

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1170 Session of 2019

INTRODUCED BY MACKENZIE, GALLOWAY, BARRAR, KEEFER, MILLARD, NEILSON, READSHAW, MENTZER, EMRICK, KORTZ, BURNS, MALAGARI, FARRY AND METCALFE, APRIL 9, 2019

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, JUNE 12, 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,

1 custom fabrication, building, assembling, site preparation and
2 repair work or maintenance work done on real property or
3 premises under a contract, including work for a public body or
4 work paid for from public funds.

5 ~~"Construction industry employer." An individual, entity or <--~~
6 ~~organization that transacts business in this Commonwealth in the~~
7 ~~construction industry, has a license issued by an agency and~~
8 ~~employs at least one employee in this Commonwealth. The term~~
9 ~~includes a staffing agency that supplies workers to a~~
10 ~~construction industry employer.~~

11 "CONSTRUCTION INDUSTRY EMPLOYER." AS FOLLOWS: <--

12 (1) AN INDIVIDUAL, ENTITY OR ORGANIZATION IN THE
13 CONSTRUCTION INDUSTRY, WHICH:

14 (I) TRANSACTS BUSINESS IN THIS COMMONWEALTH; AND

15 (II) EMPLOYS AT LEAST ONE EMPLOYEE IN THIS
16 COMMONWEALTH.

17 (2) THE TERM INCLUDES A STAFFING AGENCY THAT SUPPLIES
18 WORKERS TO A CONSTRUCTION INDUSTRY EMPLOYER.

19 "Department." The Department of Labor and Industry of the
20 Commonwealth.

21 "Employ." To enter into an employer-employee relationship
22 with an individual or to use a contract, subcontract or exchange
23 with an individual to obtain labor.

24 "Employee." An individual who has entered into an employer-
25 employee relationship with a construction industry employer or
26 enters into a contract, subcontract or exchange with a
27 construction industry employer to provide labor.

28 "Employer." A construction industry employer.

29 "E-Verify program." The Internet-based program administered
30 by the United States Department of Homeland Security and the

1 United States Social Security Administration which allows
2 employers to verify an employee's work-authorization status. The
3 term includes any successor program.

4 ~~"License." A permit, certificate, approval, registration, <--
5 charter or similar form of authorization that is required by law
6 and issued by an agency for the purposes of operating a business
7 in this Commonwealth. The term includes articles of
8 incorporation and partnership registrations. The term does not
9 include a professional or occupational license or certificate
10 granted to an individual to engage in a profession or trade.~~

11 "LICENSE." AS FOLLOWS: <--

12 (1) A PERMIT, CERTIFICATE, APPROVAL, REGISTRATION,
13 CHARTER OR SIMILAR FORM OF AUTHORIZATION THAT IS REQUIRED BY
14 LAW AND ISSUED BY AN AGENCY FOR THE PURPOSES OF:

15 (I) OPERATING A BUSINESS IN THIS COMMONWEALTH;

16 (II) CONDUCTING OPERATIONS IN THE CONSTRUCTION
17 INDUSTRY; OR

18 (III) COMPLETING A SPECIFIC CONSTRUCTION PROJECT.

19 (2) THE TERM INCLUDES ARTICLES OF INCORPORATION AND
20 DOMESTIC OR FOREIGN ENTITY REGISTRATIONS UNDER 15 PA.C.S.
21 (RELATING TO CORPORATIONS AND UNINCORPORATED ASSOCIATIONS).

22 (3) THE TERM DOES NOT INCLUDE A PROFESSIONAL OR
23 OCCUPATIONAL LICENSE OR CERTIFICATE GRANTED TO AN INDIVIDUAL
24 TO ENGAGE IN A PROFESSION OR TRADE.

25 "Subcontractor." A person regardless of tier, including, but
26 not limited to, a staffing agency that supplies workers to a
27 construction industry employer under a contract. The term shall
28 not include persons that are material suppliers for a project.

29 "Unauthorized employee." An individual who does not have the
30 legal right or authorization under Federal law to work in the

1 United States.

2 Section 3. Prohibited employment.

3 (a) Prohibition.--An employer may not knowingly employ an
4 unauthorized employee.

5 (b) Verification.--On and after the effective date of this
6 section, each employer who hires an employee shall verify the
7 employment eligibility of the employee through the E-Verify
8 program and shall keep a record of the verification for the
9 duration of the employee's employment or three years, whichever
10 is longer.

