburgh	8/29/2023
Atlantic Electrical Construction Co Inc	$ 750.00	Scranton	8/8/2023
Barriga Painting LLC	$ 750.00	Philadelphia	5/22/2023
Beaver Creek Constuction LLC	$ 750.00	Harrisburg	5/19/2023
Bellos Landscaping LLC	$ 1,500.00	Scranton	8/11/2023
Bill Whittaker & Son Construction LLC	$ 750.00	Scranton	7/14/2023
Boyd's Contracting LLC	$ 750.00	Pittsburgh	11/1/2023
Brinbeck Construction LLC	$ 2,250.00	Altoona	9/11/2023
CadeCor Energy & Lightning LLC	$ 4,550.00	Harrisburg	3/8/2023
Calderaros Home Improvements LLC	$ 1,999.98	Philadelphia	3/8/2023
CAPA Builders Inc	$ 4,500.00	Philadelphia	3/14/2023
Cimaarron Construction LLC	$ 750.00	Harrisburg	9/6/2023
Classic Granite LLC	$ 4,500.00	Harrisburg	11/15/2023
Comfort Zone HVAC LLC	$ 1,500.00	Philadelphia	3/8/2023
Comrade Services Inc	$ 3,750.00	Philadelphia	11/17/2023
Cooney Services	$ 3,000.00	Scranton	11/1/2023
Corey R Butz Contracting	$ 750.00	Scranton	11/1/2023
Crain Custon Built Homes	$ 2,250.00	Scranton	11/13/2023
Curb Appeal	$ 1,800.00	Altoona	11/3/2023
CZ Woodworking LLC	$ 3,750.00	Philadelphia	12/18/2023
David Sampsel Construction Inc	$ 750.00	Pittsburgh	10/16/2023
Deily Contractors LLC, Bethlehem PA	$ 1,500.00	Scranton	6/16/2023
DEL Construction & Gutters	$ 3,000.00	Scranton	3/10/2023
Diamond Painting Inc	$ 2,250.00	Harrisburg	6/16/2023
DNA Construction LTD	$ 500.00	Scranton	11/14/2023

Dolan Construction Inc	$	750.00	Philadelphia	11/1/2023
Donnelly & Sons LLC	$	3,750.00	Philadelphia	3/8/2023
E Hostetler Builders LLC	$	5,250.00	Pittsburgh	2/14/2023
E&E Building Group, Ernst	$	750.00	Philadelphia	11/1/2023
E&I General Contracting LLC	$	15,750.00	Philadelphia	12/27/2023
Ed's Remodeling	$	1,500.00	Scranton	11/1/2023
Energy Saving Construction LLC	$	5,250.00	Philadelphia	8/28/2023
Excavation Service, Cortlend Zetwick Trucking	$	1,800.00	Altoona	12/11/2023
Feather Bros Contracting LLC	$	3,000.00	Altoona	11/13/2023
Fitzgerald Restoration Services Inc	$	3,000.00	Philadelphia	7/14/2023
Floor Works LLC	$	2,250.00	Harrisburg	3/31/2023
Fonseca Contractors Inc	$	1,500.00	Philadelphia	12/15/2023
Gabriel Enterprises Inc	$	2,250.00	Altoona	1/30/2023
Gaugler Contracting LLC	$	1,500.00	Scranton	11/7/2023
Genesis Concrete and Hardscape	$	3,000.00	Philadelphia	12/19/2023
Gerald Scott Bryner Siding & Seamless Gutters	$	750.00	Harrisburg	5/15/2023
Golds GC Inc	$	2,250.00	Philadelphia	11/7/2023
GTR Welding Company, Inc	$	1,500.00	Philadelphia	9/28/2023
H&F Pro Painting LLC	$	12,000.00	Philadelphia	12/12/2023
H&M Bros Painting	$	5,250.00	Philadelphia	9/11/2023
Heckman LLC	$	1,700.00	Scranton	1/18/2023
Hill Construction, Cochranton	$	750.00	Pittsburgh	8/28/2023
Hulton Contracting Inc	$	750.00	Scranton	8/14/2023
Inca Stone Inc	$	750.00	Pittsburgh	3/20/2023
J Baron Construction Inc	$	750.00	Scranton	2/6/2023
J Huston Contracting, Fairhope PA	$	750.00	Pittsburgh	6/23/2023
J&E Masonry Restoration LLC	$	3,750.00	Harrisburg	8/14/2023
Jackson Construction Services LLC	$	3,000.00	Harrisburg	4/21/2023
James E Bauer Jr Carpentry & Renovations Inc	$	750.00	Philadelphia	1/18/2023
Jamison Painting LLC	$	1,500.00	Altoona	5/22/2023
Jara Construction LLC	$	1,500.00	Philadelphia	2/9/2023
Jarhead Services LLC, Birdsboro PA	$	750.00	Philadelphia	6/23/2023
JAS Concrete LLC	$	1,500.00	Pittsburgh	1/18/2023
JB Plumbing HVAC LLC	$	2,250.00	Scranton	3/8/2023
JC II Concrete Inc	$	750.00	Philadelphia	1/18/2023
Jessup Drywall Services LLC	$	4,500.00	Philadelphia	5/30/2023
JVS Roofing LLC	$	8,550.00	Pittsburgh	4/14/2023
JWE Remodeling & Roofing, Hanover	$	4,000.00	Harrisburg	1/24/2023

