



April 10, 2019

AGC Testimony on S.108 An act relating to employee misclassification:

The Associated General Contractors of Vermont has reviewed S.108 as passed by the Senate and we do not support the bill. Our association is very aware of the importance of enforcement of the misclassification laws that already exist, but we believe the challenge is not with enforcement but with state policies that define such relationships. In lieu of more enforcement we recommend a much broader dialog that clarifies the employer/employee relationship.

The Supreme Court of Vermont decision of 2017 that opened the door to LLC's (limited liability company) without employees to be considered independent contractors was a big step in clarifying the employer/employee relationship in many trades. This case was brought after the plaintiff who is a local home builder appealed his case to Department of Labor 3 times prior to going to court. This is just one example that indeed shows that the agency has been aggressive in enforcement and that clarification of the laws on the books, not more enforcement, is necessary.

In addition to the lack of need we have objection to the fact that the language in the proposal would allow an individual to advance their complaint to the attorney general "in addition to any other remedies". This language would allow the individual to completely skip due process with Department of Labor and/or creates a "double jeopardy" scenario that would put an unreasonable burden on an employer if both departments chose to adjudicate the complaint and effectively could double penalties in a decision.

Our association has been unable to identify any type of evidence through press, state reporting or otherwise that misclassification is a broad reaching issue in Vermont. In fact, we have found the opposite which we attribute to the courts decision in 2017 which clarified state policy regarding LLCs.

We are aware and appreciative of work that the House Commerce Committee has taken up worker classification rules in the past and we recommend focusing on improving policy, education of employers and outreach instead of unnecessary duplication of enforcement.

Thank you,

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