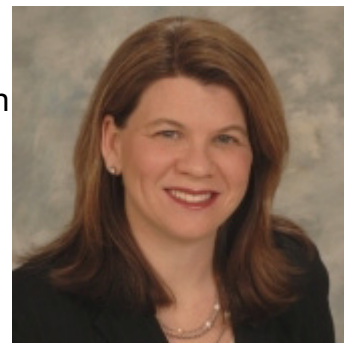


Is Your Business Prepared To Comply with the Georgia Illegal Immigration Reform and Enforcement Act of 2011?

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November 14, 2011

On May 13, 2011, Georgia Governor Nathan Deal signed into law House Bill #87, a comprehensive immigration law mandating employer verification compliance and establishing criminal penalties for various acts. Some have touted the law as one of the toughest immigration laws in the nation and claim the Georgia law is similar to many provisions in Arizona's S.B. 1070 currently under legal challenge in the State of Arizona. On June 2, 2011, several civil rights and labor groups filed suit in the United States District Court for the Northern District of Georgia challenging several provisions of the AZ-style legislation on constitutional grounds. This article will focus on the main employment verification provisions of the new law as well as various criminal provisions that could impact employers and/or their employees.



Employment Verification Requirement

All private employers with more than ten full-time employees will be required to register and participate in E-Verify. Those employers with fewer than ten employees will not be required to use E-Verify or to submit E-Verify compliance affidavits, though they will be required to file affidavits explaining their reason for the E-Verify exemption.

The number of full-time employees of a business determines if and when the employer must begin to comply with the E-Verify requirement. It is not clear at this point whether Georgia will count only employees in the State of Georgia for purposes of determining employee count, or whether all employees of a multi-state/multi-location business will be counted. The term "full-time employee" means an employee who works more than 35 hours per week. The effective dates for compliance are as follows:

- **January 1, 2012** for employers with 500 or more employees,
- **July 1, 2012** for employers with 100 or more employees but fewer than 500 employees, and
- **July 1, 2013** for employers with more than ten employees but fewer than 100 employees.

E-Verify Participation and License Issuance

In order to start a new business, open a new location, or continue to operate an existing business, the employer must provide evidence of authorization to use E-Verify. Under H.B. 87, before any county or municipal corporation can issue or renew a business license, occupational tax certificate, or any other document required to operate a business to any person, evidence of authorization to use E-Verify or proof that the provision does not apply must be submitted. The number of

employees on January 1 determines if the employer is exempt from the E-Verify requirement for the year. The employer must submit an E-Verify compliance affidavit attesting to the use of E-Verify and listing the employer's E-Verify identification number and date of enrollment. The deadlines for business license E-Verify compliance parallel the timeframes referenced above in the "Employment Verification Requirement" section.

To assist businesses with this requirement, the Attorney General will publish a standardized form affidavit by January 1, 2012. Annually, a county or municipality must submit a report identifying each license or certificate issued in the prior 12 months, including the name of the business along with the E-Verify identification number provided in the affidavit to the Department of Audits and Accounts. The Department must annually conduct an audit of at least 20% of the reporting agencies. Once an applicant submits an E-Verify affidavit with a particular federally assigned E-Verify identification number, they may not submit a renewal application using a new or different E-Verify authorization number without providing a sworn document explaining the reason for the new or different E-Verify number.

Any person presenting false or misleading evidence relating to the state license issuance or renewal process shall be subject to criminal penalties and/or monetary penalties. If a business is found to have acted in good faith despite committing a violation, the business will have thirty days to take remedial action resulting in compliance. The Attorney General may also investigate employees who may have submitted false identifying information which led to the good faith violation by the employer. This additional layer of investigation could lead to concerns by private employers because of the new criminal provisions under H.B. #87 which could apply to employers and/or employees resulting in costly fines and disruption to business operations.

New Criminal Immigration Provisions

Criminal penalties can be assessed if the employer or an agent of the company (i.e. manager) engages in intentional and/or knowing acts including harboring, sheltering, concealing, inducing to enter the state or other illegal conduct on behalf of an illegal alien.

Aggravated Identity Fraud

The new Georgia law creates the crime of aggravated identity fraud. If a person purposefully uses a fraudulent form of identification or provides any false identification information concerning a real, fictitious, or deceased person with the intent to use such fraudulent information to obtain employment, such person shall be guilty of aggravated identity fraud. A person may be imprisoned for one to fifteen years and may be fined up to \$250,000.00 and required to pay restitution. While this new criminal offense could impact employees who fraudulently attempt to gain employment, employers could also face disruptions in daily operations if an employee is subject to investigation.

Intentionally Transporting an Illegal Alien

Knowingly and intentionally transporting an illegal alien, while committing another criminal offense, is now a crime in Georgia punishable by up to \$20,000.00 and up to five years imprisonment. If such crime is committed with the intent to make a profit or receive something of value, a higher range of penalties may apply.

The particularly troubling aspect of this new law is interpreting the phrase “while committing another criminal offense.” This vague language could encompass an expansive range of activities. When might transportation of illegal aliens by an employer, with or without knowledge of the employee’s illegal status, constitute a violation of this provision? This broad ambiguity will likely result in varying interpretations and potential litigation.

Knowingly Concealing, Harboring, or Shielding an Illegal Alien from Detection

The new Georgia law makes it a crime for a person to knowingly conceal, harbor, or shield an illegal alien, while committing another criminal offense, in the state. Violations of this law include the use of any building or means of transportation for such purpose. “Harboring” is defined as any conduct that tends to substantially help an illegal alien to remain in the United States in violation of federal law with limited exceptions. The broad scope of this law and its relative ambiguity could invite future legal action.

Doing Business with a Public Employer

Any business desiring to contract or subcontract with a public employer in Georgia must comply with the employment verification provisions of House Bill #87. Contractors and subcontractors must submit affidavits stating employees have been verified by E-Verify. The contractor must also submit documentation confirming its subcontractors have verified the legal status of their employees.

Violators will be subject to criminal penalties and/or civil fines. Also, the names of the violating entities will be published on a state-run website and the entity will be prohibited from bidding on or entering into any public contract for one year from the date of conviction. To promote compliance with this new immigration law, the Commissioner of Labor must conduct more than 100 random audits per year of public employers and related contractors.

Contractors and subcontractors will not be held civilly liable or criminally responsible for unknowingly or unintentionally accepting a bid from an entity that violates the employment verification provisions of this immigration law. The bottom line is that contractors wishing to bid or engage in public employer work must sufficiently verify any new employee and ensure compliance by any subcontracting entity for appropriate compliance with employment verification measures.

Conclusion

Employers continue to face the challenge of complying with a myriad of state immigration laws as the federal government struggles to pass meaningful comprehensive immigration reform. With the U.S. Supreme Court’s recent pronouncement in *U.S. Chamber of Commerce vs. Whiting*, more states will likely adopt mandatory E-Verify laws which will be upheld. In Georgia, the mandatory E-Verify provisions will go into effect in the near future and employers need to be trained and ready to participate in E-Verify. Some provisions of H.B.# 87 are similar to other state laws (AZ S.B. 1070) currently experiencing constitutional legal challenges, and groups in Georgia have filed a lawsuit alleging constitutional violations as well. Employers must be diligent in their efforts to comply with the new Georgia law but should keep a close eye on court activity throughout the nation to determine what might become of Georgia’s immigration law.

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