

South Carolina Immigration Law Changes Take Effect January 1st

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On June 27, 2011, South Carolina Governor Nikki Haley signed into law S.B. 20, a comprehensive immigration law with new employment verification requirements and harsh criminal penalties. The law expands on the SC Illegal Immigration Reform Act passed in 2008 and considered at the time as one of the toughest in the nation. This article will focus on employment verification changes in the new law as well as various criminal provisions that could impact employers and/or their employees.



Employment Verification Requirements and Enforcement

All private employers are required to enroll and participate in E-Verify by January 1, 2012. Employers can no longer accept a state-issued driver's license or identification card from South Carolina or another acceptable state at the time of hire as proof of employment verification. Employers can operate in the state and employ workers only if their imputed employment license and all other applicable licenses (i.e. business license) are in effect. Employers must verify a new hire's work authorization status within three business days from the date of hire, even if the employee is terminated within the first three days of employment. This time period is consistent with federal law and represents a change from the 2008 law which only required verification within five (5) days from the date of hire.

The South Carolina Department of Labor, Licensing and Regulation ("SCLLR") will continue to enforce the employment verification requirements of the law. Before July 1, 2012, if an employer is found to have committed a first offense violation of the E-Verify requirement, the employer will be required to sign an affidavit indicating the employer has complied with the law within three business days. If an affirmation or oath is not given, the employer will be placed on probation for a year, during which time the employer will be required to submit quarterly reports demonstrating compliance. After July 1, 2012, if an employer is found to have committed a first offense violation of the E-Verify requirement, the employer will be placed on probation for a year and will be required to submit quarterly reports demonstrating compliance.

Subsequent violations are treated the same regardless of whether they occur before or after July 1, 2012, and will result in the suspension of the entity's employment license for at least ten but no more than 30 days. A violation may be treated as a first offense if there has been no violation in the prior three years. An employer will not be found to be in violation of the law if the employee has been employed for less than three business days. Employers who in good faith verify an employee's immigration status are presumed to have complied with the law. During the course of an audit or investigation, employers working with public employers must produce contact information for their sub-contractors and sub-subcontractors within 72 hours as well.

If an employer knowingly and/or intentionally employs an unauthorized worker, the law provides the employment license must be suspended for at least 10 days but no more than 30 days. The employer will not be able to engage in business and/or employ workers during any suspension period. For a second occurrence, the license suspension period is 30-60 days. Reinstatement may occur after the suspension period if the employer terminates the unauthorized worker(s) and pays a reinstatement fee. For third and subsequent occurrences, the employment license will be revoked. If the employment license is revoked, the employer may not seek reinstatement for a five year period. After the third occurrence only, the employer may be able to apply for a provisional license with certain conditions which will allow the business to operate and employ workers.

These penalty provisions replace the monetary penalties set forth in the 2008 law. Employers violating immigration laws will be listed on the LLR website but may be removed with the passage of time.

SCLLR may initiate an investigation based upon a written and signed complaint, or based upon good cause if reasonable grounds exist that the employer violated the law. SCLLR will continue with random audits of employers as well.

Criminal Immigration Provisions

The following criminal provisions have been added and/or modified in the new law and could impact employers and their employees.

- Making, selling, or offering to make or sell fake identification documents for illegal aliens is now a felony punishable by a \$25,000.00 fine and up to five years imprisonment, or both.
- Any alien over the age of 18 must now carry immigration documents at all times.
- The law creates the Illegal Immigration Enforcement Unit (IIEU) within the Department of Public Safety to enforce the state's immigration law. Officers of the IIEU shall have the same power as a sheriff to serve criminal processes and to arrest without warrants and detain those found violating or attempting to violate immigration laws.
- If a law enforcement officer lawfully stops, detains, investigates, or arrests a person for a criminal offense, and during such event, has reasonable suspicion to believe the person is unlawfully present in the United States; the officer can inquire about the individual's immigration status. The officer must ask the individual to provide acceptable picture identification documentation, and must contact ICE, the SC Illegal Immigration Enforcement Unit (IIEU) or other federal agencies for assistance and/or possible detention.
- When a motor vehicle is stopped by a law enforcement official and no citation is issued or no arrest is made, and the officer contacts the IIEU, the officer must complete a data collection form providing age, gender, race or ethnicity of the vehicle's driver. This information will be published on the Department's website.
- Both the illegal alien and the actor can face felony charges for transporting, harboring, concealing and/or shielding illegal aliens.

- The law establishes a twenty-four hour toll free telephone number and website to collect and record complaints about federal and state immigration violations. The information will be kept in a centralized database and allegations will be reported to appropriate law enforcement agencies.

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. In South Carolina, the mandatory E-Verify provisions will go into effect on January 1, 2012 and employers need to be trained and ready to participate in E-Verify. Employers must be diligent in their efforts to comply with the new South Carolina law but should pay close attention to court decisions that may have an effect on certain provisions of the new law.

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