South Carolina Toughens State Immigration Law

Insights
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On June 27, 2011, Gov. Nikki Haley signed into law amendments to South Carolina's immigration laws, including the South Carolina Illegal Immigration Reform Act. The legislation strengthens what was already considered to be one of the toughest immigration reform acts in the country. The new law, which takes effect on January 1, 2012, brings with it new requirements for employers in South Carolina.

New Employment Verification Requirements

For employers, the most significant change contained in the amendments pertains to employment verification procedures. Under the new law, all employers who are required to complete and maintain employment verification forms under federal law must enroll in the E-Verify federal work authorization program to verify the work authorization of every new employee within three days of hiring the employee.

Employers are no longer permitted to verify employment eligibility based only on the employee possessing a driver's license or identification card issued by South Carolina or another state as allowed under the previous Act. The new law requires the South Carolina Department of Employment and Workforce to provide private employers with technical assistance and electronic access to the E-Verify website.

Penalties For Violation Of The Act

The Act states that "a private employer who knowingly or intentionally employs an unauthorized alien violates the private employer's license" and amends the previous penalty structure by eliminating the civil penalties imposed under the former Act. Instead, for a first violation occurring before July 1, 2012, a private employer shall swear or affirm in writing to the Director of the Department of Labor, Licensing and Regulation that the employer has complied with the provisions of the federal Immigration Reform and Control Act of 1986 from the effective date of the Act, and that it will comply with the Act's employment verification procedures within three business days.

An employer who fails to swear or confirm compliance in writing, or fails to comply with the Act within three business days, will be placed on probation for a period of one year during which time the employer must provide the Director of Labor, Licensing and Regulation with quarterly compliance reports. Any subsequent violation will result in suspension of the employer's license for a period of 10 to 30 days.

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For first violations that occur on or after July 1, 2012, a private employer must immediately comply with employment verification provisions of the Act and will be placed on a one-year probationary period during which time the employer must provide the Director of Labor, Licensing and Regulation with quarterly compliance reports. Subsequent violations will range from suspension of the employer's license for a period of 10 to 30 days, up to revocation of the employer's license for a period of five years.

Under the previous Act, employers whose licenses were suspended could not "employ an employee" during the suspension period. The new law expands the prohibition and now provides that employers whose licenses are suspended for failing to comply with the new law "may not engage in business, open to the public, employ an employee, and otherwise operate" during the suspension period.

For advice or questions about compliance contact any attorney in the Columbia office of Fisher Phillips at 803-255-0000.

This Legal Alert provides an overview of a specific state law. It is not intended to be and should not be construed as legal advice for any particular fact situation.

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