

EMPLOYMENT VERIFICATION REMINDER FOR SOUTH CAROLINA EMPLOYERS

Starting July 1, 2009, private employers in South Carolina with 100 or more employees must comply with the employment verification requirements of the South Carolina Illegal Immigration Reform Act (the Act).

The Act gives private employers the option of:

- using the federal E-Verify program to check the employment status of new hires, or
- making sure each new employee possesses a South Carolina driver's license or identification card, qualifies to obtain one, or possesses a driver's license or identification card from another state that has qualifying requirements as strict as those in South Carolina; as of today, the South Carolina Department of Motor Vehicles has determined that 22 other states have sufficiently strict qualifying requirements.

Determining Size

For employers with multiple locations in South Carolina, determining the size of the business can be tricky. According to the state Department of Labor, Licensing and Regulation, employee counts will be aggregated if the separate locations essentially operate as one. If the entities are truly separate, they will be treated separately for employee counting purposes.

E-Verify vs. Driver's License/Identification

The Act's requirements do not void federal I-9 rules. Employers must still complete the I-9 form for all new hires within three days of employment. The employer examines the original documents presented by the new employee, and then records the appropriate information in Section 2 of the I-9 form. Federal law prohibits employers from requesting specific documents from List A, or Lists B and C, on the back of the I-9 form.

If an employer elects to enroll in E-Verify to comply with the Act's requirements, it enters the I-9 information in the E-Verify system. The employer can keep a copy of the E-Verify result with each new employee's I-9 file. E-Verify is a "safe harbor" under the Act, as an employer will be deemed to have complied with the Act if it relied in good faith on an E-Verify result.

Alternatively, the employer may verify that the new hire possesses or qualifies for a South Carolina or other acceptable driver's license or identification card. Some believe this approach is inconsistent with federal law, which prohibits employers from requiring specific documents to complete Section 2 of the I-9 form.

Penalties

Failure to comply with the Act may result in monetary penalties ranging from \$100 to \$1,000 per violation.

In addition, on July 1, 2009, all South Carolina employers will be imputed to have an employment license permitting them to hire and employ workers in the state. If an investigation reveals that an employer knowingly and/or intentionally hired or employed unauthorized workers, the employment license can be suspended or revoked. If the employment license is suspended or revoked, the employer may not hire and/or employ workers in South Carolina.

Criminal penalties can also be assessed if the employer or an agent of the employer engaged in harboring, shelter, concealing, or other illegal conduct on behalf of an immigrant worker.

Conclusion

New employment verification requirements are being enacted at the federal, state, and local levels. Staying abreast of these developments, and making any necessary changes in hiring procedures, will save business owners time and money.

This Employment Law Update is published as a service to our clients and friends. It is intended to be informational and does not constitute legal advice regarding any specific situation.

N|P Employment and Labor Law Group

CHARLESTON

843.577.9440

Cherie Blackburn
Molly Hughes Cherry
Josh Ellis

CHARLOTTE

704.339.0304

Sean Phelan
Grainger Pierce

COLUMBIA

803.771.8900

Mike Brittingham
Jennie Cluverius
Kristian Cross
David Dubberly
Vickie Eslinger
William Floyd
Joan Hartley
Angus Macaulay
Susi McWilliams
Nikole Mergo
Sue Odom
Sam Painter

GREENSBORO

336.373.1600

Trudy Ennis
Peter Pappas
Bill Wilcox

GREENVILLE

864.370.2211

Grant Burns
Jamie Hedgepath
Leon Harmon
Rusty Infinger
Michael Pitts
Tom Stephenson

HILTON HEAD

843.689.6277

Melissa Azallion

MYRTLE BEACH

843.213.5400

Cherie Blackburn
Molly Hughes Cherry

RALEIGH

919.755.1800

Joe Diab
David Garrett
Ernie Pearson

NEXSEN | PRUET

