

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1502 Session of  
2009

INTRODUCED BY GALLOWAY, METCALFE, BELFANTI, GERGELY, BOYLE,  
BEYER, BRENNAN, CARROLL, D. COSTA, FABRIZIO, FRANKEL,  
GOODMAN, HARKINS, HORNAMAN, W. KELLER, LONGIETTI, MARSHALL,  
MENSCH, MOUL, MURT, M. O'BRIEN, RAPP, READSHAW, SABATINA,  
SIPTROTH, M. SMITH, SOLOBAY, VULAKOVICH, WAGNER, WANSACZ,  
WATSON, WHITE, YUDICHAK AND OBERLANDER, JUNE 2, 2009

REFERRED TO COMMITTEE ON LABOR RELATIONS, JUNE 2, 2009

AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated  
2 Statutes, in contracts for public works, providing for  
3 verification of the Social Security numbers of all employees  
4 for purposes of wage reporting and employment eligibility;  
5 prescribing penalties; and establishing good faith immunity  
6 under certain circumstances.

7 The General Assembly of the Commonwealth of Pennsylvania  
8 hereby enacts as follows:

9 Section 1. Chapter 39 of Title 62 of the Pennsylvania  
10 Consolidated Statutes is amended by adding a subchapter to read:

11 SUBCHAPTER F

12 EMPLOYMENT VERIFICATION

13 Sec.

14 3951. Scope of subchapter.

15 3952. Definitions.

16 3953. Verification.

17 3954. Violations.

18 3955. Enforcement and sanctions.

1 3956. Protection from retaliation.

2 3957. Good faith immunity.

3 § 3951. Scope of subchapter.

4 This subchapter relates to verification of employment on  
5 certain public works projects.

6 § 3952. Definitions.

7 The following words and phrases when used in this subchapter  
8 shall have the meanings given to them in this section unless the  
9 context clearly indicates otherwise:

10 "Employee." An individual for whom a public works contractor  
11 is required by law to file a Form W-2 with the Internal Revenue  
12 Service.

13 "EVP." The E-Verify Program operated by the Department of  
14 Homeland Security.

15 "INA." The Immigration and Nationality Act (66 Stat. 163, 8  
16 U.S.C. § 1101 et seq.).

17 "NVS." The Social Security Number Verification Service  
18 operated by the Social Security Administration.

19 "Public work." As defined in section 2 of the act of August  
20 15, 1961 (P.L.987, No.442), known as the Pennsylvania Prevailing  
21 Wage Act.

22 "Public works contractor." A contractor that provides goods  
23 or services under a contract involving a public works project.

24 "Public works project." A project involving a public work.

25 "Secretary." The Secretary of Labor and Industry of the  
26 Commonwealth.

27 "Subcontractor." A person, other than a natural person,  
28 regardless of its tier, including, but not limited to, a  
29 staffing agency, that performs work for a public works  
30 contractor under a contract for a public work.

1 "Willful." Action or conduct undertaken intentionally or  
2 with reckless disregard for or deliberate ignorance of the  
3 requirements and obligations established by this subchapter.  
4 § 3953. Verification.

5 (a) General rule.--As a precondition of being awarded a  
6 contract for a public work, and prior to the execution of the  
7 contract, a public works contractor shall provide the  
8 Commonwealth agency with which the contract will be made a  
9 verification statement in which it shall represent the  
10 following:

11 (1) The public works contractor has verified the Social  
12 Security numbers of all of its then-existing employees for  
13 wage reporting purposes through NVS in accordance with  
14 Federal law governing the use of NVS.

15 (2) The public works contractor will verify the Social  
16 Security number of a new employee for employment eligibility  
17 purposes prior to the commencement of work by the new  
18 employee through EVP in accordance with Federal law governing  
19 the use of EVP.

20 (3) The public works contractor will provide the  
21 Commonwealth agency with the verification statement required  
22 under subsection (b) from each subcontractor it uses or  
23 intends to use on the public works project prior to the  
24 commencement of any work by the subcontractor on the public  
25 works project.

26 (b) Subcontractor verification statements.--Prior to the  
27 execution of a subcontract with a public works contractor, a  
28 subcontractor shall provide the public works contractor with a  
29 verification statement containing substantially the same  
30 information about the subcontractor as required under subsection

1 (a) about the public works contractor. The subcontractor shall  
2 submit the verification statement to the contractor prior to the  
3 commencement of any work by the subcontractor on the public  
4 works project.

5 (c) All verification statements.--The verification statement  
6 required by this section shall be on a form prescribed by the  
7 secretary and shall comply with the following additional  
8 requirements:

9 (1) The statement shall include a certification that the  
10 information in the statement is true and correct and that the  
11 person signing the statement understands that the submission  
12 of false or misleading information in connection with the  
13 verification shall subject the person and the public works  
14 contractor or subcontractor, as the case may be, to sanctions  
15 provided by law.

16 (2) The statement shall be signed by a representative of  
17 the public works contractor or subcontractor, as applicable,  
18 who has sufficient knowledge and authority to make the  
19 representations and certifications contained in the  
20 statement.

21 (d) Discrimination prohibited.--In conducting the Social  
22 Security number verification required by this section, a public  
23 works contractor or its subcontractor shall not discriminate  
24 against any employee on the basis of race, ethnicity, color or  
25 national origin.

