

NEWS & INSIGHTS

Responding to government investigations in the wake of Pennsylvania Attorney General's escalation of criminal prosecutions in the construction industry

[INSIGHTSARTICLE](#)

APRIL 14, 2021



The Pennsylvania Attorney General (AG) and other Pennsylvania prosecutors have recently undertaken aggressive criminal enforcement actions targeting the construction industry. Last week, a large heavy highway and bridge contractor [was charged with millions in theft for its alleged violations of prevailing wage laws](#). This case follows the AG criminally charging a mid-state mechanical contractor for prevailing wage violations over a year ago which, at the time, was the first ever prevailing wage prosecution in Pennsylvania. Similarly, a few months ago the Delaware County District Attorney brought criminal charges against a contractor under Act 72, the Construction Workplace Misclassification Act, for misclassifying employees as independent contractors.

These prevailing wage cases reflect a clear intent by the AG to exercise his prosecutorial power in legal disputes that are otherwise governed exclusively by civil and regulatory laws. Pennsylvania contractors should be mindful that their business practices could now become the target of previously unprecedented criminal investigations.

Related article: [Criminal charges for Act 72 construction workplace misclassification violations](#)

Are criminal prosecutions for wage disputes legitimate?

The use of prevailing wage laws as the basis for criminal prosecutions is atypical and raises doubts regarding the legitimacy of these legal actions. Unlike with Act 72, the Pennsylvania legislature did not specifically authorize criminal charges as an appropriate enforcement mechanism in passing Pennsylvania's Prevailing Wage Act. Nor did Congress in passing the Davis-Bacon Act. This suggests a legislative intent to have prevailing wage disputes and violations resolved through civil processes. Arguably, the Commonwealth has attempted to circumvent this legislative intent by charging employers with theft and other offenses under the Crimes Code for the alleged failure to comply with civil statutes – thus criminalizing a law that does not authorize criminal sanctions. Regardless of the legitimacy of these prevailing wage prosecutions, according to the AG, there will be more to come.

Responding to government investigations

Workplace prosecutions are built on business records; thus, prosecutorial inquiries will most likely first arise as a records request. While prosecutors may obtain information relevant to an allegation of workplace misconduct through government agencies, they will almost certainly obtain records directly from the targeted business, often through service of a search warrant or grand jury subpoena.

If a prosecutor's office commences an investigation against your business, you need to contact an attorney that can engage with the government from the outset with certain objectives in mind, such as:

- Minimizing disruption to the company's ongoing operations that may result from the seizure of records and other investigative actions
- Performing an independent investigation of the company's operations to identify possible areas of liability
- Evaluating and pursuing available legal challenges to the government's investigative actions

- Dialoguing with the government to resolve the matter without the need of filing criminal charges or other sanctions
- Preventing or mitigating reputational harm to the company that may result from public disclosure of an investigation into its business practices
- If charges are filed, taking necessary and appropriate actions in achieving a favorable outcome for the company and/or its owners

Proactive steps contractors can take now

Given the recent aggressive approach by the AG, it is critical for contractors to proactively evaluate their business practices, contract methods, and internal processes for legal compliance. All contractors should rely upon frequent guidance from their attorneys, insurance professionals, and accountants to ensure they are fully compliant with governing laws and regulations.

[Construction Law](#) attorneys [Ron Pollock](#) and [Matt Chabal](#) are available to discuss this emerging form of prosecutorial action. We are also well-equipped to provide legal counsel should your business become the target of a government investigation.

Related People

[Ronald H. Pollock](#)
[Matthew Chabal, III](#)

Related Services and Industries

[Construction](#)