

# **50-STATE SURVEY OF STATE IMMIGRATION LAWS AFFECTING EMPLOYERS**

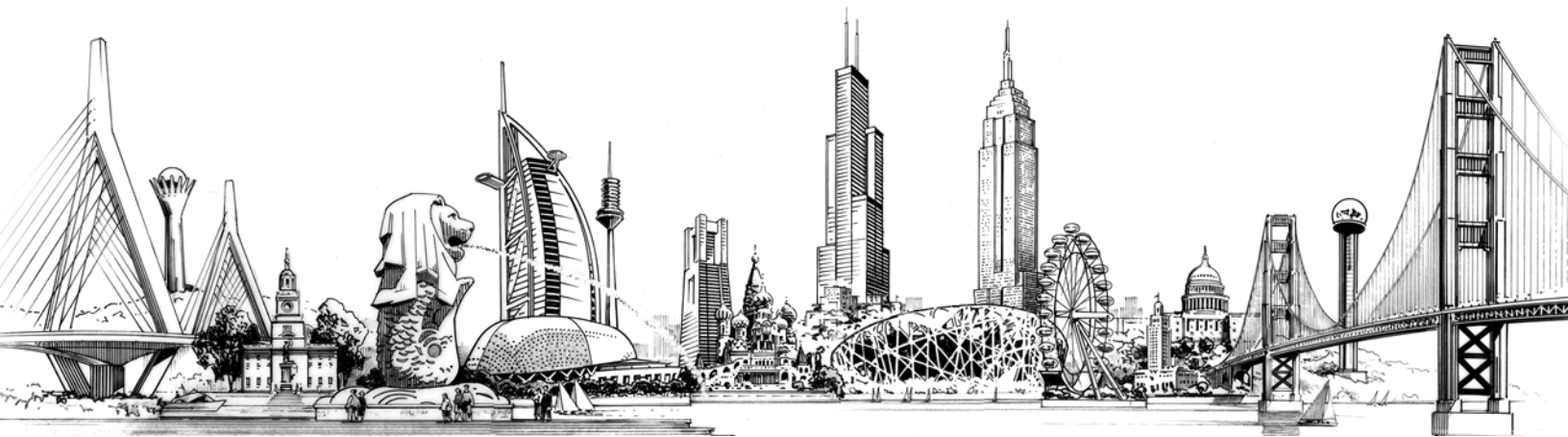
**(Rev. September 27, 2016)**

For Additional Information Contact:

Eric S. Bord

[ebord@morganlewis.com](mailto:ebord@morganlewis.com)

+1.202.739.6040



# Morgan Lewis

## Introduction

The ongoing failure to achieve federal immigration reform continues to inspire state government activity regarding immigration. As a result, the United States is creating a patchwork of immigration compliance obligations for employers operating in various jurisdictions.

This survey is an update on this rapidly evolving area of the law in all 50 states and focuses on laws and bills that could potentially impact employers and their worker-eligibility obligations beyond existing federal requirements. Because the landscape is always changing, employers should remain vigilant in order to comply with state immigration laws regulating employment. Employers should also be alert to potential local or municipal rules, which are beyond the scope of this survey, that have immigration implications for the geographic areas in which they do business.

Readers should bear in mind that state immigration laws are largely untested in terms of their enforcement. In many instances there are numerous unanswered questions, including (a) whether an E-Verify mandate applies only to employees within the state; (b) whether thresholds for numbers of employees refer only to employees within the state; (c) whether a law impacting state vendors applies to all vendors or only to a subset, e.g., service providers, government end-users; (d) the constitutionality of the statute or executive order; and (e) the sanction, if any, for violating the provision.

Accordingly, the following Disclosure and Limitation merits emphasis:

**Disclosure and Limitation: This survey does not, and is not designed to, constitute legal advice. It is a topical review of dynamic subject matter, and is not intended to provide answers to specific legal questions or situations. While we endeavor to ensure that the information is timely and accurate, we do not warrant it as such. Use of this survey does not create an attorney-client relationship.**

## E-Verify Employment Eligibility Verification Program (formerly, Basic Pilot Program)

The E-Verify program, referenced in many state laws, is administered jointly by the US Department of Homeland Security's (DHS's) Citizenship and Immigration Services (USCIS) division and the Social Security Administration (SSA). It involves verification checks of the SSA and DHS databases using an automated system to verify the employment authorization of all newly hired employees. Information is available at [www.uscis.gov/everify](http://www.uscis.gov/everify).

