
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1170 Session of
2019

INTRODUCED BY MACKENZIE, GALLOWAY, BARRAR, T. DAVIS, KEEFER,
MILLARD, NEILSON AND READSHAW, APRIL 9, 2019

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, APRIL 9, 2019

AN ACT

1 Prohibiting the employment of unauthorized employees; requiring
2 construction industry employers to verify the Social Security
3 numbers of employees; and imposing penalties.

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

6 Section 1. Short title.

7 This act shall be known and may be cited as the Construction
8 Industry Employee Verification Act.

9 Section 2. Definitions.

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

13 "Agency." An agency, department, board or commission of the
14 Commonwealth or of a municipality that issues a license for
15 purposes of operating a business in this Commonwealth.

16 "Construction industry." The industry which engages in the
17 erection, reconstruction, demolition, alteration, modification,
18 custom fabrication, building, assembling, site preparation and

1 repair work or maintenance work done on real property or
2 premises under a contract, including work for a public body or
3 work paid for from public funds.

4 "Construction industry employer." An individual, entity or
5 organization that transacts business in this Commonwealth in the
6 construction industry, has a license issued by an agency and
7 employs at least one employee in this Commonwealth.

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

11 "Employer." A construction industry employer.

12 "E-Verify program." The Internet-based program administered
13 by the United States Department of Homeland Security and the
14 United States Social Security Administration which allows
15 employers to verify an employee's work-authorization status. The
16 term includes any successor program.

17 "License." A permit, certificate, approval, registration,
18 charter or similar form of authorization that is required by law
19 and issued by an agency for the purposes of operating a business
20 in this Commonwealth. The term includes articles of
21 incorporation and partnership registrations. The term does not
22 include a professional or occupational license or certificate
23 granted to an individual to engage in a profession or trade.

24 "Unauthorized employee." An individual who does not have the
25 legal right or authorization under Federal law to work in the
26 United States.

27 Section 3. Prohibited employment.

28 (a) Prohibition.--An employer may not knowingly employ an
29 unauthorized employee.

30 (b) Verification.--On and after the effective date of this

1 section, each employer who hires an employee shall verify the
2 employment eligibility of the employee through the E-Verify
3 program and shall keep a record of the verification for the
4 duration of the employee's employment or three years, whichever
5 is longer.

6 Section 4. Procedures, presumptions and defenses.

7 (a) Form.--The Attorney General shall prescribe a complaint
8 form for an individual to allege a violation of section 3(a). An
9 individual who knowingly provides materially false information
10 in a complaint form under this subsection shall be subject to
11 punishment under 18 Pa.C.S. § 4904 (relating to unsworn
12 falsification to authorities).

13 (b) Duty to investigate.--Upon receipt of a complaint on a
14 prescribed complaint form alleging that an employer knowingly
15 employs an unauthorized employee, the Attorney General shall
16 investigate whether the employer has violated section 3(a).

17 (c) Authority to investigate.--The Attorney General may
18 investigate a complaint that is not submitted on a prescribed
19 complaint form, including an anonymous complaint.

20 (d) Prohibition.--The Attorney General may not investigate a
21 complaint that is based solely on race, color or national
22 origin.

23 (e) Verification.--If investigating a complaint, the
24 Attorney General shall verify the work authorization of the
25 alleged unauthorized employee with the Federal Government under
26 section 642(c) of the Illegal Immigration Reform and Immigrant
27 Responsibility Act of 1996 (Public Law 104-208, 8 U.S.C. §
28 1373(c)). A Commonwealth or local official may not attempt to
29 independently make a final determination on whether an
30 unauthorized employee is authorized to work in the United

1 States.

2 (f) Notification and action.--If, after an investigation,
3 the Attorney General determines that the alleged employee is an
4 unauthorized employee, the Attorney General shall do all of the
5 following:

6 (1) Notify United States Immigration and Customs
7 Enforcement of the unauthorized employee.

