
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2202 Session of
2008

INTRODUCED BY GALLOWAY, BELFANTI, CALTAGIRONE, CREIGHTON,
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YUDICHAK, CARROLL, TRUE, J. WHITE, EVERETT AND MOYER,
SEPTEMBER 18, 2008

REFERRED TO COMMITTEE ON LABOR RELATIONS, SEPTEMBER 18, 2008

AN ACT

1 Providing for prohibitions on employing unauthorized aliens and
2 for penalties and enforcement.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Legal
7 Pennsylvania Workers Act.

8 Section 2. Definitions.

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

12 "Contract." All types of government entity agreements,
13 regardless of what they may be called, for the procurement of
14 services in this Commonwealth.

15 "Contractor." Any person who has a contract with a
16 government entity.

1 "Economic development incentive." Any grant, loan or
2 performance-based incentive from any government entity that is
3 awarded after December 31, 2008.

4 "Employ." Hiring an employee after December 31, 2008.

5 "Employee." Any person who provides services or labor for an
6 employer in this Commonwealth for wages or other remuneration.
7 The term does not include an independent contractor.

8 "Employer." Any individual or type of organization that
9 transacts business in this Commonwealth, that has a license and
10 employs one or more employees in this Commonwealth. In the case
11 of an independent contractor, the term means the independent
12 contractor and does not mean the person or organization that
13 uses the contract labor. The term includes:

14 (1) The Commonwealth.

15 (2) Any political subdivision of the Commonwealth.

16 (3) Self-employed persons.

17 (4) The owner of real property on which is to be erected
18 one or more buildings, regardless of type, whether or not the
19 owner has one or more employees or entities with which the
20 owner has contracted in relation to the real property.

21 "E-Verify program." The employment eligibility verification
22 pilot program as jointly administered by the Department of
23 Homeland Security and the Social Security Administration or any
24 of its successor programs.

25 "Government entity." The Commonwealth or any of its
26 political subdivisions. The term includes any agency, authority,
27 board or commission of the Commonwealth or any of its political
28 subdivisions.

29 "Independent contractor." Any individual or entity that
30 carries on an independent business, that contracts to do a piece

1 of work according to the individual's or entity's own means and
2 methods and that is subject to control only as to results.

3 Whether an individual or entity is an independent contractor is
4 determined on a case-by-case basis through various factors,
5 including whether the individual or entity:

6 (1) Supplies the tools or materials.

7 (2) Makes services available to the general public.

8 (3) Works or may work for a number of clients at the
9 same time.

10 (4) Has an opportunity for profit or loss as a result of
11 labor or service provided.

12 (5) Invests in the facilities for work.

13 (6) Directs the order or sequence in which the work is
14 completed.

15 (7) Determines the hours when the work is completed.

16 "License." Any license, registration, permit or certificate
17 granted or provided by a government entity.

18 "Services." The furnishing of labor, time or effort in this
19 Commonwealth by a contractor or subcontractor. The term includes
20 construction or maintenance of any structure, building or
21 transportation facility or improvement of real property.

22 "Subcontractor." A person who contracts to perform work or
23 render service to a contractor or to another subcontractor as a
24 part of a contract with a government entity.

25 "Unauthorized alien." An alien who does not have the legal
26 right or authorization under Federal law to work in the United
27 States as described in section 274A(h)(3) of the Immigration and
28 Nationality Act (66 Stat. 163, 8 U.S.C. §1324a(h)(3)).

29 Section 3. Knowingly employing unauthorized aliens prohibited.

30 An employer shall not knowingly employ an unauthorized alien.

1 If, in the case when an employer uses a contract, subcontract or
2 other independent contractor agreement to obtain the labor of an
3 alien in this Commonwealth, the employer knowingly contracts
4 with an unauthorized alien or with a person who employs or
5 contracts with an unauthorized alien to perform the labor, the
6 employer violates this section.

7 Section 4. Intentionally employing unauthorized aliens
8 prohibited.

9 An employer shall not intentionally employ an unauthorized
10 alien. If, in the case when an employer uses a contract,
11 subcontract or other independent contractor agreement to obtain
12 the labor of an alien in this Commonwealth, the employer
13 intentionally contracts with an unauthorized alien or with a
14 person who employs or contracts with an unauthorized alien to
15 perform the labor, the employer violates this section.

