

2010 -- S 2375

LC00529

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO PUBLIC PROPERTY AND WORKS -- PRIVATE RIGHT OF ACTION

Introduced By: Senators Ruggerio, Maselli, McBurney, Lynch, and Lanzi

Date Introduced: February 11, 2010

Referred To: Senate Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 37-13-17 of the General Laws in Chapter 37-13 entitled "Labor and
2 Payment of Debts by Contractors" is hereby amended to read as follows:

3 **37-13-17. Private right of action to collect wages or benefits.** -- (a) An employee or
4 former employee, or any organization representing such an employee or former employee, of a
5 contractor or subcontractor may bring a civil action for a violation of section 37-13-7 or for
6 misclassifying an employee as an independent contractor for appropriate injunctive relief, or
7 actual damages, or both within three (3) years after the occurrence of the alleged violation. An
8 action commenced pursuant to this section, may be brought in the superior court for the county
9 where the alleged violation occurred, the county where the complainant resides, or the county
10 where the person against whom in the civil complaint is filed resides or has their principal place
11 of business. Any contractor or subcontractor who violates the provisions of section 37-13-7 shall
12 be liable to the affected employee or employees in the amount of unpaid wages or benefits, plus
13 interest. A civil action filed in court under this section may be instituted instead of, but not in
14 addition to the director of labor and training enforcement procedures authorized by section 37-13-
15 14.1, provided the civil action is filed prior to the date the director of labor and training issues
16 notice of an administrative hearing.

17 (b) An employer's responsibility and liability is solely for its own employees.

18 (c) An action instituted pursuant to this section may be brought by one or more
19 employees or former employees on behalf of himself/herself or themselves and other employees

1 similarly situated, except that no employee shall be a party plaintiff to any such action unless
2 he/she gives his/her consent in writing to become such a party and such consent is filed in the
3 court in which such action is brought.

4 (d) In an action filed under this section in which the plaintiff prevails, the court shall, in
5 addition to any judgment awarded to the plaintiff, require reasonable attorneys' fees and the costs
6 of the action to be paid by the defendant.

7 (e) The court in an action filed under this section shall award affected employees or
8 former employees liquidated damages in an amount equal to two (2) times the amount of unpaid
9 wages or benefits owed. Unpaid fringe benefit contributions owed pursuant to this section in any
10 form shall be paid to the appropriate benefit fund, however, in the absence of an appropriate fund
11 the benefit shall be paid directly to the individual.

12 (f) The filing of a civil action under this section shall not preclude the director of labor
13 and training from referring a matter to the attorney general as provided in section 37-13-14.1(b),
14 from prohibiting a contractor or subcontractor from bidding on or otherwise participating in
15 contracts as provided in section 37-13-14.1(d), (e) and (h), or from prohibiting termination of
16 work on failure to pay agreed wages pursuant to section 37-13-16.

17 (g) Any person, firm, or corporation found to have willfully made a false or fraudulent
18 representation in connection with wage obligations owed on a contract shall be required to pay a
19 civil penalty to the department of labor and training in an amount of no less than one thousand
20 dollars (\$1,000) and not greater than three thousand dollars (\$3,000) per representation. Such
21 penalties shall be recoverable in civil actions filed pursuant to this section. For purposes of this
22 subsection "willfully" shall mean representations that are known to be false, or representations
23 made with deliberate ignorance or reckless disregard for their truth or falsity.

24 (h) An employer shall not discharge, threaten, or otherwise discriminate against an
25 employee, or former employee, regarding compensation terms, conditions, locations or privileges
26 of employment because the employee or former employee, or a person or organization acting on
27 his or her behalf:

28 (1) Reports or makes a complaint under this section; or otherwise asserts his or her rights
29 under this section; and/or

30 (2) Participates in any investigation, hearing or inquiry held by the director of labor and
31 training under section 37-13-14.1. In the event a contractor or subcontractor retaliates or
32 discriminates against an employee in violation of this section, the affected employee may file an
33 action in any court of competent jurisdiction and the court shall order reinstatement and/or
34 restitution of the affected employee, as appropriate, with back pay to the date of the violation, and

1 an additional amount in liquidated damages equal to two (2) times the amount of back pay and
2 reasonable attorneys' fees and costs.

3 (i) If any one or more subsections of this section shall for any reason be adjudged
4 unconstitutional or otherwise invalid, the judgment shall not affect, impair, or invalidate the
5 remaining subsections.

6 SECTION 2. This act shall take effect upon passage.

=====
LC00529
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO PUBLIC PROPERTY AND WORKS -- PRIVATE RIGHT OF ACTION

1 This act would create a new cause of action for any person or entity damaged by an
2 employer misclassification of an employee as an independent contractor.

3 This act would take effect upon passage.

=====
LC00529
=====