

# Illinois Supreme Court Upholds Construction Industry Misclassification Statute

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Illinois' highest court upheld that state's six year old statute imposing strict penalties for employee misclassification in the construction industry, the Illinois Employee Classification Act. *Bartlow v. Costigan*, 2014 IL 115152 (Ill. 2014).

In *Bartlow*, Rhonda and Jack Bartlow were partners in a roofing company who contested a finding under the Act made by the **Illinois Department of Labor** that the company misclassified workers as independent contractors. The Department's preliminary determination carried a potential penalty of \$1.6 million. Based on recent amendments to the Act providing new clarity to enforcement procedures, the Illinois Supreme Court rejected the Bartlows' constitutional challenges to the Act, including their assertions that the statute did not provide for procedural due process and was impermissibly vague. The court's opinion was limited to these challenges to the *bona fides* of the statute, not the Department's determination under the statute regarding the Bartlows' purportedly misclassified contractors.

Employers in Illinois and other states that impose industry specific wage-and-hour regulations, such as New York, must be mindful of state law impacting their industry.

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