16 Section 5. Complaints.

17 (a) Form.--The attorney general shall prescribe a complaint
18 form for a person to allege a violation of section 3 or 4. The
19 complainant shall not be required to list the complainant's
20 Social Security number on the complaint form or to have the
21 complaint form notarized. On receipt of a complaint on a
22 prescribed complaint form that an employer allegedly knowingly
23 or intentionally employs an unauthorized alien, the Attorney
24 General or district attorney shall investigate whether the
25 employer has violated section 3 or 4. If a complaint is received
26 but is not submitted on a prescribed complaint form, the
27 Attorney General or district attorney may investigate whether
28 the employer has violated section 3 or 4. This subsection shall
29 not be construed to prohibit the filing of anonymous complaints
30 that are not submitted on a prescribed complaint form. The

1 Attorney General or district attorney shall not investigate
2 complaints that are based solely on race, color or national
3 origin. A complaint that is submitted to a district attorney
4 shall be submitted to the district attorney in the county in
5 which the alleged unauthorized alien is or was employed by the
6 employer. The county sheriff or any other local law enforcement
7 agency may assist in investigating a complaint. When
8 investigating a complaint, the Attorney General or district
9 attorney shall verify the work authorization of the alleged
10 unauthorized alien with the Federal Government pursuant to
11 section 642(c) of the Omnibus Consolidated Appropriations Act
12 for Fiscal Year 1997 (Public Law 104-208, 8 U.S.C. § 1373(c)). A
13 State or local official shall not attempt to independently make
14 a final determination on whether an alien is authorized to work
15 in the United States. An alien's immigration status or work
16 authorization status shall be verified with the Federal
17 Government pursuant to section 642(c) of the Omnibus
18 Consolidated Appropriations Act for Fiscal Year 1997.

19 (b) Penalty.--A person who knowingly files a false and
20 frivolous complaint under this section commits a misdemeanor of
21 the third degree.

22 Section 6. Determination.

23 If, after an investigation, the Attorney General or district
24 attorney determines that a complaint is not false and frivolous:

25 (1) The Attorney General or district attorney shall
26 notify the United States immigration and customs enforcement
27 of the unauthorized alien.

28 (2) The Attorney General or district attorney shall
29 notify the local law enforcement agency of the unauthorized
30 alien.

1 (3) The Attorney General shall notify the appropriate
2 district attorney to bring an action pursuant to section 7 if
3 the complaint was originally filed with the Attorney General.
4 Section 7. Action against employer.

5 An action for a violation of section 3 or 4 shall be brought
6 against the employer by the district attorney in the county
7 where the unauthorized alien employee is or was employed by the
8 employer. The district attorney shall not bring an action
9 against any employer for any violation of section 3 or 4 that
10 occurs before January 1, 2009. A second violation of section 3
11 or 4 shall be based only on an unauthorized alien who is or was
12 employed by the employer after an action has been brought for a
13 violation of section 3 or 4.

14 Section 8. Court action.

15 (a) First violation.--For a first violation of section 3 or
16 4 as described in section 9, the court shall:

17 (1) Order the employer to terminate the employment of
18 all unauthorized aliens.

19 (2) Order the employer to be subject to a three-year
20 probationary period for the business location where the
21 unauthorized alien performed work for a violation of section
22 3 or a five-year probationary period for the business
23 location where the unauthorized alien performed work for a
24 violation of section 4. During the probationary period, the
25 employer shall file quarterly reports with the district
26 attorney of each new employee who is hired by the employer at
27 the business location where the unauthorized alien performed
28 work.

29 (b) Knowing violation.--For a first violation of section 3,
30 the court:

1 (1) Shall order the employer to file a signed sworn
2 affidavit with the district attorney within three business
3 days after the order is issued. The affidavit shall state
4 that the employer has terminated the employment of all
5 unauthorized aliens in this Commonwealth and that the
6 employer will not intentionally or knowingly employ an
7 unauthorized alien in this Commonwealth. The court shall
8 order the appropriate agencies to suspend all licenses that
9 are held by the employer if the employer fails to file a
10 signed sworn affidavit with the district attorney within
11 three business days after the order is issued. All licenses
12 that are suspended under this subsection shall remain
13 suspended until the employer files a signed sworn affidavit
14 with the district attorney. Notwithstanding any other law, on
15 filing of the affidavit, the suspended licenses shall be
16 reinstated immediately by the appropriate agencies. For the
17 purposes of this subsection, the licenses that are subject to
18 suspension under this subsection are all licenses that are
19 held by the employer specific to the business location where
20 the unauthorized alien performed work. If the employer does
21 not hold a license specific to the business location where
22 the unauthorized alien performed work, but a license is
23 necessary to operate the employer's business in general, the
24 licenses that are subject to suspension under this subsection
25 are all licenses that are held by the employer at the
26 employer's primary place of business. On receipt of the
27 court's order and notwithstanding any other law, the
28 appropriate agencies shall suspend the licenses according to
29 the court's order. The court shall send a copy of the court's
30 order to the Attorney General, and the Attorney General shall

1 maintain the copy pursuant to section 10.