## Summary:

The following states require the use of E-Verify by public and/or private employers:

	State	Citation	Applies to:
1.	Alabama	HB 56	all employers and all state/public contractors; implementation partially enjoined
2.	Arizona	HB 2779 (2007)	all employers, public and private
3.	Colorado	HB 1343 (2006)	state contractors
4.	Florida	Executive Order 11-02 (2011)	state agencies, contractors, subcontractors
5.	Georgia	SB 529 (2006) HB 87 (2011)	state agencies, contractors, subcontractors; Arizona-style enforcement; all employers, public and private, state contractors (phased in by July 1, 2013)
6.	Idaho	Executive Order (2006)	state agencies, contractors
7.	Indiana	SEA 590 (May 2011)	state agencies, contractors
8.	Louisiana	HB 342 (2011)	state contractors, indirectly to all employers
9.	Minnesota	HR 2164 (June 2011)	state contractors
10.	Mississippi	SB 2988 (March 2008)	all employers, public and private
11.	Missouri	HB 1549 (July 2008)	public employers, some contractors
12.	Nebraska	LB 403 (April 2009)	public employers, contractors
13.	North Carolina	SB 1523 (2006) HB 36 (2011)	state agencies private employers, counties, and cities
14.	Oklahoma	HB 1804 (2007)	public employers, contractors, subcontractors
15.	Pennsylvania	SB 637 (2012)	public contractors and subcontractors (eff. Jan. 1, 2013)
16.	South Carolina	HB 4400 (2008)	all employers
17.	Tennessee	Tennessee Lawful Employment Act (SB 1669, HB 1378) (2011)	all employers
18.	Utah	SB 81 (March 2008) SB 251 (July 2010)	public employers, contractors, subcontractors private employers
19.	Virginia	SB 1049 (March 2011)	state contractors and agencies (eff. Dec. 1, 2013)

## **Alabama**

Gov. Robert Bentley signed into law a far-reaching immigration enforcement bill mirroring the controversial Arizona HB 1070. The Alabama law has a number of significant provisions not related to employment. The employment provisions include a requirement that all employers enroll in E-Verify. There is no immediate sanction for a failure to do so; however, employers that use E-Verify will have a safe harbor from any liability under Alabama law for knowingly employing an unauthorized worker. This mandatory E-Verify rule for employers took effect April 1, 2012. The law also requires that all employers that are state/public contractors of any tier, all grant recipients, and others that receive state incentives be registered with and use E-Verify. This contractor provision took effect January 1, 2012.

## **Alaska**

There are no current state immigration laws affecting employment eligibility verification.

## **Arizona**

Arizona's E-Verify law (HB 2779) became effective on January 1, 2008, and has two key features. First, it authorizes the imposition of a business license penalty against any employer that knowingly or intentionally hires unauthorized employees after January 1, 2008. For an employer's initial offense, its business license can be suspended. A further offense can result in permanent revocation of an employer's license to do business in Arizona. Second, the law requires all Arizona employers to enroll in E-Verify to confirm the work eligibility of all new hires. There is no immediate sanction for a failure to enroll in E-Verify. However, if an employer unknowingly engages in unlawful employment yet shows that it has verified a worker's status, a rebuttable presumption arises that the employer did not knowingly or intentionally employ an undocumented worker. Additional legislation, effective September 30, 2008, prohibits government entities from awarding contracts to any contractor or subcontractor that fails to use E-Verify. Arizona's notorious HB 1070, an enforcement measure, does not contain any direct significant implications for employers. Moreover, its enforcement has been halted by federal courts.

## **Arkansas**

A law (HB 1024), signed in February 2007, prohibits state agencies from entering into contracts with businesses that knowingly employ or contract with illegal immigrants. These certification requirements apply to any contractor seeking to enter into a contract with a state agency for professional services, technical services, or construction where the value of the contract is \$25,000 or more.