11 (c) Staffing agencies.--If a staffing agency supplies
12 workers to multiple industries, subsections (a) and (b) shall
13 only apply to workers supplied for the construction industry.
14 Section 4. Procedures, presumptions and defenses.

15 (a) Complaints.--A complaint about a violation of section
16 3(a) may be submitted to the department. THE DEPARTMENT SHALL <--
17 HAVE THE AUTHORITY TO INVESTIGATE COMPLAINTS UNDER THIS ACT.
18 PURSUANT TO AN INVESTIGATION OF A COMPLAINT, THE DEPARTMENT MAY:

19 (1) ENTER AND INSPECT THE PLACE OF BUSINESS OR PLACE OF
20 EMPLOYMENT OF ANY EMPLOYER OF EMPLOYEES IN ANY OCCUPATION IN
21 THIS COMMONWEALTH AT ANY REASONABLE TIME, FOR THE PURPOSE OF
22 EXAMINING AND INSPECTING RECORDS OF THE EMPLOYER THAT IN ANY
23 WAY RELATE TO COMPLIANCE WITH THIS ACT.

24 (2) COPY ANY OR ALL RECORDS AS THE DEPARTMENT MAY DEEM
25 NECESSARY OR APPROPRIATE.

26 (3) REQUIRE FROM AN EMPLOYER FULL AND ACCURATE
27 STATEMENTS IN WRITING, AT SUCH TIMES AS THE DEPARTMENT MAY
28 DEEM NECESSARY, OF THE WORK AUTHORIZATION VERIFICATION
29 PROCESS FOR ALL EMPLOYEES IN THE EMPLOYER'S EMPLOYMENT.

30 (4) Interrogate persons for the purpose of ascertaining

1 whether an employer has complied with this act.

2 (b) Form.--The department shall prescribe a complaint form
3 for an individual to allege a violation of section 3(a). An
4 individual who knowingly provides materially false information
5 in a complaint form under this subsection shall be subject to
6 punishment under 18 Pa.C.S. § 4904 (relating to unsworn
7 falsification to authorities).

8 (c) Duty to investigate.--Upon receipt of a complaint on a
9 prescribed complaint form alleging that an employer knowingly
10 employs an unauthorized employee, the department shall
11 investigate whether the employer has violated section 3(a) IF <--
12 ALL THE INFORMATION REQUIRED TO COMPLETE THE FORM HAS BEEN
13 PROVIDED, INCLUDING THE NAME OF THE PERSON FILING THE COMPLAINT.

14 (d) Authority to investigate.--The department may
15 investigate a complaint that is not submitted on a prescribed
16 complaint form, including an anonymous complaint.

17 (e) Prohibition.--The department may not investigate a
18 complaint that is based solely on race, color or national
19 origin.

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

29 (g) Notification and action.--If, after an investigation,
30 the department determines that the alleged employee is an

1 unauthorized employee, the department shall do all of the
2 following:

3 (1) For a first violation, the department shall issue a
4 warning letter detailing the violation and informing the
5 construction industry employer of the provisions of this act.
6 Notwithstanding paragraph (2), a violation by a construction
7 industry employer that occurs 10 years or more after a prior
8 violation shall be deemed a first violation. The following
9 shall apply:

10 (i) The department may not issue a warning letter if
11 the employer demonstrates that the employment eligibility
12 of the unauthorized employee was verified in good faith
13 through the E-Verify Program in accordance with section
14 3(b).

15 (ii) After the issuance of a warning letter, the
16 employer shall verify in writing to the department within
17 10 business days that the employer has terminated the
18 employment of each unauthorized employee in this
19 Commonwealth. If the employer fails to provide such
20 verification, the violation shall constitute a second
21 violation, and the department shall make a referral to
22 the Attorney General under paragraph (2).

23 (iii) The employer may appeal the issuance of the
24 warning letter under the provisions of 2 Pa.C.S.
25 (relating to administrative law and procedure).

26 (2) For a second or subsequent violation, the department
27 shall refer the case to the Attorney General for enforcement.
28 The Attorney General shall bring an action against the
29 employer in the county where the unauthorized employee is or
30 was employed by the employer. The Attorney General shall not

1 bring an action against an employer for a violation that
2 occurred before the effective date of this section.

3 (h) Expedited action.--Upon docketing, the court shall
4 expedite the action, including assigning the hearing at the
5 earliest practicable date.

