



# Pennsylvania Conference of Teamsters

## Strength in Numbers 95,000

# LEGISLATIVE ACTION ALERT

William Hamilton, President & Eastern PA Legislative Coordinator – Carl Bailey, Secretary-Treasurer & Western PA Legislative Coordinator -Tim O'Neill, Consultant – Dan Grace, Trustee & Legislative Advisor – Robert Baptiste, Esq. Legal Advisor – Thomas Felice. Staff



## PA SB 1056

### Misclassifying employees as independent contractors is theft

#### Senate of PA Session of 2021 - 2022 Regular Session

**From:** [Senator John I. Kane](#) and [Sen. Christine M. Tartaglione](#), [Sen. Lindsey M. Williams](#)  
**To:** All Senate members  
**Subject:** Improvements to the Construction Worker Misclassification Act

The construction industry is filled with hardworking people. These individuals work every day from sunrise to sunset to build our homes, offices, hospitals, roads, and other critical infrastructure. This industry supplies over 230,000 jobs and has an economic impact of over \$1 billion in Pennsylvania, according to the U.S. Bureau of Labor Statistics. Construction jobs should be good, family-sustaining jobs with benefits to Pennsylvanians; however, some contractors intentionally misclassify construction workers as independent contractors.

This misclassification cheats workers out of salaries, benefits, and important worker protections like unemployment and workers compensation. Misclassified workers do not qualify for sick pay. Misclassified workers are not guaranteed paid time off. Misclassified workers are not protected by OSHA. Despite completing the exact same work, misclassified workers receive many fewer protections than their correctly-classified peers.

Misclassification also cheats Pennsylvania taxpayers of revenue. Keystone Research Center estimates that misclassification of construction employees in Pennsylvania deprives the Commonwealth of \$83M in worker compensation premiums, \$47M in state income taxes, and \$11M in unemployment compensation taxes.

To address this issue, the General Assembly passed Act 72 of 2010, the Construction Workplace Misclassification Act. This legislation prohibits employers from misclassifying workers as independent contractors, using several data points to determine if a worker is an employee or independent contractor. From 2011- 2014 the act was rarely enforced. Since 2015, enforcement has increased -- 777 employers have been found in violation of Act 72, and the Department of Labor and Industry has levied \$2.39 million in fines. Earlier this year, the Delaware County District Attorney and the Attorney General of Pennsylvania filed the first criminal charges under Act 72 of 2010 against a dry wall contractor.

Even with the stepped-up enforcement, this remains a significant problem. Following this first criminal charge, we teamed up with the Attorney General's office and Delaware County District Attorney to discuss what changes are needed. Our legislation would strengthen and improve Act 72 by increasing penalties on contractors and increase the purview of the Attorney General and District Attorney to investigate and prosecute worker misclassification. We want to make sure working Pennsylvanians get paid what they deserve.

The specific changes we are proposing include:

1. Add a definition of Debar to Act 72 to allow contractors to be debarred from commonwealth contracting opportunities.
2. Requires the Department of Labor and Industry (DLI) to impose administrative penalties for violations of the act.
3. DLI must debar contractors or subcontractors who violate Act 72 from bidding for state work. DLI will determine if debarment is for a period or permanent.
4. Requires DLI to refer cases to the Office of Attorney General (OAG) if it is a second or subsequent violation of Act 72 by an employer.
5. Clarifies that the OAG may continue to initiate a criminal investigation and prosecution of violations of this act without a referral by DLI.
6. Allows DLI and OAG to seek penalties upstream against contractors that hire subcontractors who violate Act 72.
7. Allows the Secretary of DLI to order a tax or financial audit of companies that violate Act 72.
8. Strengthens the whistleblower protection language of Act 72. It adds a private right of action, reinstatement to employment, restitution, and reasonable attorney's fees for workers who are misclassified.
9. Enhanced penalties for violations of Act 72 including a Misdemeanor 1 for a first violation and a Felony 3 penalty for second and subsequent violations.
10. Every employer subject to this act must place an informational poster at construction sites in a highly visible and accessible place to workers.

Misclassifying employees as independent contractors is theft. Employers who misclassify their workers take advantage of them, to steal worker wages and benefits and ignore proper safety protocols and training. Our legislation will prevent the continued exploitation of workers through misclassification, and strengthen our existing legislation to protect Pennsylvania's construction industry.

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Introduced as [SB1056](#)