8 (2) Bring an action against the employer in the county
9 where the unauthorized employee is or was employed by the
10 employer. The Attorney General shall not bring an action
11 against an employer for a violation that occurred before the
12 effective date of this section.

13 (g) Expedited action.--Upon docketing, the court shall
14 expedite the action, including assigning the hearing at the
15 earliest practicable date.

16 (h) Determination.--In determining whether an employee is an
17 unauthorized employee, the court shall consider only the Federal
18 Government's determination under section 642(c) of the Illegal
19 Immigration Reform and Immigrant Responsibility Act of 1996. The
20 Federal Government's determination shall create a rebuttable
21 presumption of the employee's status. The court may take
22 judicial notice of the Federal Government's determination and
23 may request the Federal Government to provide automated or
24 testimonial verification under section 642(c) of the Illegal
25 Immigration Reform and Immigrant Responsibility Act of 1996.

26 (i) Rebuttable presumption.--Proof that the employer
27 verified the employment authorization of an employee through the
28 E-Verify program shall create a rebuttable presumption that an
29 employer did not knowingly employ an unauthorized employee.

30 (j) Affirmative defense.--For the purposes of this section,

1 it shall be an affirmative defense if the employer demonstrates
2 that it has complied in good faith with section 274A(b) of the
3 Immigration and Nationality Act (66 Stat. 163, 8 U.S.C. §
4 1324a(b)). An employer shall be considered to have complied with
5 section 274A(b) of the Immigration and Nationality Act,
6 notwithstanding an isolated, sporadic or accidental technical or
7 procedural failure to meet the requirements, if the employer
8 establishes a good faith attempt to comply with section 274A(b)
9 of the Immigration and Nationality Act.

10 Section 5. Penalties and remedial orders.

11 (a) Order.--Upon a finding of a violation under section
12 3(a), the court shall order all of the following:

13 (1) The employer to terminate the employment of each
14 unauthorized employee.

15 (2) The employer to a three-year probationary period for
16 each business location where the unauthorized employee
17 performed work. During the probationary period the employer:

18 (i) shall file quarterly reports with the Attorney
19 General of each new employee who is hired by the employer
20 at the business location where the unauthorized employee
21 performed work; and

22 (ii) may not knowingly employ an unauthorized
23 employee.

24 (3) The employer, within three business days, to verify
25 in writing to the Attorney General that the employer has
26 terminated the employment of each unauthorized employee in
27 this Commonwealth.

28 (4) Agencies to suspend each license that is held by the
29 employer if the employer fails to timely submit the
30 verification. Each license that is suspended under this

1 paragraph shall remain suspended until the employer complies.
2 Notwithstanding any other law, on filing of the verification,
3 each license shall be reinstated immediately by the
4 appropriate agency. For the purposes of this paragraph, a
5 license that is subject to suspension under this paragraph
6 shall include each license that is held by the employer
7 specific to the business location where the unauthorized
8 employee performed work. If the employer does not hold a
9 license specific to the business location where the
10 unauthorized employee performed work, the court shall order
11 suspension of each license that is held by the employer
12 pertaining to operations anywhere within this Commonwealth.

13 (b) Duration.--The following shall apply:

14 (1) For a first violation of section 3(a), the court may
15 order the agency to suspend each license described under
16 subsection (a)(4) that is held by the employer for a period
17 not to exceed 10 business days.

18 (2) For a violation occurring during a three-year
19 probationary period under subsection (a)(2), the court may
20 order suspension for a term not to exceed one year.

21 (c) Factors.--In determining whether to order suspension or
22 the duration of a suspension, the court shall consider the
23 following factors:

24 (1) The number of unauthorized employees employed by the
25 employer.

26 (2) Any prior misconduct by the employer.

27 (3) The degree of harm resulting from the violation.

28 (4) Whether the employer made good faith efforts to
29 comply with any applicable requirements.

30 (5) The duration of the violation.

1 (6) The role of the directors, officers or principals of
2 the employer in the violation.

3 (7) Any other factors the court deems appropriate.

4 Section 6. Effective date.

5 This act shall take effect in 60 days.