



# THE KULLMAN FIRM

A PROFESSIONAL LAW CORPORATION

## CLIENT E-NEWSLETTER

### **Alabama, Georgia, and Tennessee Enact New Immigration Laws**

Earlier this month, in union with the recent wave of states enacting immigration reform, Alabama, Georgia, and Tennessee enacted their own immigration reform legislation. As a service to our clients, we have prepared the following general summary of the new statutes. These are summaries only, and do not represent specific legal advice as to any employer's particular situation or needs.

The recently enacted laws place new requirements on employers that if not followed can have serious consequences ranging from monetary penalties to loss of an employer's business license. Thus, it is imperative that employers become aware of the new requirements and put policies and practices in place to ensure that the requirements are followed.

#### **The Alabama Taxpayer and Citizen Protection Act**

On June 9, 2011, Alabama enacted the Alabama Taxpayer and Citizen Protection Act. The provisions of this Act go into effect on September 1, 2011 and affect both employees and employers. Most significantly as to employees, the Act makes it unlawful for any unauthorized alien to "knowingly apply for work, solicit work . . . or perform work as an employee or an independent contractor." Violations of this provision can result in a fine of up to \$500.

The new requirements for employers are more numerous. First, the Act prohibits any business entity or employer from knowingly employing, hiring for employment, or continuing to employ an unauthorized alien to perform work within the State of Alabama. However, employers are not liable for the employees of an independent contractor performing work for the employer. An employer in violation of this provision will be required to terminate any undocumented alien and file a signed, sworn affidavit stating that the employment of the undocumented alien was terminated. Additionally, the employer's business license will be suspended for a period of up to ten days at the location where the undocumented alien worked. The employer will also be subject to a three-year probationary period in which the employer will be required to file quarterly reports regarding each new employee that is hired by the employer. Employers who violate this provision a second time will have their business licenses permanently revoked at the location where the undocumented alien worked. Employers who violate the section a third time will have their business licenses permanently revoked statewide.

The Act also requires employers to enroll in E-Verify by April 1, 2012. Employers with 25 or fewer employees will be able to utilize the Alabama Department of Homeland Security's employer agent service in order to use E-Verify. Once enrolled, an employer must verify the employment eligibility of new employees through E-Verify. While the penalties for knowingly employing an undocumented alien are harsh, the good news for employers is that if they use E-verify to verify the work authorization of an employee they will not be liable if that particular employee turns out to be an undocumented alien. However, E-Verify can only be used for prospective employees so liability for current employees would still exist.

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In addition, the Act prohibits wages or any other type of compensation paid to an undocumented alien to be used as a business expense deduction for state income or business tax purposes. Employers who violate this section are subject to a penalty equal to ten times the business expense deduction.

The Act further prohibits employers from failing to hire a job applicant or from firing an employee who is authorized to work in the United States while retaining or hiring an unauthorized alien. Violations of this section can give rise to a civil action for discrimination in state court. A finding of liability under such an action can subject the employer to compensatory damages and attorney's fees.

The Act also puts conditions on the receipt of contracts, grants, or incentives from the state. These conditions also apply to subcontractors on a project paid for by contract, grant, or incentive by the state. The conditions prohibit both recipients and subcontractors from employing, hiring, or continuing to employ an unauthorized alien, and also require recipients and subcontractors to enroll in E-Verify. A contractor is not liable for the violations of its subcontractors if the contractor receives an affidavit from the subcontractor attesting to the fact that it verified each of its employees.

Employers in violation of this provision are subject to termination of the contract and up to a 60-day suspension of their business licenses. Subsequent violations can result in permanent revocation of a business license. Subcontractors in violation of this provision may be barred from doing business in the state or have their business licenses revoked for up to 60 days. Subsequent violations may result in a permanent suspension of a subcontractor's business license. While penalties for violations of this section are harsh, as in previous provisions, enrollment in E-Verify during the full performance of the contract or subcontract limits the liability of employers and subcontractors.

