
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1894 Session of
2015

INTRODUCED BY METCALFE, D. COSTA, BAKER, ELLIS, SACCONI, TOPPER,
BARRAR, DIAMOND, WHEELAND, GOODMAN, REESE, WHITE, A. HARRIS,
KAUFFMAN, HARHART, CUTLER, GREINER, MILLARD, GIBBONS, WARD,
READSHAW, KNOWLES, WARNER, JOZWIAK, GABLER, DeLUCA AND MOUL,
MARCH 14, 2016

REFERRED TO COMMITTEE ON STATE GOVERNMENT, MARCH 14, 2016

AN ACT

1 Providing for the prohibition of employing unauthorized aliens.

2 The General Assembly of the Commonwealth of Pennsylvania

3 hereby enacts as follows:

4 Section 1. Short title.

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

7 Section 2. Definitions.

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

11 "Agency." Any agency, department, board or commission of a
12 county, city, town or the Commonwealth that issues a license for
13 purposes of operating a business in this Commonwealth.

14 "Attorney General." The Attorney General of the
15 Commonwealth.

16 "Basic pilot program." The Basic Pilot Employment

1 Verification Program as jointly administered by the United
2 States Department of Homeland Security and the Social Security
3 Administration or its successor program, as authorized under
4 Title IV, Subtitle A, of the Illegal Immigration Reform and
5 Immigrant Responsibility Act of 1996 (Public Law 104-208, 110
6 Stat. 3009-546).

7 "District attorney." The district attorney of the county in
8 which the employee is employed.

9 "Employee." A person who performs employment services for an
10 employer pursuant to an employment relationship.

11 "Employer." An individual or organization that transacts
12 business in this Commonwealth, that has a license issued by an
13 agency in this Commonwealth and that employs at least one
14 individual. Employer includes the Commonwealth, any political
15 subdivision of this Commonwealth and any self-employed person.

16 "Knowingly employ an unauthorized alien." As described in
17 section 274A of the Immigration Reform and Control Act of 1986
18 (Public Law 99-603, 8 U.S.C. § 1324A).

19 "License." Any agency permit, certificate, approval,
20 registration, charter or similar form of authorization that is
21 required by law and that is issued by an agency for the purposes
22 of operating a business in this Commonwealth, and the following
23 shall apply:

24 (1) A license shall include:

25 (i) Articles of incorporation, a certificate of
26 limited partnership, certificate of organization or
27 articles of association under 15 Pa.C.S. (relating to
28 corporations and unincorporated associations).

29 (ii) A sales tax license, as required by the act of
30 March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code

1 of 1971.

2 (2) A license does not include any state-issued
3 professional license.

4 "Secretary." The Secretary of the Department of Labor and
5 Industry.

6 "Unauthorized alien." As defined in section 274A of the
7 Immigration Reform and Control Act of 1986 (Public Law 99-603, 8
8 U.S.C. § 1324A(h)(3)).

9 Section 3. Employment of unauthorized aliens.

10 An employer shall not knowingly employ an unauthorized alien
11 in this Commonwealth.

12 Section 4. Investigations.

13 (a) General rule.--On the receipt of a complaint that an
14 employer knowingly employs an unauthorized alien, the Attorney
15 General or a district attorney shall investigate whether the
16 employer has violated section 3 and the following shall apply:

17 (1) When investigating a complaint the Attorney General
18 or district attorney shall verify the work authorization of
19 the alleged unauthorized alien with the Federal Government
20 pursuant to 8 U.S.C. § 1373(c).

21 (2) A State, county or local official shall not attempt
22 to independently make a final determination of whether an
23 alien is authorized to work in the United States.

24 (b) False complaint.--A person who knowingly files a false
25 complaint under this subsection is guilty of a class three
26 misdemeanor.

27 (c) Duty of Attorney General or district attorney.--If,
28 after an investigation, the Attorney General or district
29 attorney determines that the complaint is not false, the
30 Attorney General or district attorney shall notify:

1 (1) The United States Immigration and Customs
2 Enforcement of the unauthorized alien.

3 (2) The local law enforcement agency of the unauthorized
4 alien.

5 (3) The district attorney to bring an action under
6 subsection (b) if the complaint was originally filed with the
7 Attorney General.

8 Section 5. Civil action.

9 (a) General rule.--An action for a violation of section 3
10 shall be brought against the employer by the district attorney.

11 (b) Exception.--The district attorney shall not bring an
12 action against any employer for any violation of section 3 that
13 occurs before January 1, 2016.

14 (c) Second or subsequent violation.--A second or subsequent
15 violation shall be based on the employment of any unauthorized
16 alien by an employer after an action has been brought against
17 the employer for a violation of section 3, regardless of whether
18 the employer knowingly employed the unauthorized alien.

