



SUMMARY OF THE NEW
CONSTRUCTION WORKPLACE MISCLASSIFICATION ACT
February, 2011

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In September, 2010, the Pennsylvania General Assembly passed House Bill 400, known as the Construction Workplace Misclassification Act (the “CWMA”), which Governor Rendell signed on October 12, 2010. The new law went into effect on February 10, 2011. It contains significant changes regarding individuals who work in the construction industry as “independent contractors.”

DETERMINING INDEPENDENT CONTRACTOR STATUS

Under the CWMA, a person who performs services in the construction industry may be considered and paid as an independent contractor only if:

- The individual has a written contract to perform such services;
- The individual is free from control or direction over performance of such services, both under the contract of service and in fact; and
- As to such services, the individual is customarily engaged in an independently established trade, occupation, profession or business.



The CWMA provides that an individual is customarily engaged in an independently established trade, occupation, profession or business with respect to services the individual performs in the commercial or residential building construction industry only if:

- The individual possesses the essential tools, equipment and other assets necessary to perform the services independent of the person for whom the services are performed.
- The individual's arrangement with the person for whom the services are performed is such that the individual shall realize a profit or suffer a loss as a result of performing the services.
- The individual performs the services through a business in which the individual has a proprietary interest.
- The individual maintains a business location that is separate from the location of the person for whom the services are being performed.
- The individual previously performed the same or similar services for another person under the above requirements, or holds himself out to other persons as available and able to perform the same or similar services.
- The individual maintains liability insurance during the term of this contract of at least \$50,000.

CONSEQUENCES OF MISCLASSIFICATION

The CWMA imposes both institutional and personal liability for the failure to properly classify an individual as an employee for purposes of the Pennsylvania Workers' Compensation

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Act or the Unemployment Compensation Law. Each individual improperly classified is considered to be a separate violation. Intentional violators can be prosecuted criminally for second or third degree misdemeanors, or the Secretary of Labor and Industry may impose civil penalties of up to \$2,500 per violation. The Secretary may also petition a court for a stop work order.

For more information, please contact Matt Chabal, P.O. Box 650, Hershey, PA 17033 | 134 Sipe Ave., Hummelstown, PA 17036 | 717.533.3280 EXT 2070 | mc@jsdc.com.

This Summary is provided for informational purposes only and does not constitute legal advice. Before taking any action related to the issues addressed above, you should consult with an attorney of your choice.

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