



GCAP

General Contractors Association of Pennsylvania



April 13, 2018

The Honorable Rob W. Kauffman, Chairman
House Labor and Industry Committee
House of Representatives, Pennsylvania
312 Main Capitol Building, PO Box 202089
Harrisburg, PA 17120

Subject: Opposition to House Bill 1781

Dear Chairman Kauffman:

On behalf of the General Contractors Association of Pennsylvania (GCAP) I am writing to express our opposition to House Bill 1781 – legislation that would provide a method to certify whether an individual is an Independent Contractor for the purposes of Worker’s Compensation.

A legitimate Independent Contractor, who has proven a degree of control and independence to provide a good or service to another individual or business, can be an asset in the business world. ***Unfortunately, the construction industry is plagued by companies who intentionally misclassify workers as Independent Contractors to avoid paying taxes, insurance costs, and payroll deductions.*** These practices result in lost tax revenue, higher worker’s compensation premiums, illegal profits, and a grossly uneven playing field when it comes to cheaters entering into competitive bids. Because contractor members of GCAP abide by the rules, we are negatively impacted with the widespread phenomenon of employers misclassifying their employees as Independent Contractors.

To illustrate the severity of the worker misclassification issue, please allow me to state some facts from the recently released Pennsylvania Department of Labor & Industry publication titled: Administration and Enforcement of the Construction Workforce Misclassification Act, dated March 1, 2018.



The Construction Workplace Misclassification Act went into effect February 10, 2011; the Act prohibits employers from misclassifying construction workers as Independent Contractors who do not satisfy all of the definitional criteria of an Independent Contractor. Here are some highlights from the Department of Labor & Industry's report, which was released last month:

- When the Act went into effect there were 27 cases investigated by the Department and in year two the number investigated dropped to 9 cases.
- One may presume that with this new Act, construction companies heard the message loud and clear from Harrisburg that misclassifying employees as Independent Contractors will no longer be acceptable. Or perhaps there was very little being done in regard to enforcement.
- However, in year three, 2013, the number of investigations were 25 cases; and this number grew annually: 2014 there were 50 cases; and, 2015 there were 297 cases.
- After years of growth in cheating the system there was a drop among the unscrupulous contractors and there were 185 cases in 2016.
- Then last year, 2017, we unfortunately jumped above the 200 level again and there were 211 cases investigated.

As indicated, there was a lot of action last year among the Department of Labor & Industry in making 211 claims against violators. The Department made 364 on-site investigations during 2017. During those visits, investigators distributed educational materials, interviewed workers on the sites, and reviewed payroll information when appropriate. After 364 construction site visits, the Department filed 211 claims.

For anyone to think that misclassifying construction workers is not a problem in Pennsylvania, mull over these facts: **after 364 construction visits, there were 211 claims against employers misclassifying workers as Independent Contractors – that's 58%! For every two projects that the Department visited, one of the projects was guilty of misclassifying its workers.**

As stated earlier, legitimate Independent Contractors have a role in the business world. It's just unfortunate that in construction this business model is taken advantage of by unprincipled companies who misclassify employees as Independent Contractors. GCAP promotes a level playing field for law abiding contractors and we want to prevent dishonest companies from robbing communities of valuable tax revenue. HB1781 has the potential to increase the competitive disadvantage gap between the responsible, law-abiding employers and the deceitful employers who break the law.

We commend you, your staff, and Committee for the work you have done on the serious construction issues. GCAP stands ready and willing to assist you when construction issues cross your desk. GCAP is an organization representing the memberships of

General Building Contractors Association; Keystone Contractors Association; and Master Builders' Association of Western Pennsylvania. Collectively, GCAP represents over 600-plus construction companies based throughout the Commonwealth of Pennsylvania. Since 1953, GCAP prides itself on providing a strong, unified voice in Harrisburg on behalf of major contributors to employment and economic growth on Pennsylvania.

Please do not hesitate to contact me if I can be of assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jon O'Brien', with a long horizontal flourish extending to the right.

Jon O'Brien
Executive Director
General Contractors Association of Pennsylvania

cc: Members of the House Labor & Industry Committee