# PENNSYLVANIA STATUTES TITLE 43. LABOR CHAPTER 5C. PUBLIC WORKS EMPLOYMENT VERIFICATION ACT

#### § 167.1. Short title

This act shall be known and may be cited as the Public Works Employment Verification Act.

#### § 167.2. Definitions

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

"DEPARTMENT." THE DEPARTMENT OF GENERAL SERVICES OF THE COMMONWEALTH.

"EMPLOYEE." AN INDIVIDUAL HIRED BY A PUBLIC WORKS CONTRACTOR OR SUBCONTRACTOR FOR WHOM A PUBLIC WORKS CONTRACTOR OR SUBCONTRACTOR IS REQUIRED BY LAW TO FILE A FORM W-2 WITH THE INTERNAL REVENUE SERVICE.

"EVP." THE E-VERIFY PROGRAM OPERATED BY THE DEPARTMENT OF HOMELAND SECURITY THAT ELECTRONICALLY VERIFIES EMPLOYMENT ELIGIBILITY FOR EMPLOYEES.

"PUBLIC BODY." THE COMMONWEALTH OF PENNSYLVANIA, ANY OF ITS POLITICAL SUBDIVISIONS, ANY AUTHORITY CREATED BY THE GENERAL ASSEMBLY OF THE COMMONWEALTH AND ANY INSTRUMENTALITY OR AGENCY OF THE COMMONWEALTH.

"PUBLIC WORK." AS DEFINED UNDER SECTION 2 OF THE ACT OF AUGUST 15, 1961 (P.L. 987, NO. 442), KNOWN AS THE PENNSYLVANIA PREVAILING WAGE ACT.

"PUBLIC WORKS CONTRACTOR." A CONTRACTOR THAT PROVIDES WORK UNDER A CONTRACT INVOLVING A PUBLIC WORK.

"SECRETARY." THE SECRETARY OF GENERAL SERVICES OF THE COMMONWEALTH.

"SUBCONTRACTOR." A PERSON, OTHER THAN A NATURAL PERSON, REGARDLESS OF ITS TIER, IN-CLUDING, BUT NOT LIMITED TO, A STAFFING AGENCY THAT PERFORMS WORK FOR A PUBLIC WORKS CONTRACTOR UNDER A CONTRACT FOR A PUBLIC WORK. THE TERM SHALL NOT INCLUDE PERSONS THAT ARE MATERIAL SUPPLIERS FOR A PROJECT.

"WILLFUL." ACTION OR CONDUCT UNDERTAKEN INTENTIONALLY OR WITH RECKLESS DISREGARD FOR OR DELIBERATE IGNORANCE OF THE REQUIREMENTS AND OBLIGATIONS ESTABLISHED UNDER THIS ACT.

### § 167.3. Duty of public works contractors and subcontractors

(a) GENERAL RULE.-- A public works contractor or subcontractor shall participate in EVP and shall, subject to the requirements of Federal law governing the use of EVP, use EVP to verify employment eligibility of each new employee. The department shall post on its publicly accessible Internet website information regarding the requirements of Federal law governing the use of EVP.

(b) DISCRIMINATION PROHIBITED.-- In conducting the verification required by this section, a public works contractor or subcontractor shall not discriminate against an employee on the basis of race, ethnicity, color or national origin.

#### § 167.4. Verification form

- (a) GENERAL RULE FOR PUBLIC WORKS CONTRACTORS.— As a precondition of being awarded a contract for a public work, or with respect to a contract that was awarded prior to the effective date of this subsection but has not yet been executed, prior to the execution of the contract, a public works contractor shall provide the public body with a verification form described in subsection (c), acknowledging its responsibilities under and its compliance with section 3. Contracts between a public works contractor and its subcontractors shall contain information about the requirements of this act.
- (b) GENERAL RULE FOR SUBCONTRACTORS.-- Prior to commencing work on a public works project, a sub-contractor shall provide the public body with a verification form described in subsection (c) acknowledging its responsibilities and its compliance with section 3. Contracts between a subcontractor and its subcontractors shall contain information about the requirements of this act.
- (c) FORM.-- The verification form required by this section shall be on a form prescribed by the secretary and posted on the Internet and shall comply with the following additional requirements:
- (1) The statement shall include a certification that the information in the statement is true and correct and that the individual signing the statement understands that the submission of false or misleading information in connection with the verification shall subject the individual and the public works contractor or subcontractor, as the case may be, to sanctions provided by law.
- (2) The statement shall be signed by a representative of the public works contractor or subcontractor, as applicable, who has sufficient knowledge and authority to make the representations and certifications contained in the statement.

