

## In This Issue:

June 2011

Alabama is now the most recent state to require all employers to enroll in and verify employment eligibility through E-Verify. This requirement goes into effect on April 1, 2012. The new law prohibits all Alabama employers, public and private, from knowingly employing unauthorized aliens.

## Alabama Is Latest State to Enact E-Verify Requirement

By Kelly Reese

On June 3, 2011, the Alabama legislature passed by a large margin in both houses legislation prohibiting employers from knowingly employing unauthorized aliens. The new law is known as the Beason-Hammon Alabama Taxpayer and Citizen Protection Act. Alabama's Governor signed the bill into law on June 9, 2011. While the new law requires all employers to enroll in and utilize E-Verify, there is no direct penalty for failing to do so. However, an employer that utilizes E-Verify will be immune from any liability under the act for knowingly employing an unauthorized alien.

### State Contracts, Subcontracts, Grants, and Incentives

To be awarded any contract, subcontract, grant, or incentive by the state, any political subdivision thereof, or a state-funded entity, an employer must provide documentation that it is enrolled and participating in E-Verify. This requirement goes into effect on January 1, 2012. By enrolling in and verifying every employee under E-Verify during the term of the contract, an employer is immune from liability for employing an unauthorized alien.

An employer's first violation will be deemed a breach of contract, may result in cancellation of the contract, and can result in initiation of legal action which could result in the suspension of the employer's business license(s) and permit(s) in the state for up to 60 days. Any such suspension will terminate one business day after a legal representative of the employer files an affidavit stating that the employer is now in compliance with the law. A second or subsequent violation will also be deemed a breach of contract, will result in the mandatory cancellation of the contract, and may result in the initiation of legal action to permanently revoke the employer's business licenses and permits in the state.

An employer who is a subcontractor that knowingly employs an unauthorized alien (even for the a first violation) may be barred from doing business with the state, any political subdivision thereof, a state-funded entity, or contractors who contract with them. A first violation by a subcontractor may result in initiation of legal action that could result in the suspension of business licenses and permits for up to 60 days. Any such suspension will terminate one business day after a legal representative of the employer

files an affidavit stating that the employer is now in compliance with the law. A second or subsequent violation by a subcontractor may result in legal action to permanently revoke the subcontractor's business licenses and permits.

Compliance with the new law may be verified by state authorities or law enforcement at any time.

## All Employers

All Employers in Alabama must enroll in E-Verify by April 1, 2012, and verify employment eligibility for all their employees through E-Verify. Employers with 25 or less employees may enroll in E-Verify at no charge through the Alabama Department of Homeland Security. The Alabama Department of Homeland Security has 90 days from September 1, 2011, to establish this service, which must be accessible to qualifying employers via electronic mail, facsimile, telephone, or in person. While there is no direct sanction for failure to enroll in and verify employment eligibility through E-Verify, employers who do so cannot be found to have knowingly employed an unauthorized alien in violation of the new law.

An employer's first violation will result in a court order requiring the employer: (1) to terminate all unauthorized aliens, and (2) file a sworn affidavit with the local district attorney stating that it has terminated all unauthorized aliens and will not knowingly or intentionally employ unauthorized aliens in Alabama. The court must also direct the applicable governmental body to suspend the business licenses and permits of the employer for up to ten days in the business locations where the unauthorized alien performed work. No business license or permit may be reinstated until another sworn affidavit has been filed confirming that the employer is in compliance with the law, including enrollment in E-Verify. The filing of that affidavit will automatically terminate the suspension one business day later. The court must also place the employer on a three-year probationary period during which it must file quarterly reports with the local district attorney of each new employee hired by the employer in the State of Alabama.

A second violation will result in a court order directing the appropriate governing body or bodies to permanently revoke all licenses held by the employer specific to the county where the unauthorized alien performed work. A subsequent violation will result in a court order directing the appropriate governing body or bodies to permanently revoke all licenses held by the employer throughout the state.

## Casual Domestic Labor Excepted

The foregoing requirements do not apply to casual domestic labor performed within a household.

## Wage or Compensation Paid to Unauthorized Aliens

Employers may not deduct as a business expense any moneys paid or in kind services provided to unauthorized aliens for state income or business tax purposes. Knowing failure to comply with this section will result in a penalty equal to ten times the deduction claimed.

## New Cause of Action Created for Employees

A U.S. citizen or an authorized alien may bring a civil action in state court against an employer who fails to hire or who discharges him or her while knowingly or negligently (i.e., reasonably should have known) employing an unauthorized alien. Recovery is limited to compensatory relief. However, the losing party in such action must pay the attorneys' fees of the prevailing party in an amount not to exceed the fees paid by the losing party to its own attorney.

## Enrollment in E-Verify as an Affirmative Defense

Employers enrolled in E-Verify and that verify employment eligibility of all employees through that system in good faith, and that act in conformity with respect to all applicable federal laws and regulations are immune from liability under Alabama law for any action by an employee for wrongful discharge or retaliation based on a notification from the E-Verify program that an employee is an unauthorized alien.

The provisions of the Alabama law related to E-Verify go into effect for all employers on April 1, 2012. Employers who contract with the state or political subdivisions thereof or with state-funded entities must comply with the applicable provisions by January 1, 2012. Therefore, it is recommended that employers begin taking steps now to reduce the likelihood and consequences of an allegation of employment of unauthorized aliens.

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