

AN ACT

Bill 19-169
Act 19-668
effective
February 11,
2013

Codification
District of
Columbia
Official Code
2001 Edition

To amend An Act To provide for the payment and collection of wages in the District of Columbia provide for a penalty for an employer who misclassifies an employee as an independent contractor, to allow the employee to seek up to treble damages for lost wages and benefits, to require an employer to pay restitution, to subject an employer to a stop-work order or debarment, to require an employer to provide notice to each employee of their status as an independent contractor and the implications of such status, and to require an employer to maintain records of independent contractors working on their job sites; and to amend the Procurement Practices Reform Act of 2010 to provide that a violation of Title II of An Act To provide for the payment and collection of wages in the District of Columbia is cause for debarment or suspension from consideration for award of District contracts and subcontracts.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Workplace Fraud Amendment Act of 2012”.

Workplace
Fraud
Amendment
Act of 2012

Sec. 2. An Act To provide for the payment and collection of wages in the District of Columbia, approved August 3, 1956 (70 Stat. 976; D.C. Official Code § 32-1301 *et seq.*), is amended as follows:

(a) Designate sections 1 through 11 as Title I.

(b) A new Title II is added to read as follows:

“TITLE II. WORKPLACE FRAUD ACT.

“Sec. 201. Definitions.

“For the purposes of this title, the term:

“(1) “Construction services” includes, without limitation, all building or work on buildings, structures, and improvements of all types such as bridges, dams, plants, highways, parkways, streets, tunnels, sewers, mains, power lines, pumping stations, heaving generators, railways, airports, terminals, docks, piers, wharves, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing and landscaping. The term “construction services” shall also include moving construction-related materials on the job site.

“(2) “Employee” means every person, other than an exempt person or an independent contractor, providing construction services to another person.

“(3) “Employer” means any individual, partnership, firm, association, joint stock company, trust, limited liability company, corporation, the administrator or executor of the estate of a deceased individual or the receiver, trustee, or successor of any of the same, or any other legal entity permitted to do business within the District of Columbia employing a person to provide services, or any person or group of persons acting directly or indirectly in the interest of an employer.

New
Subchapter II,
Chapter 13,
Title 32

New
§ 32-1331.01

“(4) “Exempt person” means an individual who:

“(A)(i) Performs services in a personal capacity and who employs no individuals other than a spouse, child, or immediate family member of the individual; or

“(ii) Performs services free from direction and control over the means and manner of providing the services, subject only to the right of the person or entity for whom services are provided to specify the desired result;

“(B) Furnishes the tools and equipment necessary to provide the service; and

“(C) Operates a business that is considered inseparable from the individual for purposes of taxes, profits, and liabilities, in which the individual exercises complete control over the management and operations of the business.

“(5) “Interested party” means a person with an interest in compliance with this title.

“(6) “Knowingly” means having actual knowledge of, or acting with deliberate ignorance or reckless disregard for, the prohibition involved.

“(7) “Mayor” mean the Mayor of the District of Columbia or his or her designated agent or agents.

“(8) “Stop work order” means written notice from the Mayor to an employer to cease or hold work until the employer is given notice by the Mayor to resume work.

“Sec. 202. Application.

New
§ 32-1331.02

“This title shall apply only to the construction services industry.

“Sec. 203. Deemed employers.

New
§ 32-1331.03

“For the purposes of this title, the officers of a corporation and any agents having the management thereof who knowingly permit the corporation to violate this title shall be deemed to be the employers of the employees of the corporation.

Sec. 204. Workplace fraud prohibited.

New
§ 32-1331.04

“(a) An employer shall not improperly classify an individual who performs services for remuneration paid by an employer as an independent contractor.

“(b) An employer has improperly classified an individual when an employer-employee relationship exists, as determined by subsection (c) of this section, but the employer has not classified the individual as an employee.

“(c) An employer-employee relationship shall be presumed to exist when work is performed by an individual for remuneration paid by an employer, unless to the satisfaction of the Mayor, the employer demonstrates that:

“(1) The individual is an exempt person; or

“(2)(A) The individual who performs the work is free from control and direction over the performance of services, subject only to the right of the person or entity for whom services are provided to specify the desired result;

“(B) The individual is customarily engaged in an independently established trade, occupation, profession, or business; and

“(C) The work is outside of the usual course of business of the employer

for whom the work is performed.

