
ADMINISTRATION AND ENFORCEMENT OF THE CONSTRUCTION WORKPLACE MISCLASSIFICATION ACT

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LABOR & INDUSTRY

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COMMONWEALTH OF PA
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 4(c) of the Act authorizes the Secretary to undertake remedial action if there is evidence establishing that a person has violated the Act. Section 10(a) explicitly prohibits an employer from discriminating in any manner or taking adverse action against any person for exercising any right protected by the Act, including the filing of a complaint with the Department or informing any person about an employer’s noncompliance. Section 10(b) makes clear that a complainant’s failure to prevail on the merits on allegations of employer noncompliance does not remove the retaliation prohibition set forth in subsection (a), so long as the complainant’s allegations were made in good faith. Finally, section 10(c) creates a rebuttable presumption that the taking by an employer of adverse action against a person within 90 days of that person’s exercise of rights protected by the Act constitutes prohibited retaliation.

Section 14 of the Act requires the Department to submit annually, by March 1, a report to the Pennsylvania 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 Overview

The 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, 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, and, as of October 2020, the Construction Industry Employee Verification Act.

Current BLLC Complement

The Bureau has a staff complement of 38, with 33 currently filled position and 5 vacancies.

The Director’s office includes the Director, two program managers, and one clerical support person. Each of BLLC’s regional offices includes a supervisor and investigative team.

The Bureau currently has 25 investigators on staff; each is responsible for all 13 labor and safety laws. The staff complement breakdown is as follows:

	TOTAL	FILLED	VACANT
Director's Office	6	4	2
Altoona	4	4	0
Harrisburg	4	4	0
Philadelphia	8	7	1
Pittsburgh	8	7	1
Scranton	8	7	1
TOTALS	38	33	5

Investigator staff only	TOTAL	FILLED	VACANT
Altoona investigators	3	3	0
Harrisburg investigators	4	4	0
Philadelphia investigators	7	6	1
Pittsburgh investigators	7	6	1
Scranton investigators	7	6	1
TOTAL investigators	28	25	3

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 contractor; (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 primarily enforced by BLLC, which currently has 25 investigators in five district offices throughout the Commonwealth.

Alleged violations may be assigned to an investigator who interviews the contractor, 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 case is referred to the Department's Office of Chief Counsel for prosecution, unless there is a settlement.

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

Additionally, the Bureau is referred cases from both Office of Unemployment Compensation Tax Services (OUCTS) and the Bureau of Workers' Compensation. Those concluded referrals can then render administrative penalties issued by the Bureau of Labor Law Compliance. The Bureau also works to refer cases to both of these offices in instances when it discovers probable misclassification.

The following graphics represent an historical accounting of Act 72 cases the Bureau investigated since the inception of the law in February 2011 through 2019:

CALENDAR YEAR	Number of Cases Received in Calendar Year
2011	27
2012	9
2013	25
2014	50
2015	297
2016	185
2017	211
2018	182
2019	192
2020	72

Cases Filed with BLLC in 2020

A regional breakdown of Act 72 cases is as follows:

- Altoona District Office: **6 cases**
- Harrisburg District Office: **13 cases**
- Philadelphia District Office: **23 cases**
- Pittsburgh District Office: **18 cases**
- Scranton District Office: **12 cases**

2020 Construction Site Visits

In 2020, Bureau of Labor Law Compliance conducted over 96 on-site investigations of construction sites. This represents a 74% decline from 2019 and a result of the COVID-19 pandemic.

During on-site visits, Bureau investigators distributed educational materials, interviewed workers on the construction sites, and reviewed payroll information when deemed appropriate.

In 2018 and 2019, the Bureau conducted several job site inspections with OUCTS tax agents and the Bureau of Workers' Compensation in joint compliance efforts.

While the pandemic limited on-site interactions in 2020, joint inspections with OUCTS and the Bureau of Workers' Compensation are expected to resume in the future.

In an effort to maximize resources, the Bureau established an internal working group with the Department's Office of OUCTS and the Bureau of Workers Compensation in 2015. The taskforce has regular meetings to share information, initiate and further task force investigations, and discuss strategies. The taskforce's focus on misclassification has extended beyond the scope of the construction industry.

