



Georgia Proposes More Aggressive Immigration Law

4/29/2011

Yet another domino has fallen in the changing landscape of immigration law. Georgia, following in the footsteps of states like Arizona, has passed legislation addressing the issue of illegal immigration within its own borders. Last week, the Georgia Senate, in a 37-19 vote, adopted and amended HB 87, the immigration bill originally drafted by the Georgia House of Representatives. Governor Nathan Deal plans to sign the bill when it reaches his desk.

During a protracted legislative process, which lasted months and drew the ire of immigration and business groups alike, HB 87 signaled a shift by the Georgia legislature towards a more aggressive position in the debate over immigration and a state's role in its imposition.

In its attempts to curb illegal immigration in its state, Georgia included numerous provisions within the bill that will affect employers doing business in Georgia. These provisions include:

- Private employers in Georgia with 10 or more employees must use the federal work authorization program known as E-Verify to determine the immigration status of new workers. An employer will be required to provide an affidavit from the Attorney General stating that the company is authorized to use E-Verify and providing the employer's employment eligibility verification system user number before the employer can obtain a business license or renewal.
- A public employer will not enter into a contract for the physical performance of services within Georgia unless the contractor registers and participates in the federal E-Verify program.
- If an individual fraudulently uses false identifying information to obtain employment, he or she has committed the offense of aggravated identity fraud. This offense subjects offenders to imprisonment up to 15 years, a fine up to \$250,000, or both.
- For the first offense of transporting or moving seven or fewer illegal aliens, the perpetrator may receive imprisonment up to twelve months, a \$1,000 fine, or both. A second offense, or moving eight or more illegal aliens, is a felony. This offense carries a punishment of between one to five years imprisonment, a \$5,000-20,000 fine, or both. If a person moves illegal aliens with the intent to profit or to receive something of value, this person also commits a felony. This felony carries the same punishment parameters as the "second offense" felony.

- A person who is acting in violation of another criminal offense and who knowingly conceals, harbors, or shields an illegal alien from detection, including any building or means of transportation, and who knows the person is an illegal alien, is guilty of concealing or harboring an illegal alien. It is a misdemeanor if the offense involves seven or fewer illegal aliens, punishable by imprisonment up to twelve months, up to a \$1,000 fine, or both. A person commits a felony if it involves eight or more illegal aliens or is done with an intent to profit or to receive something of value and carries a punishment of between one to five years imprisonment, a \$5,000-20,000 fine, or both.

- A person who is acting in violation of another criminal offense and who knowingly induces, entices, or assists an illegal alien to enter into this state and knew the person was an illegal alien, is guilty of inducing an illegal alien to enter into this state. The first offense can lead to 12 months imprisonment, a \$1,000 fine, or both. Subsequent offenses or committing the offense with the intent to profit or to receive something of value carries a punishment of between one to five years imprisonment, a \$5,000-20,000 fine, or both.

As these provisions indicate, HB 87 not only requires the use by most employers and contractors of the federal E-Verify system, but also holds the potential to open up offending employers to various criminal charges. However, assuming Governor Deal signs the bill into law, which is likely, there will be some delay before it is implemented. For example, operations employing 500 or more workers do not have to comply with the E-Verify provision until January 1, 2012. For operations with 100 to 499 workers, the effective date of the E-Verify provision is July 1, 2012. And for employers with 10 to 99 workers, the provision does not take effect until July 1, 2013.

Moreover, there is a strong possibility that either various interest groups or the federal government will challenge the immigration bill in federal court, further delaying its implementation. For example, a federal appeals court has ruled that the Arizona immigration bill, which shares many similarities with Georgia's bill, improperly encroached on the federal government's exclusive right to control foreign policy.

Employers' Bottom Line

If signed into law, HB 87 would have a major impact on Georgia businesses, especially those in industries which have large populations of unskilled labor, such as agriculture, tourism, hospitality, restaurant, and construction. Since the E-Verify system doubly verifies employees' work authorization through both the Department of Homeland Security and Social Security Administration databases, the new bill may make it more difficult for businesses in these industries to meet their labor needs. While proponents of E-Verify see it as a more definitive method of verifying an employee's ability to work in the U.S. and provides employers a good faith defense if an employee ultimately turns out to be illegal, the downside is that the databases on which E-Verify relies contain errors, resulting in "false positives."

If the fate of the Arizona immigration law is any indication, the ultimate implementation of the Georgia immigration bill may be delayed due to concerns over a state's ability to dictate immigration policy. Nonetheless, Georgia employers should not take a "wait and see" approach. Rather, Georgia employers would be well advised to review their employment verification policies/procedures immediately to ensure that their I-9 and

associated practices are fully compliant. Without compliant I-9 practices, an employer undoubtedly will face numerous issues in administering the E-Verify program since the E-Verify system relies on information taken directly from the form I-9 and inputted into the online system. Furthermore, in today's era of heightened government scrutiny of employer's I-9 practices, deficient employment verification practices can expose employers to substantial civil monetary penalties, and even criminal sanctions in some cases.

If you have any questions about the proposed law, please contact the authors of this Alert Geetha Nadiminti Adinata, gadinata@fordharrison.com, or Heath Edwards, hedwards@fordharrison.com or the Ford & Harrison attorney with whom you usually work.