## **California**

There are no current state immigration laws affecting employment eligibility verification. On October 9, 2011, Gov. Jerry Brown signed into law California AB 1236, the Employment Acceleration Act of 2011, which prohibits state, county, or city governments from mandating the use of E-Verify, except as required by federal law or as a condition of receiving federal

funds. This law effectively invalidates local mandatory E-Verify provisions that had been in effect in Temecula, Lake Elsinore, Menifee (Riverside County), and Lancaster (Los Angeles County).

Effective January 1, 2014, workers in California have potential state-level claims for immigration-related discrimination, including the improper use by employers of E-Verify. AB 263 prohibits an employer from engaging in an "unfair immigration-related practice" when an employee exercises a right protected under state labor and employment laws. Examples of possible violations include requesting additional immigration documentation beyond what is required under the federal I-9 rules, using E-Verify when not authorized, threatening to file or filing a false police report, or threatening to contact or contacting immigration authorities. There is a rebuttable presumption that an adverse action taken within 90 days of the employee's exercising a protected right is retaliatory. Employees can bring a civil action for a violation of this statute and seek damages. SB 666 also subjects an employer's business license to suspension or revocation if the employer has been found to have violated these new provisions.

## Colorado

Effective August 10, 2016, Colorado no longer requires employers to complete and maintain a separate affirmation form and retain copies of documents presented during the I-9 process. House Bill 16-1114 repealed the rule that had been in effect since January 1, 2007, and that required a separate Colorado affirmation process.

A law (HB 1073), effective August 8, 2007, relates to the use of the Basic Pilot Program (now E-Verify) and prohibits a state agency or political subdivision from entering into a service contract with a contractor that knowingly employs an illegal alien to work on the contract or that knowingly contracts with a subcontractor that employs an illegal alien to perform work under the contract.

A law (HB 1314), signed in May 2013, requires proof of lawful residence in the United States for receipt of public benefits.

A law (HB 1343), signed in June 2006, prohibits state agencies from entering into contract agreements with contractors that knowingly employ illegal immigrants. Recent amendments require prospective contractors to verify the legal work status of all new hires through either E-Verify or a new program administered by Colorado's Department of Labor and Employment. If a contractor discovers that an illegal alien is employed, the contractor must alert the state agency within three days.

A law (HB 1001), signed in July 2006, requires that contractors verify the work status of their employees before applying for economic development incentive awards. Contractors receiving awards and later found to employ unauthorized workers must repay the awards and will be ineligible for another award for five years.

A law (HB 1015), signed in July 2006, mandates that an employer withhold 4.63% from the wages of an employee who is without a validated Social Security number or a validated taxpayer ID number, or an IRS-issued taxpayer ID for a nonresident alien.

## **Connecticut**

There are no current state immigration laws affecting employment eligibility verification.

## **Delaware**

A law (HB 147), signed in July 2007, limits the expiration date on a driver's license or identification card issued to a temporary foreign national to the period that he or she is authorized to remain in the United States.

## **District of Columbia**

There are no current immigration laws affecting employment eligibility verification.

## **Florida**

On January 4, 2011, newly inaugurated Gov. Rick Scott signed Executive Order (EO) 11-02, which required that state agencies, contractors, and subcontractors use E-Verify, apparently for both current and former government agency employees. Aspects of EO 11-02 conflicted with federal E-Verify rules. Accordingly, on May 27, 2011, Gov. Scott issued EO 11-116, amending EO 11-02. The amended EO requires state agencies to verify the employment eligibility of "all new agency employees" through the E-Verify system. It also requires that state agencies impose an E-Verify requirement on all state contractors and subcontractors for any contract for goods and services above a nominal threshold.

## **Georgia**

Georgia HB 87 is an Arizona-style enforcement and mandatory E-Verify law that cleared the Georgia General Assembly and was signed into law by Gov. Nathan Deal in May 2011. HB 87 requires that all employers, public and private, enroll in E-Verify. Issuance and renewal of a state, county, or municipal business license shall be contingent upon an employer's registration with E-Verify.

The mandatory use of E-Verify will be implemented in phases, based on the number of employees at a company. The effective date for employers with 500 or more employees was January 1, 2012; for employers with 100 or more employees but fewer than 500 employees the effective date was July 1, 2012; employers with 10 or more employees but fewer than 100 employees must be in compliance as of July 1, 2013.

