



**CHICAGO ROOFING CONTRACTORS ASSOCIATION**  
MAINTAINING HIGH STANDARDS OF PROFESSIONALISM



# A ROSE BY ANY OTHER NAME IS NOT AS SWEET: EMPLOYEE MISCLASSIFICATION

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# DEFINITION

"Contractor" means any **sole proprietor, partnership, firm, corporation, limited liability company, association or other legal entity** permitted by law to do business within the State of Illinois who engages in construction.

"Contractor" includes a **general contractor** and a **subcontractor**.

# INDEPENDENT CONTRACTOR

An individual performing services for a contractor is deemed to be an employee of the contractor unless it is shown that:

1. the individual has been and will continue to be **free from control or direction over the performance of the service** for the contractor, both under the individual's contract of service and in fact;
2. the service performed by the individual is **outside the usual course of services performed by the contractor**; and
3. the individual is **engaged in an independently established trade, occupation, profession or business**; or
4. the individual is deemed a legitimate sole proprietor or partnership.

# SOLE PROPRIETOR / PARTNERSHIP

1. performing the service free from the direction or control over the means and manner of providing the service, subject only to the right of the contractor for whom the service is provided to specify the desired result;
2. not subject to termination upon severance of the relationship with the contractor;
3. has a substantial investment of capital in the sole proprietorship or partnership beyond ordinary tools and equipment and a personal vehicle;

# SOLE PROPRIETOR / PARTNERSHIP (cont'd)

4. owns the capital goods and gains the profits and bears the losses;
5. makes its services available to the general public or the business community on a continuing basis;
6. includes services rendered on a Federal Income Tax Schedule as an independent business or profession;

## SOLE PROPRIETOR / PARTNERSHIP (cont'd)

7. performs services for the contractor under the sole proprietorship's or partnership's name;
8. when the services being provided require a license or permit, the sole proprietor or partnership obtains and pays for the license or permit;
9. furnishes the tools and equipment necessary to provide the service;

# SOLE PROPRIETOR / PARTNERSHIP (cont'd)

10. hires its own employees without contractor approval, pays the employees without reimbursement from the contractor and reports the employees' income to the Internal Revenue Service;
11. the contractor does not represent the sole proprietorship or partnership as an employee of the contractor to its customers; and
12. has the right to perform similar services for others on whatever basis and whenever it chooses.

# NO FLOW DOWN

A contractor shall not be liable under this Act for any subcontractor's failure to properly classify persons performing services as employees, nor shall a subcontractor be liable for any lower tiered subcontractor's failure to properly classify persons performing services as employees.

# POSTING

An **entity** for which uses independent contractors shall **post and keep posted**, in a **conspicuous place** on each **job site** where those individuals **perform services** and in each of its offices, a notice in **English, Spanish, and Polish**, **summarizing the requirements of this Act**.

# COMPLAINT

1. Any interested party may file a complaint with the Department of Labor against an entity or employer if there is a reasonable belief that the entity or employer is in violation;
2. It shall be the duty of the Department to enforce the provisions of this Act;
3. The Department shall have the power to conduct investigations in connection with the administration and enforcement of this Act;
4. Any investigator with the Department shall be authorized to visit and inspect, at all reasonable times, any places covered by this Act and
5. Shall be authorized to inspect, at all reasonable times, documents related to the determination of whether an individual is an employee.

# ACTIONS

Whenever the Department believes that there has been a violation, the Department may:

- (1) Issue an order to cease and desist** from further violation;
- (2) Take affirmative or other action to eliminate the effect** of the violation;
- (3) collect the amount of any wages, salary, employment benefits, or other compensation denied or lost** to the individual; and
- (4) assess any civil penalty** allowed by this Act.

# PROSECUTION

**Criminal violations** of this Act shall be **prosecuted** by the **Attorney General** or the **appropriate State's Attorney**. The **Department shall refer matters** to the **Attorney General** and the **appropriate State's Attorney upon determining** that a **criminal violation may have occurred**.

# PENALTIES

An employer or entity that violates any of the provisions of this Act shall be subject to a **civil penalty not to exceed \$1,000 for each violation found in the first audit** by the Department.