2 (2) May order the appropriate agencies to suspend all
3 licenses described in paragraph (1) that are held by the
4 employer for a period of time not to exceed ten business
5 days. The court shall base its decision to suspend under this
6 paragraph on any evidence or information submitted to it
7 during the action for a violation of section 3 and shall
8 consider the following factors, if relevant:

9 (i) The number of unauthorized aliens employed by
10 the employer.

11 (ii) Any prior misconduct by the employer.

12 (iii) The degree of harm resulting from the
13 violation.

14 (iv) Whether the employer made good faith efforts to
15 comply with any applicable requirements.

16 (v) The duration of the violation.

17 (vi) The role of the directors, officers or
18 principals of the employer in the violation.

19 (vii) Any other factors the court deems appropriate.

20 (c) Second violation.--For a second violation of section 3
21 or 4, as described in section 9, the court shall order the
22 appropriate agencies to permanently revoke all licenses that are
23 held by the employer specific to the business location where the
24 unauthorized alien performed work. If the employer does not hold
25 a license specific to the business location where the
26 unauthorized alien performed work, but a license is necessary to
27 operate the employer's business in general, the court shall
28 order the appropriate agencies to permanently revoke all
29 licenses that are held by the employer at the employer's primary
30 place of business. On receipt of the order and notwithstanding

1 any other law, the appropriate agencies shall immediately revoke
2 the licenses.

3 (d) Intentional violation.--For a first violation of section
4 4, the court shall:

5 (1) Order the appropriate agencies to suspend all
6 licenses described in paragraph (2) that are held by the
7 employer for a minimum of ten days. The court shall base its
8 decision on the length of the suspension under this paragraph
9 on any evidence or information submitted to it during the
10 action for a violation of section 4 and shall consider the
11 following factors, if relevant:

12 (i) The number of unauthorized aliens employed by
13 the employer.

14 (ii) Any prior misconduct by the employer.

15 (iii) The degree of harm resulting from the
16 violation.

17 (iv) Whether the employer made good faith efforts to
18 comply with any applicable requirements.

19 (v) The duration of the violation.

20 (vi) The role of the directors, officers or
21 principals of the employer in the violation.

22 (vii) Any other factors the court deems appropriate.

23 (2) Order the employer to file a signed sworn affidavit
24 with the district attorney. The affidavit shall state that
25 the employer has terminated the employment of all
26 unauthorized aliens in this Commonwealth and that the
27 employer will not intentionally or knowingly employ an
28 unauthorized alien in this Commonwealth. The court shall
29 order the appropriate agencies to suspend all licenses that
30 are held by the employer if the employer fails to file a

1 signed sworn affidavit with the district attorney within
2 three business days after the order is issued. All licenses
3 that are suspended under this subsection for failing to file
4 a signed sworn affidavit shall remain suspended until the
5 employer files a signed sworn affidavit with the district
6 attorney. For the purposes of this subsection, the licenses
7 that are subject to suspension under this subsection are all
8 licenses that are held by the employer specific to the
9 business location where the unauthorized alien performed
10 work. If the employer does not hold a license specific to the
11 business location where the unauthorized alien performed
12 work, but a license is necessary to operate the employer's
13 business in general, the licenses that are subject to
14 suspension under this subsection are all licenses that are
15 held by the employer at the employer's primary place of
16 business. On receipt of the court's order and notwithstanding
17 any other law, the appropriate agencies shall suspend the
18 licenses according to the court's order. The court shall send
19 a copy of the court's order to the Attorney General, and the
20 Attorney General shall maintain the copy pursuant to section
21 10.

22 Section 9. Determination of violation.

23 The violation shall be considered:

24 (1) A first violation by an employer at a business
25 location if the violation did not occur during a probationary
26 period ordered by the court under this act for that
27 employer's business location.

28 (2) A second violation by an employer at a business
29 location if the violation occurred during a probationary
30 period ordered by the court under this act for that

1 employer's business location.

2 Section 10. Database.

3 The Attorney General shall maintain copies of court orders
4 that are received pursuant to section 8 and shall maintain a
5 database of the employers and business locations that have a
6 first violation of section 3 or 4 and make the court orders
7 available on the Attorney General's Internet website.