The mandatory E-Verify provisions do not apply to employers of fewer than 10 employees.

The bill also imposes registration and attestation requirements on all public employers and state contractors. The bill adds to the Georgia criminal code the offense of aggravated identity fraud, which treats as a felony the use of counterfeit or fictitious identity information for purposes of obtaining employment.

Effective July 1, 2007, SB 529, the Georgia Security & Immigration Compliance Act, requires certain public employers and any contractors and subcontractors of a public employer to

register with E-Verify. An employer must withhold state income tax at a rate of 6% of payments to any individual who has failed to provide a valid taxpayer identification number. The law also provides an additional adjustment to taxable income of corporations with respect to certain disallowances and disallows as a business expense compensation paid by a taxpayer to an unauthorized employee.

## **Hawaii**

A law (HB 1750), signed in May 2007, mandates that all persons seeking employment with the government of the state must be citizens, nationals, or permanent resident aliens of the United States or eligible under federal law for unrestricted employment in the United States.

## **Idaho**

On December 13, 2006, Gov. Jim Risch issued an EO requiring that state agencies participate in the E-Verify system. Also, all workers employed for the state through contractors must be from companies that have been verified to have eligible employees. Current law only applies to state government employees.

## **Illinois**

E-Verify is permitted, but not mandatory, in Illinois. On March 12, 2009, a federal court in Illinois struck down a law (HB 1744), signed in August 2007, that would have prohibited employers from enrolling in E-Verify until the SSA and DHS databases were able to make a determination within three days on 99% of the tentative nonconfirmation notices issued to employers. *United States v. Illinois*, No. 07-3261 (C.D. Ill. Mar. 12, 2009). Subsequently, Illinois enacted the Illinois Right to Privacy in the Workplace Act, which does not require the use of E-Verify but places additional statutory obligations on employers within the state that do use E-Verify. Effective January 1, 2010, employers must complete attestations at the time of E-Verify enrollment (or by January 30, 2010 if already enrolled) confirming that responsible employees have completed the DHS E-Verify tutorial. Employers also must attest that they have posted applicable E-Verify and Office of Special Counsel for Immigration-Related Unfair Employment Practices notices at the workplace. Consistent with the DHS's Memorandum of Understanding entered into by E-Verify participants, employers are prohibited from terminating employees prior to receiving a final nonconfirmation of employment authorization from E-Verify and from using E-Verify to prescreen employment applicants. However, the Illinois law allows injured employees to file claims against the employers pursuant to the Illinois Human Rights Act.

## **Indiana**

Gov. Mitch Daniels signed into law SEA 590, which disallows state tax credits for employers that knowingly hire illegal aliens, revokes state contracts with those companies, and denies unemployment benefits to an unauthorized worker unless the worker's employment eligibility was authorized through E-Verify. It also increases state penalties for crimes associated with immigration fraud and the transportation or harboring of undocumented workers.

Effective June 30, 2011, the law requires state agencies, political subdivisions, contractors of any tier with public contracts for services with the state or a political subdivision, and certain business entities to use E-Verify. A state agency or political subdivision may not enter into or renew a public contract for services with a contractor unless (1) the public contract contains a provision requiring the contractor to enroll in and verify the work eligibility status of all of its newly hired employees through the E-Verify program, and (2) the contractor signs an affidavit affirming that the contractor does not knowingly employ an unauthorized alien.

## **Iowa**

A law (SF 562), effective July 1, 2007, provides that any business that receives economic development assistance from the state must be subject to contract provisions stating that all of its employees either are US citizens who reside within the United States or are authorized to work in the United States pursuant to federal law, including legal resident aliens.

## **Kansas**

There are no current state immigration laws affecting employment eligibility verification.

## **Kentucky**

There are no current state immigration laws affecting employment eligibility verification.

## **Louisiana**

HB 342 (2011) prohibits state contractors from bidding or contracting on state work without first submitting affidavits attesting they will use the federal E-Verify program. The bill also requires contractors to obtain sworn statements from subcontractors attesting that they use E-Verify. Penalties for failure to comply with the bill range from contract termination to a three-year ban from bidding or contract work. The bill applies to contracts entered into or bids offered on or after January 1, 2012.

