

MCA
Summary of Legislation
August 2018

Galloway Introduces Employee Misclassification Package

House Labor Relations Committee Chairman John Galloway has introduced a comprehensive package of legislation amending the Construction Workplace Misclassification Act (Act 72 of 2010), intended to reduce the practice of intentionally misclassifying employees as independent contractors.

In a memo to his House colleagues seeking cosponsors, Galloway described the problem he seeks to address. *“As you may know, intentional misclassification of workers occurs when unscrupulous employers attempt to reduce overhead costs by designating their workers as independent contractors instead of as employees or by hiring them ‘off-the-books.’ Under these schemes, employers avoid paying income taxes, minimum or overtime wages, workers’ compensation premiums and contributions to the unemployment compensation system. They also avoid coverage by the federal Americans with Disabilities Act, the Occupational Safety and Health Act, and the Fair Labor Standards Act. Among its many consequences, this practice provides dishonest employers with an unfair advantage over employers who play by the rules and pay their share taxes. Moreover, misclassification causes our state to lose out on significant revenues, and it denies workers important employment rights and benefits that they may truly need to rely on. Misclassification is already illegal, but we cannot effectively curb the practices based on existing laws.”*

His memo cites a recent study of UC audit data shows that there are approximately 580,000 misclassified workers in Pennsylvania which has resulted in at least \$200 million losses to the Unemployment Compensation Trust Fund and \$81 million losses to the Workers’ Compensation Security Fund, and suggested these numbers are likely underestimated since audit data does not account for employers that pay their workers entirely “off-the-books.”

Last year, the Pennsylvania Department of Labor and Industry entered into a Memorandum of Understanding (MOU) with the United States Department of Labor, agreeing to make a concerted effort toward “promoting compliance through the dissemination of clear and accurate information and to enhance misclassification enforcement by utilizing information sharing and cross-agency coordination.” This package of bills takes the necessary legislative steps towards fulfilling this agreement.

A companion bill to the Galloway package, [HB 2442](#), was also introduced, by Rep. Pam Snyder (D- Greene). All the bills are listed below in this report.

Legislation Offered to Exempt School Construction from School Co-op Purchasing Program

Legislation has been offered to modify a little know group buying program that school districts have used in hopes of saving money. According to some reports, these purchasing agreements have resulted in savings for schools, but not in all cases. There have been a few cases where roof replacement costs were much higher than if the school simply bid the projects as is normally required. That has spurred Representative Jesse Topper (R) from Bedford County to introduce House Bill 2614 which would no longer allow the program to be used to for school construction. In his cosponsor memo, Topper writes: “I intend to introduce legislation proposing to end the use of cooperative purchasing for school district construction projects. This proposal will allow state agencies and most local agencies to continue to use cooperative purchasing as they currently do. Additionally, the bill will permit school districts to continue to utilize cooperative purchasing for the supplies and services in which it was originally intended.

School district construction projects are not one-size-fits-all purchases and, thus, are not suitable jobs for the type of contracting that cooperative purchasing facilitates. Contracts that are competitively bid are the preferred method of procurement in such situations because they allow all contract specifications to be designed precisely for the school district in question.

In 2017 the Schuylkill Technology Center located in Frackville, PA needed to replace a 90,000 square foot roof. They were offered a quote of \$1.6 million (\$17.77/square foot) under the cooperative purchasing program. The school board felt the co-op quote was very high, so they decided to competitively bid the project. They were provided with several bids less than \$1.6 million and accepted the lowest competitive bid of \$818,000 (\$9.088/square foot) saving a total of \$782,000.” The bill was just introduced on August 30.

Governor's Office Publishes Regulatory Agenda

Executive Order 1996-1 requires all agencies under the jurisdiction of the Governor to submit for publication semi-annually an agenda of regulations under development or consideration. To meet this requirement, the following was published in the August 4 issue of the PA Bulletin. This Agenda represents the Administration's present intentions regarding future regulations. The information provided is current as of July 13, 2018. The nature and complexity of an individual regulation obviously will determine whether and when any particular regulation listed (as well as any considered subsequent to publication of this Agenda) is published. Agency contacts should be contacted for more information regarding the regulation and the procedure for submitting comments.

