

KD Alert: The Philadelphia Displaced Workers Ordinance – How it Limits an Employer’s Hiring Practices

by Philip R. Voluck, Esq. and Katharine W. Fogarty, Esq.
(March 12, 2014)

Many employers may be unaware that on June 30, 2000, the Philadelphia Displaced Contract Workers Ordinance (“DCWO”) went into effect, making it unlawful for successor contractors in the janitorial, maintenance, security, health-care, hotel, and food-and-beverage service industries within Philadelphia to terminate, without cause, any of the previous service contractor’s employees for a period of ninety (90) days.

When Does the DCWO Apply and how is the Employer Affected?

The DCWO applies when a business owner, known as an “awarding authority,” decides to replace one contractor who supplies covered services with another. The awarding authority must provide the contractor with advanced notice that the service contract will be terminated. The terminated service contractor must then, within three (3) days, provide the successor contractor with the name, date of hire, and job classification of each employee working for the prior contractor at the time that notice of termination was received. Once the original contract expires, the terminated contractor fulfills its obligations by updating the employee information provided to the successor contractor. The DCWO also applies when a company acquires a business and chooses to switch contractors.

Although the law does apply to a wide range of service industries, there are a few situations that the DCWO does not cover: 1) contractors that employ fewer than ten (10) individuals; 2) employees who work fewer than fifteen (15) hours a week; 3) managerial, supervisory or confidential employees, the latter defined under the Fair Labor Standards Act (“FLSA”) as employees who are “required to develop or present management positions with respect to meeting and conferring or whose duties normally require access to confidential information which contributes significantly to the development of such management position”; 4) and employees employed for fewer than eight (8) months with the prior contractor.

Even though successor contractors are required to keep these employees for ninety (90) days, the DCWO allows employers to set the terms and conditions of the employment in a non-union setting. Employers are not required to pay the same wages or offer the same benefits as the previous employer. The successor contractor is required to hand-deliver a written offer to the employee in his or her native language or a language in which the employee is fluent. The writing should include the wages, hours and benefits being offered to the employee. Additionally, the offer must inform the employee of his right to be employed for ninety (90) days and of his right to sue if the ordinance is violated. The employee must be given at least ten (10) days from the date of the offer to respond and the letter must clearly state when the response is due.

What are the Penalties for Violating the DCWO?

The penalties for violating the DCWO are quite steep. If the employer is found in violation of the ordinance, it will be subject to a fine of \$50 to \$100 per day, per employee. Additionally under the law, a discharged employee may bring a private cause of action against the prior contractor, the successor contractor, or the awarding authority, jointly or severally, for back pay, including the value of benefits, and even reinstatement. If the employee wins the suit, the employer is liable for attorney fees and court costs.

If you have questions pertaining to the Philadelphia Displaced Contract Workers Ordinance or need any assistance complying with the ordinance, please contact Philip R. Voluck, Esq. or Katharine W. Fogarty, Esq. at 215-461-1100.