Also, private employers are encouraged and incentivized to use E-Verify, but a failure to use E-Verify does not create an immediate sanction. Rather, employers that use E-Verify in Louisiana will be exempted from any state sanctions if they used E-Verify and are subsequently determined to have employed undocumented workers in reliance on the E-Verify authorization, but there is no requirement that they use E-Verify. The bill also exempts employers from penalties should an employer retain a copy of one of the following documents: US birth certificate or certified birth card, naturalization certificate, Certificate of Citizenship, Alien Registration Receipt Card, or US immigration Form I-94. SB 753, signed in June 2006, allows any state agency or department to conduct an investigation of a contractor's hiring policies if the employment of unauthorized immigrants is suspected. The district attorney can issue an order to fire undocumented workers, and, if the contractor does not comply within 10 days of receiving notice, the contractor is subject to penalties of up to \$10,000. This applies only to contractors employing more than 10 people.



## **Maine**

There are no current state immigration laws affecting employment eligibility verification.

## **Maryland**

There are no current state immigration laws affecting employment eligibility verification.

## **Massachusetts**

There are no current state immigration laws affecting employment eligibility verification.

Massachusetts EO 481, effective February 23, 2007, prohibits the use of undocumented workers on state contracts and requires that executive branch contractors certify that they will not knowingly use undocumented workers while performing the contracts; they will verify the immigration status of all workers without engaging in unlawful discrimination; and they will not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such workers.

## **Michigan**

A law (SB 229), signed in October 2007, directs state agencies to consider the immigration and residency statuses of persons employed by a prospective contractor and whether the use of noncitizen workers would be detrimental to the state.

## **Minnesota**

Minnesota's earlier E-Verify policy expired on April 4, 2011, but was quickly replaced with HR 2164, which took effect June 2011. Under the new law, private businesses providing more than \$50,000 worth of services to the State of Minnesota must enroll in E-Verify and use it to verify new-hire employment eligibility. Unlike the previous E-Verify law that required state agencies to use E-Verify on all new hires, this new mandate does not extend to new state employees.

## **Mississippi**

Mississippi SB 2988 was signed into law by Gov. Haley Barbour on March 17, 2008. The law mandates E-Verify participation for Mississippi employers. State agencies and employers with at least 250 employees were required to be in compliance by July 1, 2008; employers with 100 to 249 employees were required to comply by July 1, 2009; employers with 30 to 99 employees were required to comply by July 1, 2010; and all employers must have complied by July 1, 2011. Penalties include loss of public contracts for up to three years, loss of licenses for up to one year, or both. Additionally, the law makes it a felony for unauthorized workers to knowingly accept or perform work in the state, and creates a private cause of action for legal US residents laid off and replaced by unauthorized workers. The statute's definition of "employee" appears to limit the scope of the law to individuals hired to perform work within the State of Mississippi, and to limit applicability to those employers that report income paid to employed or contracted personnel in Mississippi.

## Missouri

On July 7, 2008, Gov. Matt Blunt signed into law a bill (HB 1549) that makes it mandatory for all state agencies and local governments in Missouri, as well as private contractors with the state, to use E-Verify for newly hired workers. The effective date was January 1, 2009. The law allows the state to terminate contracts with businesses that hire illegal workers, to withhold up to 25% of the value of contracts with these businesses, and to suspend the businesses from further contracts with the state for up to three years. Upon a second offense, a business could be permanently barred from doing business with the state. The law also calls for suspension of local licenses, permits, and exemptions for employers that knowingly hire unlawful workers. Additional provisions relate to limitations on public benefits, immigration training for state police, and prohibitions on misclassifying workers as independent contractors when the employers knew that the workers should be classified as employees.

HB 2058, signed on June 11, 2008, requires that any applicant of a tax credit program that purposely and directly employs an unauthorized alien has to forfeit any tax credits and must repay the amount of any tax credits redeemed during the period that an unauthorized alien was employed by the applicant.

## Montana

A law (SB 214), signed in April 2007, revises laws relating to independent contractors and excludes from the definition of "employment" services performed by an alien having a residence in a foreign country who temporarily comes to the United States to perform agricultural labor or services, or an alien who is a bona fide student and who seeks to enter the United States temporarily and solely for the purpose of pursuing a course of study.