Regulation Being Considered	Proposed Date of Promulgation	Need and Legal Basis for Action	Agency Contact
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Department of Labor and Industry (L&I)

Uniform Construction Code Regulations Title 34, Part I, Chapters 401 and 403 Bureau of Occupational and Industrial Safety (# 12-107)	Fall 2018, as Proposed	Update regulations based on the adoption of the 2015 ICC codes by the UCC Review and Advisory Council.	Matthew Kegg (717) 783-6304
Uniform Construction Code Regulations Title 34, Part I, Chapters 401, 403 and 405 Bureau of Occupational and Industrial Safety	Winter 2018, as Proposed	Update regulations adopting the 2018 ICC accessibility provisions, as required by the PA Construction Code Act.	Matthew Kegg (717) 787-6304
Apprenticeship EEO Regulations Title 34, Chapter 81 Equal Opportunity in Apprenticeship Programs	Winter 2018, as Proposed	Update the PA apprenticeship regulations to align with new Federal EEO regulations.	Eric Ramsay (717) 787-6997

Legislative Activity

The following bills of interest to the construction industry have been introduced and/or acted upon in the past month.

Bidding / Contracting

NONE

Budget Related Bills

NONE

Environmental Building Standards

NONE

Liability

NONE

Local/State Government/Regulations

The following bills have not been referred to committee as of yet.

[HB 2440](#) RE: Joint Agency Task Force on Misclassification of Employees (by Rep. John Galloway, et al)
Amends the Administrative Code, in powers and duties of the Department of Labor and Industry, providing for joint agency task force on misclassification of employees.

Filed, 8/23/2018

[HB 2441](#) RE: Independent Contractors (by Rep. John Galloway, et al)
Amends the Construction Workplace Misclassification Act, further providing for independent contractors.

Filed, 8/23/2018

[HB 2442](#) RE: Improper Classification of Employees (by Rep. Pam Snyder, et al)
Amends the Construction Workplace Misclassification Act, further providing for improper classification of employees.

Filed, 8/21/2018

[HB 2443](#) RE: [Employee Misclassification](#) (by Rep. John Galloway, et al)
Amends the Construction Workplace Misclassification Act, providing for independent contractors, improper classification of employees, administrative penalties, stop-work orders, certain agreement prohibited and penalty funds.

Filed, 8/23/2018

Local/Property Tax Reform

NONE

Mandate Waivers

NONE

Mechanic's Lien

NONE

Permitting

NONE

Prevailing Wage

NONE

Professional Licensure

NONE

Sales/Use Tax

NONE

School Construction

[HB 2614](#) RE: Cooperative Purchasing (by Rep. Jesse Topper, et al)
Amends Title 62 (Procurement), in intergovernmental relations, prohibiting school districts from participating in, sponsoring, conducting or administering a cooperative purchasing agreement for the procurement of construction.
Filed, 8/30/2018

Transportation

NONE

Worker's Comp

NONE

Workforce Development

NONE

Upcoming Meetings of Interest

Some House Committee meetings and session can be viewed online at: <http://www.pahousegop.com/>
Senate Committee meetings and session can be streamed at: <http://www.pasenategop.com/>
The House and Senate are recessed to the call of the chairs.

WEDNESDAY - 9/5/18

House Labor and Industry Committee

10:00 a.m., Room G-50, Irvis Office Building

Public hearing on proposed rulemaking on regulations for minimum wage

House Democratic Policy Committee

2:00 p.m., Carnegie Borough Municipal Building, Board Room, One Veterans Way, Carnegie

Public Hearing with Rep. Anita Kulik on small business development

[Hearing Agenda](#)

THURSDAY - 9/13/18

Independent Regulatory Review Commission

10:00 a.m., 14th Fl. Conf. Rm., 333 Market St., Harrisburg

To consider the following regulations:

Reg. No. 3181 Department of Agriculture #2-185; Vegetable Marketing and Research Program

Reg. No. 3155 Department of Transportation #18-469; Hazardous Material Transportation

Reg. No. 3211 Department of Labor and Industry #12-107; Uniform Construction Code

Reg. No. 3179 Department of Agriculture #2-187; Weighmasters

FRIDAY - 10/5/18

House Urban Affairs Committee

9:00 a.m., Hilton Garden Inn, 555 Synergy Drive, Uniontown

Informational meeting to discuss the local blight situation and discuss new state statutes the locals can use to fight blight

2018 FALL SENATE SESSION SCHEDULE (Subject to change)

September 24, 25, 26

October 1, 2, 3, 15, 16, 17

November 14

2018 HOUSE SESSION SCHEDULE

September 12 (NV), 13 (NV), 24, 25, & 26

October 1 (NV), 2 (NV), 9, 10, 15, 16, & 17

November 13

Copies of all bills of interest can be accessed via the Internet at:

<http://www.legis.state.pa.us/cfdocs/legis/home/session.cfm>