

PENNSYLVANIA PUBLIC WORKS CONTRACTORS AND SUBCONTRACTORS MUST USE E-VERIFY

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Joining a growing number of states that require employers to use E-Verify to confirm their employees' eligibility to work in the United States, starting January 1, 2013, Pennsylvania will require Pennsylvania contractors and subcontractors involved in "Public Work" projects with a contract value exceeding \$25,000 to use E-Verify to determine the eligibility of new employees to work in the United States.

The new law, entitled the Public Works Employment Verification Act (the "Act"), requires as a condition to being awarded a contract for a public work that a contractor or subcontractor must provide the public body with a verification form confirming its compliance with the Act. This must include verification that the E-Verify system was used to confirm eligibility for employment of its new employees in the United States. Failure to provide the verification will result in fines of \$250 to \$1,000 for each violation. Failure of a contractor or subcontractor to use the E-Verify system will result in the following sanctions under the Act:

1. A first violation will prompt a warning letter.
2. A second violation will cause debarment from public works projects for 30 days.
3. For third and subsequent violations, a contractor or subcontractor will be debarred from public works projects for between 180 days and one year.
4. For willful violations, a contractor or subcontractor will be debarred from public works projects for three years.

E-Verify is a free internet-based system maintained by the U.S. Department of Homeland Security. It compares information on an employee's Form I-9

to data in the U.S. Department of Homeland Security and Social Security Administration records to confirm employment eligibility in the United States. According to U.S. Citizenship and Immigration Services, a part of the Department of Homeland Security, more than 387,000 U.S. employers already use E-Verify to check the employment eligibility of their new hires, with about 1,200 new businesses signing up each week.

The E-Verify system is fairly straightforward to use and can be found at www.uscis.gov. Employers simply input information from a new employee's Form I-9 into the system, and the system searches its records and reports whether or not the worker is eligible to work in the United States.

For now, the Pennsylvania law applies only to contractors and subcontractors on "Public Work" projects. "Public Work" is defined for purposes of the Act as construction, reconstruction, demolition, alteration and/or repair work other than maintenance work, done under contract and paid for in whole or in part out of the funds of a public body where the estimated cost of the total project is in excess of \$25,000, but does not include work performed under a rehabilitation or manpower training program.

Since 2009, Federal law has required federal contractors and subcontractors holding contracts containing the Federal Acquisition Regulation ("FAR") E-Verify Clause (73 FR 67704) to use E-Verify to confirm that all new and current employees working directly on federal contracts are authorized to work in the United States. In recent years, several states, including North

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Carolina, South Carolina, Georgia and Louisiana, to name a few, passed legislation to require all or most employers to use E-Verify to confirm employees' eligibility to work in the United States.

While the new Pennsylvania law will apply only to contractors and subcontractors on public work projects, the continuing trend nationwide is toward requiring employers to use the E-Verify system to confirm eligibility to work in the United States. To avoid discovering during an audit that a state in which the employer does business requires use of the E-Verify system, employers are encouraged to consider using the E-Verify system sooner rather than later. At a minimum, employers should monitor state legislative developments for enactment of new E-Verify requirements. ♦

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