Unemployment Compensation Tax Services

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

In 2020, OUCTS found 56 construction employers had misclassified 548 employees as independent contractors, representing \$14,059,411.95 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 the Bureau for Act 72 enforcement.

* 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.

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) the Bureau 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 must petition a court of competent jurisdiction for an Order; and (7) the employer must be served the Order so it may take effect.

Between effective date of Act 72 and of December 31, 2020, the Secretary has not initiated proceedings to issue a shut-down orders.

Adjudications of Act 72 complaints

In 2020, the Department had four orders to show cause that resulted in Secretary's Orders being issued against contractors. The following list is a summary of those assessments.

Contractor	Penalty
Wedlake Construction Services	\$ 16,000.00
Arrowhead Roofing & Remodeling Inc	\$ 5,000.00
4 Brothers Drywall & Finishing Inc	\$ 35,000.00
Quality Home Remodeling	\$ 12,000.00
TOTAL	\$ 68,000.00

Since 2018, 31 Secretary's Orders have been issued, totaling \$325,000 in fines.

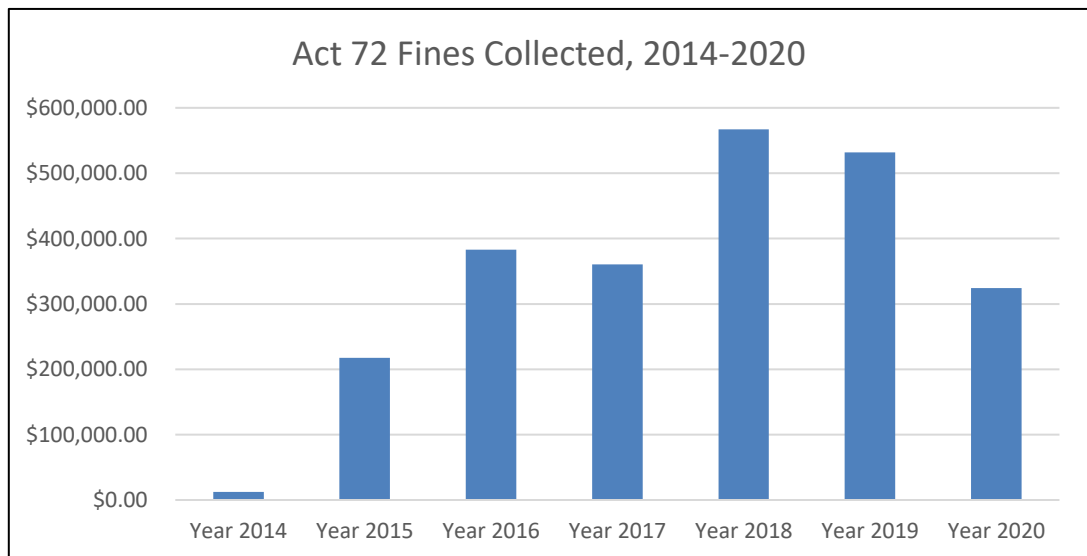
Administrative Penalties in 2020

The Bureau of Labor Law Compliance collected \$324,229.60 in fines from 64 contractors for Act 72 violations in 2020.

From 2011 through 2014, the Department collected only \$12,500 in fines in all four years combined.

The total fines collected from 2015 through 2020 is \$2,396,292.75.

Act 72 Fines Collected, 2011-2020	
Year	Act 72 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
Total	\$2,396,292.75



Contractors in Violation of Act 72, 2011-2020	
Year	Contractors in Violation
2011	0
2012	0
2013	0
2014	15
2015	105
2016	143
2017	117
2018	185
2019	163
2020	64
Total	792



Analysis and Conclusions

The COVID-19 pandemic had a considerable impact on Act 72 enforcement and administration and caused declines in both job site visits and the number of cases that the Bureau addressed in 2020. The decreases compared to 2020 are notable, but do reflect a permanent change as the Bureau anticipates the successful mitigation of COVID-19 in 2021 will return complaint levels and investigations to pre-pandemic levels during the upcoming year.

