

Despite Lawsuit, Immigration Enforcement Set to Resume in S.C.

David Dubberly

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Regardless of what happens with a recently filed lawsuit, state regulators plan to begin enforcement of employment law provisions that take effect New Year's Day.

On October 12, 2011, the ACLU and a coalition of labor unions and immigrants' rights groups filed a lawsuit, Lowcountry Immigration Coalition, et al. v. Nikki Haley, et al., seeking to enjoin enforcement of parts of the state's 2011 immigration law, known as Senate Bill 20 (SB 20). Importantly for employers, the lawsuit does not directly challenge the law's employment provisions, including the requirement that almost all private employers use E-Verify.



So the Office of Immigrant Worker Compliance of the S.C. Department of Labor, Licensing and Regulation (LLR) is still set to enforce the employment provisions of the new law, which will go into effect January 1, 2012. LLR stopped enforcing the employment provisions of the state's 2008 immigration law on May 31, 2011, four weeks before enactment of SB 20, due to questions about the validity of the prior employment provisions.

Under the employment provisions of SB 20, a private S.C. employer is "imputed" (deemed to have) an employment license allowing the employer to employ workers and do business in the state. The employer violates its employment license, and could have its right to employ workers and to do business in S.C. suspended or revoked, if it either:

- Does not enroll in E-Verify by January 1, 2012 and use E-Verify to confirm the work authorization of all employees hired on or after that date; or
- Knowingly or intentionally employs an unauthorized alien.

E-Verify is an Internet-based system operated by the federal government that checks whether a new hire's name, Social Security number, and date of birth are correct, and whether the person is authorized to work in the U.S. Generally, new employees must be verified through the system within three business days of employment.

As of January 1, 2012, employers can no longer use driver's licenses or DMV-issued I.D. cards to verify worker eligibility. The 2008 law gave employers the option of using such documentation, but SB 20 mandates use of E-Verify.

LLR will enforce the employment provisions of SB 20 by either inspecting employers with its own inspectors or by contracting with a private company to conduct employer inspections. The agency is

developing a statewide random audit program. It will also conduct inspections in response to written and signed complaints or when there is other good cause to believe an employer is not complying with the law.

Prior to an inspection, LLR will send a letter to the employer indicating the date and time of the audit. LLR's new audit guidelines have not been finalized, but it is expected that upon arrival the inspector will ask the employer to produce a copy of its E-Verify memorandum of understanding and the E-Verify confirmation number or printed receipt for any employee hired after January 1, 2012, or a list printed from E-Verify of employees verified since January 1, 2012.

LLR inspectors should not request (nor should employers provide) copies of I-9 forms, as I-9's are inspected by the Immigration and Customs Enforcement agency (ICE) of the U.S. Department of Homeland Security.

In addition to potentially losing its right to employ workers and do business in S.C., an employer that violates SB 20 will be reported by LLR to ICE and to state and local law enforcement agencies, and will have its name published on the LLR website.

S.C. employers can prepare for the resumption of LLR inspections by enrolling in E-Verify, training staff on use of the system, and auditing immigration records.

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