26 § 3954. Violations.

27 The following shall constitute a violation of this  
28 subchapter:

29 (1) Employment by a public works contractor or  
30 subcontractor of an employee whose Social Security number has

1 not been verified by the NVS or EVP as required by this  
2 subchapter.

3 (2) Use by a public works contractor of a subcontractor  
4 on a public works project prior to the submission by the  
5 subcontractor of a verification statement required by this  
6 subchapter.

7 (3) Commencement of work by a subcontractor on a public  
8 works project prior to submitting to the public works  
9 contractor a verification statement required by this  
10 subchapter.

11 (4) Making a false statement or misrepresentation in a  
12 verification statement required by this subchapter.

13 § 3955. Enforcement and sanctions.

14 (a) General rule.--The secretary shall enforce the  
15 provisions of this subchapter.

16 (b) Investigation of complaints.--The secretary shall  
17 accept, review and investigate in a timely manner any credible  
18 complaint that a public works contractor or subcontractor has  
19 violated a provision of this subchapter.

20 (c) Audits.--To ensure compliance with the requirements of  
21 this subchapter, the secretary shall conduct complaint-based and  
22 random audits of public works contractors and subcontractors in  
23 this Commonwealth. In conducting such audits, the secretary  
24 shall utilize NVS and EVP to verify the Social Security numbers  
25 of employees for wage reporting purposes and employment  
26 eligibility, as appropriate, in accordance with Federal law  
27 governing the use of NVS and EVP.

28 (d) Sanctions.--The following sanctions shall apply to  
29 violations of section 724A of INA or of this act:

30 (1) A public works contractor or subcontractor that

1 violates section 724A of INA or engages in violations  
2 described in section 3954(1), (2) or (3) (relating to  
3 violations):

4 (i) At the discretion of the secretary, may be  
5 subject to debarment under section 531 (relating to  
6 debarment or suspension) for a period of up to three  
7 years.

8 (ii) At the discretion of the Commonwealth agency  
9 with whom the public works contractor has contracted, may  
10 be subject to termination of the contract by the  
11 Commonwealth agency without recourse against or penalty  
12 to the Commonwealth agency. The right of the Commonwealth  
13 agency to terminate the contract under this subparagraph  
14 may not be waived.

15 (iii) At the discretion of the public works  
16 contractor with whom the subcontractor has contracted,  
17 may be subject to termination of the subcontract by the  
18 public works contractor without recourse against or  
19 penalty to the public works contractor. The right of the  
20 public works contractor to terminate the subcontract  
21 under this subparagraph may not be waived.

22 (2) A public works contractor or subcontractor that  
23 willfully violates section 724A of INA or willfully engages  
24 in violations described in section 3954(1), (2) or (3):

25 (i) Shall be subject to debarment under section 531  
26 for three years.

27 (ii) At the discretion of the Commonwealth agency  
28 with which the public works contractor has contracted,  
29 may be subject to termination of the contract by the  
30 Commonwealth agency without recourse against or penalty

1 to the Commonwealth agency. The right of the Commonwealth  
2 agency to terminate the contract under this subparagraph  
3 may not be waived.

4 (iii) At the discretion of the public works  
5 contractor with whom the subcontractor has contracted,  
6 may be subject to termination of the subcontract by the  
7 public works contractor without recourse against or  
8 penalty to the public works contractor. The right of the  
9 public works contractor to terminate the subcontract  
10 under this subparagraph may not be waived.

11 § 3956. Protection from retaliation.

12 (a) General rule.--It shall be unlawful for a public works  
13 contractor or subcontractor to discharge, threaten or otherwise  
14 retaliate or discriminate against an employee regarding  
15 compensation or other terms or conditions of employment because  
16 the employee:

17 (1) participates in an investigation, hearing or inquiry  
18 held by the secretary or any other governmental authority  
19 under this subchapter; or

20 (2) reports or makes a complaint regarding the violation  
21 of this subchapter to a public works contractor,  
22 subcontractor or governmental authority.

23 (b) Actions.--

24 (1) Any employee who suffers retaliation or  
25 discrimination in violation of this section may bring an  
26 action in a court of common pleas in accordance with  
27 established civil procedures of this Commonwealth.

28 (2) The action must be brought within three years from  
29 the date the employee knew of the retaliation or  
30 discrimination.

1     (c) Relief.--If an employee prevails in an action commenced  
2     under this section, the employee shall be entitled to the  
3     following relief:

4             (1) Reinstatement of the employee, if applicable.

5             (2) Restitution equal to three times the amount of the  
6     employee's wages and fringe benefits calculated from the date  
7     of the violation or discrimination.

8             (3) Reasonable attorney fees and costs of the action.

9             (4) Any other legal and equitable relief as the court  
10     deems appropriate.

11     § 3957. Good faith immunity.

12     A public works contractor or subcontractor that relies in  
13     good faith on NVS and EVP procedures to verify the Social  
14     Security numbers of employees shall be immune from the sanctions  
15     authorized under section 3955 (relating to enforcement and  
16     sanctions) in the event that incorrect information has been  
17     provided to the public works contractor or subcontractor.

18     Section 2. This act shall take effect in 60 days.