



INTERNATIONAL
UNION OF

**PAINTERS
& ALLIED
TRADES**

**DISTRICT
COUNCIL
21**

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AFFILIATED WITH

**PHILADELPHIA,
NORTHEASTERN
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AND DELAWARE
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HEADQUARTERS

**2980 SOUTHAMPTON ROAD
PHILADELPHIA, PA 19154**

October 9, 2021

Chairwoman Katie Muth
185 Main Capitol
Senate Box 203044
Harrisburg, PA 17120-3044

Dear Chairwoman Muth,

The International Union of Painters and Allied Trades District Council 21 (DC 21) represents over 4500 tradespeople throughout Central and Northeast Pennsylvania, the Philadelphia Region, South Jersey, and Delaware. We provide family-supporting career pathways for people who are starting out as apprentices all the way to experienced journeypersons in painting, drywall finishing, wall covering, glazing, and glass work. While DC 21 has a primary obligation to serve its members and collectively bargain, its mission includes advocacy for the rights, protections, and well-being of workers and their families.

I want to thank you for moving forward the discussion surrounding misclassification within the Commonwealth and its impact on our economy and workforce. As the gig economy continues to grow, so does the use of misclassification and labor brokers throughout our industry. As long as misclassification remains a widespread problem, our economy will not be able to help the middle class and small businesses get ahead. A strong economy does not let bad employers steal rights and wages from workers as well as create a marketplace where reputable contractors struggle to generate business simply because they play by the rules. Misclassification is a significant issue across many sectors; however, its existence in construction can take place in unique ways and have an outsized impact on taxpayers. If we want to continue encouraging trades as a career path for Pennsylvanians, it's crucial we fight misclassification by improving the Commonwealth's enforcement and adopting more effective penalties.

Whenever a worker is misclassified as an independent contractor, they are ultimately denied the wage protections, legal protections, and access to safety net programs that employees enjoy. They are not subject to minimum wage or overtime laws and are barred from claiming Unemployment Compensation (UC) or Workers' Compensation. These protections are crucial for making sure all workers have a baseline of fair pay and dignity, however, they have an especially large effect on protecting workers in the construction industry. Construction, of course, is a dangerous industry to work in. According to the U.S. Bureau of Labor Statistics, the construction industry in 2020 had about 2.5% of its workers

experience a non-fatal work-related injury or illness. Just for context, coal mining experienced a 3% rate.¹ Additionally, a lot of construction work is different from “regular” employment as it’s mostly temporary and seasonal work. Plenty of tradespeople expect not work much during the colder months, so they save enough money and claim UC to help pay for bills until more opportunities come back when the weather warms up. Workers in construction also rely on UC to stabilize their income once a project is completed and they wait for more work to come their way. This is an important system that protects tradespeople’s health and turns construction jobs into stable careers. Whenever a worker in the construction industry does not have access to these programs, they are at risk of being put in an unsafe environment or taken advantage of.

Misclassification also isn’t just an issue that takes power away from workers; it hurts taxpayers and decent employers who play by the rules. There is a clear incentive for unscrupulous contractors who misclassify their workers, according to Keystone Research Center, misclassification lowers labor costs by as much as 30%.² This savings creates an uncompetitive bidding environment for contractors who are doing the right thing by correctly classifying their employees, they are unable to gain more business simply because they chose to follow the law and treat their workers appropriately. Additionally, whenever a worker is misclassified as an independent contractor, UC payments, Workers’ Compensation payments, and income tax revenues go unpaid, taking money from both trust funds and the Commonwealth’s overall revenues. According to Keystone Research Center’s 2019 study on misclassification, approximately \$10 million are withheld from the Unemployment Compensation Trust Fund, \$15 million lost in income tax revenues, and as much as \$83 million is not paid in premiums to Workers’ Compensation because of misclassification. Taxpayers of all kinds pay into these funds and rely on them to provide important safety net benefits. Whenever there is money withheld from them, those programs are less able to deliver those services.

Even though our Commonwealth has a few laws, regulations, and offices dedicated to preventing misclassification, there still is a whole construction industry that uses misclassification to get an immoral and illegal leg up on its law-abiding competition. These tools, at times, can go after and punish some cases of misclassification, but its current setup is not strong enough to discourage its practice. Statutory, regulatory, and administrative changes are needed with the goal of creating a system that makes both the combined likelihood of getting caught misclassifying workers and the price of punishment higher than the potential benefits to contractors. I will touch on only a few changes that can make a serious difference in fighting misclassification.

First and foremost is to increase funding levels for the Bureau of Labor Law Compliance (BLLC). In raw dollars, funding to BLLC in the FY 2003-2004 and FY 2004-2005 state budgets were about \$3 million higher than funding in the FY 2021-2022 budget. A potential funding increase should be greater

¹ U.S Bureau of Labor Statistics, Employer-Reported Workplace Injuries and Illnesses, 2020:
https://www.bls.gov/iif/oshwc/osh/os/summ1_00_2020.xlsx

² Illegal Labor Practices in the Philadelphia Regional Construction Industry: An Assessment and Action Plan -
<https://www.keystoneresearch.org/publications/research/illegal-labor-practices-philadelphia-regional-construction-industry-assessment>

than \$3 million considering inflation and a higher need today for investigators to help combat misclassification and other labor law violations. To put this into context, BLLC only has 25 investigators currently employed, when compared to New Jersey's recently replenished staff of about 67 investigators, it's clear that more staff is needed to effectively combat misclassification.

Some investigators within BLLC should be dedicated to enforcing laws within the construction industry as well as take on required enhanced and continuing training. Investigators in BLLC work to enforce the Construction Workplace Misclassification Act (Act 72), in addition to many other possible labor law violations that take place across all other industries. The construction industry, and even within DC 21, has a large number of different trades and skills. DC 21 often finds tradespeople working on prevailing wage work who are categorized as an incorrect trade that is paid a lower hourly rate than the trade that they should be categorized. This was seen during the recent case of GoodCo and their project at State College. Workers were categorized as electricians for most of their labor hours and but then as laborers for a small portion of their work only to lower labor costs and pay workers less than they were entitled to. The many ways unscrupulous contractors in the construction industry can have wages taken from workers highlights the need to help better support and prepare our investigators in BLLC who are doing good work on behalf of Pennsylvanians.

Finally, the Commonwealth should adopt strong insurance audits during the public bidding processes and encourage departments to work together and find ways to incorporate audits as well as best practices. We often find during public bidding processes that unscrupulous bidders gain an advantage on law-abiding contractors through purchasing inappropriate and cheaper insurance policies. Contractors often acquire these bad insurance policies by renting them through labor brokers. These bad insurance policies are often cheaper than the appropriate policy, not only because it skimps on coverage, but because it ultimately provides coverage for work that is completely different, less dangerous, and cheaper to insure than the work that's actually being done on site. By renting or purchasing inappropriate insurance, unscrupulous contractors can cut down on overhead costs and provide a cheaper bid than their more legitimate competition all at the expense of their workers' safety and taxpayers dollars.

Misclassification is a widespread problem that hurts working Pennsylvanians in all industries. If we want a Commonwealth that works for all, it is absolutely important that we fight to stop it completely. I thank you and the rest of the committee members for helping push this conversation forward as well as letting District Council 21 contribute to it. If you have any questions or concerns about this or anything else, please don't hesitate to reach me at 215-294-9465 or tcrowther@dc21.com.

Sincerely,



Joseph T. Ashdale

Business Manager/Secretary-Treasurer

IPUAT District Council 21