

DAVID S. BABOIAN, CPA

PROFESSIONAL CORPORATION

4350 Carlisle Pike, Camp Hill, PA 17011

(717) 763-8044 / Fax 763-1111

www.baboiancpa.com

Update... Act 72

Use of subcontractors in construction industry

(urgent: if applicable, please call me asap to discuss)

New PA Act 72 rules... When can you use independent contractors?

If you work in PA “construction”, you must pass ALL of these tests. “Construction” is defined broadly to include new construction, renovations, repairs... on any real property or premises... under contract. If you flunk even one of these tests, you are subject to harsh penalties: 1) need written contract with sub 2) you can't pay hourly 3) sub needs insurance of \$50k+ 4) contract includes the specific work 5) contract includes work site location and square footage/specific rooms 6) you can't directly supervise the sub 7) sub provides their own tools 8) sub has possibility of losing money on the job if you are not paid 9) sub has their own business with their own address/work site 10) sub holds themselves out to the public as available for work.

Penalties

*Automatic PA UC tax of \$300-\$900 per worker... and then they refer to PA Labor and IRS.

*Automatic PA Labor penalty of \$1,000 per worker.

*Possible PA criminal prosecution with fines plus \$2,500 admin fee and stop-work order.

*Possible IRS employer matching taxes and penalties... if IRS acts on the tip and finds you in violation based upon IRS criteria (which are more lenient than PA criteria).

*Must now offer employee benefits to misclassified worker... health insurance, pension, union.

Background and my opinion

This PA law was backed by large construction companies. Their mission was to throw up a road block to small contractors competing against them for jobs. The larger contractors easily comply with this law already. So Act 72's primary effect is on the small contractor businesses. **The penalties are harsh enough to put some of you out of business.** The law has been around since 2011. But not until 2015 is PA actively enforcing the law in the Harrisburg area. It is an easy revenue raiser for PA... nearly all small contractors using subcontractors will owe penalties. How did this law sneak through the PA Congress and get passed? Were the politicians snowed by large construction lobbyists that this was to protect PA consumers? Or did politicians see Act 72 as an easy way to raise funds without raising taxes. Even the PA auditors on the enforcement side of this issue think it is unfairly targeting small construction contractors.

Enforcement is coming down quickly and harshly. From PA's web site...

<http://www.portal.state.pa.us/portal/server.pt?open=514&objID=1105944&mode=2>

The bureau currently has 27 investigators on staff, each of whom is responsible for 13 labor and safety laws. In 2015, the bureau plans to increase its jobsite visits or "**sweeps**" of construction projects. This involves gathering a group of several investigators from each bureau district office visit a jobsite unexpectedly. The investigators will simultaneously conduct **interviews of construction workers** in various trades to ensure that they are properly classified as employees. While conducting the sweep, **the bureau may encounter violations of the other laws it enforces, such as the Minimum Wage Act, Child Labor Act, or Prevailing Wage Law.** It is expected that the increased sweeps will result in the effective use of the bureau's limited resources to put construction employers on notice that this Act is being enforced, while protecting vulnerable workers at risk of misclassification.