Following a first audit, an employer or entity shall be subject to a **civil penalty not to exceed \$2,000 for each repeat violation within a 5 year period. Each violation of this Act for each person and for each day the violation continues shall constitute a separate and distinct violation.**

# RECOVERY

In determining the amount of a penalty, the Director shall consider the appropriateness of the penalty to the employer or entity charged, upon the determination of the gravity of the violations. The amount of the penalty, may be recovered in a civil action filed in any circuit court by the Director of Labor, or a person aggrieved. In any civil action brought by an interested party, the circuit court shall award the interested party 10% of the amount recovered. The remaining amount recovered shall be submitted to the Director of Labor.

# DEPARTMENT

For any **second or subsequent violation** which is **within 5 years** of an earlier violation, the Department shall **add the employer or entity's name to a list to be posted on the Department's official website**. Upon such notice, the Department shall **notify the violating employer or entity**. No **state contract shall be awarded** to an employer or entity appearing on the list **until 4 years have elapsed from the date of the last violation**.

# WILLFUL VIOLATIONS

Whoever willfully violates any of the provisions or whoever obstructs the Director of Labor, or his or her representatives, or any other person authorized to inspect places of employment shall be liable for penalties up to double the statutory amount.

# PUNITIVE DAMAGES

Whoever **willfully violates** any of the provisions of this Act shall be **liable to the employee for punitive damages** in an amount equal to the **penalties assessed**.

# STANDARD OF PROOF

The **penalty shall be imposed** in cases in which an employer or entity's conduct is **proven by a preponderance** of the evidence to be willful.

# MISDEMEANOR / FELONY

An entity or employer that **willfully violates** any provision of this Act or any rule adopted under this Act commits a **Class C misdemeanor**. An entity or employer that commits a **second or subsequent violation within a 5 year period** commits a **Class 4 felony**.

## Class C Misdemeanor:

Maximum 30 days in jail and a fine of \$1,500.

## Class 4 Felony:

1-3 years in prison and fines up to \$25,000 (individuals) or \$50,000 (corporations)

# NO RETALIATION

It is a **violation** for an **employer** or entity, or any **agent of an employer** or entity, to retaliate through **discharge** or in any other manner **against any person** for **exercising any rights**. Such retaliation shall subject an employer or entity to **civil penalties** or a **private cause of action**, or **both**.

# NO RETALIATION (cont'd)

It is a **violation** for an employer or entity to **retaliate** against a person for:

- 1. making a complaint to an employer or entity, to a co-worker, to a community organization, before a public hearing, or to a State or federal agency that rights have been violated;**
- 2. causing to be instituted any proceeding; or**
- 3. testifying or preparing to testify in an investigation or proceeding.**

# INTERESTED PARTY

An interested party or person aggrieved by a violation may file suit in circuit court, in the county where the alleged offense occurred or where any person who is party to the action resides, without regard to exhaustion of any alternative administrative remedies. Actions may be brought by one or more persons for themselves and other persons similarly situated.

# RECOVERY

A **person** whose **rights** have been violated 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 equal amount in liquidated damages;**
2. **compensatory damages** and an amount up to \$500 for each violation;
3. in the case of **unlawful retaliation**, all **legal or equitable relief** as may be appropriate; and
4. **attorney's fees and costs.**

# TIME LIMIT

The right of an interested party or aggrieved person to bring an action terminates upon the passing of 3 years from the final date of performing services to the employer or entity. This limitations period is tolled if an employer or entity has deterred a person's exercise of rights.

# SHARED INFORMATION

The Departments of Labor, Employment Security, Revenue, and the Workers' Compensation Commission shall cooperate by sharing information concerning any suspected misclassification by an employer or entity of one or more of its employees as independent contractors. Upon determining that an employer or entity has misclassified employees as independent contractors, the Department shall notify the Departments of Employment Security, Revenue, the Office of the State Comptroller, and the Workers' Compensation Commission who shall be obliged to check such employer or entity's compliance with their laws.

# THANK YOU



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