“Sec. 205. Investigation of complaints.

New
§ 32-1331.05

“(a) The Mayor, pursuant to a complaint from an employee, a representative of an employee, an interested party, or on his or her own initiative, shall investigate violations of this title.

“(b) The Mayor may:

“(1) Enter and inspect the premises or place of business, employment, or work site, and upon demand examine and copy, wholly or partly, any or all books, registers, payrolls, and other records, including those required to be made, kept, and preserved under this title or under any regulation issued pursuant to this title;

“(2) Question an employer, employee, or other person in the premises, place of business or employment, or work site;

“(3) Require from any employer full and correct statements in writing, including sworn statements, upon forms prescribed or approved by the Mayor, with respect to the payment of wages, hours, names, addresses, and such other information pertaining to remuneration to employees or independent contractors as the Mayor may determine necessary or appropriate; and

“(4) Investigate such facts, conditions, or matters as the Mayor may determine necessary or appropriate to determine whether this title or any regulation issued pursuant to this title has been or is being violated.

“(c)(1) The Mayor, in the performance of any duty or the execution of any power prescribed by this title, may administer oaths or affirmations, hold hearings, certify official acts, take and cause to be taken depositions of witnesses, issue subpoenas, and compel the attendance of witnesses and production of books, papers, documents, records, and testimony.

“(2) In case of failure of any person to comply with a lawful subpoena or of the refusal of any witness to produce evidence or to testify to any matter about which he or she may be lawfully interrogated, the Superior Court of the District of Columbia, upon the application of the Mayor or the Mayor's designee, may compel obedience by proceedings for contempt as provided in section 12(e) of the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-076; D.C. Official Code § 2-1831.09(e)).

“(d) An employer that fails to produce to the Mayor the books and records requested in the course of an investigation to determine whether the employer is in compliance with the provisions of this title shall be subject to an administrative penalty not to exceed \$500 per day for each day the requested records are not produced.

“(e) Nothing contained in this title shall be deemed a limitation on any power or authority of the Mayor under any law which may be otherwise applicable to administer or enforce this title.

“Sec. 206. Hearings.

New
§ 32-1331.06

“(a)(1) Within 15 days after service of notice of a violation, an alleged violator may submit a written request to the Mayor to hold a hearing on the alleged violation.

“(2) Upon receipt of a timely request, the Mayor shall conduct a hearing in accordance with the procedures set forth in Title I of the District of Columbia Administrative

Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), and issue a decision within 30 days after the hearing.

“(b) If the Mayor, after investigation but before a hearing, has cause to believe that a person is violating any provision of this title and the violation has caused, or may cause, immediate and irreparable harm to the public, the Mayor may issue a stop work order requiring the alleged violator to immediately cease and desist construction-related business activities. The order shall be served by certified mail or delivery in person.

“(c)(1) Within 10 days after service of a stop work order, the alleged violator may submit a written request to the Mayor for an expedited hearing on the alleged violation

“(2) Upon receipt of a timely request for an expedited hearing, the Mayor shall conduct a hearing within 10 days after the date of receiving the request and shall deliver to the alleged violator at his or her last known address a written notice of the hearing by any means guaranteed to be received at least 5 days before the hearing date.

“(3) The Mayor shall issue a decision within 10 days after an expedited hearing.

“(d) Any party aggrieved by a final order of the Mayor under subsection (c)(3) of this section may seek judicial review and appeal under section 11 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1209; D.C. Official Code § 2-510).

“Sec. 207. Penalties.

New
§ 32-1331.07

“(a) Any employer who violates or fails to comply with the requirements of this title shall be subject to a civil penalty of not less than \$1,000, and not more than \$5,000, for each violation. Each employee who is not properly classified in violation of this title shall be considered a separate violation.

“(b) An employer who violates section 210 shall be subject to a civil penalty of not less than \$5,000, and not more than \$10,000, for each such violation.

