

# PUBLICATION

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## Do You Need to Know the Immigration Status of that Worker?

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### **Contractors cannot always bury their head in the sand when it comes to worker documentation.**

I read an [article](#) about immigration reform in Texas and its relationship to the construction industry. The article mentioned that some contractors in Texas are classifying workers as subcontractors in an effort to, among other things, avoid knowing the legal status of their workers. This was surprising because I thought that Texas, of all places, would require contractors, and the subcontractors employed by them, to confirm that workers on projects had the legal status to work on a project.

Other states and the Federal Government require companies to employ only individuals who may legally work in the United States.

Alabama's statute on verification of employment eligibility requires not only contractors, but also subcontractors, performing work on a project paid for by contract, grant, or incentive by the state, any political subdivision of the state, or any state funded entity to avoid employing, hiring, or continuing to employ unauthorized aliens within the state of Alabama. See Ala. Code § 31-13-9.

Alabama's statute is very broad and compliance is likely required on more than just a public construction project, as it would be hard to find a construction project these days that did not get some form of incentive from the state or local government.

Alabama makes documentation of enrollment in the E-Verify program and compliance with the Alabama statute a condition to let a contract and for the opportunity to work on a project. Ala. Code § 31-13-9.

In Alabama, the penalty for failing to comply with the statute ranges from a three-year probationary period to the loss of the contract and business license. Ala. Code § 31-13-9(e). These are pretty stiff penalties in a tight market that will force construction industry professionals to diligently comply with the terms of the statute.

Georgia also has a statute requiring contractors, subcontractors and sub-subcontractors to participate in a federal work authorization program, like E-Verify, and requires them to file an affidavit stating that the affiant is participating in the program and will continue to do so for the duration of the project. See Ga. Code Ann. § 13-10-90 *et seq.*

Georgia's requirements seem to be more narrow than Alabama and limited to contracts with departments, agencies, or instrumentality of the state or a political subdivision of the state for "building, altering, repairing, improving, or demolishing of any public structure or building or other public improvements of any kind to public real property within this state, including the construction, reconstruction, or maintenance of all or part of a public road; or any other performance of labor for a public employer within this state under a contract or other bidding process." Ga. Code Ann. § 13-10-90(4).

Contractors, subcontractors, and sub-subcontractors in Georgia are not permitted to contract with others that fail to register and participate in the federal work authorization program. Ga. Code Ann. § 13-10-91(b)(2) – (4).

Contractors, subcontractors, and sub-subcontractors in Georgia that violate the statute can be prohibited from bidding on or contracting to perform work on a public project for 12 months. Ga. Code Ann. § 13-10-91(b)(9).

It seems as if both Alabama and Georgia have dealt with the situation experienced in Texas. I would imagine that Texas is not that far behind, assuming that having unauthorized workers on at least public projects are a problem in Texas.

As a construction professional, it is important to understand documentation requirements and the types of contracts governed by those requirements. Failing to comply or contracting with someone who fails to comply, depending on the state, can have serious implications.