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Construction Law Alert

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NEW EMPLOYEE SCREENING REQUIREMENTS ON PENNSYLVANIA PUBLIC PROJECTS

Contractors working on Pennsylvania public work projects now face new employee screening requirements. Effective January 1, 2013, the Public Works Employment Verification Act ("Act") requires contractors and subcontractors (excluding material suppliers) working on public works to verify the employment eligibility of each new employee through the federal government's E-Verify system. The Act was signed into law by Governor Corbett on July 5, 2012.

The Federal government created the Employment Verification Program to ensure that companies employ a legal workforce. E-Verify is an internet-based system operated by the United States Department of Homeland Security, that compares information from an employee's Form I-9, Employment Eligibility Verification, to the data from the Department of Homeland Security and Social Security Administration records to confirm employment eligibility.

The Act defines an employee subject to this verification as an individual hired by a public works contractor or subcontractor after January 1, 2013. The definition of employee is broad and includes all newly-hired employees of the contractor or subcontractor, regardless of whether they will be working onsite or offsite of a public work or otherwise. Verification must be completed within 5 business days of the employee's start date. The employee may work during that time.

A contractor subject to this requirement is a contractor that provides work under a contract involving public works. A public work is 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 twenty-five thousand dollars ($25,000). Public works exempted from this Act include work performed under a rehabilitation or manpower training program and maintenance work which includes the annual inspection or routine upkeep of an existing facility which does not alter the use or size of the facility. For determining the $25,000 threshold, the total cost of the project includes the sum of all prime contracts and any subcontracts.

A subcontractor subject to this Act is a subcontractor that performs works for a public works contractor under a contract for public works. This term applies to subcontractors of every level. If the project is subject to the Act, then every contract and subcontract, regardless of value, shall comply with the Act. For example, if you are a sub-subcontractor with a $6,000 contract on a $2,000,000 project, you must comply with the Act.

Prior to the award of a public work contract, the public body must obtain a completed verification form from each successful bidder that will be awarded a contract. The verification form is a precondition of award. A bidder that fails to submit a completed Public Works Employment Verification Form to the awarding public body will not be awarded a contract.

The Department of General Services is responsible for implementing the Commonwealth's process of notification, investigation, and compliance with the Act. In addition to not being awarded the contract, violations of the Act can result in other penalties. A first violation will result in the issuing of a warning letter to the contractor or subcontractor detailing the violation. A second violation can result in a contractor being prevented from submitting a bid or being awarded any contract or performing a subcontract on a public works project in Pennsylvania for 30 days. Subsequent violations can result in a contractor being precluded from public work contracts for up to 1 year. Willful violations can result in a 3 year ban from public work contracts. Civil penalties of $1,000 per violation may also be levied against the contractor.

This *Construction Law Alert* was written by **Brian Slough**, Associate in the Pennsylvania office of Norris McLaughlin & Marcus, P.A. If you have any questions regarding this alert, please contact Brian at bslough@nmmlaw.com.

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