#### § 167.5. Violations

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

- (1) Fail to verify the employment eligibility of a new employee through EVP in accordance with Federal law.
- (2) Not provide the verification form as required under section 4 or to make a false statement or misrepresentation with respect to completing the form.

#### § 167.6. Enforcement and sanctions

- (a) GENERAL RULE.-- The department shall enforce this act.
- (b) INVESTIGATION OF COMPLAINTS.-- The department shall accept, review and investigate in a timely manner any credible complaint that a public works contractor or subcontractor has violated a provision of this act.
- (c) AUDITS.-- To ensure compliance with the requirements of this act, the department shall conduct complaint-based and random audits of public works contractors and subcontractors in this Commonwealth.
  - (d) SANCTIONS.-- The following sanctions shall apply only to a violation under section 5(1):
- (1) For a first violation, a public works contractor or subcontractor shall receive a warning letter from the department detailing the violation. The letter shall be posted on the department's Internet website.

- (2) For a second violation, a public works contractor or subcontractor shall be debarred from public work for 30 days.
- (3) For a third violation and subsequent violations, a public works contractor or subcontractor shall be debarred from public work for not less than 180 days and not more than one year.
- (4) In the case of an alleged willful violation, the secretary shall file a petition in Commonwealth Court seeking to have the court issue a rule to show cause why a public works contractor or subcontractor did not engage in the willful violation. If the court finds that the public works contractor or subcontractor engaged in a willful violation, the court shall order that the public works contractor or subcontractor be debarred from public work for a period of three years.
- (5) Notwithstanding the provisions of paragraph (1), (2) or (3), a violation by a public works contractor or subcontractor that occurs ten years or more after a prior violation shall be deemed to be a first violation.
- (6) For the purposes of assessing sanctions, violations committed by a contractor or subcontractor subject to this act involving a single public works contract shall be considered a single violation despite the number of employees that are the subject of the violations.
- (e) CIVIL PENALTY.-- A public works contractor or subcontractor that violates section 5(2) shall be subject to a civil penalty of not less than \$ 250 and not more than \$ 1,000 for each violation, to be imposed by the department.
- (f) NOTICE AND APPEAL.-- Actions taken by the department under subsections (d)(1), (2) and (3) and (e) shall be subject to the notice, appeal and other provisions of 2 Pa.C.S. (relating to administrative law and procedure).

#### § 167.7. Protection from retaliation

- (a) GENERAL RULE.-- It shall be unlawful for a public works contractor or subcontractor to discharge, threaten or otherwise retaliate or discriminate against an employee regarding compensation or other terms or conditions of employment because the employee:
- (1) participates in an investigation, hearing or inquiry held by the secretary or any other governmental authority under this act; or
- (2) reports or makes a complaint regarding the violation of this act to a public works contractor or subcontractor or to any governmental authority.

#### (b) ACTIONS .--

- (1) An employee who suffers retaliation or discrimination in violation of this section may bring an action in a court of common pleas in accordance with established civil procedures of this Commonwealth.
  - (2) The action must be brought within 180 days from the date the employee knew of the retaliation or discrimination.
- (c) RELIEF.-- If an employee prevails in an action commenced under this section, the employee shall be entitled to the following relief:
  - (1) Reinstatement of the employee, if applicable.
- (2) Restitution equal to three times the amount of the employee's wages and fringe benefits calculated from the date of the retaliation or discrimination.
  - (3) Reasonable attorney fees and costs of the action.

(4) Any other legal and equitable relief as the court deems appropriate.

## § 167.8. Good faith immunity

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

## § 167.9. Public works contractor and subcontractor liability

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

#### § 167.10. Rules and regulations

The department may promulgate rules and regulations necessary to administer and enforce this act.

## § 167.11. Cooperation among departments

The department may enter into agreements with the Department of Labor and Industry or any other Commonwealth agency to provide for the cooperative enforcement of the provisions of this act.