

STATE DEVELOPMENTS

Georgia Small Businesses and Public Works Contracts – Do Companies with 10 or Less Employees Have to Enroll in E-Verify?



The short answer is YES, if you are a state contractor. Section 13-10-91 of the OCGA does not exempt contractors, subcontractors or sub-subcontractors with 10 or less employees from the requirement to submit a signed, notarized affidavit attesting that the affiant has registered with and uses the federal work authorization program otherwise known as E-Verify. If the contractor, subcontractor or sub-subcontractor has no employees and does not hire or intend to hire employees, they are required to provide a copy of the state issued driver's license or state issued identification card in accordance with OCGA §13-10-91(b)(5).

According to the Georgia Department of Audits and Accounts (DOAA), even though private employers with 10 or less employees wouldn't otherwise have to enroll in E-Verify under the Georgia immigration law and OCGA section 36-60-6, the fact that an employer is state contractor means that exemption no longer applies.

Save the Date – Georgia E-Verify Law Webinar

Save the Date—Spring 2012. Ms. Montserrat Miller will conduct a webinar on the Georgia E-Verify law. The webinar will also feature training on proper completion of the Employment Eligibility Verification form (form I-9), use of E-Verify and a discussion on proper employment eligibility verification practices and immigration employment compliance programs.

States Mandate E-Verify for Public Contractors with Public Works Contracts

Whenever doing business in a new state, whether as a private employer or a public contractor working with a state or local government, it is important to check whether there is an E-Verify mandate in place. Several states require those doing business with them to use E-Verify and some have reporting requirements in place as well. Often the mandate is written into the public works contract and therefore it is important to carefully read contracts for immigration specific language. Additionally, as a part of one's due diligence, state and local statutes should be checked.

What follows is a list of some of the states with E-Verify or similar mandates for state contractors – Arkansas, Colorado, Georgia, Indiana, Louisiana, Missouri and Virginia. Remember, this is not a complete list and there are many local jurisdictions that also have E-Verify requirements for public contractors.

Alabama E-Verify Mandate for State Contractors



Effective January 1, 2012, as a condition for the award of any state contract, every contractor or subcontractor must enroll in E-Verify and verify the employment eligibility of its new hires using the program. A first offense can lead to debarment from state contracts, cancellation of state government grants or incentives and suspension or revocation of business license for up to 60 days. A second offense may lead to permanent revocation of the employer's business license.

Wondering about the bird? It is the Yellowhammer, the official State Bird of Alabama.

FEDERAL DEVELOPMENTS

Employees from El Salvador, TPS and Work Authorization

Employees from El Salvador, with expiring Employment Authorization Documents (EAD), should be flagged by your tickler system notifying you of an upcoming expiration date on an EAD. In certain situations, employees with expired EADs may continue working for an employer. One such scenario is for eligible TPS work-authorized employees.

Employees from [El Salvador](#) who have [TPS](#) have had their employment authorization automatically extended until September 9, 2012, even if the employees have not yet obtained a new EAD. Note that only TPS beneficiaries are eligible and one determines eligibility based on the "Category" code and the expiration date of their EAD. For more information about this please contact us.

Release of New E-Verify Flyer for Employees

The Office of Special Counsel for Immigration-Related Unfair Employment Practices has [released](#) a new flyer entitled "Know Your Rights! What You Need to Know about E-Verify" for employees.

Department of Justice Enforcement Action



The Justice Department announced a [settlement](#) with Garland Sales Inc., a Georgia rug manufacturer, resolving allegations that it engaged in discrimination by imposing unnecessary documentary requirements on individuals of Hispanic origin when establishing their eligibility to work in the United States, and that it retaliated against a worker for protesting his discriminatory treatment. According to the settlement, Garland Sales Inc. has agreed to pay \$10,000 in back pay and civil penalties, and to undergo training on proper employment eligibility verification practices.

In its complaint, the Department of Justice alleged that a naturalized U.S. citizen of Hispanic descent applied for a job with Garland Sales Inc. and at the time of hire presented his unexpired driver's license and an unrestricted Social Security card—a combination of documents sufficient to prove his identity and his authorization to work in the United States. The complaint alleged that

Garland Sales Inc. demanded that he provide his “green card,” and after refusing to do so the company rescinded the job offer. The worker, along with another individual who was denied employment with Garland Sales Inc. when the company rejected the individual’s valid documentation, will receive full back pay out of the \$10,000 settlement.

The Department of Justice’s complaint also alleged that Garland Sales Inc. required newly hired non-U.S. citizens and foreign-born U.S. citizens to present specific and additional work authorization documents beyond those required by federal law.

A few things stand out here. One, *naturalized* U.S. Citizens are U.S. Citizens and therefore don’t have “green cards” anymore. Second, once an employee provides the appropriate documents for Section 2 of the Employment Eligibility Verification form (form I-9), employers should not ask for additional or different documents.

For more information on how Arnall Golden Gregory LLP can assist companies with their employment eligibility verification practices and immigration compliance program, please contact the following attorneys:

Ms. Montserrat Miller, Partner
montserrat.miller@agg.com
202.677.4038

Ms. Teri Simmons, Partner
teri.simmons@agg.com
404.873.8612



Not *if*, but *how*.®

The *Immigration Compliance Newsletter* provides a general summary of recent legal and legislative developments and is for informational purposes only. It is not intended to be, and should not be relied upon as, legal advice.

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.

©2011 All Rights Reserved.