

LAWFUL HIRING OF EMPLOYEES LAW
RULES & REGULATIONS

Local Law No. 52-2006

Adopted October 4, 2006

Lawful Hiring of Employees Unit
Suffolk County Department of Labor

LAWFUL HIRING OF EMPLOYEES LAW

RULES & REGULATIONS

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B. LEGISLATIVE INTENT

1. 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.
2. 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.
3. This Legislature further finds and determines that, since there has been a lack of enforcement of a twenty (20) year old federal law (Simpson-Mazzoli) that requires businesses to verify that their employees are legally eligible to be employed in the United States, Suffolk County has an opportunity to lead by example in an effort to prod the federal government to undertake such enforcement action.
4. 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.
5. This Legislature further finds and determines that Suffolk County at present has no jurisdiction to enforce Simpson-Mazzoli, even against businesses whose contracts are one hundred percent (100%) funded by the County of Suffolk
6. This Legislature also finds and determines that the County of Suffolk has a finite amount of scarce taxpayer resources to expend, which resources shall be spent wisely and prudently.
7. This Legislature further finds that the County of Suffolk provides grants, loans, contracts, license agreements, leases and other forms of financial assistance to businesses that result in the creation and maintenance of a wide variety of employment opportunities in Suffolk 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.
8. Therefore, the purpose of this 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 one hundred percent (100%) funded by the County of Suffolk, thereby:

- (i) helping to promote the federal policy of requiring employers to verify the employment status of potential employees;
- (ii) helping to eliminate unfair competitive advantages between businesses;
- (iii) helping to eliminate unfair labor practices and worker exploitation; and
- (iv) helping to assure taxpayers that employers and employees are paying their fair share of taxes by complying with tax laws.

C. DEFINITIONS

ALIEN:

Any person who is not a citizen or national of the United States.

AWARDING AGENCY:

That subordinate or component entity or person of the County of Suffolk 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.

COMPENSATION:

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, or the owners thereof, by or through the authority or approval of the County of Suffolk including, but not limited to, Community Development Block Grant (CDBG) loans, Industrial Development Agency (IDA) loans, and Enterprise-Zone-related incentives.

Any contract, subcontract, license agreement, lease or other financial compensation agreement let to a person with or by the County of Suffolk for the furnishing of services, goods, equipment, supplies, materials, public works, or other property to or for the County of Suffolk.

CONTRACTOR:

A person who contracts to do work for another. This term does not include wholesalers.

COUNTY:

The County of Suffolk, 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 Suffolk, or over which majority control is exercised by officers of the County of Suffolk or of a County-affiliated agency or their appointees.

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.

COVERED EMPLOYER:

A recipient of, or an applicant for, compensation that is not exempt from this law, and who has at least one (1) covered employee working within the County of Suffolk or the County of Nassau, or at least one 50% or more owner living within the County of Suffolk.

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.

PROTECTED INDIVIDUAL:

An individual who: a) is a citizen or national of the United States; or b) is an alien who is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under Title 8 U.S.C. Section 1160(a) or Section 1255a(a)(1), is admitted as a refugee under Title 8 U.S.C. Section 1157, or is granted asylum under Title 8 U.S.C. Section 1158; but does not include: (i) an alien who fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, within six months after the date of the enactment of Title 8 U.S.C. Section 1324b; and (ii) an alien who has applied on a timely basis, but has not been naturalized as a citizen within 2 years after the date of the application, unless the alien can establish that the alien is actively pursuing naturalization.

RECIPIENT:

Any person or entity that is a recipient of compensation, as defined in this law, and any contractor or subcontractor of a recipient producing or providing goods, materials, supplies, public works, or services to a recipient that are used by that recipient in the project or matter for which the recipient has received compensation.

SEASONAL:

A period of time not to exceed ninety (90) consecutive days at any given time within a six-month period.

SUBCONTRACTOR:

A person who takes portions of a contract from a covered employer, a contractor or another subcontractor. This term does not include wholesalers.

WHOLESALE:

A person who buys in comparatively large quantities, and then resells, usually in small quantities, to a middleman or retailer, but never to the ultimate consumer.

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TITLE 8 UNITED STATES CODE (U.S.C.) SECTION 1324A

Part II

REQUIREMENTS

A. SUMMARY

This part outlines the requirements that covered employers, contractors, subcontractors, and the owners thereof, must follow to comply with Suffolk County's Lawful Hiring of Employees Law.

