

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1502 Session of
2009

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GRUCELA, QUINN, BURNS, SEIP, MURPHY, GEIST, PAYNE, KORTZ,
DEASY, BRIGGS AND SANTARSIERO, JUNE 2, 2009

AS REPORTED FROM COMMITTEE ON LABOR RELATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, DECEMBER 8, 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.

1 3954. Violations.

2 3955. Enforcement and sanctions.

3 3956. Protection from retaliation.

4 3957. Good faith immunity.

5 § 3951. Scope of subchapter.

6 This subchapter relates to verification of employment on
7 certain public works projects.

8 § 3952. Definitions.

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

12 "Employee." An individual for whom a public works contractor
13 OR A SUBCONTRACTOR is required by law to file a Form W-2 with ←
14 the Internal Revenue Service.

15 "EVP." The E-Verify Program operated by the Department of
16 Homeland Security.

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

19 "NVS." The Social Security Number Verification Service
20 operated by the Social Security Administration.

21 "Public work." As defined in section 2 of the act of August
22 15, 1961 (P.L.987, No.442), known as the Pennsylvania Prevailing
23 Wage Act.

24 "Public works contractor." A contractor that provides goods
25 or services under a contract WITH A COMMONWEALTH AGENCY ←
26 involving a public works project.

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

28 "Secretary." The Secretary of Labor and Industry of the
29 Commonwealth.

30 "Subcontractor." A person, ~~other than a natural person,~~ ←

1 regardless of its tier, including, but not limited to, a
2 staffing agency, that performs work for a public works
3 contractor under a contract for a public work.

4 "Willful." Action or conduct undertaken intentionally or
5 with reckless disregard for or deliberate ignorance of the
6 requirements and obligations established by this subchapter.
7 § 3953. Verification.

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

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

18 (2) The public works contractor will verify the Social
19 Security number of a new employee for employment eligibility
20 purposes ~~prior to the commencement of work by~~ WITHIN THREE ←
21 DAYS FOLLOWING THE FIRST DAY OF EMPLOYMENT OF the new
22 employee through EVP in accordance with Federal law governing
23 the use of EVP.

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

30 (b) Subcontractor verification statements.--Prior to the

1 execution of a subcontract with a public works contractor, a
2 subcontractor shall provide the public works contractor with a
3 verification statement containing substantially the same
4 information about the subcontractor as required under subsection
5 (a) about the public works contractor. The subcontractor shall
6 submit the verification statement to the contractor prior to the
7 commencement of any work by the subcontractor on the public
8 works project.

9 (c) All verification statements.--The verification statement
10 required by this section shall be on a form prescribed by the
11 secretary and shall comply with the following additional
12 requirements:

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

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

25 (d) Discrimination prohibited.--In conducting the Social
26 Security number verification required by this section, a public
27 works contractor or ~~its~~ A subcontractor shall not discriminate ←
28 against any employee on the basis of race, ethnicity, color or
29 national origin.

30 (E) APPLICATION.--THE REQUIREMENTS OF THIS SECTION REGARDING ←

1 THE VERIFICATION OF SOCIAL SECURITY NUMBERS SHALL NOT APPLY TO
2 EMPLOYEES WHO ARE AUTHORIZED UNDER FEDERAL LAW TO WORK IN THE
3 UNITED STATES WITHOUT SOCIAL SECURITY NUMBERS.

4 § 3954. Violations.

5 The following shall constitute a violation of this
6 subchapter:

7 (1) Employment by a public works contractor or
8 subcontractor of an employee whose Social Security number has
9 not been verified by the NVS or EVP as required by this
10 subchapter, EXCEPT DURING ANY PERIOD OF TIME IN WHICH THE ←
11 EMPLOYER IS AWAITING RESOLUTION FROM THE FEDERAL GOVERNMENT
12 OF A WAGE REPORTING OR EMPLOYMENT ELIGIBILITY ISSUE OR
13 DISPUTE REGARDING THE EMPLOYEE.