KCL Sealcoating LLC	$	750.00	Philadelphia	12/13/2023
Kevin Hayes Electric LLC	$	200.00	Altoona	8/21/2023
Keystone Drywall Inc, Cresson PA	$	32,250.00	Altoona	8/31/2023
KRK Construction LLC	$	750.00	Scranton	9/6/2023
Latuch Construction LLC	$	500.00	Pittsburgh	9/18/2023
Left Moon Painting LLC	$	4,500.00	Philadelphia	9/6/2023
Leviathan Construction Inc	$	1,000.00	Philadelphia	6/16/2023
Luddy's Painting LLC, Sugarloaf	$	1,000.00	Scranton	8/31/2023
Luis Tello LLC	$	13,955.00	Philadelphia	1/27/2023
M Hoy Contracting LLC	$	6,000.00	Pittsburgh	5/15/2023
M&C Solutions	$	1,500.00	Pittsburgh	12/28/2023
Mahlon J Loretta, DBA Kurtz Lawn Furniture	$	750.00	Pittsburgh	8/14/2023
MAKS Air Inc	$	6,000.00	Philadelphia	2/14/2023
Mason Excavating LLC	$	500.00	Scranton	5/9/2023
MCH Masonry Group	$	1,000.00	Philadelphia	9/7/2023
Michael Bricker Contracting LLC	$	1,500.00	Pittsburgh	10/30/2023
Michael J Hanley Jr Inc, York PA	$	750.00	Harrisburg	12/12/2023
Mione Family Management Service	$	750.00	Harrisburg	2/6/2023
MJL Electrical Construction LLC, Media PA	$	9,000.00	Philadelphia	6/16/2023
MMP Contractors Inc	$	2,250.00	Philadelphia	4/21/2023
Monolith Tristate Inc	$	1,500.00	Philadelphia	12/12/2023
NEPA Homes LLC	$	2,250.00	Scranton	8/8/2023
Next Level Home Improvement Inc	$	1,500.00	Scranton	10/30/2023
Nick Perez Jr Renovations LLC	$	1,500.00	Scranton	8/11/2023
OD&M Home Improvements Inc	$	9,750.00	Harrisburg	1/3/2023
Peak Precision Roofing Concepts, Orcipcorp LLC	$	1,500.00	Pittsburgh	4/14/2023
Peights Window Specialty LLC	$	750.00	Altoona	6/16/2023
PICA HVAC Inc	$	8,250.00	Scranton	8/31/2023
Pineda Contractor LLC	$	2,250.00	Scranton	6/5/2023
Precision Flooring Enterprises LLC	$	3,000.00	Philadelphia	6/13/2023
Prestige Custom Trim Inc	$	7,500.00	Harrisburg	1/24/2023
Priority Plumbing LLC	$	3,000.00	Philadelphia	11/3/2023
Pyrect Building Inc	$	3,000.00	Pittsburgh	12/21/2023
Redtruck Contracting LLC	$	750.00	Pittsburgh	11/8/2023
RH Technical LLC	$	1,500.00	Pittsburgh	1/18/2023
Rick Lloyd Building & Remodeling, Somerset PA	$	1,500.00	Pittsburgh	8/28/2023
RJ DeLuca & Sons LLC	$	12,750.00	Philadelphia	2/2/2023
RJ McCarthy Painting	$	750.00	Scranton	1/18/2023

Ross Contractors LLC, Stewartstown	$	6,000.00	Harrisburg	7/3/2023
Shade Mountain Construction	$	3,750.00	Pittsburgh	12/18/2023
Snyder General Contractors Inc	$	750.00	Philadelphia	11/1/2023
South Mountain Masonry, Bethlehem	$	1,500.00	Scranton	7/3/2023
Southwest Contracting Services Inc	$	750.00	Altoona	7/3/2023
SRD Renovation Inc	$	1,500.00	Philadelphia	12/18/2023
Steve Peace Contracting LLC	$	750.00	Pittsburgh	7/11/2023
T Dunlap Construction LLC, Jersey Shore PA	$	3,000.00	Scranton	8/31/2023
TAU Remodeling Inc	$	3,000.00	Philadelphia	2/7/2023
Tavares and Harvey Corp	$	8,343.75	Harrisburg	11/1/2023
Terrasol Energies Incorporated	$	3,750.00	Philadelphia	3/10/2023
The Patch Boys of South Central PA	$	9,750.00	Harrisburg	6/2/2023
The Vanic Company Inc, Hellertown PA	$	4,500.00	Philadelphia	8/21/2023
Tiger Walls & Ceilings LLC	$	3,750.00	Harrisburg	1/18/2023
Tioga Millwrights LLC	$	6,000.00	Scranton	3/8/2023
TJ Stonikinis Inc, Dupont PA	$	750.00	Scranton	12/13/2023
Top Notch Interiors LLC	$	750.00	Harrisburg	11/8/2023
Town & Country Builders	$	3,000.00	Altoona	5/19/2023
Tudi Mechanical Systems Inc	$	1,500.00	Pittsburgh	6/16/2023
Valente Painting LLC	$	500.00	Philadelphia	6/13/2023
Valente Painting LLC	$	1,500.00	Philadelphia	10/17/2023
Velvet Crown Restoration Inc	$	1,500.00	Philadelphia	10/20/2023
Waugaman Painting & Papering LLC	$	750.00	Altoona	8/31/2023
Wheary Inc	$	750.00	Harrisburg	1/24/2023
William R Ritter, DBA Ritters Roofing Inc	$	3,750.00	Scranton	5/30/2023
Williamson Construction	$	6,000.00	Pittsburgh	2/6/2023
Wince Construction Inc	$	3,000.00	Scranton	11/14/2023
Wonder Color Painting	$	10,000.00	Harrisburg	3/10/2023
WW Installations, Water Wydra Jr	$	5,250.00	Scranton	11/15/2023
Zook's Masonry LLC, Marvin or Marie Zook	$	750.00	Altoona	8/14/2023
Total	$	414,398.73		