

## **SURVEY OF STATE AND FEDERAL LAWS THAT REQUIRE EMPLOYERS TO PARTICIPATE IN E-VERIFY**

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### **WHAT IS E-VERIFY?**

E-Verify (f/k/a the Basic Pilot Program) is an Internet-based system operated by the U.S. Citizenship and Immigration Services (USCIS) of the Department of Homeland Security that allows employers to verify the employment eligibility of their employees, regardless of citizenship. Based on the information provided by the employee on his or her Form I-9, E-Verify checks this information electronically against records contained in DHS and Social Security Administration (SSA) databases. E-Verify is currently voluntary for all employers with limited exceptions. We first analyze requirements at the state level and then analyze the requirements for certain federal contractors.

### **SUMMARY OF SURVEY**

This survey first summarizes the state laws impacting employers' E-Verify requirements, then addresses states with other types of employment eligibility verification requirements, and finally discusses federal contractor E-Verify requirements.

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WHAT STATES CURRENTLY REQUIRE EMPLOYERS TO PARTICIPATE IN E-VERIFY?

Seventeen (17) states require participation in E-Verify (or an alternative) for public and/or private employers. One (1) other state, Rhode Island, rescinded its Executive Order that required E-Verify use.

	State	Citation	Applies to:	Effective Date
1.	Alabama	HB 56, 2011	All employers, public and private	01/01/2012 and 04/01/2012
2.	Arizona	HB 2779, 2007 HB 2745, 2008	All employers, public and private	01/01/2008
3.	Colorado	HB 1017, 2007 HB 1343, 2006	Public contractors (E-Verify), all employers (affirmation)	08/07/2006
4.	Florida	EO 11-02 and 11-116, 2011	State agencies, contractors	01/04/2011
5.	Georgia	SB 529, 2006 HB 87, 2011	Public employers, contractors, and subcontractors. All employers with more than 10 employees	07/01/2007 (staggered) 01/01/2012 (staggered)
6.	Indiana	SEA 590, 2011	Public agencies, contractors and grantees	07/01/2011
7.	Louisiana	HB 342, 2011 HB 646, 2011	Public contractors and subcontractors	01/01/2012
8.	Minnesota	Appr.B. 11-3590	Public contractors over \$50,000 and subcontractors	07/22/2011
9.	Mississippi	SB 2988, 2008	All employers, public and private	07/01/2008
10.	Missouri	HB 1549, 2008	Public employers, contractors, and subcontractors	01/01/2009
11.	Nebraska	LB 403, 2009	Public employers, contractors and subcontractors	10/01/2009

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12.	North Carolina	SB 1523, 2006 HB 36, 2011	Public agencies only All employers with 25 or more employees	01/01/2007 10/01/2012 <i>(staggered)</i>
13.	Oklahoma	HB 1804, 2007	Public employers, contractors and subcontractors	11/01/2007
14.	South Carolina	HB 4400, 2008 S 20, 2011	Public employers, contractors and subcontractors All employers (with alternate process) All employers (no alternate process)	01/01 and 07/01/2009 <i>(staggered)</i> 01/01/2012
15.	Tennessee	HB 1378	All employers with 6 or more workers (with alternate process)	01/01/2012 <i>(staggered)</i>
16.	Utah	SB 81, 2008 SB 251, 2010 HB 116, 2011	Public employers, contractors and subcontractors All employers with 15 or more employees All employers with 15 or more employees	07/01/2009 07/01/2010 <i>(staggered)</i>
17.	Virginia	HB 737, 2010 HB 1859, 2011	Public agencies only Public contractors with more than 50 employees and contract over \$50,000 and subcontractors	06/01/2011 or 12/01/2012 12/01/2013

WHAT ARE THE STATE E-VERIFY REQUIREMENTS?

Alabama Beason-Hammon Alabama Taxpayer and Citizen Protection Act (HB 56)

*Effective January 1, 2012*, any employer that enters into or receives a contract, grant, or incentive by the state, any political subdivision of the state, or any state-funded entity must register and participate in E-Verify and provide an affidavit affirming that it will not knowingly employ, hire, or continue to employ an unauthorized worker. These requirements apply to both contractors and subcontractors. A first violation of these provisions may result in termination of the state contract and suspension of business licenses and permits up to 60 days. Second and subsequent violations may result in permanent revocation of business licenses and permits.