This law applies to all covered employers, contractors and subcontractors of covered employers, and the owners thereof that are recipients of compensation from the County which is one hundred percent (100%) funded by the County, through any grant, loan, subsidy funding, appropriation, payment tax incentive, contract, subcontract, license agreement, lease or other financial compensation agreement issued by the County or an awarding agency.

This law applies to all covered employers, contractors and subcontractors of covered employers, and the owners thereof, that are constructing public works for the County of Suffolk.

B. APPLICATION SUBMITTAL AND REVIEW

1. **The Covered Employer and the owner are responsible for:**
 - a. Submitting to the awarding agency the **Notice of Application to Certify Compliance with Federal Law (LHE-1) including:**
 1. the name, address, and phone number of the prospective recipient and the contractor and subcontractor if applicable;
 2. the term of the contract or extension of same;
 3. a brief description of the project or service for which the compensation is sought;
 4. not-for-profit status – if applicable, proof of IRS not-for-profit status must be attached; and
 5. evidence of compliance with Title 8 of the United States Code (U.S.C.) Section 1324a (Aliens and Nationality).

- b. Submitting to the awarding agency a completed sworn **Affidavit of Compliance (LHE-2)** with the requirements of Title 8 of the United States Code (U.S.C.) Section 1324a (Aliens and Nationality) 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 and with respect to the alien and nationality status of the owners;
- c. Executing the sworn affidavit or designating an authorized representative of the covered employer or owner to do so;
- d. Submitting the sworn affidavit as part of an executed contract, subcontract, license agreement, lease or other financial compensation agreement with the County;
- e. Forwarding forms **LHE-1** and **LHE-2** to their contractors and subcontractors, and the owners thereof;
- f. Maintaining the evidence of compliance documentation at the construction site; and
- g. Maintaining a daily sign-in register or log (**Construction Site Sign-In Sheet - LHE-7**) for employees working at the construction site.

2. All contractors and subcontractors of covered employers or the owners thereof are responsible for:

- a. Submitting the **Notice of Application to Certify Compliance with Federal Law (LHE-1)** to the covered employer including:
 - 1. the name, address, and phone number of the prospective recipient;
 - 2. a brief description of the project or service for which the compensation is sought;
 - 3. the amount of compensation; and
 - 4. evidence of compliance with Title 8 of the United States Code (U.S.C.) Section 1324a (Aliens and Nationality).
- b. Submitting a completed sworn **Affidavit of Compliance with the requirements of Title 8 of the United States Code (U.S.C.) Section 1324a (Aliens and Nationality) (LHE-2)** 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 and with respect to the alien and nationality status of the owners;

- c. Executing the sworn affidavit or designating an authorized representative of the contractor, subcontractor or owner to do so;
- d. Submitting the affidavit to the covered employer;
- e. Maintaining the evidence of compliance documentation at the construction site; and
- f. Maintaining a daily sign-in register or log for employees working at the construction site.

3. The Awarding Agency is responsible for:

- a. Receiving all sworn affidavits and applications from the covered employer and owner at the following times:
 - Upon application to the County for any grant, loan subsidy, tax incentive funding, appropriation, payment, or other form of financial assistance;
 - Upon submission to the County of any response to a County bid, request for proposals (RFP), request for qualifications (RFQ) request for expressions of interest (RFEI), or similar contract letting process;
 - On January 1st of each year for the duration of the County contract, subcontract, license agreement, lease or other financial compensation agreement;
 - Upon renewal and amendment of any County contract, subcontract, license agreement, lease or other financial compensation agreement.
- b. Receiving all sworn affidavits and Notice of Applications submitted by the covered employer on behalf of their contractors and subcontractors:
 - Within one (1) week after the contractor or subcontractor is hired by the covered employer to perform the work in connection with the County contract, subcontract, license agreement, lease or other financial compensation agreement;
 - Upon renewal of a County contract, subcontract, license agreement, lease or other financial compensation

agreement, where a contractor or subcontractor was previously hired by a covered employer to perform work;

- On January 1st of each year for the duration of the County contract, subcontract, license agreement, lease or other financial compensation agreement, provided they are continuing to perform work on said contract.

- c. Forwarding all sworn affidavits and applications to the Lawful Hiring of Employees Unit;
- d. Completing **Notice of Non-Applicability (LHE-6)** if the law does not apply to a covered employer, contractor or subcontractor, and forward to the Lawful Hiring of Employees Unit; and
- e. Including the **Lawful Hiring of Employees Unit's approval form (LHE-3)** with contracts.

4. The Lawful Hiring of Employees Unit is responsible for:

- a. Receiving all sworn affidavits and notice of applications;
- b. Sending approval receipt to Awarding Agency; and
- c. Making sworn affidavits available to the public upon request.

