

PUBLICATION

Georgia Requires More Employers to Use E-Verify, Other Changes, Sets Stage

Authors: Robert C. Divine

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On May 13, 2011, the Georgia governor signed H.B. 87, the "Illegal Immigration Reform and Enforcement Act of 2011," which will require most private employers needing a Georgia business license to use the federal E-Verify identification system to confirm the eligibility of new employees. The new Georgia law duplicates and arguably goes beyond federal criminal definitions for "harboring" "illegal aliens," and it expands the scope of state law enforcement in identifying, detaining, and ensuring removal of unauthorized persons encountered in enforcement activity.

E-Verify Provisions

Georgia law already had prohibited state income tax deductions for employers of unauthorized aliens, but H.B. 87 now requires any employer of ten or more full-time workers seeking a new or renewed state or local business or professional license, organizational tax certificate, or similar license, to submit a standardized affidavit providing the employer's E-Verify registration number and attesting to its proper use. This requirement takes effect on January 1, 2012 for employers of 500 or more employees, on July 1, 2012 for employers of 100 to 499 employees, and on July 1, 2013 for employers of 10 to 99 employees, with the number of employees determined as of January 1 of the year in which the license is sought. Employers found to have made a "good faith violation" (an undefined term) may be given 30 days to get into compliance.

Georgia law already required E-Verify use by all public employers and most state contractors and subcontractors involving "physical performance of services" within Georgia, "regardless of tier." H.B. 87 does not seem to change meaningfully the scope of the activity covered, but it requires each contractor down the chain to submit upstream a standardized affidavit attesting to its E-Verify use, its E-Verify registration number, and its commitment to require such affidavit from downstream contractors for the physical performance of services in Georgia. A sole proprietor in such a contract would not use E-Verify but must submit a drivers license or ID card of a state that requires proof of lawful immigration status, as listed by the Georgia Attorney General's web site. The bill adds numerous layers of web site publication, governmental audits, agency funding reductions, contracting debarment, removal from office, and other civil and criminal enforcement to ensure compliance with the requirements.

Rather than penalizing non-complying employers with loss of existing business license, as did the Arizona law currently undergoing challenge in the U.S. Supreme Court, the Georgia law only denies a new license to those who cannot certify their E-Verify participation. Business interests might choose to wait for resolution of the Arizona litigation before deciding whether to challenge the Georgia law. Mandatory use of E-Verify is an element of the "Blueprint" for immigration reform recently released by the White House, but it is widely recognized that, in the absence of biometric verification back to a national identity system, increased use of E-Verify tends mainly to shift the production of counterfeit documents toward the embodiment of real stolen identities.

Other Immigration Requirements

H.B. 87 reflects an effort to follow examples in Arizona and Utah, while moderating some provisions to reduce legal challenge, as reflected in Governor Nathan Deal's signing statement. It "authorizes," rather than requires, law enforcement officers to inquire and act on information about detainees' immigration status. It criminalizes

on the state level actions such as identity theft, transporting, inducing, and "harboring" "illegal aliens," with harsh penalties. In an attempt to resolve the complex issue of how a state can prove that someone was illegally present, the bill gives breathtakingly wide latitude for evidence. Rather than brazenly claim to create a guestworker visa program as Utah did, the Georgia bill criticizes the ineffectiveness of the federal H-2A agricultural guestworker program and sets up a Georgia study of guestworker arrangements.

The bill also requires every state agency and political subdivision to limit all but a few exempted "public benefits" to persons who have presented a "secure and verifiable document" (as published on the state Attorney General's web site) and signed a form affidavit of their lawful status. The bill prohibits any state agency or political subdivision in most circumstances from accepting any document for identification unless it is on the published "secure and verifiable document" list. The bill creates an unpaid "Immigration Enforcement Review Board" to issue regulations, review audits, and investigate complaints that public officers are not following the bill's provisions.

The Georgia law provides a new template version for legislatures in several other states that appear to be considering restrictive immigration legislation, but it is likely to draw rounds of litigation before it could be enforced. Even the Georgia legislature complains of the absence of federal immigration reform legislation, a point on which most of the new Georgia law's opponents might agree.

How We Can Help

Baker Donelson's Immigration Group regularly counsels employers on I-9 compliance. We perform private audits of I-9 documents, prepare compliance programs, and train managers and workers in implementing those programs. We evaluate particular questionable documents and situations. We help employers decide whether and how to create or store I-9 forms electronically, to use Social Security Administration's Number Verification System, or to participate in the Department of Homeland Security's E-Verify program. We help federal contractors design and implement E-Verify programs in compliance with Executive Order 13465 as implemented in Federal Acquisition Regulations.

We defend sanctions actions by ICE for "paperwork" and "knowingly hire" violations of I-9 rules. We work with our strong Litigation Department to bring and defend claims against competitors based on employment of unauthorized aliens. We advise and defend claims against competitors based on employment of unauthorized aliens. We advise and defend employers and managers in the increasingly common criminal investigations and proceedings relating to employment of aliens.

We coordinate our Team's services closely with our firm's well-respected Labor and Employment Law Group and with our firm's White Collar Crime Group. We provide advice and coordinate with U.S. and foreign preparers concerning U.S. taxation of international companies doing business in the U.S., and concerning the U.S. taxation of international workers placed in the U.S. and abroad.