WEST VIRGINIA CODE CHAPTER 21 ARTICLE 1B

WV Legislature

§21-1B-1. Findings; policy.

The Legislature finds that employers have the responsibility to verify the legal employment status of all persons who come into their employ and to report their employment to the appropriate governmental agencies. Employers are precluded from hiring unauthorized workers and can be penalized for doing so. Additionally, employers owe a duty to the residents of the state to uphold the intent and integrity of the general workforce due to the potential loss of revenue to the state by loss of taxes, unemployment premiums and workers' compensation premiums.

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§21-1B-2. Definitions.

(a) "Employer" means any individual, person, corporation, department, board, bureau, agency, commission, division, office, company, firm, partnership, council or committee of the state government, public benefit corporation, public authority or political subdivision of the state or other business entity which employs or seeks to employ an individual or individuals.

(b) "Commissioner" means the labor commissioner or his or her designated agent.

(c) "Unauthorized worker" means a person who does not have the legal right to be employed or is employed in violation of law.

(d) "Records" means records that may be required by the commissioner of labor for the purposes of compliance with the provisions of this article.

(e) "Knowingly" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware by documentation or action that the person's conduct is of that nature or that the circumstance exists. Failure to request or review documentation of an employee's legal status or authorization to work is deemed to be "knowingly".

(f) "License" means any permit, certificate, approval, registration, charter or similar form of authorization that is required by law and that is issued for the purpose of operating a business in this state.

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§21-1B-3. Unauthorized workers; employment prohibited.

(a) It is unlawful for any employer to knowingly employ, hire, recruit or refer, either for him or herself or on behalf of another, for private or public employment within the state, an unauthorized worker who is not duly authorized to be employed by law.

(b) Employers shall be required to verify a prospective employee's legal status or authorization to work prior to employing the individual or contracting with the individual for employment services.

(c) For purposes of this article, proof of legal status or authorization to work includes, but is not limited to, a valid social security card, a valid immigration or nonimmigration visa, including photo identification, a valid birth certificate, a valid passport, a valid photo identification card issued by a government agency, a valid work permit or supervision permit authorized by the Division of Labor, a valid permit issued by the Department of Justice or other valid document providing evidence of legal residence or authorization to work in the United States.

(d) For purposes of enforcing the provisions of this article, and notwithstanding any other provision of this code to the contrary, the commissioner or his or her authorized representative may access information maintained by any other state agency, including, but not limited to, the Bureau of Employment Programs and the Division of Motor Vehicles, for the limited purpose of confirming the validity of a worker's legal status or authorization to work. The commissioner shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code to safeguard against the release of any confidential or identifying information that is not necessary for the limited purpose of enforcing the provisions of this article.

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§21-1B-4. Record-keeping requirements; employer compliance.

Every employer, firm and corporation shall make such records of the persons he or she employs including records of proof of the legal status or authorization to work of all employees. Such records shall be preserved pursuant to the provisions of section five, article five-c of this chapter and shall be maintained at the place of employment. Pursuant to section three, article one of this chapter, such records shall be made available to the commissioner or his or her authorized representative for inspection and investigation as the commissioner deems necessary and appropriate for the purposes of determining whether any employer, firm or corporation has violated any provision of this article which may aid in the enforcement of the provisions of this article.

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§21-1B-5. Penalties.

(a) Any employer who knowingly and willfully fails to maintain records as required by section four of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined $100 for each offense. Failure to keep records on each employee constitutes a separate offense.

(b) Any employer who knowingly violates the provisions of section three of this article by employing, hiring, recruiting or referring an unauthorized worker is guilty of a misdemeanor and, upon conviction thereof, is subject to the following penalties:

(1) For a first offense, a fine of not less than $100 nor more than $1,000 for each violation;

(2) For a second offense, a fine of not less than $500 nor more than $5,000 for each violation;

(3) For a third or subsequent offense, a fine of not less than $1,000 nor more than $10,000, or confinement in jail for not less than thirty days nor more than one year, or both.

(c) Any employer who knowingly and willfully provides false records as to the legal status or authorization to work of any employee to the commissioner or his or her authorized representative is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not more than one year or fined not more than $2,500, or both.

(d) Any employer who knowingly and willfully and with fraudulent intent sells, transfers or otherwise disposes of substantially all of the employer's assets for the purpose of evading the record-keeping requirements of section four of this article is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not more than one year or fined not more than $10,000, or both.

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§21-1B-6. Denial of deductible business expense.

On or after January 1, 2008, no wages or remuneration for services paid to an unauthorized worker of $600 or more per annum may be claimed and allowed as a deductible business expense for state income tax purposes by a taxpayer if the employer has been convicted under this article of employing, hiring, recruiting or referring the unauthorized worker. The commissioner shall notify the Department of Revenue of any conviction of an employer under this article and the department is to take the appropriate action against the taxpayer.

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§21-1B-7. Suspension or revocation of license.

(a) If, upon examination of the record or records of conviction, the commissioner determines that an employer has been convicted of a third or subsequent offense under subsection (b), section five of this article or has been convicted of the offenses described in subsection (c) or (d) of said section, the commissioner may enter an order imposing the following disciplinary actions:

(1) Permanently revoke or file an action to revoke any license held by the employer; or

(2) Suspend a license or move for a suspension of any license held by the employer for a specified period;

(b) The order shall contain the reasons for the revocation or suspension and the revocation or suspension periods. Further, the order shall give the procedures for requesting a hearing. The person shall be advised in the order that because of the receipt of the record of conviction by the commissioner a presumption exists that the person named in the record of conviction is the person named in the commissioner's order and this constitutes sufficient evidence to support a revocation or suspension and that the sole purpose for the hearing held under this section is for the person requesting the hearing to present evidence that he or she is not the person named in the record of conviction. A copy of the order shall be forwarded to the person by registered or certified mail, return receipt requested. No revocation or suspension shall become effective until ten days after receipt of a copy of the order.

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§21-1B-8. Citation for violation.

(a) If, upon inspection or investigation, the commissioner believes that an employer has violated a provision of this article, the commissioner shall issue a notice to produce records or documents to the employer. Each notice shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of this article alleged to have been violated. The employer shall have up to seventy-two hours, or for good cause shown to the commissioner, a greater period of time, to produce employment status verification records.

(b) If after the time period allowed under subsection (a) of this section the employer is unable to produce the required documents to satisfy the commissioner that there is no violation of this article, the commissioner may issue a citation to the employer. Each citation shall be in writing on a standard form as prescribed by the commissioner and shall describe with particularity the nature of the violation, including a reference to the provision of this article alleged to have been violated. Each citation issued under this section or a copy or copies thereof shall be prominently presented to a magistrate or circuit judge in the county where the violation occurred.

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