

GOVERNOR PERDUE SIGNS GEORGIA IMMIGRATION/SECURITY LAW

Insights

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On Monday, April 17, Governor Sonny Perdue signed the Georgia Security and Immigration Compliance Act. The new law contains several provisions that affect employers, but much remains unclear. Here is an analysis of the law's employment-related measures.

Verification Requirements

Effective July 1, 2007 all State departments, agencies, or instrumentalities, and all state contractors and subcontractors with 500 or more workers, must use the Social Security Administration and Department of Homeland Security online verification systems to verify SSNs and immigration status. These requirements apply to contractors and subcontractors with 100 or more workers on July 1, 2008.

One year later, on July 1, 2009, all contractors and subcontractors must be using the federal online verification systems. Although this section of the law does not contain any specific enforcement provisions, the Commissioner of Labor is empowered to promulgate rules and regulations necessary to administer and effectuate these requirements. Presumably, the Commissioner will publish some regulation calling for debarment from state contracts for those employers found not to be in compliance.

Section 4 of the Act authorizes negotiation of a memorandum of understanding between the state and federal government allowing Georgia law enforcement officers to enforce federal immigration and customs laws while performing their regular duties. If this memorandum is negotiated, then law enforcement officers in Georgia could conceivably begin conducting I-9 audits of employers and detaining for removal persons who lack legal status.

TAX PROVISIONS

The new law also changes Georgia's tax code to prohibit employers from deducting as a business expense \$600 or more in wages paid to any individual who is not authorized to work. This section becomes effective on January 1, 2008 and applies only to persons hired after that date.

Presumably if a new hire presents valid I-9 documents, you may treat that person as an "authorized worker" for purposes of this section. But if you later learn that the worker is unauthorized, then you lose the tax deduction for wages paid to that worker. This provision does not apply to a business that does not directly employ or compensate the unauthorized worker, so staffing companies and temporary help agencies will likely now start to conduct I-9 verifications that they were not obligated to do before so that they avoid negative tax consequences.

The tax code is also amended to require six percent withholding of compensation paid and reported on Form 1099 if the recipient does not provide a valid taxpayer identification number, provides an incorrect taxpayer identification number, or provides a taxpayer identification number issued only to nonresidents.

Applications for State or Local Benefits

The Act requires state agencies to verify lawful presence for anyone who applies for state or local public benefits or federal benefits administered by the state. Although there are some narrow exceptions for things like emergency medical care, the scope of this provision is very broad and may have unforeseen effects. For example, this would appear to require verification of lawful presence in order to collect worker compensation benefits.

Much remains to be clarified with regard to the scope of this new law and how it will be enforced. Should you have questions about how the law impacts you specifically, please contact your regular Fisher Phillips attorney.