In late 2020, Act 85 of 2020 created the Joint Task Force on Misclassification of Employees, which began meeting in early 2021 to address the serious nature of misclassification and the widespread impacts it can have on state and local areas. Additionally, the Bureau will continue to conduct job site visits, and OUCTS and Bureau of Workers' Compensation referrals will be addressed.

Increased enforcement will help vulnerable workers, who are unaware of the Act or fear retaliation if they file a complaint, to better understand their rights under the law. Increased enforcement will also ensure that law-abiding contractors that properly classify workers do not suffer a disadvantage at the hands of contractors that violate Act 72.

The Bureau will continue its educational efforts by proactively engaging industry organizations and workers through informative presentations.

The Bureau will continue its cooperative collaboration with OUCTS and the Bureau of Workers' Compensation. As a result of those referrals, the Bureau has already collected \$15,000 from six contractors in violation and assessed an additional \$110,000 to 14 contractors potentially in violation in January and February of 2021.

ADDENDUM

Contractors Who Paid Act 72 Fines in 2020				
CONTRACTOR	PENALTY PAID	DISTRICT OFFICE	FINE PAID	
AJ's Carpentry Service	\$ 536.46	Harrisburg	1/2/2020	Payment plan
Thomas Elder Construction	\$ 150.00	Pittsburgh	1/8/2020	Payment plan
Family Restoration	\$ 597.23	Scranton	1/8/2020	Payment plan
Family Restoration	\$ 597.23	Scranton	1/8/2020	Payment plan
Nazar Remodeling Inc	\$ 500.00	Philadelphia	1/8/2020	Payment plan
Bower Interiors LLC	\$ 875.00	Pittsburgh	1/31/2020	Payment plan
Nazar Remodeling Inc	\$ 500.00	Philadelphia	1/8/2020	Payment plan
DePaul & Company	\$ 3,000.00	Philadelphia	1/31/2020	Payment plan
Reckus Construction	\$ 900.00	Philadelphia	1/31/2020	Payment plan
Citaly LLC	\$ 1,500.00	Harrisburg	2/6/2020	Payment plan
AJ's Carpentry Service	\$ 536.46	Harrisburg	2/2/2020	Payment plan
AJ's Carpentry Service	\$ 536.46	Harrisburg	2/6/2020	Payment plan
Thomas Elder Construction	\$ 150.00	Pittsburgh	2/6/2020	Payment plan
Renovations Company Inc	\$ 750.00	Harrisburg	2/6/2020	
Mt. Pleasant Stone Inc	\$ 750.00	Harrisburg	2/6/2020	
Stronghold Developers	\$ 2,500.00	Philadelphia	2/14/2020	
DeFrank Development	\$ 2,250.00	Pittsburgh	2/14/2020	
First Place Painting LLC	\$ 1,500.00	Philadelphia	2/14/2020	
JENA Asphalt Solutions Inc, Russo & Sons Sealcoating	\$ 2,250.00	Philadelphia	2/14/2020	
Paramount Painters	\$ 4,000.00	Harrisburg	2/14/2020	
Professional Painting Services LLC	\$ 15,000.00	Pittsburgh	2/14/2020	Payment plan
Cost Less Painting LLC	\$ 6,000.00	Philadelphia	2/21/2020	
Bert's Painting, Delbert Hall Jr	\$ 8,250.00	Altoona	2/21/2020	
S&I Electric Inc, Joshua Ickes	\$ 4,500.00	Harrisburg	2/21/2020	
Patchel Construction	\$ 2,250.00	Philadelphia	2/21/2020	
Minoan Inc	\$ 9,000.00	Harrisburg	2/21/2020	

