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Georgia's New Immigration Law Mandates Electronic Government Verification For New Hires

Amid threats of boycotts of Georgia goods and services, and while legal challenges to Arizona's tough immigration law are headed to the Supreme Court, Governor Nathan Deal has signed into law Georgia's own Arizona-style immigration law. The law gives law enforcement officers the right to check the immigration status of a suspect if (a) the officer has probable cause to believe the individual has committed a "criminal offense" and (b) the individual is unable to produce a valid ID. Police also may arrest such individuals and transport them to state and federal jails. The law also creates criminal penalties under state law for harboring undocumented aliens and makes it a felony to use fraudulent documents to obtain employment.

The law also imposes a new requirement for most Georgia businesses, mandating that every employer with eleven (11) or more employees use the federal E-Verify program for all new hires. E-Verify is an Internet-based system through which enrolled employers confirm the legal status of new hires by inputting information about their right-to-work documentation and identity. While all public employers and most private employers holding contracts with the State of Georgia already are required to use E-Verify, the new law extends the requirement to the vast majority of businesses in the state, including small businesses, farmers, restaurants, and every other type of business in the state. To renew or obtain a business license or other documents from the State, employers will be required to prove that they utilize E-Verify or provide evidence as to why the requirements of this new law do not apply to them.

Opponents of the law have already indicated their intent to challenge it in federal court, including seeking an injunction to halt its enforcement, in whole or in part. But, assuming enforcement goes forward, the employment verification provisions will take effect as follows:

- For employers with 500 or more employees, the effective date is January 1, 2012;
- For employers with 100 or more (but fewer than 500) employees, the effective date is July 1, 2012; and
- For employers with more than ten (but fewer than 100) employees, the effective date is July 1, 2013.

Employers can enroll in the E-Verify program through the federal E-Verify portal. In so doing, they must agree to and follow the rules and guidelines required for use of the E-Verify system, which include waiting periods and delays when an employee is not automatically certified. Employers are given thirty (30) days to correct any "good faith" compliance violations before they face penalties under the new Georgia law.

Additional aspects of this new law include:

- Making it a crime ("aggravated identity fraud") under state law to use fake identification to obtain employment in Georgia. Penalties can extend to up to 15 years in prison and \$250,000 in fines.
- Expanding the rules for obtaining contracts with the State (including cities and

counties) to require businesses bidding on work to attest that they will only use subcontractors who prove they use E-Verify. Contractors and subcontractors who have no employees are exempt from E-Verify enrollment, but they must present acceptable proof of their own identity, issued by a qualifying state.

- Directing the Department of Agriculture to consider and recommend immigration reform measures for the agricultural industry, including the feasibility of creating a state guest worker program for agriculture.
- Criminalizing the knowing transportation or harboring of undocumented immigrants. Exceptions exist for the provision of services to children or victims of crime, emergency medical care and certain legal and other social services.
- Establishing an Immigration Enforcement Review Board to investigate complaints of violation or non-enforcement of the immigration law by public officials or law enforcement.

For assistance preparing to comply with this new Georgia immigration law, please contact [Kelly Weston](#), [Sara Anne Thomas](#) or your [Miller & Martin Labor and Employment law attorney](#).

The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.

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