C. FORMS

Notice of Application to Certify Compliance with Federal Law (Title 8 U.S.C. Section 1324a) with Respect to Lawful Hiring of Employees (LHE-1)

Affidavit of Compliance with the Requirements of Title 8 U.S.C. Section 1324a with Respect to Lawful Hiring of Employees (LHE-2)

Verification of Submission of Lawful Hiring of Employees (LHE-3)

Notice of Non-Applicability for Compliance with Federal Law (Title 8 U.S.C. Section 1324a) with Respect to Lawful Hiring of Employees (LHE-6)

Construction Site Sign-In Sheet (LHE-7)

D. ATTACHMENT

Title 8 United States Code (U.S.C.) Section 1324a

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Part III

MAINTENANCE OF RECORDS

A. SUMMARY

This part outlines the records that covered employers and owners must receive from an employee and maintain in order to comply with the law.

B. EVIDENCE OF COMPLIANCE

1. The covered employer, contractor, subcontractor or owner shall:
 - a. Verify that their covered employees are authorized to work in the United States by maintaining copies of the following records for each covered employee:
 - (i) United States passport; or
 - (ii) resident alien card or alien registration card; or
 - (iii) birth certificate indicating that person was born in the United States; or
 - (iv) (a) 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
 - (v) employment authorization documents such as an H-1B visa, H-2B visa, and L-1 visa, or other work visa as may be authorized by the United States Government at the time the County contract is awarded.
 - b. Review all records to insure that they are genuine.
 - c. Maintain all such records for the minimum periods of time as follows:
 - (i) one (1) year for a tax incentive;

- (ii) two (2) years for a County grant, subsidy or other financial assistance;
 - (iii) until such time the County loan is paid back in full; and
 - (iv) six (6) years after the County contract, subcontract, license agreement, lease or other financial compensation agreement either expires or is terminated.
 - d. Make all records available to monitors from the Lawful Hiring of Employees Unit upon request.
- 2. All covered employees shall provide their employer with the records outlined in **Section B(1) Evidence of Compliance**.
- 3. The Lawful Hiring of Employees Unit shall:
 - a. Review records submitted by covered employees.
 - b. Determine if the submitted records comply with the requirements of the Law.

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AFFIRMATIVE DEFENSE

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Part IV

AFFIRMATIVE DEFENSE

A. SUMMARY

This section outlines an affirmative defense with respect to documenting alien and nationality status.

Copies of all required documentation are necessary to establish the forgoing affirmative defense.

B. ESTABLISHING AFFIRMATIVE DEFENSE

1. Covered employers and the owners, thereof, that:
 - a. 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, and with respect to the alien nationality status of the owners thereof; and
 - b. that they have complied with the law by following all the Rules and Regulations as outlined herein;shall have an affirmative defense that they have not violated δ 234-3.A. (1) of the Law.

2. Contractors and subcontractors of a covered employer and the owners thereof that:
 - a. Establish 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 and with respect to the requirements of the alien nationality status of the owners thereof; and
 - b. that they have complied with the law by following all the Rules and Regulations as outlined herein;shall have an affirmative defense that they have not violated δ 234-3.B. (1) of the Law.

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PART V

ENFORCEMENT AND PENALTIES

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- 3. COVERED EMPLOYER OR OWNER WHO VIOLATES THE PROVISIONS OF THE LAW MORE THAN TWO (2) TIMES**
- 4. COVERED EMPLOYER OR OWNER WHO SUBMITS A FALSE, FICTITIOUS OR FRAUDULENT AFFIDAVIT TO THE COUNTY**
- 5. A COVERED EMPLOYER OR OWNER THEREOF WHO FAILS TO MAINTAIN THE RECORDS REQUIRED BY THE LAW**
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SECTION C: ATTACHMENT

TITLE 8 UNITED STATES CODE (U.S.C.) SECTION 1324B

Part V

ENFORCEMENT AND PENALTIES

A. SUMMARY

This part outlines the penalties that a covered employer, or owner will be subject to if they are not complying with the Law as outlined in Part II of the Rules and Regulations. Both civil and criminal penalties may be imposed. Each violation shall constitute a separate and distinct offense.

In addition, all covered employers, contractors, subcontractors, and the owners thereof, shall not discriminate against any covered employee or applicant for employment with respect to the hiring, recruitment or referral for a fee because of race, creed, color, national origin, sex, age, gender, disability, sexual orientation, military status or marital status, or in the case of a protected individual, due to the individual's citizenship status.