A law (HB 111), signed in March 2007, revises the unemployment insurance law and excludes from the definition of "employment" services performed by an alien having a residence in a foreign country who temporarily comes to the United States to perform agricultural labor or services.

## Nebraska

On April 18, 2009, Gov. Dave Heineman signed into law a bill (LB 403) requiring public employers (i.e., state agencies and political subdivisions) and contractors to register with and use the E-Verify program to determine the employment eligibility of new hires starting October 1, 2009. A public contractor is defined as "any contractor or his or her subcontractor who is awarded a contract by a public employer for the physical performance of services within the State of Nebraska." The law also requires Nebraska's public employers to verify the legal status of all applicants trying to collect public benefits, thereby prohibiting the public employers from providing benefits to persons illegally present in the United States.

## Nevada

In June 2007, Gov. Jim Gibbons signed into law a bill (AB 383) that provides administrative fines for those business licensees that are found to employ illegal aliens. The bill also requires verification of an employee's Social Security number.

## **New Hampshire**

There are no current state immigration laws affecting employment eligibility verification.

## **New Jersey**

There are no current state immigration laws affecting employment eligibility verification.

## **New Mexico**

There are no current state immigration laws affecting employment eligibility verification.

## **New York**

There are no current state immigration laws affecting employment eligibility verification.

## **North Carolina**

Gov. Beverly Perdue signed into law HB 36, which requires private employers with at least 25 employees and all counties and cities to use E-Verify to verify the work authorization of newly hired employees. The law, signed on June 23, 2011, required North Carolina counties and cities to register and participate in E-Verify by October 1, 2011. Private sector employers with 500 or more employees were required to participate as of October 1, 2012; employers with 100 to 499 employees were required to participate as of January 1, 2013; and employers with 25 to 99 employees were required to participate as of July 1, 2013.

SB 1523, enacted in 2006, requires all state agencies, offices, and universities to use E-Verify for employees hired on or after January 1, 2007, except for employees of local education agencies hired on or after March 1, 2007. As of May 2008, North Carolina had other pending bills related to employer-based and/or employee-based immigration laws.

## **North Dakota**

There are no current state immigration laws affecting employment eligibility verification.

## **Ohio**

There are no current state immigration laws affecting employment eligibility verification.

## **Oklahoma**

The Oklahoma Taxpayer and Citizen Protection Act, signed in May 2007, required state and local government agencies and private employers with government contracts to check the immigration status of applicants for employment by verifying Social Security numbers. Implementation of the law was enjoined on June 4, 2008 by a federal court in Oklahoma, which found that it is "substantially likely" that the law is preempted by federal immigration law. As originally enacted, the law required an employer to withhold state income tax at a rate of 6% of

the amount of compensation paid to an individual if the individual had failed to provide a valid Social Security number. It also mandated that public employers use E-Verify beginning November 1, 2007 and that state contractors use E-Verify by July 1, 2008. A divided US Court of Appeals for the Tenth Circuit lifted parts of the injunction in February 2010, allowing Oklahoma to enforce the requirement that state, county, and municipal governments and those that contract with the state use E-Verify to prove the legal status of all new hires.

## **Oregon**

A law (SB 202), effective January 1, 2008, amends Oregon labor law to prohibit a holder of a farm labor contractor license from hiring "an alien not legally present or legally employable in the United States." It permits any individual, including the Commissioner of the Bureau of Labor, to bring suit against any person to enjoin that person from using the services of a farm labor contractor that employs illegal aliens. The commissioner may also impose civil fines against violators.

## **Pennsylvania**

On July 5, 2012, Gov. Tom Corbett signed the Public Works Employment Verification Act (SB 637) into law. Under the act, effective January 1, 2013 all public works contractors and subcontractors are required to use E-Verify for all new hires. Subcontractors that are only suppliers are exempt from the law. Contractors must execute a certification of compliance as a prerequisite to being awarded a public works contract. The Department of General Services has authority to investigate compliance based on either complaints or random inspections. Failure to comply can result in a sanction that ranges from a warning letter for an initial violation to debarment for egregious violations.