LA Maison Masonry Inc	\$	1,500.00	Philadelphia	2/24/2020	
Family Restoration	\$	597.23	Scranton	2/25/2020	Payment plan
Bowser Interiors LLC	\$	875.00	Pittsburgh	3/4/2020	Final payment
Nazar Remodeling Inc	\$	500.00	Philadelphia	3/4/2020	Payment plan
DePaul & Company	\$	723.00	Philadelphia	3/4/2020	Payment plan
AJ's Carpentry Service	\$	536.46	Harrisburg	3/4/2020	Payment plan
Reckus Construction	\$	900.00	Philadelphia	3/4/2020	Payment plan
Reed General Services	\$	1,500.00	Harrisburg	3/4/2020	
RWG Painting and General Contracting	\$	4,500.00	Pittsburgh	3/4/2020	
Star Electric, Dennis W Martin Inc	\$	750.00	Harrisburg	3/9/2020	
Citaly LLC	\$	1,500.00	Harrisburg	3/9/2020	Payment plan
J&D Home Improvement Inc DBA J&D Waterproofing	\$	9,000.00	Pittsburgh	3/9/2020	
Davidson's Heating & Air	\$	500.00	Scranton	3/9/2020	
Eppinette Construction LLC	\$	3,000.00	Harrisburg	3/13/2020	
A Hentzel & Sons Contracting LLC	\$	1,500.00	Harrisburg	3/13/2020	
Professional Painting Services LLC	\$	4,666.00	Pittsburgh	3/25/2020	Payment plan
Houtz Facility Specialist Inc	\$	5,000.00	Harrisburg	3/25/2020	
Reckus Construction	\$	900.00	Philadelphia	4/2/2020	Payment plan
DePaul & Company	\$	723.00	Philadelphia	4/17/2020	Payment plan
AJ's Carpentry Service	\$	536.46	Harrisburg	4/17/2020	Payment plan
Noel Enterprises	\$	900.00	Altoona	4/23/2020	
DePaul & Company	\$	732.00	Philadelphia	5/4/2020	Payment plan
Professional Painting Services LLC	\$	4,666.66	Pittsburgh	5/4/2020	Payment plan
Reckus Construction	\$	800.00	Philadelphia	5/4/2020	Payment plan
Professional Painting Services LLC	\$	4,666.68	Pittsburgh	5/26/2020	Final payment
Paramount Painters	\$	4,000.00	Harrisburg	5/26/2020	Payment plan
Thomas Elder Construction	\$	300.00	Pittsburgh	5/26/2020	Payment plan
DePaul & Company	\$	732.00	Philadelphia	5/29/2020	Payment plan
AJ's Carpentry Service	\$	536.00	Harrisburg	6/20/2020	Payment plan
Nazar Remodeling Inc	\$	1,000.00	Philadelphia	6/29/2020	Payment plan
DePaul & Company	\$	732.00	Philadelphia	6/30/2020	Payment plan

