

LOCAL LAW NO. "I" FOR 2008

A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK REQUIRING ORGANIZATIONS DOING BUSINESS WITH THE COUNTY TO CERTIFY COMPLIANCE WITH FEDERAL LAW WITH RESPECT TO LAWFUL HIRING OF EMPLOYEES

Introduced: 7/14/08

By Messrs. Domalewicz, Morse, McCoy, Rahm and Scavo:

BE IT ENACTED by the County Legislature of the County of Albany as follows:

Section 1. Legislative Intent.

This Legislature hereby finds that there has been an ongoing national debate regarding the unfairness and inequities between employers that comply with all federal, State, and local laws and regulations in connection with the hiring of their employees and employers that fail to comply with such laws and regulations.

This Legislature further finds and determines that these inequities provide a financial disadvantage to those employers who comply with all federal, State, and local laws and regulations in connection with the hiring of their employees while, in turn, providing an unfair financial advantage to those employers who do not comply with the law.

This Legislature also finds and determines that employer non-compliance with federal, state, and local laws and regulations that regulate the hiring of employees results in diminished protections of employees from unfair labor practices and fosters the circumvention of prevailing wage and health insurance coverage requirements.

This Legislature further finds that the County of Albany provides grants, loans, contracts, leases and other forms of financial assistance to businesses that result in the creation and maintenance of a wide variety of employment opportunities in Albany County, thereby affording the County the opportunity to utilize its economic and financial leverage to compel local businesses to comply with the federal law requiring businesses to verify that their employees are legally eligible to be employed in the United States.

Therefore, the purpose of this Local Law is to provide a means of assisting the enforcement of the federal law requiring businesses to verify that their employees are legally eligible to be employed in the United States by providing an enforcement mechanism at the County level against non-compliant businesses that are funded by the County of Albany.

Section 2. Definitions.

As used in this law, the following terms shall have the meaning indicated:

- A.) Alien – Any person who is not a citizen or national of the United States.
- B.) Awarding Agency – That subordinate or component entity or person of the County of Albany that is responsible for solicitation of proposals or bids and responsible for the award and administration of contracts, license agreements, leases and other financial compensation agreements.
- C.) Compensation –
 - 1.) Any grant, loan, tax incentive funding, appropriation, payment, subsidy or other form of financial assistance which is realized by or provided to a covered employer by or through the authority or approval of the County of Albany.
 - 2.) Any contract, lease or other financial compensation agreement let to a person with or by the County of Albany for the furnishing of services, goods, equipment, supplies, materials, public works, or other property to or for the County of Albany.
- D.) Contractor – A person who contracts to do work for another. This term does not include wholesalers.
- E.) County – The County of Albany, any agency, office, position, administration, department, division, bureau, board, commission, corporation, public authority or unit of government, the expenses of which are paid in whole or in part by the County of Albany, or over which majority control is exercised by officers of the County of Albany or of a County-affiliated agency or their appointees.
- F.) Covered Employee – An individual employed on either a full-time, part-time, temporary or seasonal basis, by a covered employer to perform work on or for the project or matter for which the recipient has received compensation.
- G.) Covered Employer – A recipient of, or an applicant for, compensation and who has at least one (1) covered employee working within the County of Albany.
- H.) Person – One or more of the following or their agents, employees, representatives and legal representatives: individuals, corporations, partnerships, joint ventures, associations, labor organizations, educational institutions, mutual companies, joint-stock companies, all trusts,

unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries and other entities recognized at law by this County.

- I.) Recipient – Any person or entity that is a recipient of compensation, as defined in this Local Law.
- J.) Seasonal – A period of time not to exceed ninety (90) consecutive days at any given time within a six-month period.

Section 3. Requirements.

- A.) All covered employers that are recipients of compensation from the County through any grant, loan, subsidy, funding, appropriation, payment, tax incentive, contract, lease or other financial compensation agreement issued by the County or an awarding agency, where such compensation is one hundred percent (100%) funded by the County, shall submit a completed sworn affidavit (under penalty of perjury), the form of which shall be established by the County Department of Law, certifying that they have complied, in good faith, with the requirements of Title 8 of the United States Code (U.S.C.) Section 1324a (Aliens and Nationality) with respect to the hiring of covered employees. The affidavit shall be executed by an authorized representative of the covered employer and shall be part of any executed contract, lease or other financial compensation agreement with the County; and shall be made available to the public upon request.
- B.) Covered employer affidavits shall be submitted to the awarding agency at the following times:
 - 1.) upon application made to the County for any grant, loan, subsidy, tax incentive funding, appropriation, payment, or other form of financial assistance;
 - 2.) upon submission to the County of any response to a County bid, request for proposals (RFP), request for qualifications (RFQ) or similar contract letting process, including but limited to letting for leases and other financial compensation agreements; and
 - 3.) on January 1st of each year for the duration of the County contract, lease or other financial compensation agreement.