“(c) In addition to the penalties provided in subsections (a) and (b) of this section, an employer may be subject to a stop work order, and may be ordered to make restitution, pay any interest due, and otherwise comply with all applicable laws and regulations.

“(d) Within 30 days of the final order, an employer found in violation of this title shall be required to:

“(1) Pay restitution to or on behalf of any individual not properly classified; and

“(2) Otherwise come into compliance with all applicable labor laws, including those related to income tax withholding, unemployment insurance, wage and hour laws, and workers’ compensation.

“(e) Notwithstanding subsections (a) and (b) of this section, an employer who has been found to have violated this title more than twice in a 2-year period:

“(1) Shall have the choice of being assessed an administrative penalty of \$20,000 for each employee that was not properly classified, or be debarred for 5 years; and

“(2) If an employer is debarred pursuant to paragraph (1) of this subsection, the employer shall be subject to a civil penalty of not less than \$5,000, and not more than \$10,000, for each employee that was not properly classified, and may be ordered to make restitution, pay

any interest due, and otherwise comply with all applicable laws and regulations.

“(f) Any penalty issued under this section against an employer shall be in effect against any successor corporation or business entity that:

“(1) Has one or more of the same principals or officers as the employer against whom the penalty was assessed; and

“(2) Is engaged in the same or equivalent trade or activity.

“Sec. 208. Provisions of law may not be waived by agreement.

New
§ 32-1331.08

“No provision of this title may in any way be contravened or set aside by private agreement. Any agreement between an employer and employee in which the employee, despite not being an exempt person, agrees to be classified as an independent contractor shall be no defense to any action to recover unpaid wages or liquidated damages.

“Sec. 209. Private right of action.

New
§ 32-1331.09

“(a) A person aggrieved by a violation of this title, or any rule issued pursuant to this title, by an employer or entity may bring a civil action in any court of competent jurisdiction within 3 years after the occurrence of the alleged violation of title. A person whose rights have been violated under this title by an employer or entity is entitled to collect:

“(1) The amount of any wages, salary, employment benefits, or other compensation denied or lost to the person by reason of the violation, plus an additional equal amount in liquidated damages;

“(2) Compensatory damages and an amount up to \$500 for each violation of this title or any rule issued pursuant to this title; and

“(3) In the case of unlawful retaliation, all legal or equitable relief as may be appropriate.

“(b) A court may order the following:

“(1) Reinstatement and the payment of back wages;

“(2) Fringe benefits;

“(3) Seniority rights;

“(4) Treble damages for lost wages or benefits; or

“(5) Any combination of the remedies set forth in paragraphs (1) through (4) of this subsection .

“(c) The court shall allow for reasonable attorneys fees and costs of the action to be paid by the defendant.

“Sec. 210. Retaliation prohibited.

New
§ 32-1331.10

“(a) An employer may not discriminate in any manner or take adverse action against any person because the person:

“(1) Makes an oral or written complaint with the employer or the Mayor alleging that the employer violated any provision of this title or any rule issue pursuant to this title;

“(2) Brings an action or initiates a proceeding involving a violation of this title;

“(3) Testifies in an action authorized under this title or a proceeding involving a violation of the provisions of this title or any rule issued pursuant to this title; or

“(4) Assists in an investigation by providing information to a litigant in a civil

action, the Mayor, or another agency in proceedings as provided by title

“(b)(1) A person who believes that an employer has discriminated in any manner or taken adverse action against the person in violation of this title may submit to the Mayor a written complaint, signed by the complainant, that alleges the discrimination.

“(2) Upon receipt of a complaint, the Mayor shall conduct an investigation.

“Sec. 211. Provisions relating to contracts with public bodies.

New
§ 32-1331.11

“(a) Where, after investigation, the Mayor determines that an employer who is or has engaged in work on a project funded by District funds is in violation of this title, the Mayor shall:

“(1) Withhold from payment due to the employer an amount that is sufficient to:

“(A) Pay restitution to each employee according to section 209, including any applicable prevailing wages; and

“(B) Pay any benefits, taxes, or other contributions that are required by law to be paid on behalf of the employee.

“(2) Upon a final determination, the Mayor shall release the full amount of the withheld funds if no violation is found, or if a violation is found, the balance of the withheld funds after all obligations are satisfied pursuant to paragraph (1) of this subsection.

