

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL**No. 380** Session of
2011

INTRODUCED BY GALLOWAY, METCALFE, BARBIN, BARRAR, B. BOYLE,
BRENNAN, BURNS, BUXTON, CARROLL, CUTLER, DAVIS, DEASY,
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PERRY, KNOWLES, GOODMAN, D. COSTA, MATZIE, K. SMITH,
KAVULICH, DAY, SCHRODER, MURT, DeLUCA, FARRY AND M. SMITH,
FEBRUARY 1, 2011

AS REPORTED FROM COMMITTEE ON LABOR AND INDUSTRY, HOUSE OF
REPRESENTATIVES, AS AMENDED, JUNE 20, 2012

AN ACT

1 Requiring construction industry employers to verify the Social
2 Security numbers of all employees for purposes of wage
3 reporting and employment eligibility; providing for the
4 powers and duties of the Department of Labor and Industry;
5 prescribing sanctions; 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. Short title.

10 This act shall be known and may be cited as the Construction
11 Industry Employment Verification Act.

12 Section 2. Definitions.

13 The following words and phrases when used in this act shall
14 have the meanings given to them in this section unless the
15 context clearly states otherwise:

1 "Construction." Erection, reconstruction, demolition,
2 alteration, modification, custom fabrication, building,
3 assembling, site preparation and repair work or maintenance work
4 done on any real property or premises under contract, ~~whether or~~ ←
5 ~~not the work is for a public body or paid for from public funds.~~

6 "Construction industry employer." An individual,
7 partnership, association, joint stock company, corporation,
8 business trust or any other business entity, person or group of
9 persons that acts directly or indirectly to employ persons to
10 provide or perform services in the construction industry for
11 remuneration.

12 "DEPARTMENT." THE DEPARTMENT OF LABOR AND INDUSTRY OF THE ←
13 COMMONWEALTH.

14 "Employee." An individual for whom a construction industry
15 employer is required by law to file a Form W-2 with the Internal
16 Revenue Service.

17 "EVP." The E-Verify Program operated by the Department of
18 Homeland Security.

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

21 "NVS." The Social Security Number Verification Service
22 operated by the Social Security Administration.

23 "PUBLIC WORK." AS DEFINED UNDER SECTION 2 OF THE ACT OF ←
24 AUGUST 15, 1961 (P.L.987, NO.442), KNOWN AS THE PENNSYLVANIA
25 PREVAILING WAGE ACT.

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

28 "Willful." Action or conduct undertaken intentionally or
29 with reckless disregard for or deliberate ignorance of the
30 requirements and obligations established by this act.

1 Section 3. Verification.

2 (a) Duty of construction industry employers.--

3 (1) Except as set forth in paragraph (2), a construction
4 industry employer ON A PUBLIC WORK shall participate in NVS ←
5 and EVP and shall do the following, subject to the
6 requirements of Federal law governing the use of NVS and EVP:

7 (i) within 60 days following the effective date of
8 this section, use NVS to verify, for wage reporting
9 purposes, the Social Security numbers of its employees in
10 existence on the effective date of this section; and ←

11 (ii) within three days following the first day of
12 employment of a new employee, use EVP to verify for
13 employment eligibility purposes the Social Security
14 number of the new employee; AND ←

15 (III) AS A PRECONDITION OF BEING AWARDED A CONTRACT
16 FOR PUBLIC WORK AND PRIOR TO EXECUTION OF THE CONTRACT,
17 USE NVS TO VERIFY, FOR WAGE REPORTING PURPOSES, THE
18 SOCIAL SECURITY NUMBERS OF ITS EMPLOYEES AND SHALL WITHIN
19 THREE DAYS FOLLOWING THE FIRST DAY OF EMPLOYMENT OF A NEW
20 EMPLOYEE, USE EVP TO VERIFY FOR EMPLOYMENT ELIGIBILITY
21 PURPOSES THE SOCIAL SECURITY NUMBER OF THE NEW EMPLOYEE.

22 (2) This subsection does not apply to an employee who is
23 authorized to work under Federal law in the United States
24 without a Social Security number.

25 ~~(b) Verification statements. A construction industry ←~~
26 ~~employer shall submit a verification statement annually to the~~
27 ~~Department of Revenue with its State income tax return. The~~
28 ~~statement shall be on a form prescribed by the Department of~~
29 ~~Revenue and shall comply with the following requirements:~~

30 ~~(1) The statement shall represent that the construction~~

1 ~~industry employer has verified the Social Security numbers of~~
2 ~~its employees through NVS or EVP, as appropriate, as required~~
3 ~~by subsection (a).~~

4 ~~(2) The statement shall include a certification that the~~
5 ~~information in the statement is true and correct and that the~~
6 ~~person signing the statement understands that the submission~~
7 ~~of false or misleading information in connection with the~~
8 ~~verification shall subject the person and the construction~~
9 ~~industry employer to sanctions provided by law.~~

10 ~~(3) The statement shall be signed by a representative of~~
11 ~~the construction industry employer who has sufficient~~
12 ~~knowledge and authority to make the representation and~~
13 ~~certifications contained in the statement.~~

14 (3) THIS SUBSECTION APPLIES ONLY TO THOSE EMPLOYEES THAT ←
15 A CONSTRUCTION INDUSTRY EMPLOYER UTILIZES ON A PUBLIC WORK.

16 (B) (RESERVED).

17 (c) Discrimination prohibited.--In conducting the Social
18 Security number verification required by this section, a
19 construction industry employer shall not discriminate against an
20 employee on the basis of race, ethnicity, color or national
21 origin.

