



LABOR & EMPLOYMENT LAW UPDATE

Beginning July 1, 2009, South Carolina's Largest Private Employers Must Comply with the State's Immigration Act

On May 29, 2008, the South Carolina legislature passed the South Carolina Illegal Immigration Reform Act (the "Act"), which was signed into law by Governor Mark Sanford the following week. The Act requires all employers in South Carolina to verify the legal status of new employees distinct from that which the Immigration Reform and Control Act ("IRCA") requires with the Form I-9.

Beginning **July 1, 2009**, all private employers with more than 100 employees (and their contractors and subcontractors) must either use E-Verify and verify employment authorization within 5 business days after employing an individual, or employ only workers who possess or are eligible to obtain a valid South Carolina driver's license or a license from a state with requirements at least as strict as South Carolina. The South Carolina Department of Motor Vehicles ("SCDMV") has determined that North Carolina driver's licenses are unacceptable under the new verification requirements. The Act will apply to employers with less than 100 employees beginning **July 1, 2010**.

The Act has been in effect since January 1, 2009 for public employers, which must screen new hires through E-Verify within 3 days of hire. Additionally, since January 1, 2009, employers that contract with the state government and have 500 or more employees, and their subcontractors, must screen all new employees through E-Verify or hire only workers who possess or are eligible to obtain a valid South Carolina driver's license or identification card issued by the SCDMV or an equally restrictive state.

South Carolina businesses that fail to comply with the Act's requirements may face civil penalties of up to \$1000 per violation. If an employer "knowingly or intentionally" hires an unauthorized alien, the employer may lose its imputed "license" to do business in this state for up to 5 years.

Federal Contractor Rule Delayed until September 8, 2009

The effective date of the final rule requiring certain federal contractors and subcontractors to use E-Verify has been delayed until **September 8, 2009**. At this time, federal contractors may not use E-Verify to verify current employees until the Rule

becomes effective and they are awarded a contract that includes the Federal Acquisition Regulation (FAR) E-Verify clause.

The new Rule implements Executive Order 12989, as amended by President George W. Bush on June 6, 2008, directing federal agencies to require that federal contractors agree to electronically verify employment eligibility of their employees. The amended Executive Order reinforces the policy, first announced in 1996, that the federal government only conducts business with companies that have a legal workforce.

Federal Minimum Wage Will Increase to \$7.25 Effective July 24, 2009

The federal minimum wage increases from \$6.55 per hour to \$7.25 per hour effective **July 24, 2009**. Employers in North Carolina and South Carolina must comply immediately with this minimum wage increase with regard to all non-exempt employees.

Although the formula for overtime calculation will remain the same, the minimum wage increase will increase the amount of overtime pay an employee earns per hour. For example, an employee earning the new federal minimum wage of \$7.25 per hour and working more than forty hours in a work week is now entitled to an overtime wage of \$10.88 per hour, instead of the current overtime wage rate of \$9.83 per hour.

All covered employers are required to obtain the new FLSA minimum wage poster and display it in a conspicuous place in all of their establishments. A copy of the poster may be downloaded from the U.S. Department of Labor website: <http://www.dol.gov/esa/regs/compliance/posters/flsa.htm>

Should you have any questions regarding the South Carolina Immigration Laws, E-Verify, the new Federal Minimum Wage or any other employment-related matters, please contact Kris Cato at 803-227-2277 or kcato@mgclaw.com; Amy Jenkins at 843-576-2917 or amy.jenkins@mgclaw.com; Edward Rawl at 803-227-4930 or erawl@mgclaw.com or Tracy Downs at 704-643-6303 or tracy.downs@mgclaw.com.

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