



Immigration Compliance Newsletter

Published by Montserrat Miller, Immigration & Privacy Practice Teams | Washington, DC office

August 24, 2011

FEDERAL DEVELOPMENTS

SAVE Program

If you are required to use the U.S. Citizenship and Immigration Services' Systematic Alien Verification for Entitlements (SAVE) program, take note that the agency is offering two upcoming [webinar](#) training opportunities this month. August 23rd for existing users and another webinar August 31st which is specifically geared for Georgia cities and counties that are required to use SAVE by the Georgia Security and Immigration Compliance Act. The complimentary webinar is 1.5 hours.

Expansion of E-Verify Self-Check

U.S. Citizenship and Immigration Services (USCIS) recently announced that Self Check, a free online service of E-Verify that allows workers to check their own employment eligibility status, is now available in Spanish and accessible to residents in 16 additional states: California, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New York, Ohio, South Carolina, Texas, Utah and Washington. This expands the list of states included in the initial launch of Self Check earlier this year, which included individuals living in Arizona, Colorado, Idaho, Mississippi, Virginia and the District of Columbia.

CAVEAT: As I reported in the April newsletter, the Self Check program is NOT to be used as an employment screening tool to determine a job applicant's employment authorization status. The purpose of the program is to allow individuals to check records held by the Department of Homeland Security and Social Security Administration to determine if there are any inaccuracies which may need to be corrected. If there are issues, individuals will be directed on how they can make corrections where necessary through either agency.

So, if you are curious to see whether you are work authorized or not at this time, go to USCIS' [Self Check](#). I did it and I will say that some of the questions posed by the third party authenticator to confirm identity required some thinking on my part. Fortunately for my employer, I'm work authorized.

Justice Department Settles Allegations of Immigration Related Employment Discrimination

What is important in this story isn't who the settlement is with, but rather focus on the *practice* for which they were penalized, as company's typically "over document" and require certain individuals to show more documentation when completing the Employment Eligibility Verification form (form I-9) than is required by law. As I like to say, more isn't necessarily better with the form I-9.

Back to the [settlement](#), which the Department of Justice (DOJ) reached with Summit Steel Fabricators Inc. in Houston, resolving allegations that the company engaged in a pattern or practice of discrimination against non-citizens in the employment eligibility verification process. DOJ alleged that the

company had a policy of requiring newly hired, non-U.S. citizens workers to present specific documentation, such as a permanent resident card or resident alien card, even if they had already presented other documents sufficient to establish their employment eligibility under federal law. Pursuant to the settlement agreement, Summit Steel Fabricators will alter its practices to ensure that citizens and non-citizens are treated equally in the employment eligibility verification process, pay a civil penalty of \$15,400, provide appropriate training to their HR personnel and provide periodic reports to the DOJ for three years.

STATE DEVELOPMENTS

States are Aggressively Pursuing Mandating E-Verify

It doesn't seem that long ago when Arizona became the first state to mandate use of E-Verify by private employers and we all wondered what would come of that. Fast forward a few years and one favorable Supreme Court decision later ([Chamber of Commerce](#) of the *United States of America, et al., Petitioners v. Michael B. Whiting, et al.*, Supreme Court No. 09-115, 563 U.S. ____ (2011)) and we know. States are moving fast to mandate use of E-Verify by private employers and so far the Southeast is taking the prize with the most participants.

Where are we and who is new? Currently, Arizona, Mississippi, South Carolina and Utah all mandate private employers participate in E-Verify. New kids on the block include Alabama, Georgia, Indiana (E-Verify can be a safe harbor), Louisiana, North Carolina (small business exemption), South Carolina (gone is the allowance for checking driver's licenses and ID cards in lieu of E-Verify) and Tennessee (E-Verify or check documents). Tied to participation in E-Verify are civil fines and/or business license restrictions and most of the E-Verify mandates go into effect next year, 2012.

Who may be next? Florida.

Each state has slightly different requirements, penalties and exceptions and the above comments are not exhaustive. Each month I will focus on one particular state, starting with Alabama.

E-Verify Comes to Alabama

On June 9, 2011, Alabama Governor, Robert Bentley, signed into law a bill, due to take effect on September 1, 2011, that may very well be the toughest enforcement measure that the country has seen. Similar to the widely debated Arizona law that had all sides of the immigration debate in an uproar, Alabama's recently passed immigration law, [HB 56](#), is even tougher! It includes not only an E-Verify mandate, but also policing measures including giving law enforcement officials the right to arrest and detain anyone they suspect of being in the country illegally. It makes it a crime in Alabama for undocumented workers to apply for a job. It requires schools to check citizenship and so on.

Similar to Arizona's law, H.B. 56 makes it a crime to hire undocumented works and mandates use of E-Verify, a free, web-based electronic employment eligibility verification program. Effective April 1, 2012, all private employers must enroll in E-Verify. Enrollment in the program provides a safe harbor (sort of) from being found in violation of the Alabama law. First time offenders will be ordered by a court to terminate all unauthorized workers and will be placed on a three year probationary period during which time they will be required to file reports with the local District Attorney attesting to the lawful work authorization status of new hires. A second violation will lead to revocation of the employer's business license or permit at the location where undocumented workers are found. A third violation will lead to a state-wide revocation of the employer's business license and permits. Additionally, a business will not be allowed to take a deductible business expense for state income or business tax purposes for any undocumented workers.

The kicker in all of this – anyone can file a complaint with the Attorney General and it must be responded to within 60 days, either by the filing of a formal complaint in court or by receipt of written explanation as to why such is not warranted.

Earlier this month, the Department of Justice challenged Alabama’s new immigration law in federal court. Additionally, a coalition of religious and community groups are filing briefs in opposition to the Alabama law, as well several countries such as Mexico. What has happened in situations such as this in the past is that the Court will enjoin the policing measures but allow the E-Verify mandate to stand while it considers the lawsuit.

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Not *if*, but *how*.®

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Arnall Golden Gregory, LLP has a full-service business immigration and compliance team ready to provide legal advice and counsel on issues addressed in this newsletter. For more information please contact Montserrat Miller at 202.677.4038.

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