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Missouri has become the most recent state to require E-Verify for certain employers. The new state law also prohibits all Missouri employers from knowingly hiring or continuing to employ unauthorized aliens.

## Midwest Edition

*A Littler Mendelson Midwest-specific Newsletter*

### Missouri is Latest State to Enact E-Verify Requirement

*By: David C. Whitlock*

On July 7, 2008, Missouri Governor Matt Blunt signed legislation requiring state contractors to enroll in E-Verify. With this measure, Missouri joins a growing number of states seeking to regulate employment of illegal workers. The Missouri legislation is quite similar to measures enacted in Colorado, Georgia, Minnesota, Oklahoma, Rhode Island, and Utah. State contractors in Arizona, Mississippi, and South Carolina are subject to legislation that already requires all private employers to enroll in E-Verify.

House Bill No. 1549 prohibits any Missouri employer from knowingly hiring or continuing to employ an unauthorized alien to perform work in the State of Missouri (the “knowing employment” prohibition). In addition, any employer with a contract or grant in excess of \$5,000 with the state or any political subdivision of the state, and employers that receive state-administered or subsidized tax credits, tax abatements or loans, must enroll in E-Verify with respect to employees working in connection with the contracted services. Such employers also must execute an affidavit stating that no unauthorized workers are knowingly employed in connection with the contracted services. State contractors will not be liable for a subcontractor’s noncompliance if the contract affirmatively states that the subcontractor does not knowingly employ unlawful workers and the subcontractor executes an affidavit to that effect.

All public employers and political subdivisions must enroll in E-Verify. In

addition, the statute provides an incentive for all private employers to enroll in E-Verify by providing an affirmative defense to a “knowing employment” violation if the employer is enrolled in E-Verify and retained proof of verification.

The state attorney general is charged with enforcement of the “knowing employment” prohibition. Within 15 days from receipt of a signed complaint by any state official, business entity, or state resident, the attorney general will request identity information about any person named in the complaint. The attorney general will submit that data to the Department of Homeland Security for verification purposes. If DHS confirms that the alleged worker is not authorized, and the employer is not already enrolled in E-Verify, the attorney general shall bring a civil action against the employer.

If a court in the civil action finds that the employer did not knowingly employ the illegal worker, the employer has 15 days to terminate the worker or provide proof of legal status. If the court finds that the employer knowingly employed the individual, the employer’s business license shall be suspended for at least 14 days and until the employer executes an affidavit affirming that the violation has been cured and produces documentation confirming enrollment in E-Verify. Enrollment in E-Verify is required for non-contractors found guilty of a “knowing employment” violation. Non-contractors already enrolled in E-Verify are immune from a “knowing employ-

ment” finding. Any employer guilty of a second offense is subject to a one-year suspension of its business license or permit. In addition, a state contractor found to have violated the “knowing employment” prohibition may face contract termination and debarment for three years. If the contract is terminated, the state may withhold up to 25% of the amount due to the employer.

Like the other state immigration reform statutes, the Missouri law contains several other measures that may indirectly affect employers:

- State law enforcement agencies are encouraged to cooperate with DHS with respect to the apprehension and detention of illegal aliens.
- Municipalities are not permitted to adopt or enact any kind of sanctuary policy.
- Illegal aliens are ineligible for state and local public benefits, including drivers’ licenses, and applicants 18 years or older for such benefits must establish that they are in the country lawfully.
- Employers with five or more employees must submit copies of 1099 forms to the state Department of Revenue.
- Employers are forbidden from misclassifying a worker as an independent contractor when the employer knows that the worker is truly an employee.
- Finally, an employer may not take a business expense deduction for any remuneration knowingly given to an unauthorized alien.

The provisions of the Missouri law take effect on January 1, 2009. Therefore, we recommend that employers determine whether they are subject to the E-Verify requirement. Those employers that are or may become subject to the requirement may wish to consider proactive steps to reduce the likelihood and consequences of an allegation of employment of illegal aliens.

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