A law (HB 2319), signed in May 2006 and known as the Prohibition of Illegal Alien Labor on Assisted Project Act, defines an "illegal alien" as one who violates federal immigration laws yet is a paid employee within the commonwealth. This bill prohibits the use of labor by illegal immigrants on projects financed by grants or loans from the state government. Appropriate federal authorities should be contacted in the event that a contractor that knowingly employs illegal aliens accepts a state contract.

## **Rhode Island**

On November 5, 2010, then–newly inaugurated Gov. Lincoln Chafee issued EO 08-01, rescinding his predecessor's 2008 EO regarding the mandatory use of E-Verify.

## **South Carolina**

On June 4, 2008, Gov. Mark Sanford signed HB 4400, the South Carolina Illegal Immigration Reform Act. The legislation requires all South Carolina employers to use E-Verify. Large employers (more than 500 employees) were required to comply by January 2009; all other employers had until July 2010. Employers could be fined between \$100 and \$1,000 for each employee not verified, and the violation would be reported to federal officials. An employer found to have knowingly hired illegal immigrants faces suspension of its business license for 10

to 30 days for a first offense, and up to five years for a third offense. Licenses could be revoked in the most egregious cases. Other provisions include creation of an informational website and telephone call center for the reporting of suspected immigration law violations, a prohibition on treating as a deductible business expense any wages paid to an undocumented worker, and mandatory withholding of 7% of all compensation paid to an undocumented worker.

## **South Dakota**

There are no current state immigration laws affecting employment eligibility verification.

## **Tennessee**

Effective January 1, 2017, all Tennessee employers with 50 or more employees are required to enroll in and use E-Verify. The Tennessee Lawful Employment Act (TLEA) (SB 1669, HB 1378) was signed into law by Gov. Bill Haslam on June 7, 2011. The law originally required employers either to register with and use E-Verify or to request from an employee and retain a photocopy of one document from a list of acceptable documents in addition to fulfilling the federal Form I-9 requirements. The law was phased in according to employer size:

- January 1, 2012: Employers with 500+ employees and government entities
- July 1, 2012: Employers with 200 to 499 employees
- January 1, 2013: Employers with 6 to 199 employees

On April 21, 2016, the governor signed into law an amendment to the TLEA that will drop the document retention option in favor of mandatory E-Verify use for all Tennessee employers with 50 or more employees. This change takes effect January 1, 2017.

A law (HB 111), effective June 2006, prohibits contractors from contracting with state agencies within one year of the discovery that the contractors employ illegal immigrants.

A law (SB 903), signed in May 2007, provides that an employer shall not accept an individual tax identification number (ITIN) to prove immigration status. According to some, illegal immigrants often present ITINs without also presenting valid federal immigration documents. Tennessee hopes to prevent fraudulent use of ITINs for employment purposes.

A law (HB 729), signed in June 2007, provides for the suspension of the business license of an employer for knowingly hiring an illegal alien. For a first violation, the employer's license would be suspended until the illegal worker is terminated. For second and subsequent violations, the suspension would be for one year. As with the Arizona law, the employer's participation in E-Verify serves as a defense to a claim that the employer has violated the law.

## **Texas**

A law (HB 1196), effective September 1, 2007, requires Texas businesses that receive taxpayer-subsidized job creation grants and tax abatements to certify that they will not knowingly employ undocumented workers. In the certified statement, a business must declare that if convicted of

engaging in a pattern or practice of violations of federal law governing unlawful employment of illegal workers, the business must repay the amount of the public subsidy with interest, at a specified rate and term, within 120 days of receiving notice of the violation. The law also authorizes a public agency, a local taxing jurisdiction, an economic development corporation, or the Texas attorney general to bring a civil action to recover funds if a business hires workers who are not legally in the United States. The bill applies to a business's subsidiary, affiliate, or franchise, or a person with whom the business contracts.

## Utah

On March 31, 2010, Gov. Gary Herbert signed into law SB 251, "Verification of Employment Eligibility." The law requires that, as of July 1, 2010, private employers that employ 15 or more employees use a "status verification system" (either E-Verify or Social Security Number Verification Service (SSNVS)) to verify the federal legal working status of every new hire. Foreign national employees in H-2A or H-2B nonimmigrant status are excluded. There is no sanction or liability for a failure to comply with the law. Employers may register with the Utah Department of Commerce, certifying their compliance with the law. The Department of Commerce is required to publish on the Internet a list of companies that have registered under the law.