22 Section 4. Violations.

23 It is a violation of this act for a construction industry
24 employer ON A PUBLIC WORK to: ←

25 (1) Employ an employee whose Social Security number has
26 not been verified by NVS or EVP as required by this act
27 except during a period of time in which the employer is
28 awaiting resolution by the Federal Government of a wage
29 reporting or employment eligibility issue or dispute
30 regarding the employee.

1 (2) Make a false statement or misrepresentation in a
2 ~~verification statement required by~~ STATEMENT MADE TO THE ←
3 DEPARTMENT IN ITS ENFORCEMENT OF this act.

4 Section 5. Enforcement and sanctions.

5 (a) General rule.--The ~~secretary~~ DEPARTMENT shall enforce ←
6 the provisions of this act. THE DEPARTMENT MAY ESTABLISH THROUGH ←
7 REGULATION A PROCESS THAT ENSURES THAT CONSTRUCTION INDUSTRY
8 EMPLOYERS ARE NOTIFIED OF THE REQUIREMENTS OF THIS ACT.

9 (b) Investigation of complaints.--The ~~secretary~~ DEPARTMENT ←
10 shall accept, review and investigate in a timely manner any
11 credible complaint that a construction industry employer has
12 violated a provision of this act.

13 (c) Audits.--To ensure compliance with the requirements of
14 this act, the ~~secretary~~ DEPARTMENT shall conduct complaint-based ←
15 and random audits of construction industry employers in this
16 Commonwealth. In conducting such audits, the ~~secretary~~ ←
17 DEPARTMENT shall utilize NVS and EVP to verify the Social ←
18 Security numbers for wage reporting purposes and employment
19 eligibility of employees in accordance with Federal law
20 governing the use of those systems.

21 (d) Sanctions.--The following sanctions shall apply to a
22 violation of section 274A of the INA (8 U.S.C. § 1324a) or ~~of~~ ←
23 ~~this act:~~

24 ~~(1) A construction industry employer that violates~~
25 SECTION 4(1) OF THIS ACT: ←

26 (1) A CONSTRUCTION INDUSTRY EMPLOYER SHALL RECEIVE A
27 WARNING LETTER FROM THE DEPARTMENT DETAILING THE VIOLATION
28 FOR A FIRST OFFENSE.

29 (2) A CONSTRUCTION INDUSTRY EMPLOYER THAT VIOLATES
30 section 274A of the INA or engages in the violation described

1 in section 4(1) may be ~~required, at the discretion of the~~ ←
2 ~~secretary, to forfeit all licenses or certifications issued~~
3 ~~by the Commonwealth that authorize the construction industry~~
4 ~~employer to conduct business in this Commonwealth, including~~
5 ~~corporate articles and franchises for a period of up to 90~~
6 ~~days for a second violation and for a period of up to three~~
7 ~~years for a subsequent violation.~~

8 ~~(2) A construction industry employer that willfully~~
9 DEBARRED FROM PUBLIC WORK, AT THE DISCRETION OF THE ←
10 SECRETARY, FOR 30 DAYS FOR A SECOND VIOLATION AND NOT LESS
11 THAN 180 DAYS, BUT UP TO ONE YEAR FOR A SUBSEQUENT VIOLATION.

12 (3) A CONSTRUCTION INDUSTRY EMPLOYER THAT WILLFULLY
13 violates section 274A of the INA or willfully engages in the
14 violation described in section 4(1) shall be ~~required to~~ ←
15 ~~forfeit all licenses or certifications issued by the~~
16 ~~Commonwealth that authorize the construction industry~~
17 ~~employer to conduct business in this Commonwealth, including~~
18 ~~corporate articles and franchises, for a period of 3 years.~~

19 ~~(3) The Office of Attorney General shall have the same~~
20 ~~authority to revoke corporate articles and franchises under~~
21 ~~this act as it has under 15 Pa.C.S. § 503 (relating to~~
22 ~~actions to revoke corporate franchises).~~ DEBARRED FROM PUBLIC ←
23 WORK FOR A PERIOD OF THREE YEARS.

24 (4) A CONSTRUCTION INDUSTRY EMPLOYER THAT VIOLATES
25 SECTION 4(2) IS SUBJECT TO AN ADMINISTRATIVE PENALTY OF UP TO
26 \$2,000 FOR EACH VIOLATION.

27 (e) Notice and appeal.--Actions taken under subsection (d)
28 shall be subject to the notice, appeal and other provisions of 2
29 Pa.C.S. (relating to administrative law and procedure).

30 Section 6. Protection from retaliation.

1 (a) General Rule.--It shall be unlawful for a construction
2 industry employer to discharge, threaten or otherwise retaliate
3 or discriminate against an employee regarding compensation or
4 other terms or conditions of employment because the employee:

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

8 (2) reports or makes a complaint regarding the violation
9 of this act to a construction industry employer or
10 governmental authority.

11 (b) Actions.--

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

16 (2) The action must be brought within ~~three years~~ 180 ←
17 DAYS from the date the employee knew of the retaliation or
18 discrimination.

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

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

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

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

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

29 Section 7. Good faith immunity.

30 A construction industry employer that relies in good faith on

1 NVS and EVP procedures to verify the Social Security number of
2 employees shall be immune from the sanctions authorized under
3 section 5 and shall have no liability to an individual who is
4 not hired or who is discharged from employment in the event that
5 incorrect information has been provided to the construction
6 industry employer. A CONSTRUCTION INDUSTRY EMPLOYER THAT CAN ←
7 PRODUCE WRITTEN ACKNOWLEDGMENT PROVIDED BY AN APPLICABLE FEDERAL
8 AGENCY OF USE OF EVP OR OF NVS IS CONSIDERED TO HAVE ACTED IN
9 GOOD FAITH.

10 Section 20. Effective date. ←

11 This act shall take effect ~~July 1, 2011~~ JANUARY 1, 2013. ←