*Effective April 1, 2012*, every business entity or employer in Alabama must enroll in and use E-Verify. Employers that violate this requirement are subject to the following penalties:

- A court order to terminate the employment of every unauthorized worker;
- A three-year probationary period throughout the state, during which time the employer must file quarterly reports with the local district attorney of each new employee hired;
- A court order to file a signed, sworn affidavit with the local district attorney within three days after the order is issued by the court stating that the employer has terminated the employment of every unauthorized worker and the employer will not knowingly or intentionally employ an unauthorized worker in Alabama.
- Suspension of applicable state, county, or municipal business licenses and permits, if such exist, for a period not to exceed 10 business days specific to the business location where the unauthorized employee performed work.
- Second and subsequent violations subject the employer to permanent revocation of business licenses and permits.

Any resident of Alabama can file a petition for enforcement of this provision.

Within 90 days of the effective date of the Act, the Alabama Department of Homeland Security shall establish and maintain an E-Verify employer agent service for any business entity or employer in the state with 25 or fewer employees. Such employers may engage the state's agent service to fulfill its E-Verify administrative requirements. There will be no fee for this service.

*Effective September 1, 2011*, an employer cannot claim as a deductible business expense for any state income or business tax purposes wages, compensation (whether in money or in kind or in services), or remuneration of any kind for the performance of services paid to an unauthorized worker. Any employer who knowingly violates this provision shall be liable for a penalty equal to 10 times the business expense deduction claimed.

## Arizona HB 2779 – The Legal Arizona Workers Act (as amended by HB 2745)

The Legal Arizona Workers Act (“HB 2779”), as amended by Arizona House Bill 2745, prohibits an employer from knowingly or intentionally employing unauthorized workers and contracting or subcontracting with a contractor or subcontractor that employs unauthorized workers.

*Effective January 1, 2008, ALL employers doing business in Arizona are required to verify the employment eligibility of all newly hired employees through E-Verify.*

The law establishes substantial penalties for noncompliance and threatens noncompliant employers with suspension and potential revocation of their business license(s).

## Colorado HB 1017

*Effective January 1, 2007, Colorado HB 1017 imposes employment verification requirements on all employers who transact business and have employees in Colorado. HB 1343 requires employers, within 20 days after hiring a new employee, to:*

- Affirm that the employer has examined the legal work status of the newly hired employee;
- Affirm that the employer has retained copies of documents evidencing the newly hired employee’s employment eligibility as required by IRCA (8 U.S.C. § 1324a);
- Affirm that the employer has not altered or falsified the newly hired employee's identification documents; and
- Affirm that the employer has not knowingly hired an unauthorized alien.

HB 1017 requires employers to keep a written or electronic copy of the affirmation, and all of the documents required by IRCA (8 U.S.C. sec. 1324a) for the term of employment of each employee. This is a departure from IRCA, which makes copying and retaining I-9 documents optional, rather than mandatory.

## Colorado HB 1343

*Effective August 9, 2006, and applicable to contractors inside and outside Colorado alike, HB 1343 imposes new requirements on state contractors. Colorado HB 1343:*

- Prohibits state agencies<sup>1</sup> and political subdivisions<sup>2</sup> from entering into or renewing a public contract for services with a contractor who knowingly employs or contracts with illegal aliens.
- Prohibits state agencies and political subdivisions from entering into or renewing a public contract for services with a contractor who knowingly contracts with a subcontractor who knowingly employs or contracts with illegal aliens.
- Requires prospective contractors, prior to executing a public contract, to certify that it does not knowingly employ or contract with illegal aliens and that the contractor has participated or attempted to participate in E-Verify to verify the employment eligibility of all newly hired employees.
- Applies to work performed in Colorado on public contracts for services even if the employer is located outside Colorado.

All public contracts for services must contain a provision that the contractor will not:

- Knowingly employ or contract with an illegal alien to perform work under the public contract; or
- Enter into a contract with a subcontractor that fails to certify to the contractor that the subcontractor will not knowingly employ or contract with illegal aliens to perform work under the public contract.