6 (i) Determination.--In determining whether an employee is an
7 unauthorized employee, the court shall consider only the Federal
8 Government's determination under section 642(c) of the Illegal
9 Immigration Reform and Immigrant Responsibility Act of 1996. The
10 Federal Government's determination shall create a rebuttable
11 presumption of the employee's status. The court may take
12 judicial notice of the Federal Government's determination and
13 may request the Federal Government to provide automated or
14 testimonial verification under section 642(c) of the Illegal
15 Immigration Reform and Immigrant Responsibility Act of 1996.

16 (j) Rebuttable presumption.--Proof that the employer
17 verified the employment authorization of an employee through the
18 E-Verify program shall create a rebuttable presumption that an
19 employer did not knowingly employ an unauthorized employee.

20 (k) Affirmative defense.--For the purposes of this section,
21 it shall be an affirmative defense if the employer demonstrates
22 that it has complied in good faith with section 274A(b) of the
23 Immigration and Nationality Act (66 Stat. 163, 8 U.S.C. §
24 1324a(b)). An employer shall be considered to have complied with
25 section 274A(b) of the Immigration and Nationality Act,
26 notwithstanding an isolated, sporadic or accidental technical or
27 procedural failure to meet the requirements, if the employer
28 establishes a good faith attempt to comply with section 274A(b)
29 of the Immigration and Nationality Act.

30 Section 5. Penalties and remedial orders.

1 (a) Order.--Upon a finding of a violation under section 3(a)
2 pursuant to an action brought by the Attorney General under this
3 act, the court shall order all of the following:

4 (1) The employer to terminate the employment of each
5 unauthorized employee.

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

9 (i) shall file quarterly reports with the department
10 of each new employee who is hired by the employer at the
11 business location where the unauthorized employee
12 performed work; and

13 (ii) may not knowingly employ an unauthorized
14 employee.

15 (3) The employer, within five business days, to verify
16 in writing to the department that the employer has terminated
17 the employment of each unauthorized employee in this
18 Commonwealth.

19 (4) Agencies to suspend each license that is held by the
20 employer if the employer fails to timely submit the
21 verification. Each license that is suspended under this
22 paragraph shall remain suspended until the employer complies.
23 Notwithstanding any other law, on filing of the verification,
24 each license shall be reinstated immediately by the
25 appropriate agency. For the purposes of this paragraph, a
26 license that is subject to suspension under this paragraph
27 shall include each license that is held by the employer
28 specific to the business location where the unauthorized
29 employee performed work. If the employer does not hold a
30 license specific to the business location where the

1 unauthorized employee performed work, the court shall order
2 suspension of each license that is held by the employer
3 pertaining to operations anywhere within this Commonwealth.

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

5 (1) For a second violation of section 3(a), the court
6 may order the agency to suspend each license described under
7 subsection (a)(4) that is held by the employer for a period
8 not to exceed 30 business days.

9 (2) For a subsequent violation of section 3(a) or a
10 violation occurring during a three-year probationary period
11 under subsection (a)(2), the court shall order suspension for
12 a term not less than one year up to the permanent revocation
13 of each license.

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

17 (1) The number of unauthorized employees employed by the
18 employer.

19 (2) Any prior misconduct by the employer.

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

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

23 (5) The duration of the violation.

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

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

27 (d) Suspension and reinstatement fees.--Nothing in this act
28 shall prohibit an agency from charging any applicable fee for
29 the suspension or reinstatement of a license.

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 of Labor and Industry or any other
7 governmental authority 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 from
17 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. Immunity and compliance.

30 (a) Immunity.--A construction industry employer that relies

1 in good faith on the E-Verify Program to verify employment
2 eligibility of new employees under this act shall have no
3 liability to an individual who is not hired or who is discharged
4 from employment if incorrect information has been provided to
5 the construction industry employer.

6 (b) Contractor and subcontractor compliance.--Except as
7 provided in subsection (c), nothing in this act may be construed
8 to render a contractor responsible for a violation of section
9 3(a) by a subcontractor or a subcontractor responsible for a
10 violation by another subcontractor.

11 (c) General contractor responsibility.--A contractor shall
12 not be considered in violation of section 3(a) when a
13 subcontractor has knowingly employed an unauthorized employee,
14 if the contractor has done the following:

15 (1) Required compliance with this act in the contract
16 with the subcontractor, including providing for the
17 termination of the contract upon COURT-ORDERED SANCTIONS FOR <--
18 a violation of this act by the subcontractor.

19 (2) Obtained written verification from the subcontractor
20 that the subcontractor is aware of the provisions of this act
21 and is responsible for compliance.

22 Section 8. Effective date.

23 This act shall take effect ~~July 1, 2020~~ IN ONE YEAR. <--