



Ohio Revised Code

Section 4115.13 Investigations - determinations.

Effective: September 29, 2011

Legislation: House Bill 153 - 129th General Assembly

(A) Upon the director's own motion or within five days of the filing of a properly completed complaint under section 4115.10 or 4115.16 of the Revised Code, the director of commerce, or a representative designated by the director, shall investigate any alleged violation of sections 4115.03 to 4115.16 of the Revised Code.

(B) At the conclusion of the investigation, the director or a designated representative shall make a determination as to whether the alleged violation was committed. If the director or designated representative determines that the alleged violation was an intentional violation, the director or designated representative shall give written notice by certified mail of that determination to the contractor, subcontractor, or officer of the contractor or subcontractor which also shall state that the contractor, subcontractor, or officer of the contractor or subcontractor may file with the director an appeal of the determination within thirty days after the date the notice was received. If the contractor, subcontractor, or officer of the contractor or subcontractor timely appeals the determination, within sixty days of the filing of the appeal, the director or designated representative shall schedule the appeal for a hearing. If the contractor, subcontractor, or officer of the contractor or subcontractor fails to timely appeal the determination, the director or designated representative shall adopt the determination as a finding of fact for purposes of division (D) of this section. The director or designated representative, in the performance of any duty or execution of any power prescribed by sections 4115.03 to 4115.16 of the Revised Code, may hold hearings, and such hearings shall be held within the county in which the violation of sections 4115.03 to 4115.16 of the Revised Code is alleged to have been committed, or in Franklin county, whichever county the person alleged to have committed the violation chooses. For the purpose of the hearing, the director may designate a hearing examiner who shall, after notice to all interested parties, conduct a hearing and make findings of fact and recommendations to the director. The director shall make a decision, which shall be sent to the affected parties. The director or designated representative may make decisions, based upon findings of fact, as are found necessary to enforce sections 4115.03 to 4115.16 of the Revised Code.



(C) If any underpayment by a contractor or subcontractor was the result of a misinterpretation of the statute, or an erroneous preparation of the payroll documents, the director or designated representative may make a decision ordering the employer to make restitution to the employees, or on their behalf, the plans, funds, or programs for any type of fringe benefits described in the applicable wage determination. In accordance with the finding of the director that any underpayment was the result of a misinterpretation of the statute, or an erroneous preparation of the payroll documents, employers who make restitution are not subject to any further proceedings pursuant to sections 4115.03 to 4115.16 of the Revised Code.

If a contractor's or subcontractor's underpayment to an employee is less than one thousand dollars, the contractor or subcontractor is not subject to any further proceedings under sections 4115.03 to 4115.16 of the Revised Code for that underpayment if the contractor or subcontractor makes full restitution to the affected employee.

(D) If the director or designated representative makes a decision, based upon findings of fact, that a contractor, subcontractor, or officer of a contractor or subcontractor has intentionally violated sections 4115.03 to 4115.16 of the Revised Code, the contractor, subcontractor, or officer of a contractor or subcontractor is prohibited from contracting directly or indirectly with any public authority for the construction of a public improvement or from performing any work on the same as provided in section 4115.133 of the Revised Code. A contractor, subcontractor, or officer of a contractor or subcontractor may appeal the decision, within sixty days after the decision, to the court of common pleas of the county in which the first hearing involving the violation was heard. If the contractor, subcontractor, or officer of a contractor or subcontractor does not timely appeal the determination of the director or designated representative under division (B) of this section, the contractor, subcontractor, or officer of a contractor or subcontractor may appeal the findings of fact, within sixty days after the determinations are adopted as findings of fact, to the court of common pleas within the county in which the violation of sections 4115.03 to 4115.16 of the Revised Code is alleged to have been committed or in Franklin county, whichever county the person alleged to have committed the violation chooses.

(E) No appeal to the court from the decision of the director may be had by the contractor or subcontractor unless the contractor or subcontractor files a bond with the court in the amount of the restitution, conditioned upon payment should the decision of the director be upheld.



(F) No statement of a contractor, subcontractor, or officer of a contractor or subcontractor and no determination, recommendation, or finding of fact issued under this section is admissible as evidence in a criminal action brought under this chapter against the contractor, subcontractor, or officer of a contractor or subcontractor.

(G) In determining whether a contractor, subcontractor, or officer of a contractor or subcontractor intentionally violated sections 4115.03 to 4115.16 of the Revised Code, the director may consider as evidence either of the following:

(1) The fact that the director, prior to the commission of the violation under consideration, issued notification to the contractor, subcontractor, or officer of a contractor or subcontractor of the same or a similar violation, provided that the commission of the same or a similar violation of sections 4115.03 to 4115.16 of the Revised Code at a subsequent time does not create a presumption that the subsequent violation was intentional;

(2) The fact that, prior to the commission of the violation, the contractor, subcontractor, or officer of a contractor or subcontractor used reasonable efforts to ascertain the correct interpretation of sections 4115.03 to 4115.16 of the Revised Code from the director or 4115.04 or 4115.131 of the Revised Code, provided that a violation is presumed not to be intentional where a contractor, subcontractor, or officer of a contractor or subcontractor complies with a decision the director or designated representative issues pursuant to a request made under section 4115.131 of the Revised Code.

(H) As used in this section, "intentional violation" means a willful, knowing, or deliberate failure to comply with any provision of sections 4115.03 to 4115.16 of the Revised Code, and includes, but is not limited to, the following actions when conducted in the manner described in this division:

(1) An intentional failure to submit reports as required under division (C) of section 4115.071 of the Revised Code or knowingly submitting false or erroneous reports;

(2) An intentional misclassification of employees for the purpose of reducing wages;



- (3) An intentional misclassification of employees as independent contractors or as apprentices;
- (4) An intentional failure to pay the prevailing wage;
- (5) An intentional failure to comply with the allowable ratio of apprentices to skilled workers as required under section 4115.05 of the Revised Code and by rules adopted by the director pursuant to section 4115.12 of the Revised Code;
- (6) Intentionally allowing an officer of a contractor or subcontractor who is known to be prohibited from contracting directly or indirectly with a public authority for the construction of a public improvement or from performing any work on the same pursuant to section 4115.133 of the Revised Code to perform work on a public improvement.