All public contracts for services must also include:

- A provision stating that the contractor has confirmed or attempted to confirm the employment eligibility of all newly hired employees through in E-Verify.
- A provision stating that if the contractor is not accepted into E-Verify prior to entering into a public contract, that the contractor will apply to participate in the E-Verify program every three months until the contractor is accepted or the public contract for services has been completed, whichever is earlier.

If you obtain actual knowledge that a subcontractor performing work under the public contract knowingly employs or contracts with illegal aliens, you are required to:

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<sup>1</sup> HB 1343 defines a state agency as “any department, commission, council, board, bureau, committee, institution of higher education, agency, or other governmental unit of the executive, legislative or judicial branch of the state government.

<sup>2</sup> HB 1343 defines political subdivision as “any city, county, city and county, town, special district, school district, local improvement district, or any other kind of municipal, quasi-municipal, or public corporation.

- Notify the subcontractor and the state agency or political subdivision within three days that you have actual knowledge that the subcontractor is employing or contracting with illegal aliens; and
- Terminate the subcontract if within three days of receiving notice, the subcontractor does not stop employing or contracting with the illegal alien; except that you may not terminate the subcontract if during the three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with illegal aliens.

## Florida Executive Orders 11-02 and 11-116

Executive Order 11-02 (“EO 11-02”), effective January 4, 2011, requires state agencies under the direction of the Governor to use E-Verify and to include in all state contracts a requirement that contractors use E-Verify to verify the employment eligibility of their workers.

Executive Order 11-116 (“EO 11-116”) was published on May 27, 2011, to clarify that such contractors (and their subcontractors) must use E-Verify only for newly hired employees during the term of the state contract. The previous EO required verification of existing employees and other workers, which is not permitted in the E-Verify system. EO 11-116 also limits the E-Verify requirement to “contracts for the provision of goods or services to the state in excess of nominal value.”

## The Georgia Security and Immigration Compliance Act of 2006 (SB 529)

The Georgia Security and Immigration Compliance Act of 2006 (“SB 529”) provides that:

- *Effective on or after July 1, 2007*, contractors or subcontractors are prohibited from entering into a contract with a public employer<sup>3</sup> for the physical performance of services in the State of Georgia unless the contractor or subcontractor registers and participates in a federal work authorization program (E-Verify). SB 529 appears to apply to the physical performance of services in the State of Georgia on public contracts even if the employer is located outside Georgia.

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<sup>3</sup> SB 529 defines a public employer as “every department, agency or instrumentality of the state or a political subdivision of the state.”

<sup>3</sup> SB 529 defines a “federal work authorization program” as any of the electronic employment authorization verification programs operated by the U.S. Department of Homeland Security or any equivalent federal work authorization program operated by the U.S. Department of Homeland Security to verify the employment eligibility of newly hired employees.

- Registration and participation in a federal work authorization program is effective for contractors and subcontractors:
  - § On July 1, 2007 for public employers, contractors and subcontractors with 500 or more employees;
  - § On July 1, 2008 for public employers, contractors and subcontractors with 100 – 499 employees; and
  - § On July 1, 2009 for all other public employers, contractors and subcontractors.

## Georgia's Illegal Immigration Reform and Enforcement Act of 2011 (HB 87)

The Illegal Immigration Reform and Enforcement Act of 2011 ("HB 87") expands Georgia's E-Verify requirement to all employers throughout the state with more than 10 employees. HB 87 also modifies the requirements for public employers and contractors.

- The provision requiring all employers in Georgia to use E-Verify becomes effective on a staggered basis:
  - January 1, 2012 for employers with 500 or more employees;
  - July 1, 2012 for employers with 100 or more employees; and
  - July 1, 2013 for employers with more than 10 employees.
- Only full-time employees, i.e., those employed to work at least 35 hours per week, are included in the count of the company size.
- Counties and municipalities must obtain an affidavit regarding a business's E-Verify registration (or exemption from the E-Verify requirement) prior to issuing a business license, occupational tax certificate, or other document required to operate a business. This includes renewals as well as initial issuances.
  - The Attorney General must provide a standardized form affidavit no later than January 1, 2012.
  - Counties and municipalities must provide annual reports to the Department of Audits and Accounts regarding compliance with this provision. The Department will conduct audits of these agencies, if funding is later provided.
  - Providing a false or misleading evidence affidavit may result in a fine up to \$1,000 and possible imprisonment for 1 to 5 years.