“(b) An employer found to be in violation of this section more than twice in a 2-year period shall be subject to debarment. A debarment under this section shall be in effect against any successor corporation or business entity that:

“(1) Has one or more of the same principals or officers as the employer against whom the debarment was imposed; and

“(2) Is engaged in the same or equivalent trade or activity.

“Sec. 212. Employer record-keeping requirements.

New
§ 32-1331.12

“(a) An employer shall keep, for at least 3 years, in or about its place of business, records of the employer containing the following information:

“(1) The name, address, occupation, and classification of each employee, exempt person, or independent contractor;

“(2) The rate of pay of each employee or method of payment for the independent contractor or exempt person;

“(3) The classification of each individual as an employee, exempt person, or an independent contractor;

“(4) The amount that is paid each pay period to each employee, exempt person, or independent contractor;

“(5) The hours that each employee, exempt person, or independent contractor works each day and each work week;

“(6) For all individuals who are not classified as employees, evidence that each individual is an exempt person or an independent contractor or an employee thereof; and

“(7) Other information that the Mayor requires, by regulation, as necessary to enforce this title.

“(b)(1) An employer shall provide each individual classified as an independent

contractor or exempt person with written notice of such classification at the time the individual is hired.

“(2) The written notice shall include:

“(A) An explanation of the implications of the individual’s classification as an independent contractor or exempt person rather than as an employee, in compliance with the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code § 2-1933), and

“(B) Contact information for the Mayor.

“(3) Failure to provide a written notice shall be evidence of a knowing violation. The employer shall be liable for an administrative penalty of \$500 for each individual that the employer failed to notify.

“(4) The Mayor shall adopt regulations establishing specific requirements for the content and form of the notice within 180 days of the effective date of this title and, the adoption of such regulations shall be a prerequisite to the obligation to furnish the notice.

“Sec. 213. Further acts prohibited; penalty.

New
§ 32-1331.13

“(a) A person who knowingly incorporates or forms, or assists in the incorporation or formation of, a corporation, partnership, limited liability company, or other entity, or pays or collects a fee for use of a foreign or domestic corporation, partnership, limited liability corporation, or other entity for the purpose of facilitating, or evading detection of, a violation of this title shall be subject to a civil penalty not less than \$5,000 and not to exceed \$20,000.

“(b) A person who knowingly conspires with, aids and abets, assists, advises, or facilitates, an employer with the intent of violating this title shall be subject to a civil penalty not less than \$5,000 and not to exceed \$20,000.

“Sec. 214. Rules.

New
§ 32-1331.14

“The Mayor, pursuant to Title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to implement the provisions of this title. The proposed rules shall be submitted to the Council for a 30-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 30-day review period, the proposed rules shall be deemed approved.

“Sec. 215. Workplace Fraud Fund.

New
§ 32-1331.15

“There is established as a nonlapsing fund the Workplace Fraud Fund (“Fund”). Each civil penalty collected pursuant to this title shall be paid into the Fund to partially offset the administration, investigation, and other expenses incurred in implementing this title. All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of the fiscal year, or at any other time, but shall be continually available for the administration of this title without regard to fiscal year limitation, subject to authorization of Congress.”.

COUNCIL OF THE DISTRICT OF COLUMBIA
D.C. Law 19-300, effective April 27, 2013 (Delayed Applicability)

20 DCSTAT 1018

Sec. 3. Section 907(c) of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-359.07(c)), is amended as follows:

**Amend
§ 2-359.07**

(a) Paragraph (6) is amended by striking the word “or” at the end.

(b) A new paragraph (6A) is added to read as follows:

“(6A) A violation of Title II of An Act To provide for the payment and collection of wages in the District of Columbia, passed on 2nd reading on December 18, 2012 (Enrolled version of Bill 19-169); and”.

Sec. 4. Applicability.

Sections 205, 206, and 212(e) of this title shall apply upon the inclusion of their fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

**Delayed
Applicability
§§ 32-1331.05,
32-1331.06,
32-
1331.12(b)(4)**

Sec. 5. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 6. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.