

Paul Prendergast

Eastern Atlantic States Regional Council of Carpenters

June 11, 2024

My name is Paul Prendergast. I am a Compliance Auditor for the Eastern Atlantic States Regional Council of Carpenters Industry Labor and Compliance Department.

On behalf of over 20,000 hard-working carpenters, floor layers, millwrights, cabinet makers and pile drivers in the Commonwealth of Pennsylvania, the Compliance department monitors ongoing and completed construction projects throughout Pennsylvania and the rest of the Eastern Atlantic States Region to ensure compliance with all state and federal labor laws.

In the construction industry, misclassification is unfortunately all-too-common. This is not a union or non-union issue, a public vs private construction issue, or even an issue solely for the victimized workers. Misclassification of workers is an issue that impacts every taxpayer in Pennsylvania.

Whether to gain an edge on the competition in the public bidding process, increase profit margins, or simply due to carelessness, both public and private contractors misclassify workers. Through misclassification, contractors keep costs down by avoiding payroll taxes, unemployment and workers compensation insurance, as well as overtime and other employee benefits. In failing to pay their obligations, these burdens are then placed on the backs of the taxpayers.

In many cases, unscrupulous contractors will seek out a vulnerable workforce of undocumented workers. These workers may not know their rights and their immigration status offers a vulnerability that can be exploited by employers. While Pennsylvania cannot prevent the exploitation of undocumented labor, the State can take steps to keep the profit out of exploitation.

Our department has interviewed workers who have been manipulated into signing subcontractor agreements by their employer. Despite the terms of these agreements, the workers continue to function as employees, being directed where, when and what work to perform for the contractor. Though nominally an independent business owner, these workers do not perform nor even seek work with other contractors.

Act 72 has been a great resource in addressing misclassification in the construction industry. Since its implementation over \$3 million in fines have been collected. That money

represents money stolen from construction workers and missing tax revenue that would have otherwise increased the tax burden of hardworking Pennsylvanians.

While Act 72 has proven to be a great step in addressing misclassification in Pennsylvania, there is still work to be done. The Department of Labor and Industry as well as the Office of Attorney General have worked diligently to implement and enforce Act 72; however, it is time to give the investigators the necessary support to ensure the continued success of the act.

In 2011 the Bureau of Labor Law Compliance (BLLC) investigated 27 cases. In 2023 the BLLC investigated 249. At first glance this appears to show growth in enforcement. However, the Bureau's caseload has remained around 200-250 per year for nearly the past decade.

This information should not be interpreted to mean there are only 250 cases of misclassification per year. Rather this appears to represent the maximum capacity of the BLLC to investigate misclassification at current staffing levels.

While the number of cases investigated by the BLLC has increased substantially from the first few years of implementation, resource levels have not increased commensurately. In 2013, the Department of Labor & Industry reported 27 investigators on staff. In March of this year, the Department reported 27 investigators on staff.

It is imperative the legislature pursue improvements to Act 72 such as Representative Donahue's bill HB 1751, which would build on the successes of Act 72 by allowing the Department to retain recovered funds to increase the Department's investigatory capacity.

Act 72 has been a success for Pennsylvania's workforce and taxpayers. The Eastern Atlantic States Regional Council of Carpenters support Act 72 and encourage the legislature to devote more resources to the investigation and enforcement of misclassification, both in the construction industry and any other industry where workers are being victimized.

All workers should receive the full pay and benefits to which they are entitled.

The Commonwealth of Pennsylvania must grant the necessary resources to protect all workers from manipulation and exploitation.

Thank you for your time.