
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2076 Session of
2021

INTRODUCED BY R. MACKENZIE, BERNSTINE, DeLUCA, HAMM, JOZWIAK,
KAUFFMAN, KEEFER, M. MACKENZIE, MENTZER, ROWE, RYAN, SAYLOR,
SMITH AND ZIMMERMAN, NOVEMBER 12, 2021

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, NOVEMBER 12, 2021

AN ACT

1 Amending the act of July 5, 2012 (P.L.1086, No.127), entitled
2 "An act requiring public works contractors and subcontractors
3 to verify employment eligibility; providing for the powers
4 and duties of the Department of General Services; prescribing
5 sanctions; and establishing good faith immunity under certain
6 circumstances," further providing for title of act, for short
7 title, for definitions, for duty of public works contractors
8 and subcontractors, for verification form, for violations,
9 for enforcement and sanctions, for protection from
10 retaliation, for good faith immunity and for public works
11 contractor and subcontractor liability.

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 Section 1. The title of the act of July 5, 2012 (P.L.1086,
15 No.127), known as the Public Works Employment Verification Act,
16 is amended to read:

17 AN ACT

18 Requiring public [works] contractors and subcontractors to
19 verify employment eligibility; providing for the powers and
20 duties of the Department of General Services; prescribing
21 sanctions; and establishing good faith immunity under certain
22 circumstances.

1 Section 2. Sections 1, 2, 3, 4, 5, 6, 7(a), 8 and 9 of the
2 act are amended to read:

3 Section 1. Short title.

4 This act shall be known and may be cited as the Public
5 [Works] Contractor Employment Verification Act.

6 Section 2. Definitions.

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

10 "Contract." A type of written agreement between a public
11 body and a public contractor, regardless of what the agreement
12 may be called, for the procurement or disposal of supplies,
13 services or construction and executed by all parties in
14 accordance with all applicable State laws.

15 "Department." The Department of General Services of the
16 Commonwealth.

17 "Employee." An individual hired by a public [works]
18 contractor or subcontractor for whom a public [works] contractor
19 or subcontractor is required by law to file a Form W-2 with the
20 Internal Revenue Service.

21 "EVP." The E-Verify Program operated by the Department of
22 Homeland Security that electronically verifies employment
23 eligibility for employees.

24 "Public body." The Commonwealth of Pennsylvania, any of its
25 political subdivisions, any authority created by the General
26 Assembly of the Commonwealth and any instrumentality or agency
27 of the Commonwealth.

28 ["Public work." As defined under section 2 of the act of
29 August 15, 1961 (P.L.987, No.442), known as the Pennsylvania
30 Prevailing Wage Act.]

1 "Public [works] contractor." A contractor that provides work
2 under a contract [involving a public work] with a public body.

3 "Secretary." The Secretary of General Services of the
4 Commonwealth.

5 "Subcontractor." A person, other than a natural person,
6 regardless of its tier, including, but not limited to, a
7 staffing agency that performs work for a public [works]
8 contractor under a contract [for a public work]. [The term shall
9 not include persons that are material suppliers for a project.]

10 "Willful." Action or conduct undertaken intentionally or
11 with reckless disregard for or deliberate ignorance of the
12 requirements and obligations established under this act.

13 Section 3. Duty of public [works] contractors and
14 subcontractors.

15 (a) General rule.--A public [works] contractor or
16 subcontractor shall participate in EVP and shall, subject to the
17 requirements of Federal law governing the use of EVP, use EVP to
18 verify employment eligibility of each new employee. The
19 department shall post on its publicly accessible Internet
20 website information regarding the requirements of Federal law
21 governing the use of EVP.

22 (b) Discrimination prohibited.--In conducting the
23 verification required by this section, a public [works]
24 contractor or subcontractor shall not discriminate against an
25 employee on the basis of race, ethnicity, color or national
26 origin.

27 Section 4. Verification form.

28 (a) General rule for public [works] contractors.--As a
29 precondition of being awarded a contract [for a public work], or
30 with respect to a contract that was awarded prior to the

1 effective date of this subsection but has not yet been executed,
2 prior to the execution of the contract, a public [works]
3 contractor shall provide the public body with a verification
4 form described in subsection (c), acknowledging its
5 responsibilities under and its compliance with section 3. The
6 verification form shall be accompanied by proof of registration
7 in EVP. Public contractors with no employees may submit an
8 affidavit swearing that the public contractor does not have
9 employees in lieu of proof of registration in EVP. Contracts
10 between a public [works] contractor and its subcontractors shall
11 contain information about the requirements of this act.

12 (b) General rule for subcontractors.--Prior to commencing
13 work [on a public works project] under a contract, a
14 subcontractor shall provide the public body with a verification
15 form described in subsection (c) acknowledging its
16 responsibilities and its compliance with section 3. The
17 verification form shall be accompanied by proof of registration
18 in EVP. Public contractors with no employees may submit an
19 affidavit swearing that the public contractor does not have
20 employees in lieu of proof of registration in EVP. Contracts
21 between a subcontractor and its subcontractors shall contain
22 information about the requirements of this act.

23 (c) Form.--The verification form required by this section
24 shall be on a form prescribed by the secretary and posted on the
25 Internet and shall comply with the following additional
26 requirements:

27 (1) The statement shall include a certification that the
28 information in the statement is true and correct and that the
29 individual signing the statement understands that the
30 submission of false or misleading information in connection

1 with the verification shall subject the individual and the
2 public [works] contractor or subcontractor, as the case may
3 be, to sanctions provided by law.

4 (2) The statement shall be signed by a representative of
5 the public [works] contractor or subcontractor, as
6 applicable, who has sufficient knowledge and authority to
7 make the representations and certifications contained in the
8 statement.

9 Section 5. Violations.

10 It is a violation of this act for a public [works] contractor
11 or subcontractor [on a public work] to:

12 (1) Fail to verify the employment eligibility of a new
13 employee through EVP in accordance with Federal law.

14 (2) Not provide the verification form as required under
15 section 4, accompanied by proof of registration in EVP or an
16 affidavit stating that the public contractor or subcontractor
17 does not have employees, or to make a false statement or
18 misrepresentation with respect to completing the form.

19 Section 6. Enforcement and sanctions.

20 (a) General rule.--The department shall enforce this act.

21 (b) Investigation of complaints.--The department shall
22 accept, review and investigate in a timely manner any credible
23 complaint that a public [works] contractor or subcontractor has
24 violated a provision of this act. The department shall provide
25 confirmation of receipt of a complaint to the person making a
26 complaint. If a complaint does not include enough specific
27 information to initiate an investigation, the department shall
28 inform the person making the complaint of the additional
29 information that is needed in order to initiate an investigation
30 within 30 days of receipt of the complaint.

1 (b.1) Verification.--Prior to the execution of a contract
2 with a public contractor and prior to the commencement of work
3 by a subcontractor, the public body shall certify that the
4 public contractor or subcontractor has provided the verification
5 form and proof of enrollment in EVP.

6 (c) Audits.--To ensure compliance with the requirements of
7 this act, the department shall conduct complaint-based and
8 random audits of public [works] contractors and subcontractors
9 in this Commonwealth.

10 (c.1) Reimbursement.--A public contractor or subcontractor
11 shall reimburse the department for the cost of an audit if the
12 public contractor or subcontractor:

13 (1) is debarred from work under a contract under
14 subsection (d); or

15 (2) is subject to a civil penalty under subsection (e).

16 (d) Sanctions.--The following sanctions shall apply only to
17 a violation under section 5(1):

18 (1) For a first violation, a public [works] contractor
19 or subcontractor shall receive a warning letter from the
20 department detailing the violation. The letter shall be
21 posted on the department's Internet website.

22 (2) For a second violation, a public [works] contractor
23 or subcontractor shall be debarred from [public] work under a
24 contract for [30] 60 days.

25 (3) For a third violation and subsequent violations, a
26 public [works] contractor or subcontractor shall be debarred
27 from [public] work under a contract for not less than [180
28 days] one year and not more than [one year] two years.

29 (4) In the case of an alleged willful violation, the
30 secretary shall file a petition in Commonwealth Court seeking

1 to have the court issue a rule to show cause why a public
2 [works] contractor or subcontractor did not engage in the
3 willful violation. If the court finds that the public [works]
4 contractor or subcontractor engaged in a willful violation,
5 the court shall order that the public [works] contractor or
6 subcontractor be debarred from [public] work under a contract
7 for a period of [three] five years.

8 (5) Notwithstanding the provisions of paragraph (1), (2)
9 or (3), a violation by a public [works] contractor or
10 subcontractor that occurs ten years or more after a prior
11 violation shall be deemed to be a first violation.

12 (6) For the purposes of assessing sanctions, violations
13 committed by a contractor or subcontractor subject to this
14 act involving a single [public works] contract shall be
15 considered a single violation despite the number of employees
16 that are the subject of the violations.

17 (e) Civil penalty.--A public [works] contractor or
18 subcontractor that violates section 5(2) shall be subject to a
19 civil penalty of [not less than \$250 and not more than \$1,000
20 for each] two and a half percent of the amount the public
21 contractor or subcontractor will be paid under the contract for
22 a first violation, and five percent of the amount the public
23 contractor or subcontractor will be paid under the contract for
24 a second or subsequent violation, to be imposed by the
25 department.

26 (f) Notice and appeal.--Actions taken by the department
27 under subsections (d)(1), (2) and (3) and (e) shall be subject
28 to the notice, appeal and other provisions of 2 Pa.C.S.
29 (relating to administrative law and procedure).

30 Section 7. Protection from retaliation.

1 (a) General rule.--It shall be unlawful for a public [works]
2 contractor or subcontractor to discharge, threaten or otherwise
3 retaliate or discriminate against an employee regarding
4 compensation or other terms or conditions of employment because
5 the employee:

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

9 (2) reports or makes a complaint regarding the violation
10 of this act to a public [works] contractor or subcontractor
11 or to any governmental authority.

12 * * *

13 Section 8. Good faith immunity.

14 A public [works] contractor or subcontractor that relies in
15 good faith on EVP procedures to verify employment eligibility of
16 new employees under this act shall be immune from the sanctions
17 authorized under section 6 and shall have no liability to an
18 individual who is not hired or who is discharged from employment
19 in the event that incorrect information has been provided to the
20 public [works] contractor or subcontractor. A public [works]
21 contractor or subcontractor that can produce written
22 acknowledgment provided by an applicable Federal agency of use
23 of EVP is considered to have acted in good faith.

24 Section 9. Public [works] contractor and subcontractor
25 liability.

26 Nothing in this act may be construed to render a public
27 [works] contractor liable for the action of a subcontractor or a
28 subcontractor liable for an action of another subcontractor.

29 Section 2. This act shall take effect in 180 days.