

Jana R. Barnett, Esq.
Law Offices of Jana R. Barnett, LLC
P.O. Box 6615
Wyomissing, PA 19610-6615

Admitted to Practice in Pennsylvania
E-mail address: jrb@janarbarnettesq.com

Telephone: 610/478-1860
Facsimile: 610/478-0453

***WYOMISSING-READING-BERKS COUNTY EMPLOYMENT ATTORNEY
PROVIDES LEGAL UPDATES***

Attorney Jana R. Barnett regularly represents clients in employment law matters, and makes herself aware of updates in employment law so that she can better represent her clients.

Pennsylvania Construction Workplace Misclassification Act

The Construction Workplace Misclassification Act took effect on February 10, 2011. It provides criteria for determining whether a person who works in construction is an independent contractor.

“Construction” means erection, reconstruction, demolition, alteration, modification, custom fabrication, building, assembling, site preparation and repair work done on any real property or premises under contract.

By law, an individual working in the construction industry is only an independent contractor if the person (1) has a written contract to perform such services, (2) is free from control or direction over the performance of those services, and (3) is customarily engaged in an independently established trade, occupation, profession or business.

The third criterion is satisfied only if (1) the individual possesses the essential tools, equipment and other assets necessary to perform the services independently of the person for whom the services are being performed; (2) the individual’s arrangement is such that the individual could gain a profit or suffer a loss as a result of performing the services; (3) the individual performs the service through a business in which he or she has a proprietary interest; (4) the individual maintains a business location separate from that of the person for whom services are being performed; (5) the individual previously performed these services for another person while free from direction or control, or (b) is available to work for others who will not provide direction or control; and (6) the person maintains liability insurance of at least \$50,000.00 during the term of the contract.

In determining whether an individual is an independent contractor for purposes of the Workers Compensation Act or the Unemployment Compensation Law, the failure to withhold federal or state income taxes or pay unemployment compensation contributions or workers’ compensation premiums shall not be considered.

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An employer, officer or agent violates this law by improperly classifying an individual as an employee and failing to provide workers' compensation coverage or to pay amounts required by the unemployment compensation law.

It also is a violation to require or demand that a person enter into an agreement or sign a document resulting in the person's being misclassified as an independent contractor.

Civil and criminal penalties can be imposed. The crimes are third or second degree misdemeanors, or summary offenses. Administrative penalties are up to \$1,000 per employee for the first offense, and up to \$2,500 per employee for each subsequent violation.

Persons who file a complaint or inform any person about an employer's noncompliance with this law are protected from retaliation. It not only is illegal for an employer, officer or agent to discriminate or take adverse action in retaliation for a person's exercising the rights conferred by this law, taking adverse action against a person within ninety (90) days of the person's exercise of rights protected under this law raises a rebuttable presumption of retaliation.

Misclassification is a separate offense for each employee.

If you would like to speak with Attorney Jana R. Barnett about an employment law matter and learn how she can assist you, call her at 610-478-1860, or [click here](#) to send her an e-mail, and she will reply as quickly as possible.

Attorney Jana R. Barnett's offices are located at 525 Kenhorst Boulevard, Reading, PA 19611 and 1238 Cleveland Avenue, Wyomissing, PA 19610-2102. Attorney Jana R. Barnett practices family law, employment law, and employment discrimination law in Reading, Wyomissing and the surrounding cities and towns, as well as in Berks County, Bucks County, Chester County, Delaware County, Lancaster County, Lehigh County, Montgomery County, Northampton County, Philadelphia County and in the United States District Court for the Eastern District of Pennsylvania and the United States District Court for the Middle District of Pennsylvania.