Former Gov. Jon Huntsman signed SB 81 into law on March 13, 2008, with an effective date of July 1, 2009. The law requires all public employers, as well as their contractors of any tier, to use an electronic employment eligibility verification system (either E-Verify or SSNVS) to verify employment eligibility. The requirement applies only to contracts entered into for the physical performance of services after July 1, 2009 and to employees hired after the law took effect.

## Vermont

There are no current state immigration laws affecting employment eligibility verification.

## Virginia

On March 25, 2011, Gov. Bob McDonnell signed into law SB 1049. The law, effective December 1, 2013, requires that any employer with more than an average of 50 employees for the previous 12 months and entering into a contract in excess of \$50,000 with any agency of the commonwealth to perform work or provide services pursuant to such contract shall register with and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract.

Previous action in Virginia includes HB 1298, which was signed into law effective July 1, 2008. The law does not impose any additional employer obligations; however, it creates a state criminal offense for employers that essentially fail to fulfill their existing employment eligibility verification obligations under existing federal immigration law. In addition, HB 926 was signed into law authorizing regulatory boards to revoke state licenses, registrations, certificates, or authorizations in the event of a state or federal conviction for knowingly employing unlawful workers. Also, since July 1, 2008, all public contracts for goods and services have included a provision that a contractor does not and will not knowingly employ an unauthorized worker in the performance of a contract. On April 11, 2010, Gov. McDonnell signed into law HB 737,

which require agencies of the commonwealth to enroll in the E-Verify program by December 1, 2012, and to use the program for each newly hired employee who is to perform work within the commonwealth.

### **Washington**

There are no current state immigration laws affecting employment eligibility verification.

### **West Virginia**

A law (SB 70), signed in April 2007, makes it unlawful for any employer to knowingly employ an unauthorized worker. An employer is required to verify a prospective employee's legal status or authorization to work. The law also provides for penalties for employing unauthorized workers, including fines, jail sentences, and revocation of business licenses.

### **Wisconsin**

There are no current state immigration laws affecting employment eligibility verification.

### **Wyoming**

There are no current state immigration laws affecting employment eligibility verification.

## **About Morgan, Lewis & Bockius LLP**

With 29 offices in the United States, Europe, the Middle East, and Asia, Morgan Lewis provides comprehensive transactional, litigation, labor and employment, regulatory, and intellectual property legal services to clients of all sizes—from global Fortune 100 companies to just-conceived start-ups—across all major industries. Our international team of lawyers, patent agents, employee benefits advisors, regulatory scientists, and other specialists—more than 3,000 professionals total—serves clients from locations in Almaty, Astana, Beijing, Boston, Brussels, Chicago, Dallas, Dubai, Frankfurt, Hartford, Houston, London, Los Angeles, Miami, Moscow, New York, Orange County, Paris, Philadelphia, Pittsburgh, Princeton, San Francisco, Santa Monica, Shanghai, Silicon Valley, Singapore, Tokyo, Washington, DC, and Wilmington. For more information about Morgan Lewis or its practices, please visit us online at [www.morganlewis.com](http://www.morganlewis.com).

## **Immigration**

Morgan Lewis's immigration team is a full-service practice uniquely positioned to offer a complete range of immigration services. We provide clients with both the international resources of a top-tier law firm and the highly specialized competency of a first-class, dedicated immigration team. Beyond our experience in general business immigration law, we offer proficiency in several key immigration-related subspecialties—including taxation, compliance, due diligence, and foreign employment laws—as well as a proven ability to operate successfully around the world.

For Additional Information Contact:

Eric S. Bord

[ebord@morganlewis.com](mailto:ebord@morganlewis.com)

tel.: +1.202.739.6040

This communication is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius LLP. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does this message create an attorney-client relationship. These materials may be considered advertising in some jurisdictions. Prior results discussed in the material do not guarantee similar outcomes.

© 2016 Morgan, Lewis & Bockius LLP