

Employment Law Update

June 12, 2012

Amendment to Alabama's Immigration Law

On May 18, 2012, Governor Bentley signed Ala. Act No. 2012-491, which is an amendment to the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, also known as Alabama's immigration law. There were no changes to the primary employment-related provision – Section 15 – so all employers are still required to be enrolled in E-Verify and to run through E-Verify all new hires.

There were some significant changes to the section that applies to employers who contract with state or local government entities. As a result, government contractors will no longer be required to provide an affidavit to the agency awarding the contract, but they must provide evidence of enrollment in E-Verify (usually a copy of the Memorandum of Understanding) and will no longer be required to obtain affidavits from subcontractors. The amended law – which is effective as of May 18, 2012 – narrows its application to contracts that are competitively bid or would, if entered into by the state or a state agency, be required to be submitted to the Contract Review Permanent Legislative Oversight Committee. It also more closely mirrors the federal law with respect to responsibility for compliance by subcontractors, which is that a contractor is only responsible for violations by a subcontractor if it knew or had reason to know that the subcontractor was not in compliance with the state or federal immigration law. Subcontractors on state or local government contracts are also covered by Section 9, but the law now clarifies that it only applies to subcontractors “performing work on a project” under a government contract and “not to collateral persons or business entities hired by the subcontractor.” The amended act also requires in all state contracts the following clause: “By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the state of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.”

The amended Section 9 concerning government contractors also rewrites the penalty sections, but they are still very similar to what they were before and remain harsh. A violation, even a first violation, is still considered a breach of the government contract. For a first violation, the contract may be terminated, but doesn't have to be. If there is a showing of a “policy or practice” that violates Section 9, a court can order a suspension of business licenses and permits for up to 60 days specific to the locations where the unauthorized alien performed work. For a second violation within 10 years of the first violation, the penalties include mandatory termination of the government contract, five-year probation for the employer who must file quarterly reports, a suspension of business licenses and permits for between 60 and 120 days, and a few other things. For a third violation, the penalties include mandatory termination of contract and permanent revocation of business licenses and permits.

You can obtain a copy of Act No. 2012-491, which shows the changes, at:
<http://arc-sos.state.al.us/PAC/SOSACPDF.001/A0009507.PDF>

The attorney general's website still has copies of the original act, including a highlighted version showing which provisions have been enjoined by the federal courts. See <http://www.ago.state.al.us/Page-Immigration>. Litigation over the original act remains pending, but the employment provisions of Section 15 and Section 9 are not at issue in the federal litigation.

If you have any questions about compliance with the immigration law or the new amendments, with ensuring the eligibility of employees to work, or with any other employment issues, please contact us.

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