

PUBLICATION

Southern States Legal Round Up

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ALABAMA

In late September, an Alabama federal court issued orders to prevent enforcement of several provisions of Alabama's controversial immigration law while the overall constitutionality of the law is being litigated.

Importantly, the ruling does not affect the law's requirement that Alabama employers use the federal E-Verify program to determine whether applicants are eligible for hire. The E-Verify requirement went into effect on January 1, 2012, for employers doing business with the state, and will go into effect for all other Alabama employers on April 1, 2012.

The following employment provisions of the law may not be enforced pending a final judgment on the overall constitutionality of the law:

- Section 8, which prohibits unauthorized aliens from enrolling in Alabama public postsecondary education institutions;
- Section 11(a), which criminalizes the application for, solicitation for, or performance of work by an unauthorized alien;
- Sections 11(f) and (g), which prohibit occupants of motor vehicles from hiring passengers to perform work;
- Section 16, which forbids employers from claiming as business tax deductions any wages paid to an unauthorized alien; and
- Section 17, which establishes a civil cause of action against an employer that fails to hire or discharges a U.S. citizen or an alien who is authorized to work while hiring, or retaining, an unauthorized alien.

Other important provisions that became enforceable effective September 29 are the law's requirements that Alabama courts refrain from enforcing contracts made knowingly between a party and an unauthorized alien and criminalizing unauthorized aliens to enter into a "business transaction" with the state of Alabama or any of its political subdivisions.

FLORIDA

Florida law requires a new state minimum wage calculation each year on September 30, based on the Consumer Price Index. If that calculation is higher than the federal rate, the state's rate then would take effect the following January.

Florida's minimum wage was \$7.31 per hour in 2011. Beginning January 1, 2012, Florida's minimum wage increased to \$7.67 per hour, which is a 4.9 percent (or \$0.36) increase from last year due to the change in the Consumer Price Index.

Employers of "tipped employees" who meet eligibility requirements for the tip credit under the Fair Labor Standards Act (FLSA) may count tips actually received as wages under the FLSA. However, the employer

must pay "tipped employees" a direct wage. Effective January 1, 2012, the new minimum wage for tipped employees became \$4.65 per hour, plus tips.

Employees who are not paid the minimum wage may bring a civil action against the employer or any person violating Florida's minimum wage law. The state attorney general also may bring an action to enforce the minimum wage.

GEORGIA

In mid-September, the Georgia Supreme Court adopted a state bar advisory opinion holding that garnishments are a legal proceeding, just like any other lawsuit, which requires the filing of an answer to prevent the entry of a default judgment. As a result, a corporation's response to a garnishment issued in a Georgia superior or state court must be filed by an attorney who is licensed to practice in Georgia.

According to this advisory opinion, a non-attorney who signs such an answer on behalf of a corporation or other non-individual business entity has engaged in the unauthorized practice of law. The risk of ignoring this requirement is two-fold. First, a non-attorney who signs a garnishment answer on behalf of a corporation subjects himself or herself to criminal and civil penalties. Second, the court may strike an answer filed by a non-attorney and enter a default judgment against the company, which could render the company liable for the entire debt and not just the amount it would otherwise have withheld in garnishment.

The Georgia business community and others are hopeful that this requirement will be short-lived. In fact, when the Supreme Court adopted this opinion, Justice David Nahmias issued a concurring opinion noting the possibility of removing this requirement through legislation and said that Georgia businesses "should understand that today's decision leaves them free to seek such a remedy from . . . the General Assembly." But until that happens, Georgia employers who are called on to answer garnishments in superior or state court must enlist the aid of inside or outside counsel licensed in Georgia.

MISSISSIPPI

Mississippi's concealed firearms law has been amended to allow licensed gun owners who have "additional" training to carry concealed firearms in certain locations previously prohibited by law. These locations include courthouses, polling places, government meetings, any school, college or professional athletic event, bars and restaurants that serve alcohol, any elementary or secondary school facility, any junior college, community college, college or university facility, inside the passenger terminal of any airport and in any church or other place of worship.

Under the amendment, a holder of a permit to carry a concealed weapon must complete an eight-hour course in addition to the regular concealed carry permit requirements to receive an "endorsement" to carry in prohibited locations. The Mississippi Attorney General opined that permit holders with the endorsement can carry concealed weapons in places that were statutorily prohibited by Mississippi Code Ann. 45-9-101(13). The only exception noted in the amendment is a courtroom during a judicial proceeding.

Interaction With Existing Gun-to-Work Law

Mississippi's existing gun-to-work law (Title 45 - Public Safety and Good Order) allows an employer to bar weapons from the workplace. The law, however, prohibits an employer from banning employees from leaving their legally possessed guns in their vehicles in the employer's parking lot, unless access to the parking area is limited by use of a gate, security station or other means.

The new amendment raises the question whether an employee working in a previously-prohibited area, such as a bar, restaurant or school campus, may now carry a concealed weapon into work with an "endorsement."

Effect of Notice Posting

Another troubling issue raised by the amendment involves the concealed weapon statute's notice provision. It allows a person or entity exercising control over a physical location to post a notice at that location that says, "Carrying of a pistol or revolver is prohibited." The Mississippi Attorney General recently opined that such a notice could not lawfully prevent individuals with an endorsed concealed weapon permit from carrying a weapon on to their employer's premises.

TENNESSEE

In mid-October, Tennessee's Attorney General opined that Tennessee employers are required to compensate employees for travel time to and from jury duty in addition to the employees' actual jury service, regardless of whether the employees' usual compensation includes travel time.

The Attorney General based his opinion on the plain language of Tenn. Code Ann. § 22-4-106, which provides that employers must compensate employees for time spent in jury service. Specifically, in determining that travel time is compensable, the Attorney General focused on statutory language that "no employer shall be required to compensate an employee for more time than was actually spent serving and traveling to and from jury duty." The Attorney General further relied on a 1978 opinion letter, which stated that an employee who serves two hours "traveling and sitting as a juror," would be entitled to two hours of compensation. Op. Tenn. Att'y Gen. 78-311 (July 31, 1978).

Based on the "plain meaning" of the statutory language, the Attorney General found that travel time to and from jury service is compensable. By way of example, the Attorney General stated that if an employee spends two hours traveling to and from jury service and four hours serving on the jury, the employee would be entitled to six total hours of his/her usual compensation.

Accordingly, covered Tennessee employees summoned for jury duty are entitled to be excused from work to serve, provided they notify their employer and their jury duty responsibilities exceed three hours. Employees are entitled to their usual compensation for any time spent traveling to and from jury duty and actual time spent in jury duty. Therefore, covered Tennessee employers should not only request that their employees submit documentation of their time spent in actual jury service, but also their travel time. Note that time spent in jury duty would not need to be calculated as hours worked for overtime purposes under the FLSA, nor would it need to be included in the employee's regular rate when calculating overtime.

If you have questions about any of the above, please feel free to reach out to any of our nearly 70 Labor & Employment attorneys located in Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; and Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee.