

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 274 Session of 2023

INTRODUCED BY R. MACKENZIE, GLEIM, JOZWIAK, KAUFFMAN,
M. MACKENZIE, MARSHALL AND STRUZZI, MARCH 10, 2023

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, MARCH 10, 2023

AN ACT

1 Amending the act of April 9, 1929 (P.L.177, No.175), entitled
 2 "An act providing for and reorganizing the conduct of the
 3 executive and administrative work of the Commonwealth by the
 4 Executive Department thereof and the administrative
 5 departments, boards, commissions, and officers thereof,
 6 including the boards of trustees of State Normal Schools, or
 7 Teachers Colleges; abolishing, creating, reorganizing or
 8 authorizing the reorganization of certain administrative
 9 departments, boards, and commissions; defining the powers and
 10 duties of the Governor and other executive and administrative
 11 officers, and of the several administrative departments,
 12 boards, commissions, and officers; fixing the salaries of the
 13 Governor, Lieutenant Governor, and certain other executive
 14 and administrative officers; providing for the appointment of
 15 certain administrative officers, and of all deputies and
 16 other assistants and employes in certain departments, boards,
 17 and commissions; providing for judicial administration; and
 18 prescribing the manner in which the number and compensation
 19 of the deputies and all other assistants and employes of
 20 certain departments, boards and commissions shall be
 21 determined," in public works employment verification, further
 22 providing for definitions, for duty of public works
 23 contractors and subcontractors, for verification form, for
 24 violations, for enforcement and sanctions, for Public Works
 25 Employment Verification Account, for protection from
 26 retaliation, for good faith immunity and for public works
 27 contractor and subcontractor liability; and making an
 28 editorial change.

29 The General Assembly of the Commonwealth of Pennsylvania
 30 hereby enacts as follows:

31 Section 1. Article XXIV-C heading and sections 2401-C, 2402-

1 C, 2403-C, 2404-C, 2405-C, 2406-C heading and (a), 2407-C(a),
2 2408-C and 2409-C of the act of April 9, 1929 (P.L.177, No.175),
3 known as The Administrative Code of 1929, added November 3, 2022
4 (P.L.2048, No.141), are amended to read:

5 ARTICLE XXIV-C

6 PUBLIC [WORKS] CONTRACTOR EMPLOYMENT VERIFICATION

7 Section 2401-C. Definitions.

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

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

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

18 "Employee." An individual hired by a public [works]
19 contractor or subcontractor for whom the public [works]
20 contractor or subcontractor is required by law to file a Form W-
21 2 with the Internal Revenue Service.

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

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

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

1 Prevailing Wage Act.]

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

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

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

12 "Willful." Action or conduct undertaken intentionally or
13 with reckless disregard for or deliberate ignorance of the
14 requirements and obligations established under this article.

15 Section 2402-C. Duty of public [works] contractors and
16 subcontractors.

17 (a) General rule.--[A]

18 (1) Except as provided in paragraph (2), a public
19 [works] contractor or subcontractor shall participate in EVP
20 and shall, subject to the requirements of Federal law
21 governing the use of EVP, use EVP to verify employment
22 eligibility of each new employee. The department shall post
23 on its publicly accessible Internet website information
24 regarding the requirements of Federal law governing the use
25 of EVP.

26 (2) A public contractor or subcontractor without
27 employees shall not be required to enroll in EVP. The
28 following shall apply:

29 (i) For the purposes of section 2403-C, a public
30 contractor or subcontractor without employees may submit

1 an affidavit stating that the individual public
2 contractor or subcontractor is authorized to work in the
3 United States and has no employees, in lieu of a
4 statement that the public contractor or subcontractor is
5 enrolled in EVP.

6 (ii) A public contractor or subcontractor without
7 employees shall enroll in EVP and provide an updated
8 verification form to the public body prior to hiring any
9 employees.

10 (b) Discrimination prohibited.--In conducting the
11 verification required by this section, a public [works]
12 contractor or subcontractor shall not discriminate against an
13 employee on the basis of race, ethnicity, color or national
14 origin.

15 Section 2403-C. Verification form.

16 (a) General rule for public [works] contractors.--As a
17 precondition of being awarded a contract [for a public work], or
18 with respect to a contract that was awarded prior to the
19 effective date of this subsection but has not yet been executed,
20 prior to the execution of the contract, a public [works]
21 contractor shall provide the public body with a verification
22 form described in subsection (c), acknowledging its
23 responsibilities under and its compliance with section 2402-C
24 and stating that the contractor is enrolled in EVP. Contracts
25 between a public [works] contractor and its subcontractors shall
26 contain information about the requirements of this article.

27 (b) General rule for subcontractors.--Prior to commencing
28 work [on a public works project] under a contract, a
29 subcontractor shall provide the public body with a verification
30 form described in subsection (c) acknowledging its

1 responsibilities and its compliance with section 2402-C and
2 stating that the subcontractor is enrolled in EVP. Contracts
3 between a subcontractor and its subcontractors shall contain
4 information about the requirements of this article.

5 (c) Form.--The verification form required by this section
6 shall be on a form prescribed by the secretary and posted on the
7 department's publicly accessible Internet website and shall
8 comply with the following additional requirements:

9 (1) The statement shall include a certification that the
10 information in the statement is true and correct and that the
11 individual signing the statement understands that the
12 submission of false or misleading information in connection
13 with the verification shall subject the individual and the
14 public [works] contractor or subcontractor, as the case may
15 be, to sanctions provided by law.

16 (2) The statement shall be signed by a representative of
17 the public [works] contractor or subcontractor, as
18 applicable, who has sufficient knowledge and authority to
19 make the representations and certifications contained in the
20 statement.

21 Section 2404-C. Violations.

22 It is a violation of this article for a public [works]
23 contractor or subcontractor [on a public work] under a contract
24 to:

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

27 (2) Not provide the verification form as required under
28 section 2403-C or make a false statement or misrepresentation
29 with respect to completing the form.

30 Section 2405-C. Enforcement and sanctions.

1 (a) General rule.--The department shall enforce this
2 article.

3 (b) Investigation of complaints.--The department shall
4 accept, review and investigate in a timely manner any credible
5 complaint that a public [works] contractor or subcontractor has
6 violated a provision of this article.

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

11 (d) Reimbursement of department.--

12 (1) The department may require a public [works]
13 contractor or subcontractor to reimburse the department for
14 the cost of an audit if the public [works] contractor or
15 subcontractor:

16 (i) is debarred from [public] work under a contract
17 under subsection (e); or

18 (ii) is subject to a civil penalty under subsection

19 (f).

20 (2) The cost of an audit shall be reasonably based on
21 the amount of staff time spent on conducting an individual
22 audit.

23 (e) Sanctions.--The following sanctions shall apply only to
24 a violation under section 2404-C(1):

25 (1) For a first violation, a public [works] contractor
26 or subcontractor shall receive a warning letter from the
27 department detailing the violation. The letter shall be
28 posted on the department's publicly accessible Internet
29 website.

30 (2) For a second violation, a public [works] contractor

1 or subcontractor shall be debarred from [public] work under a
2 contract for 60 days.

3 (3) For a third violation and subsequent violations, a
4 public [works] contractor or subcontractor shall be debarred
5 from [public] work under a contract for not less than one
6 year and not more than two years.

7 (4) In the case of an alleged willful violation, the
8 secretary shall file a petition in Commonwealth Court seeking
9 to have the court issue a rule to show cause why a public
10 [works] contractor or subcontractor did not engage in the
11 willful violation. If the court finds that the public [works]
12 contractor or subcontractor engaged in a willful violation,
13 the court shall order that the public [works] contractor or
14 subcontractor be debarred from [public] work under a contract
15 for a period of three years.

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

20 (6) For the purposes of assessing sanctions, violations
21 committed by a contractor or subcontractor subject to this
22 article involving a single [public works] contract shall be
23 considered a single violation despite the number of employees
24 that are the subject of the violations.

25 (f) Civil penalty and sanctions.--The following shall apply:

26 (1) A public [works] contractor or subcontractor that
27 violates section 2404-C(2) shall be subject to a civil
28 penalty of not less than \$2,500 and not more than \$25,000 for
29 each violation, to be imposed by the department based on the
30 duration and severity of the violation.

1 (2) In addition to the penalty under paragraph (1), in
2 the event of a willful violation of section 2404-C(2), a
3 public [works] contractor or subcontractor shall be subject
4 to debarment for not less than 60 days nor more than three
5 years, depending on the duration and severity of the
6 violation.

7 (g) Notice and appeal.--Actions taken by the department
8 under subsections (e)(1), (2) and (3) and (f) shall be subject
9 to the notice, appeal and other provisions of 2 Pa.C.S.
10 (relating to administrative law and procedure).

11 Section 2406-C. Public [Works] Contractor Employment
12 Verification Account.

13 (a) Establishment.--The Public [Works] Contractor Employment
14 Verification Account is established as a restricted revenue,
15 interest-bearing account in the General Fund.

16 * * *

17 Section 2407-C. Protection from retaliation.

18 (a) General rule.--It shall be unlawful for a public [works]
19 contractor or subcontractor to discharge, threaten or otherwise
20 retaliate or discriminate against an employee regarding
21 compensation or other terms or conditions of employment because
22 the employee:

23 (1) participates in an investigation, hearing or inquiry
24 held by the secretary or any other governmental authority
25 under this article; or

26 (2) reports or makes a complaint regarding the violation
27 of this article to a public [works] contractor or
28 subcontractor or to any governmental authority.

29 * * *

30 Section 2408-C. Good faith immunity.

1 A public [works] contractor or subcontractor that relies in
2 good faith on EVP procedures to verify employment eligibility of
3 new employees under this article shall be immune from the
4 sanctions authorized under section 2405-C and shall have no
5 liability to an individual who is not hired or who is discharged
6 from employment in the event that incorrect information has been
7 provided to the public [works] contractor or subcontractor. A
8 public [works] contractor or subcontractor that can produce
9 written acknowledgment provided by an applicable Federal agency
10 of use of EVP is considered to have acted in good faith.

11 Section 2409-C. Public [works] contractor and subcontractor
12 liability.

13 Nothing in this article may be construed to render a public
14 [works] contractor liable for the action of a subcontractor or a
15 subcontractor liable for an action of another subcontractor.

16 Section 2. This act shall take effect in 60 days.