



South Carolina Employers Face July 1 Compliance Deadline

Insights

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For private employers in South Carolina with 100 or more employees, compliance with the employment verification requirements of the South Carolina Illegal Immigration Reform Act begins July 1, 2009. The Act's verification procedures apply to all employees hired on or after July 1, 2009.

What The Law Requires

Employers have a choice on how to comply with the Act. An employer can satisfy the requirements of the Act by verifying employees' work status through the federal E-Verify program, or alternatively, by verifying that the employee possesses either a South Carolina driver's license or identification card, is qualified to obtain one, or has an out-of-state driver's license from a state having qualification requirements as strict as those in South Carolina. Of course in all cases, under both federal and state law, employers must fill out and maintain an I-9 Form on all employees.

The Act creates an inducement to use the E-Verify authorization program by establishing a presumption of compliance for those employers who "in good faith" verify the immigration status of the new employee pursuant to E-Verify. No such presumption is created for employers who elect only to use the I-9 Form and verification of the employee's driver's license or identification card. Nevertheless, private employers are not required to use E-Verify as long as they adhere to the alternative verification procedures at the time of hire of any new employee.

Penalties

The Act expressly states that a private employer shall not "knowingly or intentionally" employ an unauthorized alien. The new law imposes a system of penalties for employers who violate either the verification of employment provisions or the prohibition on hiring an unauthorized alien. A private employer can be assessed a civil penalty of not less than \$100.00 and not more than \$1000.00 for each violation. For a first violation, employers can avoid the assessment of a penalty by complying with the verification provisions within 72 hours of notification of a violation. For any subsequent violation, the employer will be assessed a civil penalty.

If an employer knowingly or intentionally hires an unauthorized alien, the penalties involve either suspension or revocation of the employer's imputed license, thereby preventing the employer from hiring new employees or conducting business within the state of South Carolina. Additionally, in order to obtain reinstatement of the employer's license, the employer must terminate the unauthorized alien, and pay a reinstatement fee of not more than \$1000.00. Subsequent violations of this portion of the Act can result in revocation of an employer's license for a period of five years.

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Conclusion

When the law passed, South Carolina legislators hailed the new legislation as the "toughest bill in the United States." It is apparent that employers doing business in South Carolina must tighten their hiring procedures and decide which employment verification process works best with their operations. It remains to be seen how aggressive South Carolina officials will be in enforcing the new law.

This Global Immigration presents highlights of a particular South Carolina law. It is not intended to be, and should not be construed as, legal advice for any specific fact situation.