8 Section 11. Determination of unauthorized alien status.

9 On determining whether an employee is an unauthorized alien,
10 the court shall consider only the Federal Government's
11 determination pursuant to section 642(c) of the Omnibus
12 Consolidated Appropriations Act for Fiscal Year 1997 (Public Law
13 104-208, 8 U.S.C. § 1373(c)). The Federal Government's
14 determination creates a rebuttable presumption of the employee's
15 lawful status. The court may take judicial notice of the Federal
16 Government's determination and may request the Federal
17 Government to provide automated or testimonial verification
18 pursuant to section 642(c) of the Omnibus Consolidated
19 Appropriations Act for Fiscal Year 1997.

20 Section 12. Proof.

21 For the purposes of this act, proof of verifying the
22 employment authorization of an employee through the E-Verify
23 program creates a rebuttable presumption that an employer did
24 not knowingly employ an unauthorized alien.

25 Section 13. Affirmative defense.

26 For the purposes of this act, an employer that establishes
27 that it has complied in good faith with the requirements of
28 274A(b) of the Immigration and Nationality Act (66 Stat. 163, 8
29 U.S.C. § 1324a(b)) establishes an affirmative defense that the
30 employer did not knowingly or intentionally employ an

1 unauthorized alien. An employer is considered to have complied
2 with the requirements of section 274A(b) of the Immigration and
3 Nationality Act, notwithstanding an isolated, sporadic or
4 accidental technical or procedural failure to meet the
5 requirements, if there is a good faith attempt to comply with
6 the requirements.

7 Section 14. Verification of employment eligibility.

8 (a) Requirement.--After December 31, 2008, every employer,
9 after hiring an employee, shall verify the employment
10 eligibility of the employee through the E-Verify program.

11 (b) Registration.--In addition to any other requirement for
12 an employer to receive an economic development incentive from a
13 government entity, the employer shall register with and
14 participate in the E-Verify program. Before receiving the
15 economic development incentive, the employer shall provide proof
16 to the government entity that the employer is registered with
17 and is participating in the E-Verify program. If the government
18 entity determines that the employer is not complying with this
19 subsection, the government entity shall notify the employer by
20 certified mail of the government entity's determination of
21 noncompliance and the employer's right to appeal the
22 determination. On a final determination of noncompliance, the
23 employer shall repay all moneys received as an economic
24 development incentive to the government entity within 30 days of
25 the final determination.

26 (c) List.--Every three months, the Attorney General shall
27 request from the Department of Homeland Security a list of
28 employers from this Commonwealth that are registered with the E-
29 Verify program. On receipt of the list of employers, the
30 Attorney General shall make the list available on the Attorney

1 General's Internet website.

2 Section 15. Government procurement.

3 (a) Contracts.--After December 31, 2008, a government entity
4 shall not award a contract to any contractor or subcontractor
5 that fails to comply with section 14(a). Every government entity
6 shall ensure that every government entity contractor and
7 subcontractor complies with the Federal immigration laws and
8 regulations that relate to their employees and section 14(a).
9 Every government entity shall require that every government
10 entity contract include all of the following provisions:

11 (1) That each contractor and subcontractor warrants
12 their compliance with all Federal immigration laws and
13 regulations that relate to their employees and their
14 compliance with section 14(a).

15 (2) That a breach of a warranty under paragraph (1)
16 shall be deemed a material breach of the contract that is
17 subject to penalties up to and including termination of the
18 contract.

19 (3) That the government entity retains the legal right
20 to inspect the papers of any contractor or subcontractor
21 employee who works on the contract to ensure that the
22 contractor or subcontractor is complying with the warranty
23 under paragraph (1).

24 (b) Verification.--Every government entity that enters into
25 a contract shall establish procedures to conduct random
26 verification of the employment records of government entity
27 contractors and subcontractors to ensure that the contractors
28 and subcontractors are complying with their warranties.

29 (c) Compliance with Federal law.--A government entity shall
30 not deem a government entity contractor or subcontractor in

1 material breach of a contract if the contractor or subcontractor
2 establishes that it has complied with the employment
3 verification provisions prescribed by sections 274A and 274B of
4 the Immigration and Nationality Act (66 Stat. 163, 8 U.S.C. §
5 1324a and 1324b) and the E-Verify requirements prescribed by
6 section 14(a).

7 Section 16. Effective date.

8 This act shall take effect in 60 days.