Chavarria Construction	\$	300.00	Scranton	6/30/2020	Payment plan
Citaly LLC	\$	4,500.00	Harrisburg	7/13/2020	Payment plan
AJ's Carpentry Service	\$	536.46	Harrisburg	7/13/2020	Payment plan
Family Restoration	\$	597.23	Scranton	7/16/2020	Payment plan
Family Restoration	\$	597.23	Scranton	7/16/2020	Payment plan
Family Restoration	\$	597.23	Scranton	7/16/2020	Payment plan
Thomas Elder Construction	\$	150.00	Pittsburgh	5/26/2020	Payment plan
Trejo Drywall	\$	2,370.00	Philadelphia	7/21/2020	Payment plan
KMB Homes LLC	\$	1,222.22	Scranton	7/30/2020	Payment plan
DePaul & Company	\$	723.00	Philadelphia	8/6/2020	Payment plan
Royers Discount Flooring	\$	1,500.00	Philadelphia	8/6/2020	
AJ's Carpentry Service	\$	536.46	Harrisburg	8/6/2020	Payment plan
Alright Cabling LLC	\$	1,500.00	Harrisburg	8/6/2020	
Superior Construction Enterprises LLC	\$	14,250.00	Harrisburg	8/6/2020	Payment plan
Citaly LLC	\$	1,500.00	Harrisburg	8/7/2020	Payment plan
Premier Maintenance Plus vs DiEugenio Contracting	\$	4,500.00	Pittsburgh	8/7/2020	
Dilbert Sanchez Roofing	\$	2,250.00	Scranton	8/7/2020	
Art Beidel Enterprises	\$	750.00	Harrisburg	8/7/2020	
Penn Fencing Inc	\$	2,250.00	Pittsburgh	8/11/2020	
Hilltop Pacing Sealer LLC	\$	1,500.00	Pittsburgh	8/11/2020	
S&K Framing Contractors	\$	750.00	Scranton	8/12/2020	
Empire Roofing & More LLC	\$	3,000.00	Pittsburgh	8/11/2020	
JN Wire	\$	2,000.00	Philadelphia	8/10/2020	Payment plan
A Stone's Throw LLC	\$	750.00	Philadelphia	8/20/2020	
Handy Couple General Contracting LLC	\$	750.00	Philadelphia	8/20/2020	
Bill A Keeny Construction	\$	750.00	Harrisburg	8/20/2020	
Constructstart	\$	750.00	Philadelphia	8/20/2020	
Thompson Electric LLC	\$	750.00	Philadelphia	8/20/2020	
Pecororo Construction Company	\$	5,000.00	Pittsburgh	8/20/2020	
JC Paving & Asphalt Maintenance LLC	\$	750.00	Pittsburgh	8/20/2020	
Genesis Home Remodeling	\$	500.00	Philadelphia	8/21/2020	

Top to Bottom Interiors	\$ 5,250.00	Altoona	8/21/2020	
MJA Installations	\$ 45,250.00	Scranton	8/17/2020	
KMB Homes LLC	\$ 9,778.78	Scranton	8/24/2020	Payment plan
Superior Construction Enterprises LLC	\$ 1,187.50	Harrisburg	8/27/2020	Payment plan
DePaul & Company	\$ 723.00	Philadelphia	8/31/2020	Payment plan
MPC Construction Inc	\$ 1,500.00	Scranton	9/14/2020	
Kish Valley Siding / Urie Peachey	\$ 1,500.00	Harrisburg	9/14/2020	
DePaul & Company	\$ 7,000.00	Philadelphia	9/17/2020	Payment plan
AJ's Carpentry Service	\$ 536.46	Harrisburg	9/17/2020	Payment plan
Family Restoration	\$ 2,388.78	Scranton	9/24/2020	Final payment
Thomas Elder Construction	\$ 300.00	Pittsburgh	5/26/2020	Payment plan
Thomas Elder Construction	\$ 3,200.00	Pittsburgh	10/8/2020	Payment plan
AJ's Carpentry Service	\$ 536.00	Harrisburg	10/9/2020	Payment plan
JSE Construction Services Inc	\$ 750.00	Harrisburg	10/9/2020	
Ardmore Inc	\$ 12,500.00	Philadelphia	10/22/2020	
D&M Painting Corp	\$ 9,750.00	Pittsburgh	10/28/2020	
JN Wire	\$ 2,000.00	Philadelphia	11/4/2020	Payment plan
Superior Construction Enterprises LLC	\$ 1,187.50	Harrisburg	11/14/2020	Payment plan
Pecororo Construction Company	\$ 12,000.00	Pittsburgh	11/4/2020	
AJ's Carpentry Service	\$ 536.46	Harrisburg	11/4/2020	Payment plan
Citaly LLC	\$ 1,500.00	Harrisburg	11/6/2020	Payment plan
Davis Construct LLC	\$ 12,500.00	Pittsburgh	11/6/2020	
Superior Construction Enterprises LLC	\$ 1,187.50	Harrisburg	12/2/2020	Payment plan
Grote Construction	\$ 1,500.00	Scranton	12/2/2020	
MPC Construction Inc	\$ 1,100.00	Scranton	12/2/2020	Payment plan
AJ's Carpentry Service	\$ 536.46	Harrisburg	12/2/2020	Payment plan
JN Wire	\$ 2,000.00	Philadelphia	12/9/2020	Payment plan
Total	\$ 324,229.60			