

# **Pennsylvania's E-Verify Law**

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The Construction Industry Employee Verification Act prohibits any construction employer from knowingly employing an employee.

# What is a construction industry employer

- Industry which engages in erection, reconstruction, demolition, alteration, modification, custom fabrication, building, assembling, site preparation and repair work or maintenance work on real property and
  - Transacts business in PA.
  - Employs at least one person.
- This includes a staffing agency that supplies workers to the construction industry.

Prohibition to employing unauthorized individuals applies to employer-employee relationship and if a construction industry uses a contract to procure workers.

# What is an unauthorized employee?

Unauthorized employees are those who do not have the legal right to work in the United States.

# Employer Responsibilities

For all employees hired on or after  
October 7, 2020:

- Verify the employee's eligibility to work through the E-Verify system.
- Keep records of the verification for the duration of the employee's employment or for three years, whichever is longer.

Staffing agencies who provide employees to multiple employees only have to comply for employees who work in the construction industry

# Complaint Procedure

- Complaints may be submitted to the department.
- DLI will create the complaint form but may accept complaints that are not submitted on the form.
- Complaints may be submitted anonymously.
- Without a complaint, Department has NO authority to investigate.
- **DIFFERENCE.** The Department must investigate complaints that are completed and filled out on their form. The Department has discretion to not investigate complaints not on the form or anonymous complaints.

# Investigations

- May enter and inspect any business at any reasonable time for the purpose of inspecting records.
- Copy all records.
- Require employer provide full and accurate statements of the work authorization process for all employees.
- Interrogate persons to determine compliance.
- The Department may not investigate any complaint based solely upon race, color or national origin.
- Department shall verify the work authorization with the Federal Government
  - No Commonwealth or local official has independent authority to determine whether someone is authorized to work.



# Enforcement-Department

If an investigation determines that the employer hired an employee who is unauthorized to work, then the Department must issue a written warning.

- The Department cannot issue a warning if employer uses E-Verify system and it verified the employees right to work.
- A warning stays on the books for 10 years.

Then employer must verify within 10 business days that they terminated each unauthorized employee

- Failure to provide verification shall constitute a second violation of the Act.

# Enforcement-Attorney General

- If there's a second violation, the Department refers to Attorney General's Office.
- Cases are brought in county court where the employee was employed.
  - Cases are heard on expedited basis.
- To determine if an employee is unauthorized the Court can only consider federal government's determination.
- Proof employer e-verified employee creates rebuttal presumption that employer did not knowingly hire unauthorized employee.
- It's an affirmative defense if employer proves it made a good faith attempt to verify employment notwithstanding an isolated, sporadic or accidental technical or procedural failure to comply.

# Penalties

Court must impose all the following penalties:

- An order for employer to terminate all unauthorized employees.
- Imposition of 3-year probationary period for employers.
  - During probation, employers must file quarterly reports outlining each new employee that is hired and may not knowingly hire an unauthorized employee.
- Order requiring employer verify to the Department, within 5 business days, that the employer has fired unauthorized employees.
- If employer fails to submit verification, then agencies must suspend licenses held by the employer and remain suspended until the employer submits the required verification.
  - If employer holds a license specific to the location where an unauthorized employee performed work, then that licensee shall be suspended.
  - If the employer does not hold a license specific to the location, then a Commonwealth-wide license shall be suspended.

# More penalties

Court may impose a license suspension of up to 30 days for violations other than a failure to submit a certification.

If there's another violation or a violation during the probation period, then Court may impose license suspension for a minimum of one year and a maximum permanent suspension.

To determine length of suspension the Court will consider:

- Number of unauthorized employees.
- Employer's prior misconduct.
- Degree of harm resulting from the violation.
- Duration of the violation.
- Role of principal, directors or officers in the violation.

# Anti-retaliation

Cannot discharge, threaten or otherwise retaliate or discriminate against an employee regarding compensation or other terms or conditions of employment because the employee:

- Participated in an investigation, inquiry or hearing.
- Reports a violation or files a complaint.

Employee has three years to bring a private action in county court.

The Court can order:

- Reinstatement of employment.
- Reinstitution equal to 3 times the employees wages and fringe benefits.
- Costs and attorney fees.
- Any other legal or equitable relief that the Court deems appropriate.

# Employer Immunity

Employer who in good faith relied on E-Verify system has no liability to any individual not fired or terminated if incorrect information was provided to the employer.

Contractors are not responsible for a violation of the subcontractor if the contractor has:

- Required compliance with the Act in the contract including a clause terminating the contract if a court issues sanctions against the subcontractor.
- Obtained written verification from the subcontractor that the subcontractor is aware of the Act's requirements and is responsible for compliance.

