

PUBLICATION

More States Impose Immigration Requirements on Employers

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In the wake of immigration enforcement laws enacted in Arizona, Utah, Georgia, and Alabama, several other states have enacted laws or orders imposing immigration-related requirements on employers.

North Carolina

NC Session Law 2011-263 (House Bill 36), enacted June 23, 2011, requires private employers to use E-Verify if they have 25 or more workers (but not including seasonal workers). The requirement is to be enforced by the N.C. Commissioner of Labor, who can receive anonymous complaints. Graduated penalties for successive violations start with an affidavit of compliance within 3 days, then a \$10,000 fine, then a \$1,000 fine (total), and then a \$2,000 per worker fine. These penalties do not seem to fit the exemption relating to "license" in the federal law preempting state laws on employer sanctions, and a challenge to it on the basis of federal preemption probably would be successful.

federal preemption probably would be successful. The NC law will take effect at different times for different employers: October 2011: cities and counties; October 2012: more than 500 employees; January 2013: 100 or more but fewer than 500 employees; and July 2013: 25 or more but fewer than 100 employees.

South Carolina

The South Carolina Illegal Immigration Reform Act, enacted on June 27, 2011, and effective on January 1, 2012, requires private employers to use E-Verify and punishes failure to use E-Verify with graduated penalties culminating in loss of various state licenses for up to 30 days, including employment licenses, articles of organization, articles of incorporation, a certificate of partnership, a partnership registration, a certificate to transact business, and any transaction privilege tax license. The law punishes knowing employment of unauthorized aliens with loss of licenses. It requires state government contractors to use E-Verify. Other broad provisions may be subject to legal challenge.

Indiana

Senate Enrolled Act 590, effective July 11, 2011, requires government entities and government contractors and subcontractors to use E-Verify. Other broader provisions are similar to those in Arizona and other states and have been enjoined by a federal court.

Florida

Governor Scott issued an Executive Order No. 11-02 on January 4, 2011, requiring state government agencies to require government contractors and subcontractors to use E-Verify to confirm work eligibility of all persons performing work under the government contract.

How We Can Help

Baker Donelson's Immigration Group regularly counsels employers on I-9 compliance. We perform private audits of I-9 documents, prepare compliance programs, and train managers and workers in implementing those programs. We evaluate particular questionable documents and situations. We help employers decide whether and how to create or store I-9 forms electronically, to use Social Security Administration's Number Verification System, or to participate in the Department of Homeland Security's "E-Verify" program. We defend

sanctions actions by ICE for paperwork and "knowingly hire" violations of I-9 rules. We work with our strong Litigation Department to bring and defend claims against competitors based on employment of unauthorized aliens. We advise and defend employers and managers in the increasingly common criminal investigations and proceedings relating to employment of aliens. We coordinate our Team's services closely with our firm's well-respected Labor and Employment Law Group and with our firm's White Collar Crime Group. We provide advice and coordinate with U.S. and foreign preparers concerning U.S. taxation of international companies doing business in the U.S., and concerning the U.S. taxation of international workers placed in the U.S. and abroad.