Section 4. Affirmative Defense.

Any covered employer that establish that they have complied in good faith with the requirements of Title 8 U.S.C. Section 1324a with respect to the hiring of covered employees have established an affirmative defense that such covered employer have not violated this Local Law with respect to such hiring.

Section 5. Maintenance of Records.

- A.) All covered employers shall verify that they have complied with the requirements of this Local Law based upon the categories of records, set forth below, copies of which shall be maintained by the covered employer to evidence compliance with this Local Law:
- (i) United States passport; or
 - (ii) resident alien card or alien registration card; or
 - (iii) (a) driver's license, if it contains a photograph of the individual; and
(b) a social security account number card (other than such a card which specifies on its face that the issuance of the card does not authorize employment in the United States); or
 - (iv) employment authorization documents, such as an H-1B visa, H-2B visa, and L-1 visa, or such other work visa as may be authorized by the United States Government at the time the County contract is awarded for all covered employees; or
 - (v) birth certificate indicating that person was born in the United States;
- B.) The documents reviewed and relied upon by the covered employer must appear on their face to be genuine. Copies of such documents relied upon by the covered employer shall be maintained by the covered employer for all covered employees for the periods set forth below.
- C.) Such records shall be maintained by the covered employer for the following minimum periods of time:
- 1.) one (1) year for a tax incentive;
 - 2.) two (2) years for a County grant, subsidy or other financial assistance;
 - 3.) until such time the County loan is paid back in full; and
 - 4.) six (6) years after the County contract, lease or other financial compensation agreement either expires or is terminated.
- D.) Authorized County employees shall be entitled to review such records on a periodic basis as requested by the County or awarding agency.

Section 6. County contracts

No grant, loan, subsidy, tax incentive, funding, appropriation, payment, other financial assistance, contract, lease or other financial compensation agreement shall be awarded to a covered employer that does not certify that it has complied with

Title 8 U.S.C. Section 1324a and this Local Law with respect to its covered employees. All County contracts, leases and other financial compensation agreements awarded shall set forth the obligations of the covered employer as enumerated in this Local Law.

Section 7. Applicability.

This Local Law shall apply to the following actions:

- (i) All County contracts, license agreements, leases and other financial compensation agreements entered into or renewed after the applicability date of this Local Law;
- (ii) All loans, subsidies, tax incentives funding, appropriations, payments, and other financial assistance provided by the County; and
- (iii) A covered employer who is constructing public works for the County of Albany under a loan agreement and pursuant to County plans and specifications, even though the project may not be 100 per cent County funded due to federal and/or State aid that may be available.

Section 8. Enforcement; penalties for offenses.

- A.) Notwithstanding any provision of law to the contrary, any covered employer who submits a false, fictitious or fraudulent affidavit to the County or awarding agency in connection with this Local Law shall, upon conviction, shall be guilty of a Class A misdemeanor, punishable by a fine of not less than \$250.00 nor more than \$2,000.00, or up to six (6) months imprisonment, or both. Each such violation shall constitute a separate and distinct offense.
- B.) Notwithstanding any provision of law to the contrary, any covered employer, who violates any of the provisions of this Local Law, upon a first violation shall be subject to a civil penalty, in an amount not less than \$250.00 nor more than \$1,000.00, for each day such covered employee remains employed by the covered employer. Any covered employer who violates any of the provisions of this Local Law as set forth herein within the period of one (1) year immediately subsequent to the first violation, shall result in a second violation, the civil penalty of which shall be in an amount not less than \$2,000.00 nor more than \$5,000.00 for each day such covered employee remains employed by the covered employer. Each such violation shall constitute a separate and distinct offense.
- C.) Notwithstanding any provision of law to the contrary, any covered employer who violates the maintenance of records provisions of this Local Law shall be

subject to a civil penalty, in an amount not less than \$250.00 nor more than \$2,000.00.

- D.) Any covered employer who violates the provisions of this Local Law more than two (2) times shall have its contract, lease or other financial compensation agreement terminated immediately; and, in the case of a County loan, subsidy or other form of financial assistance, same shall be declared in default for purposes of the County collecting on the full amount of the loan, subsidy or other form of financial assistance.
- E.) Any determination made hereunder by the County of Albany shall be reviewable pursuant to Article 78 of the Civil Practice Law and Rules.

Section 9. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this Local Law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 10. Effective Date.

This Local Law shall take effect immediately upon filing in the Office of the Secretary of State.

Referred to Law Committee. 7/14/08