- Regarding the pre-existing requirement in SB 529 that companies who contract with a Georgia public employer for the physical performance of services within the state use E-Verify and ensure their subcontractors use E-Verify, HB 87 adds the following:
  - The new law clarifies that the requirement flows down to subcontractors and sub-subcontractors of all levels with privity of contract.
  - The law also requires that the contractor and subcontractor E-Verify affidavits confirm that the company will obtain E-Verify affidavits from all subcontractors and sub-subcontractors. Affidavits must be forwarded to the contracting entity within five business days, who must then forward the affidavit up the line until reaching the primary contractor. The primary contractor must submit copies of all affidavits to the public employer within five business days of receipt.
  - Form affidavits will be published by the Department of Audits and Accounts by August 1, 2011.
  - A contractor, subcontractor or sub-subcontractor who does not have any employees must furnish a copy of an acceptable driver's license or identification card of each independent contractor utilized pursuant to the contract. A list of states issuing acceptable documents will be provided by the Attorney General by July 1, 2011.
  - Public employers must submit annual compliance reports to the state auditor. The state auditor will conduct audits of these agencies, *if* funding is later provided. Public agencies risk losing status as a "qualified local government" and losing state funding if they are in violation of the E-Verify provisions.
  - In addition to the existing penalties for providing a false affidavit (debarment from public contracts for 12 months, as well as a fine up to \$1,000.00 and imprisonment for 1 to 5 years), contractors, subcontractors and sub-subcontractors who are convicted of making a false statement in violation of these provisions will be listed on the [www.open.georgia.gov](http://www.open.georgia.gov) or other official website. Further, those found to have violated the E-Verify provisions by the Commissioner of Labor will be debarred from public contracts for 12 months.
  - Public agencies, officials and employees who violate the E-verify provisions will be subject to a fine of up to \$10,000, restitution, and removal from office or employment.
  - The bill establishes an Immigration Enforcement Review Board to take complaints, investigate and enforce the provisions of the bill regarding public agency and public employee requirements related to E-Verify and secure documentation verification. No requirements are established to qualify as a board member. A single board member is authorized to investigate and issue decisions.

## Indiana Senate Enrolled Act (SEA) 590

Indiana SEA 590, effective, July 1, 2011, requires that employers entering into or renewing contracts with state agencies and state political subdivisions, and their subcontractors, enroll in and use E-Verify and provide an affidavit verifying that the employer does not knowingly employ unauthorized workers. The same requirements apply to business entities that receive a grant of more than \$1,000 from a state agency or state political subdivision.

- Contractors who violate these requirements will have 30 days to remedy the violation or the contract will be terminated and damages will be owed.
- If the state determines that termination of the contract would be detrimental to the public interest or public property, it may allow the contract to remain in effect until a new contractor is in place.
- If a contractor determines that a subcontractor is in violation of these requirements, it may terminate the contract with the subcontractor.

Although private employers who do not contract with or receive grants from the state are not required to use E-Verify, they are provided certain protections if they do. Specifically, the law prohibits business owners in Indiana who knowingly hire unauthorized workers from deducting expenses associated with that employee in the calculation of their state income taxes, but a safe harbor is provided to employers who use E-Verify.

Finally, the law requires the Indiana Department of Workforce Development (DWD) to verify citizenship before determining eligibility for unemployment benefits, and authorizes DWD to file civil action to recoup unemployment benefits from employers who knowingly employ illegal aliens.

## Louisiana House Bill 342 and House Bill 646 (HB 342 and HB 646)

Louisiana House Bill 342 ("HB 342") requires all private employers who bid on or contract with a public entity for the physical performance of services within Louisiana to register and participate in E-Verify for all employees in the state of Louisiana, effective January 1, 2012. Such private employers must also require their subcontractors to do the same.

Employers who are in violation of this law may have their contracts cancelled and be deemed ineligible for public contracts for a period up to three years. Employers in violation of the law will also be liable for costs incurred by the public entity due to the cancellation of the contract or loss of the employer's business license.

HB 342 also provides safe harbor to employers who use E-Verify pursuant to this law, keeping them free from state civil or criminal liability for the hiring or retention of an employee who is not authorized to work in the U.S. if they properly used the E-Verify system, and conversely keeping employers free from

state civil or criminal liability for refusing to hire or retain an individual if the E-Verify system indicates the person is not authorized to work.

