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LEGAL ALERT



Legal Alert: Enforcement of the South Carolina Illegal Immigration Reform Act Underway

7/16/2009

Two weeks after the South Carolina Illegal Immigration Reform Act (SCIIRA) took effect for private employers with 100 or more employees, the South Carolina Department of Labor Licensing and Regulation (DLLR) is already actively enforcing the law. The DLLR hired ten investigators to perform random compliance audits and to respond to written complaints throughout the state. The investigators are conducting audits using support teams of multiple DLLR agents. Despite the law's provision for a "random auditing program," the DLLR identified 13 immigration prone industries, which it is openly targeting for auditing, including the construction, manufacturing, transportation and food service industries. A complete list of these industries is included below. The SCIIRA requires that private employers with 100 or more employees, state contractors with qualifying contracts, as well as their sub-contractors, and sub sub-contractors perform employment eligibility verification in addition to completing I-9s. To comply with the verification requirement an employer may either: (1) use the federal E-Verify program run by the Department of Homeland Security (found at www.uscis.gov); (2) only employ those who have a driver's license or identification card issued by the South Carolina Department of Motor Vehicles, or who are eligible for a South Carolina driver's license or identification card; or (3) only employ those who have a driver's license or identification card from one of 22 other states. The list of qualifying states does not include North Carolina, and can be found at www.scdmvonline.com. Failure to comply can result in monetary penalties of more than \$1,000 per employee and revocation of the employer's "employment license," which would prevent the employer from employing any workers until reinstatement of the license. The SCIIRA will apply to all other employers on July 1, 2010. The DLLR's random audits are being carried out by groups of DLLR agents who, under the SCIIRA, have the authority to arrive at the workplace unannounced, enter the workplace after presentation of credentials, interview employees, and inspect, photograph, and reproduce business records relevant to determining compliance with the law. Part of the SCIIRA provides that employers shall not knowingly employ an unauthorized alien. **The DLLR interprets this provision to apply to all current employees including those hired before the July 1 effective date.** Therefore, according to the DLLR the inspection agents will request documentation showing that the employer takes some measure to verify that all employees are work eligible. The DLLR does not require that employers present their I-9s as such proof, but neither does it offer alternative forms of proof. According to the DLLR, its agents will not review I-9s for any reason other than to ensure that employers are verifying worker eligibility, and its agents are not issuing I-9 citations. Choosing the right SCIIRA compliance

procedure for your business is important. Because of the DLLR's enforcement tactics it is equally important that employers review their I-9 practices and consider performing an I-9 self audit. If you would like to learn more about the SCIIRA, what to do in the case of a DLLR audit, or review the best I-9 practices, please contact L. Grant Close, gclose@fordharrison.com, 864-699-1158 or the Ford & Harrison attorney with whom you regularly work.

Industries Targeted by the DLLR (by North American Industry Classification)

11 Agriculture, Forestry, Fishing and Hunting

23 Construction

31-33 Manufacturing

42 Wholesale Trade

44-45 Retail Trade

48-49 Transportation and Warehousing

51 Information

53 Real Estate and Rental and Leasing

56 Administrative and Support and Waste Management and Remediation Services

62 Health Care and Social Assistance

71 Arts, Entertainment, and Recreation

72 Accommodation and Food Services

81 Other Services (except Public Administration)