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The State of Georgia joins a national trend with the implementation of Senate Bill 529, mandating electronic employment verification for public contractors.

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Global Edition

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Georgia Implements State-Enforced Immigration Compliance Bill

By Christopher DiGiorgio and Russell C. Ford

On April 17, 2006, the State of Georgia joined the national trend of states passing immigration compliance statutes by passing Senate Bill 529, the Georgia Security and Immigration Compliance Act of 2006. SB529 becomes effective July 1, 2007, even though there are many unanswered questions regarding which employers are required to comply with the law. Georgia's law also continues the national trend of confusion around complying with the various state statutes. Employers now have to navigate not only federal law in regards to immigration compliance, but also state statutes that vary from state to state. This additional burden comes on the heels of a new environment of criminal persecution by the Immigration and Customs Enforcement.

Primary to the Act is the requirement that certain public employers and any contractors and subcontractors to a public employer register with the U.S. Department of Homeland Security's Employment Eligibility Verification Program (EEV), discussed below. A *public employer* is defined by SB529 as "every department, agency, or instrumentality of the state or a political subdivision of the state." Any public employer (or its contractors/subcontractors) with 500 or more employees must be registered on July 1, 2007. Any public employer (or its contractors/subcontractors) with 100 or more employees must register on July 1, 2008. All public employers (or its contractors/subcontractors) must be registered on July 1, 2009, regardless of the number of employees.

The Employment Eligibility Verification Program

- The Employment Eligibility Verification Program (EEV), formerly known as the Basic Pilot Program, is administered joint-

ly by the U.S. Department of Homeland Security's (DHS) Citizenship and Immigration Services (USCIS) division and the Social Security Administration (SSA). EEV involves verification checks of the SSA and DHS databases, using an automated system to verify the employment authorization of all newly hired employees.

- Employers must first register online and sign a Memorandum of Understanding (MOU) with the USCIS and the SSA to use EEV. SB529 authorizes the State of Georgia to enter into this MOU.
- The EEV will allow employers to register distinct divisions or departments.
- The EEV does not allow employers to verify the work authorization of current employees; only new hires can be verified.

Regulations and Interpretations

A public employer cannot enter into a contract for the physical performance of labor within Georgia unless the contractor registers and participates in EEV. It is not clear from the statutory and regulatory language, whether Georgia will attempt to apply SB 529 to employers and employment locations outside the state of Georgia.

- On or after July 1, 2007, contractors or subcontractors with 500 or more employees are subject to the statute.
- It is unclear how the number of employees will be counted under the statute. Neither the law nor regulations indicate whether coverage requires that 500 employees be physically employed in the State of Georgia, or

elsewhere in the country. It is also not clear whether short term or temporary presence in the State will trigger the requirement.

- The Georgia Department of Labor has the ability to conduct random audits of contractors and subcontractors to ensure that they are in compliance and registered with the EEV.
 - Contractors and subcontractors must maintain files that can be requested at any time that contain evidence that they have registered for EEV and that they are utilizing the program. There is a sample affidavit and agreement contained in the regulations at 300-10-1-.07.
- The only employees impacted by the EEV requirements are those hired after July 1, 2007, and after the date the contractor or subcontractor registers for EEV.
 - It is unclear when contractors or subcontractors must register if their number of employees rises over the requisite threshold, or if contractors or subcontractors can terminate participation in the program if their number of employees drops below a threshold.
- The Georgia DOL has the authority to report to the DHS whenever the records they have are not sufficient to verify work eligibility of an individual.
 - The state can audit to make sure the employer is registered and also that each individual person has work eligibility. This will lead to disputes with state auditors over sufficiency of records to verify work eligibility and whether the ability to audit is only for employees hired after July 1, 2007.

Littler Mendelson will continue to monitor the situation in Georgia, as it is sufficiently unsettled that litigation concerning the scope and/or constitutionality of the law will follow. Employers are well advised to keep up to date on state and local developments in this dynamic area of the law. Employers should also be mindful of continued increases in raids by Immigration and Customs Enforcement. Before registering in the EEV program, employers should seek assistance of counsel to discuss the impact from legal,

economic and political standpoints. Littler Mendelson has been monitoring these trends and will continue to do so; you can review recent actions on our website by reviewing our earlier ASAP's on the "Swift" case and other recent enforcement actions. <http://www.littler.com/presspublications/index.cfm?event=detail&childviewID=324>.

Please stay tuned for further developments as SB529 is implemented and interpreted.

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