19 Section 6. Penalties.

20 (a) First violation.--The following shall apply for the
21 first violation during a three-year period:

22 (1) The court shall order:

23 (i) the employer to terminate the employment of all
24 unauthorized aliens;

25 (ii) the employer to enter into a three-year
26 probationary period, during which the employer shall file
27 quarterly reports with the district attorney of each new
28 employee who is hired by the employer at the specific
29 location where the unauthorized alien performed work;

30 (iii) the employer to file a signed affidavit with

1 the district attorney within three business days after
2 the order is issued that states the employer has
3 terminated the employment of all unauthorized aliens; and

4 (iv) the appropriate agencies to suspend all
5 licenses subject to this subdivision that are held by the
6 employer if the employer fails to file a signed affidavit
7 with the district attorney within three business days
8 after the order is issued.

9 (2) All licenses that are suspended under this
10 subsection shall remain suspended until the employer files
11 the signed affidavit under paragraph (1)(iii) with the
12 district attorney. Notwithstanding any other law, a suspended
13 license shall be reinstated immediately by the appropriate
14 agency upon the filing of the affidavit by the employer.

15 (3) The court shall send a copy of the court's order to
16 the Attorney General, who shall maintain the copy pursuant to
17 section 7.

18 (4) The court may order the appropriate agency to
19 suspend a license held by the employer for not more than 10
20 business days. The court shall consider the following factors
21 in deciding to suspend a license, if relevant:

22 (i) The number of unauthorized aliens employed by
23 the employer.

24 (ii) Any prior misconduct by the employer.

25 (iii) The degree of harm resulting from the
26 violation.

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

29 (v) The duration of the violation.

30 (vi) The role of the directors, officers or

1 principals of the employer in the violation.

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

3 (b) Second or subsequent violation.--For a second or
4 subsequent violation of section 3 during the period of
5 probation, the following shall apply:

6 (1) The court shall order the appropriate agencies to
7 permanently revoke all licenses that are held by the employer
8 and that are necessary to operate the employer's business at
9 the employer's business location where the unauthorized alien
10 performed work.

11 (2) If a license is not necessary to operate the
12 employer's business at the specific location where the
13 unauthorized alien performed work, but a license is necessary
14 to operate the employer's business in general, the court
15 shall order the appropriate agencies to permanently revoke
16 all licenses that are held by the employer at the employer's
17 primary place of business.

18 Section 7. Records of the Attorney General.

19 The Attorney General shall maintain copies of court orders
20 that are received pursuant to section 6(a)(3) and shall maintain
21 a database of the employers who have a first violation of
22 section 3 and make the court orders available on the Attorney
23 General's website.

24 Section 8. Verifying the immigration status of an employee.

25 (a) General rule.--A court shall verify the immigration
26 status of an employee through a query to the appropriate entity
27 of the Federal Government under section 642 of the Omnibus
28 Consolidated Appropriations Act, 1977 (Public Law 104-208, 8
29 U.S.C. § 1373(c)).

30 (b) Rebuttable presumption of immigration status.--A

1 determination of an employee's immigration status under
2 subsection (a) creates a rebuttable presumption of the
3 employee's lawful status. The court may take judicial notice of
4 the Federal Government's determination and may request the
5 Federal Government to provide automated or testimonial
6 verification of the employee's immigration status.

7 (c) Intent of employer.--Evidence that an employer verified
8 an employee's authorization for employment through the basic
9 pilot program creates a rebuttable presumption that an employer
10 did not violate section 3.

11 Section 9. Employer actions.

12 This article shall not be construed to require an employer to
13 take any action that the employer believes in good faith would
14 violate Federal or State law.

15 Section 10. Verification of employment eligibility through the
16 basic pilot program.

17 After December 31, 2015, an employer shall verify the
18 employment eligibility of an employee through the basic pilot
19 program.

20 Section 11. Employer notice.

21 On or before October 1, 2015, the Department of Revenue shall
22 provide a notice to each employer that is required to withhold
23 tax pursuant to the act of March 4, 1971 (P.L.6, No.2), known as
24 the Tax Reform Code of 1971, which shall include the following:

25 (1) An explanation of the provisions of this act.

26 (2) Instructions for how an employer enrolls in the
27 basic pilot program.

28 Section 12. Promulgation of a Statewide random auditing program.

29 The secretary shall develop a Statewide random auditing
30 program to inspect private employers for compliance with the

1 provisions of this act and shall promulgate regulations for the
2 program under the act of June 25, 1982 (P.L.633, No.181), known
3 as the Regulatory Review Act.

4 Section 13. Right of entry and inspection by inspectors.

5 The secretary or inspectors, agents, designees of the
6 secretary or any elected official of this Commonwealth, upon
7 proper presentation of credentials to the owner, manager or
8 agent of the employer, may:

9 (1) enter at reasonable times and question either
10 publicly or privately any employer, owner, manager or agent
11 and the employees of the private employer; and

12 (2) inspect, investigate, reproduce or photograph
13 business records relevant to determining compliance with this
14 act.

15 Section 14. Severability.

16 The provisions of this act are severable. If any provision of
17 this act or its application to any person or circumstance is
18 held invalid, the invalidity shall not affect other provisions
19 or applications of this act which can be given effect without
20 the invalid provision or application.

21 Section 15. Effective date.

22 This act shall take effect in 60 days.