14 (2) Use by a public works contractor of a subcontractor
15 on a public works project prior to the submission by the
16 subcontractor of a verification statement required by this
17 subchapter.

18 (3) Commencement of work by a subcontractor on a public
19 works project prior to submitting to the public works
20 contractor a verification statement required by this
21 subchapter.

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

24 § 3955. Enforcement and sanctions.

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

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

1 (c) Audits.--To ensure compliance with the requirements of
2 this subchapter, the secretary shall conduct complaint-based and
3 random audits of public works contractors and subcontractors in
4 this Commonwealth. In conducting such audits, the secretary
5 shall utilize NVS and EVP to verify the Social Security numbers
6 of employees for wage reporting purposes and employment
7 eligibility, as appropriate, in accordance with Federal law
8 governing the use of NVS and EVP.

9 (d) Sanctions.--The following sanctions shall apply to
10 violations of section ~~724A~~ of INA 274A OF THE INA (8 U.S.C. § ←
11 1324A) or of this act:

12 (1) A public works contractor or subcontractor that
13 violates section ~~724A~~ 274A of INA or engages in violations ←
14 described in section 3954(1), (2) or (3) (relating to
15 violations):

16 (i) ~~At~~ FOR A SECOND VIOLATION, AT the discretion of ←
17 the secretary, may be subject to debarment under section
18 531 (relating to debarment or suspension) for a period of
19 up to ~~three years~~ 90 DAYS. FOR A SUBSEQUENT VIOLATION, AT ←
20 THE DISCRETION OF THE SECRETARY, MAY BE SUBJECT TO
21 DEBARMENT UNDER SECTION 531 FOR A PERIOD OF UP TO THREE
22 YEARS.

23 (ii) At the discretion of the Commonwealth agency
24 with whom the public works contractor has contracted, may
25 be subject to termination of the contract by the
26 Commonwealth agency without recourse against or penalty
27 to the Commonwealth agency. The right of the Commonwealth
28 agency to terminate the contract under this subparagraph
29 may not be waived.

30 (iii) At the discretion of the public works

1 contractor with whom the subcontractor has contracted,
2 may be subject to termination of the subcontract by the
3 public works contractor without recourse against or
4 penalty to the public works contractor. The right of the
5 public works contractor to terminate the subcontract
6 under this subparagraph may not be waived.

7 (2) A public works contractor or subcontractor that
8 willfully violates section ~~724A~~ 274A of INA or willfully ←
9 engages in violations described in section 3954(1), (2) or
10 (3):

11 (i) Shall be subject to debarment under section 531
12 for three years.

13 (ii) At the discretion of the Commonwealth agency
14 with which the public works contractor has contracted,
15 may be subject to termination of the contract by the
16 Commonwealth agency without recourse against or penalty
17 to the Commonwealth agency. The right of the Commonwealth
18 agency to terminate the contract under this subparagraph
19 may not be waived.

20 (iii) At the discretion of the public works
21 contractor with whom the subcontractor has contracted,
22 may be subject to termination of the subcontract by the
23 public works contractor without recourse against or
24 penalty to the public works contractor. The right of the
25 public works contractor to terminate the subcontract
26 under this subparagraph may not be waived.

27 § 3956. Protection from retaliation.

28 (a) General rule.--It shall be unlawful for a public works
29 contractor or subcontractor to discharge, threaten or otherwise
30 retaliate or discriminate against an employee regarding

compensation or other terms or conditions of employment because
the employee:

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

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

(b) Actions.--

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

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

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

(1) Reinstatement of the employee, if applicable.

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

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

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

§ 3957. Good faith immunity.

A public works contractor or subcontractor that relies in
good faith on NVS and EVP procedures to verify the Social
Security numbers of employees shall be immune from the sanctions

1 authorized under section 3955 (relating to enforcement and
2 sanctions) AND SHALL HAVE NO LIABILITY TO AN INDIVIDUAL WHO IS ←
3 NOT HIRED OR IS DISCHARGED FROM EMPLOYMENT in the event that
4 incorrect information has been provided to the public works
5 contractor or subcontractor.

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