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North Carolina Governor Signs E-Verify Law

On June 23, 2011, Governor Beverly Perdue signed a bill into law requiring all cities, all counties, and private employers of a certain size in North Carolina to use the federal government's E-Verify program to verify the work authorization of newly-hired employees. The law is titled, "An Act To Require Counties, Cities, And Employers To Use The Federal E-Verify Program To Verify The Work Authorization Of Newly Hired Employees." North Carolina is one of 17 states, including neighboring Georgia, South Carolina and Virginia, that have some form of E-Verify requirements for employers.

Employers Covered By The Act

State agencies in North Carolina, including public universities and community colleges, are already required by North Carolina law to use E-Verify. The new North Carolina law will apply to local government employers (municipalities and counties) and employers that employ 25 or more employees in North Carolina.

The Act will be phased in for different employers from October 1, 2011, through July 1, 2013. The employer must register and participate in E-Verify by the applicable date. On October 1, 2011, the Act takes effect for municipalities and counties in North Carolina. On October 1, 2012, the law takes effect for employers that employ 500 or more

employees. On January 1, 2013, the law takes effect for employers that employ 100 or more employees. On July 1, 2013, the law takes effect for employers that employ 25 or more employees.

There is an exception for employers with seasonal temporary employees who work fewer than 90 days in a consecutive 12-month period. The law also does not apply to employers that employ fewer than 25 employees in North Carolina.

What Will Be Required Of An Employer Covered By The Act?

An employer covered by the Act will be required to enter a new hire's information reported on the Form I-9, Employment Eligibility Verification, into the E-Verify program to determine the eligibility of that employee to work in the United States.

An employer must retain the records of the verification of the employee's work authorization during the length of that employee's employment and for one year after the end of the employment period.

Complaints Regarding Violations Of The Act

Any person who has a good faith belief that an employer is violating the requirement to use E-Verify may file a complaint with the North Carolina Commissioner of Labor. The complaint may be anonymous.

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The commissioner will investigate valid complaints and may issue subpoenas for employment records from the employer as part of this investigation.

Penalties For Violation Of The Act

For a first violation of the Act, the North Carolina Commissioner of Labor will order the employer to file a sworn affidavit within three business days after the determination that the employer has violated the Act. The employer must swear in the affidavit that it has consulted with the employee and requested a verification through E-Verify. Failure to

timely file this affidavit subjects the employer to a \$10,000 civil penalty. A second violation of the Act subjects the employer to an additional \$1,000 civil penalty, and a third violation subjects the employer to a \$2,000 civil penalty for each required employee verification that the employer failed to make. The Act contains a provision allowing an employer to appeal the commissioner's determination that the employer has violated the Act.

For advice or questions about compliance with the Act, please contact any attorney in the Charlotte office of Fisher & Phillips at 704.334.4565.

This Global Immigration Alert provides an overview of a specific new law. It is not intended to, and should not be construed as, legal advice on any particular fact situation.

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