The covered employer shall not intimidate, threaten, coerce, or retaliate against any covered employee or applicant for employment for the purpose of interfering with any right or privilege secured under Title 8 U.S.C. Section 1324b or because the covered employee or applicant for employment intends to file or has filed a charge or a complaint, testified, assisted or participated in an investigation proceeding or hearing under Title 8 U.S.C. Section 1324b.

B. ENFORCEMENT AND PENALTIES

1. A covered employer or owner thereof who is found guilty of a first violation of the Law:
 - a. Shall be subject to a civil penalty in an amount not less than \$250.00 nor more than \$1,000.00 for each day that:
 - (i) the covered employee remains employed by the covered employer; or
 - (ii) the owners remain an owner thereof.
2. A covered employer or owner thereof who, within one (1) year of the first violation, again violates the law:
 - a. Shall be subject to a civil penalty in an amount not less than \$2,000.00 nor more than \$5,000.00 for each day that:

- (i) the covered employee remains employed by the covered employer; or
 - (ii) the owners remain an owner thereof.
- 3. A covered employer or owner thereof, who violates the provisions of the law more than two (2) times:
 - a. Shall have its contract, subcontract, license agreement, lease, or other financial compensation agreement terminated immediately;
 - b. Shall, in the case of a County loan, subsidy, or other financial assistance be declared in default for purposes of the County collecting on the full amount of the loan, subsidy or other form of financial assistance; and
 - c. Shall be ineligible to receive any future loans, subsidies or other financial assistance from the County.
- 4. A covered employer or owner thereof who submits a false, fictitious or fraudulent affidavit to the County shall, upon conviction,:
 - a. Be guilty of a Class A misdemeanor;
 - b. Receive a fine of not less than \$250.00 nor more than \$2,000.00; and/or
 - c. Be imprisoned for up to six (6) months.
- 5. A covered employer or owner thereof who fails to maintain the records required by the Law shall be subject to a civil penalty in an amount not less than \$250.00 nor more than \$2,000.00.
- 6. The Lawful Hiring of Employees Unit is responsible for:
 - a. Enforcing all provisions of the **Lawful Hiring of Employees Law**;
 - b. Monitoring covered employers, owners, contractors and subcontractors for compliance;
 - c. Conducting inspections at covered employers', owners', contractors' or subcontractors' workplaces;

- d. Examining the documents required to be maintained by the covered employer;
 - e. Investigating complaints received;
 - f. Serving notice to the covered employer, owners, contractor or subcontractor in violation of the law to correct such violations within a specific timeframe;
 - g. Receiving the findings of violations and penalties from the Suffolk County Department of Labor (SCDOL) Hearing Officer and collecting monetary penalties and fines in the appropriate amount in check form payable to the “Suffolk County General Fund”;
 - h. Depositing the collected funds in accordance with County Standard Operating Procedures;
 - i. Forwarding to the Suffolk County District Attorney all matters arising from a violation of Section 234-8. A of this Law; and
 - j. Forwarding all complaints it receives of unlawful discrimination and unlawful discriminatory practices relative to this Law to the Suffolk County Human Rights Commission.
7. All violations of Section 234-8. A of this Law will be referred to the Suffolk County District Attorney who shall take whatever actions he deems appropriate under this Law or applicable State law.

C. ATTACHMENT

Title 8 United States Code (U.S.C.) Section 1324b

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INVESTIGATIONS PROCESS

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- 3. SUFFOLK COUNTY DEPARTMENT OF LABOR HEARING OFFICER RESPONSIBILITIES**

SECTION C: FORMS

**COVERED EMPLOYER/EMPLOYEE/CONTRACTOR/
SUBCONTRACTOR COMPLAINT FORM (LHE-4)**

Part VI

INVESTIGATIONS PROCESS

A. SUMMARY

This part delineates the procedure for investigating complaints from covered employers, covered employees, contractors, subcontractors or owners concerning violations of the Lawful Hiring of Employees Law.

The Suffolk County Department of Labor (SCDOL) is authorized to utilize employees from other County departments to implement this law.

B. INVESTIGATING COMPLAINTS

1. If filing a complaint, the covered employer, covered employee, contractor, subcontractor, or owner thereof is responsible for:
 - a. Submitting to the SCDOL a completed signed complaint form (LHE-4);
 - b. Submitting copies of all documents supporting the complaint, if any;
 - c. Cooperating with all investigations;
 - d. Permitting access to work sites and relevant records;
 - e. Participating in a meeting among the relevant parties, if necessary, to attempt to resolve the complaint;
 - f. Providing, within ten (10) days, any further documentation requested by SCDOL or a designated Hearing Officer; and
 - g. Complying with the decision regarding the complaint and adhering to the timeframe for taking corrective action as necessary.