### **The Georgia Illegal Immigration Reform and Enforcement Act of 2011**

On May 13, 2011, Georgia enacted the Illegal Immigration Reform and Enforcement Act of 2011. The Act requires employers with more than ten employees to enroll in E-Verify. Once enrolled, the employment eligibility of all new hires must be verified through the system.

This law will take effect in stages. Employers with more than 500 employees will be required to follow the new requirements by January 1, 2012. Employers with 100-499 employees will have until July 1, 2012 to comply and employers with 11-99 employees will have until July 1, 2013.

The Act also requires that employers submit an affidavit affirming the employer's use of E-Verify or affirming that the employer is exempt from the E-Verify requirement. A form affidavit that employers may use will be posted by the Attorney General on the Department of Law's official website no later than January 1, 2012. A copy of the affidavit will be required before any county or municipal corporation can issue or renew a business license, occupational tax certificate, or other document required to operate a business. Employers that submit false or misleading affidavits will be guilty of a misdemeanor.

Additionally, employers who violate the Act will be required to provide evidence of compliance within 30 days. The Attorney General is also authorized to conduct an investigation and bring any criminal or civil action deemed necessary to ensure compliance with the new requirements.

### **The Tennessee Lawful Employment Act**

On June 7, 2011, Tennessee enacted the Tennessee Lawful Employment Act to help ensure that employers are employing a legal workforce. The Act requires employers with more than five employees to enroll in

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E-Verify or request that all new employees provide specific employment authorization documents. Once enrolled in E-Verify, employers are required to use the program for all new hires. If an employer chooses not to enroll in E-Verify, but rather to request and maintain employment authorization documents, only the following documents will suffice:

- (1) A valid Tennessee driver's license or photo identification;
- (2) A valid driver's license or photo identification issued by another state where the issuance requirements are at least as strict as those in Tennessee;
- (3) An official birth certificate issued by a U.S. state, jurisdiction, or territory;
- (4) A U.S. government-issued certified birth certificate;
- (5) A valid, unexpired U.S. passport;
- (6) A U.S. certificate of birth abroad;
- (7) A report of birth abroad of a U.S. citizen;
- (8) A certificate of citizenship;
- (9) A certificate of naturalization;
- (10) A U.S. citizen identification card; or
- (11) Valid alien registration documentation.

Under the Act, employers are required to keep copies of these documents for three years after the date of hire, or one year after the employee is terminated, whichever is later. The Act also mandates that employers utilizing independent contractors verify the contractor's authorized status by requesting and maintaining one of these employment authorization documents prior to the contractor providing labor or services.

This new law takes effect in stages. Employers with more than 500 employees and government entities will be required to follow the new requirements by January 12, 2012. Employers with 200-499 employees will have until July 1, 2012 to comply and employers with 6-199 employees will have until January 1, 2013.

Employers who violate the Act will be issued a \$500 general fine plus an additional \$500 fine per employee who was not run through E-Verify or for whom an employment authorization document was not received. These fines increase to \$1,000 and \$2,500 for second and third violations respectively. Additionally, employers who violate the law will be required to provide evidence of compliance within 60 days of a final order. Employers that fail to do so will have their business license revoked until the violation is remedied.

To protect against potential violations of these new laws employers should develop a strategy to ensure workplace compliance. The first line of defense for employers would be to enroll in E-Verify and set up policies and procedures that safeguard against hiring unauthorized aliens. The Kullman Firm regularly counsels employers regarding labor and employment issues such as the challenges provided by immigration reform legislation. If you have any questions regarding this or any other labor and employment issue, please contact the Kullman attorney with whom you customarily work.



## Management Resource in Labor and Employment Law

**1600 Energy Centre, 1100 Poydras Street / New Orleans, LA 70163 / 504.524.4162**  
**Suite A, 4605 Bluebonnet Boulevard / Baton Rouge, LA 70809 / 225.906.4250**  
**Suite 340, 600 University Park Place / Birmingham, AL 35209 / 205.871.5858**  
**Suite 704, Court Square Towers, 200 6th Street North / Columbus, MS 39701 / 662.244.8824**  
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**1100 Riverview Plaza, 63 S. Royal Street / Mobile, AL 36602 / 251.432.1811**

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