# **BUREAU OF LABOR LAW COMPLIANCE**

[WWW.DLI.STATE.PA.US](http://WWW.DLI.STATE.PA.US)  
**800-932-0665**

# SCOPE OF BUREAU OF LABOR LAW ENFORCEMENT

Prevailing Wage	Minimum Wage	Child Labor	Wage Payment	Apprenticeship and Training
	Act 75 – E-Verify	Equal Pay	Construction Workplace Misclassification (Act 72)	
Seasonal Farm	Personnel File	Prohibition of Excessive Overtime in Health Care (Act 102)	Industrial Homework	Medical Pay



# LAWS THAT MAY EFFECT THE CONSTRUCTION INDUSTRY

- Prevailing Wage Law
- Misclassification of Construction Employees (Act 72)
- Wage Payment Collection
- Minimum Wage/Overtime
- Apprenticeship and Training
- Child Labor Act

**And now Act 75**



## WAYS TO FILE COMPLAINTS

- The Bureau can accept both paper and online submissions.
  - These forms are in both English and Spanish
- The Bureau's website includes links to the forms and web applications, in which complaints can be inputted directly by employees.

**Construction Industry  
Employee Verification  
Act complaint form**

**Instructions:** Please review and complete all pages of this form. Anonymous complaints will not be investigated. Sign and date the bottom of the complaint, and mail the completed form to:

Bureau of Labor Law Compliance  
851 Boac Street, Room 1301  
Harrisburg, PA 17121  
Telephone: (800) 852-9885 Fax: (717) 787-0617  
Email: [PA-3-LSLMR-LIC@pa.gov](mailto:PA-3-LSLMR-LIC@pa.gov)

\*The Department may not investigate a claim based on race, color, or national origin\*

An individual who knowingly provides materially false information on this complaint form shall be subject to punishment under 13 P.A.C. 8. § 4804

Please print:

**YOUR INFORMATION**

Name of person filing complaint: \_\_\_\_\_

Address: \_\_\_\_\_  
Street (apt #) City State Zip

Telephone number: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_  
(Include area code) (Include area code)

E-mail address: \_\_\_\_\_

**BUSINESS INFORMATION**

Name of business you are complaining about: \_\_\_\_\_  
(A business includes a corporation, partnership, sole proprietorship or person)

Address: \_\_\_\_\_  
Street (apt #) City State Zip

Telephone number: (\_\_\_\_) \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_  
(Include area code) (Include area code)

What type of construction services does the business perform? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Owner of the business: \_\_\_\_\_

**EMPLOYMENT INFORMATION**

Provide the following information about each worker that you believe has not been verified by the construction employer:

Name (First, Last)	Type of work performed	Worksite name and location

Why do you contend that the construction company did not verify employees prior to hiring the named individual: \_\_\_\_\_

*I verify that facts set forth in this complaint are true and correct to the best of my knowledge, information and belief. I sign this complaint subject to 18 Pa.C.S. § 4904 (relating to unsworn falsifications to authorities).*

Signature \_\_\_\_\_ Date \_\_\_\_\_

Auxiliary aids and services are available upon request to individuals with disabilities.  
Equal Opportunity Employer/Program



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Please print:

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## YOUR INFORMATION

Name of person filing complaint: \_\_\_\_\_

Address: \_\_\_\_\_

Street (apt #)

City

State

Zip

Telephone number: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_  
(Include area code)

Fax: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_  
(Include area code)

E-mail address: \_\_\_\_\_

## BUSINESS INFORMATION

Name of business you are complaining about: \_\_\_\_\_  
(A business includes a corporation, partnership, sole proprietorship or person)

Address: \_\_\_\_\_

Street (apt #)

City

State

Zip

Telephone number: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_  
(Include area code)

Fax: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_  
(Include area code)

What type of construction services does the business perform? \_\_\_\_\_

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## Act 75 Complaint

### Department of Labor & Industry - Bureau of Labor Law Compliance - Construction Industry Employee Verification Act complaint form

This form is used for complaints under the Pennsylvania Act 75

#### Claimant Information

<b>First Name:</b> *	<input type="text"/>	<b>Daytime Telephone:</b>	<input type="text"/>
<b>Initial:</b>	<input type="text"/>	<b>Evening Telephone:</b>	<input type="text"/>
<b>Last Name:</b> *	<input type="text"/>	<b>Fax:</b>	<input type="text"/>
<b>Address - Line 1:</b> *	<input type="text"/>	<b>E-Mail:</b> *	<input type="text"/>
<b>Address - Line 2:</b>	<input type="text"/>		
<b>City:</b> *	<input type="text"/>		
<b>State:</b> *	---Select---		
<b>Zip:</b> *	<input type="text"/>		

#### Business Information

<b>First Name of Contact Person:</b> *	<input type="text"/>	<b>Company Name:</b> *	<input type="text"/>
<b>Initial:</b>	<input type="text"/>	<b>Telephone:</b>	<input type="text"/>
<b>Last Name of Contact Person:</b> *	<input type="text"/>	<b>Address - Line 1:</b> *	<input type="text"/>
<b>First Name of Owner:</b> *	<input type="text"/>	<b>Address - Line 2:</b>	<input type="text"/>