Note: A complaint form (LHE-4) may be obtained from SCDOL or from the Suffolk County website at www.co.suffolk.ny.us/labor. If this form is not used, the written complaint must contain at a minimum:

- **The name, address, job title and telephone number of the complainant**
- **Nature of the complaint**
- **Documentation supporting the claim**

2. The Lawful Hiring of Employees Unit is responsible for:
 - a. Ensuring that all complaints are in writing, signed by the complainant, logged and filed;
 - b. Informing the party charged in the complaint of the allegations;
 - c. Initiating an investigation, including a monitoring visit to the worksite at issue, within ten (10) days, if necessary;
 - d. Referring the investigation to a SCDOL designated Hearing Officer, if warranted;
 - e. Advising complainant and the party charged in the complaint of the results of the investigation; and
 - f. Maintaining all records of complaints, investigations, and decisions.

3. The SCDOL Hearing Officer is responsible for:
 - a. Issuing subpoenas, if necessary;
 - b. Administering oaths and examining witnesses pursuant to the New York Civil Practice Law and Rules;
 - c. Initiating a complete review and investigation of any complaints forwarded by the Lawful Hiring of Employees Unit;
 - d. Conducting both formal and informal meetings and hearings within twenty (20) days of receiving complaints in order to resolve the complaints;
 - e. Negotiating settlements;
 - f. Making findings of violations and ordering the payment of civil penalties; and
 - g. Informing the Lawful Hiring of Employees Unit within the SCDOL of the decision.

C. FORMS

**Covered Employer/Employee/Contractor/Subcontractor Complaint
Form (LHE-4)**

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PART VII

APPEALS PROCESS

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- 2. SUFFOLK COUNTY COMMISSIONER OF LABOR RESPONSIBILITIES**
- 3. LAWFUL HIRING OF EMPLOYEES UNIT RESPONSIBILITIES**

SECTION C: FORMS

NOTICE OF APPEAL (LHE-5)

Part VII

APPEALS PROCESS

A. SUMMARY

This part describes procedures for a covered employer who has been deemed non-compliant to dispute the findings of the SCDOL Hearing Officer.

B. APPEALS FROM COVERED EMPLOYER, CONTRACTOR, SUBCONTRACTOR OR OWNER

1. To formally dispute the findings of the SCDOL Hearing Officer, the covered employer, covered employee, contractor, subcontractor or owner thereof must:
 - a. File a **Notice of Appeal (LHE-5)** to the Suffolk County Commissioner of Labor within thirty (30) calendar days after the SCDOL Hearing Officer's decision; and
 - b. Submit with the appeal any new documentation to support the case.
2. The Suffolk County Commissioner of Labor shall:
 - a. Appoint a committee of three persons to make a thorough assessment of the appeal;
 - b. Render a decision after reviewing the committee's recommendation; and
 - c. Convey the decision to the Lawful Hiring of Employees Unit in the SCDOL.
3. The Lawful Hiring of Employees Unit is responsible for:
 - a. Sending the decision via U.S. Mail, certified/return receipt requested, to the covered employer, covered employee, contractor, subcontractor or owner thereof; and
 - b. Maintaining records and documentation of all notices, appeals and decision.

C. FORMS

Notice of Appeal (LHE-5)

LAWFUL HIRING OF EMPLOYEES LAW

RULES & REGULATIONS

PART VIII

APPLICABILITY

SECTION A: SUMMARY

SECTION B: APPLICABILITY

Part VIII

APPLICABILITY

A. SUMMARY

This part defines who is covered by the Law on all actions occurring on or after January 1, 2007.

B. APPLICABILITY

1. This law shall apply to all actions occurring on or after January 1, 2007 and shall apply to:
 - a. All one hundred percent (100%) County-funded County contracts, subcontracts, license agreements, leases and other financial compensation agreements entered into or renewed;
 - b. Amendments to all such County contracts, subcontracts, license agreements, leases and other financial compensation agreements;
 - c. All one hundred percent (100%) County-funded loans, subsidies, tax incentives, appropriations, payments and other financial assistance provided by the County; and
 - d. A covered employer, or the owner thereof, who is constructing public works for the County, and pursuant to County plans and specifications even though the project may not be one hundred percent (100%) County funded due to federal and/or State aid.
2. This law shall not apply to subcontractors of not-for-profit corporations or the subcontractors of the owners thereof, as the case may be.