



Legal Alert: California Employers No Longer Subject to State or Local E-Verify Requirements

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Executive Summary: Bucking a recent trend in state immigration laws that require E-Verify use by employers, California has forged its own path by enacting "The Employment Acceleration Act of 2011" (California Assembly Bill 1236). The new law – signed by Governor Jerry Brown this past weekend – prohibits state and local governments in California from passing local mandates that require employers use the federal E-verify program to electronically verify the employment eligibility of newly hired employees.

Since 2008, no fewer than 14 cities and counties in California have passed local ordinances or laws that require employers use E-verify under a variety of circumstances. All such local ordinances are effectively invalidated by the new law that amends California's Labor Code.

No State or Local Requirement to Use Electronic Employment Verification

The Employment Acceleration Act of 2011 prohibits the state, or a city, county, city and county, or special district, from requiring employers use an electronic employment verification program, including the federal E-Verify program, unless participation is required by federal law or as a condition of receiving federal funds. Specifically, employers cannot be required to use an electronic verification program:

- as a condition of receiving a [state or local] government contract;
- as a condition of applying for or maintaining a business license; or
- as a penalty for violation of other laws.

Contrary to many of the states that have passed state immigration laws – including Alabama, Arizona, Georgia and North Carolina, among others – California has explicitly prohibited the *quid pro quo* approach to mandate or promote the use of E-Verify by employers.

As rationale for the new law, the California legislature asserts that the mandatory use of an electronic employment verification program would increase the costs of doing business in a difficult economic climate, by imposing additional costs, technological demands and training requirements on California businesses. Specifically, the legislation notes that if E-Verify had been made mandatory in 2010, it would have cost businesses \$2.7

billion, \$2.6 billion of which would have been borne by small businesses.

Federal Immigration Requirements Still In Force

Notwithstanding the new state law, California employers still must comply with the federal Employment Eligibility Verification (Form I-9) process whereby employers must complete and maintain a Form I-9 to verify the identity and employment eligibility of all new hires. Additionally, employers that are qualifying federal contractors or subcontractors still are subject to the Federal Acquisition Regulation (FAR) E-Verify requirement.

Employers' Bottom Line:

While employers in California remain free to voluntarily use the federal E-Verify program, under the new law they cannot be required to do so by state or local governmental entities. If you have any questions regarding the new law or other business immigration issues, please contact Charles Roach, croach@fordharrison.com, a partner in our Minneapolis office, or the Ford & Harrison attorney with whom you usually work.