

# IMMIGRATION UPDATE

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## Georgia & North Carolina Employers must begin using E-Verify July 1, 2013 – are you ready?

In the summer of 2011, the Georgia and North Carolina legislatures each passed laws mandating the use of [E-Verify](#) for private companies. Employers were phased over time to the [U.S. Citizenship and Immigration Services](#) (USCIS) online electronic employment eligibility program based on the size of the company. On July 1, 2013, the final phase of the states' programs take effect, requiring Georgia employers with over ten (10) employees and North Carolina employers with over twenty-five (25) employees to begin using the E-Verify system. The mandatory usage of E-Verify for private and public employers is [expanding](#) with nine (9) states mandating use of the system for new hires.<sup>1</sup> With a patchwork quilt of E-Verify state laws, national employers must be vigilant in keeping up with laws and regulations in different states.

	Georgia	North Carolina
500 or more Employees	January 1, 2012	October 1, 2012
100 or more Employees	July 1, 2012	January 1, 2013
10 or more (GA); 25 or more employees (NC)	July 1, 2013	July 1, 2013

### Georgia

The [Georgia Department of Labor](#) is charged with enforcing the E-Verify [Bill](#). Companies found to be acting in “willful violation” of the law by accepting documents that are not acceptable are guilty of a misdemeanor and subject to imprisonment not to exceed twelve months, a fine not to exceed \$1,000 or both. The Bill also provides that public employers cannot enter into contracts for physical performance of services unless the contractor, subcontractor, and sub-subcontractor all register and participate in E-Verify and submit an affidavit to that effect. In addition, the Bill provides for criminal penalties for any person who “knowingly and willingly” submits a false statement in an affidavit.

### North Carolina

[S.L. 2011-263](#) gives the [North Carolina Department of Labor](#) the duty to enforce North Carolina's E-Verify law and charges it with investigating complaints for violations. For first-time violations, private employers will be required to file signed sworn affidavits that the employer has requested verification of work authorization through E-Verify for all applicable employees and the affidavit must be filed with the Commissioner of the Department of Labor within three days of a finding of noncompliance. Failure to file the affidavit will result in a civil penalty of \$10,000. For second-time violators, employers will receive a fine of \$1,000 in addition to the affidavit requirement. After two violations, employers will receive a \$2,000 fine in addition to the affidavit requirement. Employers have a right to appeal the order to pay the fine or submit the affidavit.

<sup>1</sup> Alabama, Arizona, Georgia Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Utah all have laws mandating the usage of E-Verify for most private employers.

## E-Verify

E-Verify is considered a best practice by the government for immigration compliance and is part of the Immigration and Customs Enforcement's IMAGE program. Over the past four years, the E-Verify program has expanded tremendously and become more intuitive and notably easier for employers to use. Since its inception E-Verify has refined the speed in which it processes queries and has become infinitely more accurate.

The program has benefited from an enormous amount of funding directed at improving the quality of resources available to employees and employers, as well as increasing the frequency and accessibility of training USCIS provides. In addition, the Department of Justice's Office of Special Counsel now offers a suite of resources including role-play videos and targeted E-Verify "Do's and Don't's." While still extremely susceptible to identity theft, the program continues to be upgraded and includes a photo-matching component for U.S. Passports, Permanent Resident Cards, and Employment Authorization Cards.



The [Records and Information from DMVs for E-Verify](#) (RIDE) Program is intended to enhance E-Verify's ability to thwart identity theft. However, RIDE only matches driver license/identification card numbers with information found in motor vehicles records. The program is in the pilot phase and is only comparing data for employees with Mississippi and Florida motor vehicle records. Currently, there is no photo-matching component. Accordingly, employers have turned to other solutions to weed out identity issues including [SecureID](#), a system that electronically authenticates employee information and a "Connect the Dots" type employee identification processes that attempts to have employees confirm specific personal information.

The Monitoring and Compliance Branch of USCIS has been increasing its review of E-Verify usage with increased [desk reviews](#) and [site visits](#). The decision to enroll in E-Verify should not be made lightly and includes planning and compliance. While the program is "free," significant resources should be dedicated to its implementation and ongoing monitoring.

Employers in all states should be cautious when using E-Verify: intergovernmental Memorandums of Agreement permit data mining between [Immigration and Customs Enforcement](#) and the [Department of Justice](#) with regard to E-Verify usage. Indeed, USCIS has published specific guidance reminding employers of [antidiscrimination requirements](#) when using E-Verify. All employers, particularly government contractors and subcontractors, should seek advice from counsel prior to enrolling in E-Verify and should use caution to ensure that compliance with a state specific law is not in turn violating employee rights under other state and or federal laws.

**By [Dawn Lurie](#) 202.469.4963 and [Catherine Risoleo](#) 202.469.4997. For more information, please contact anyone in our [Global Immigration and Compliance Group](#) or your relationship attorney at Sheppard Mullin.**

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