

EEKS! IT'S E-VERIFY!

Governor Sanford signed Act 280, the Illegal Immigration Reform, on June 4, 2008 and the burden of this Act¹ will quickly come into effect on January 1, 2009, for certain employers, namely all public employers and contractors, subcontractors, or sub-subcontractors of five hundred or more employees having a contract with a political subdivision in which the total value of the contract in a twelve month period exceeds \$15,000. Others will have additional time to prepare, but eventually the hiring practices of all South Carolina employers will change as a result. The remainder of the schedule is:

- Contractors, subcontractors and sub-subcontractors with at least one hundred employees but less than five hundred must comply with the Act by July 1, 2009.
- Contractors, subcontractors and sub-subcontractors with less than one hundred employees must comply with the Act by January 1, 2010.
- Private employers with at least one hundred employees must comply with the Act by July 1, 2009 and those with less than one hundred employees will be required to comply by July 1, 2010.

Employers must be prepared on their respective compliance dates to address the issue of illegal immigration every time they hire a new employee. The Act requires employers to verify the citizenship or immigration status of all new hires by using the federal E-Verify system or, in the case of private sector employers only, an alternate option of requiring a valid South Carolina's driver's license or ID card issued by the South Carolina Department of Motor Vehicles.

Beginning on or before January 1, 2009, public employers shall register with the federal E-Verify system to be utilized every time it hires a new employee. Enrollment in the system requires the electronic signature on a Memorandum of Understanding that will appear during the registration process. Registration takes forty-eight (48) hours to become effective and queries may only be run following the completion of a 45 minute tutorial and the successful completion (a score of 70 or better) of a quiz on the tutorial. Employers will also be able to download and print the required **E-Verify Participation Poster** and the **Anti-Discrimination Poster**. These posters must be placed with other employment posters and must be posted in both English and Spanish.

While employers do not need to verify existing employees, all new hires must be checked within three days of their actual start date. It is important to note, however, that the check must be conducted **post-offer**. That means that the employee must have been offered a position that they have accepted prior to the verification of citizenship or immigration status otherwise the employer may find themselves the recipient of discrimination charges. E-Verify

¹ S.C. Code 8-14-10, et seq.

compliance does not eliminate the need for the completion of an I-9 form for new employees. In fact, the information on the I-9 is what the employer will use to verify the employee through E-Verify. The use of E-Verify must be applied to **all new hires, regardless of their citizenship status.**

E-Verify will indicate one of three results following submission:

1. Employment Authorized – this is the most common response to a query and indicates that the employee is authorized to work.
2. SSA Tentative Nonconfirmation (TNC) – There is an information mismatch with the Social Security Administration. There can be numerous reasons for the mismatch, most commonly it is simply a data entry error.
3. DHS (Department of Homeland Security) Verification in Process – you should receive more information within a 24 hour period that the employee is either authorized or TNC.

Obviously, if the employment is authorized, this process is complete. It is important to note the record number listed on the E-Verify report on the I-9. However, since the I-9 is a federal form and you are in effect editing that form, simply placing notes in the margins of this form is not acceptable without initials and a date to attest that the form was not fraudulently edited. It may further be advisable to print the E-Verify report to attach to the I-9 despite the claims by DHS and SSA that all of this information is stored electronically.

When an employer receives a TNC, the system provides a letter of notification to the employee that the employer must print and send so the employee may indicate whether they will contest or not. In the event the employee contests, the matter must be referred to either SSA (where the Social Security Number does not match) or DHS (where the non-citizen status does not match) and the employee must be notified within a reasonable time not defined by the law of the referral. The employee then has eight days to make contact with the appropriate agency to attempt to reconcile the problem. This does not mean that the employee has eight days to **correct** the problem, only that they must contact the agency. During this time, the employee can continue to work without liability to the employer.

The General Assembly has burdened South Carolina employers by imposing the use of E-Verify for all new hires. The system is inaccurate, by direct admission of the DHS (“we’re working on it”), employers don’t understand how to use it, it places the burden and penalty on a South Carolina employer for a federal system with which they have absolutely no control, and we have absolutely no guidance on enforcement, procedure, etc. from the Department of Labor Licensing and Regulation, the state agency charged with these matters by the legislature. Regardless, when January and July arrive, we must be prepared to comply.

This is but a brief synopsis of the requirements for employers under this Act. We will visit other requirements in the next issue of our newsletter but for those employers affected in January, **now** is the time to prepare for implementation of E-Verify.