Louisiana House Bill 646 (“HB 646”) creates civil penalties for persons who hire, employ, recruit or refer an individual who is not authorized to reside or work in the U.S. Persons who violate this law are subject to the following penalties:

- Suspension of license or permit to do business;
- For a first violation, a penalty up to \$500 for each unauthorized worker;
- For a second violation, a penalty up to \$1,000 for each unauthorized worker (except health care facilities and entities licensed by the Department of Health and Hospitals will be penalized based on the applicable licensing statutes and rules);
- For a third or subsequent violation, the license or permit to do business will be immediately suspended for 30 days to 6 months and a fine imposed up to \$2,500 for each unauthorized worker (health care facilities and entities licensed by the Department of Health and Hospitals will be penalized based on the applicable licensing statutes and rules);

HB 646 also creates safe harbor for employers who fall under either category below:

- Employers who have verified that employee’s work authorization through E-verify; or
- Employers who have retained a copy of the employee’s picture identification and one of the following documents:
  - U.S. birth certificate of certified birth card;
  - Naturalization certificate;
  - Certificate of citizenship;
  - Alien registration receipt card; or
  - U.S. Form I-94 with employment authorized stamp.

## Minnesota Appropriations Bill 11-3590

Minnesota previously implemented an E-Verify requirement for public agencies and contractors through an Executive Order that expired in April 2011. In a surprise move, the state appropriations bill signed into law on July 21, 2011, included a modified E-Verify requirement that was added overnight without discussion. The provision went widely unnoticed until Minnesota Public Radio broadcasted a story on it in August 2011.

*Effective July 22, 2011*, just one day after enactment, the law requires that contractors with the state for services valued in excess of \$50,000 must use E-Verify and ensure their subcontractors also use E-Verify for all newly hired employees who will perform work on behalf of the state. This provision does not apply to contracts entered into by the State Board of Investment.

The main difference from the expired executive order is that the law does not require state agencies to use E-Verify, but only applies to businesses contracting with the state.

The Mississippi Employment Protection Act (SB 2988)

The Mississippi Employment Protection Act ("SB 2988") requires ALL EMPLOYERS in Mississippi to register and utilize E-Verify to determine the employment eligibility of all newly hired employees as of the tiered effective dates noted below.

*SB 2988 separately requires contractors and subcontractors who enter into a public contract with the State of Mississippi to register and utilize E-Verify.* This requirement that contractors and subcontractors entering into public contracts with the State of Mississippi register and utilize E-Verify does not appear to make a distinction between in-state and out-of-state employers and seems to apply equally to employers in Mississippi as well as employers outside Mississippi.

SB 2988 will be phased in as follows:

- § State and local government agencies, public contractors (regardless of size) and public subcontractors (regardless of size) must register and utilize E-Verify no later than July 1, 2008;
- § All private employers with 250 or more employees must register and utilize E-Verify no later than July 1, 2008;
- § All employers with 100 – 249 employees must register and utilize E-Verify no later than July 1, 2009;
- § All employers with 30 – 99 employees must register and utilize E-Verify no later than July 1, 2010;
- § All other employers must register and utilize E-Verify no later than July 1, 2011.

Section 2(4)(d) of SB 2988 makes it a discriminatory practice for employers to terminate the employment of U.S. citizens or lawful permanent residents while continuing to employ unauthorized workers hired after July 1, 2008 who are working in Mississippi in a job that requires equal skill, effort and responsibility and performed under similar working conditions. However, as provided in Section 2(4)(e), utilizing E-Verify establishes a safe harbor for employers from liability, investigation or suit as long as the employer was enrolled in and utilized E-Verify on the date of termination in question.

Section 2(4)(e) seems to encourage employers to participate in E-Verify to avoid being charged with engaging in a discriminatory practice even if the employer would otherwise be exempt from the law because the employer entered into a contract on or before July 1, 2008.

Executing a contract prior to July 1, 2008 exempts an employer from participating in E-Verify for public/private contracts, but it appears you get ensnared into participating in E-Verify anyway in order to avoid being charged with engaging in a discriminatory practice. In other words, executing a contract

on or before July 1, 2008 does not protect you against being charged with engaging in a discriminatory practice.

Employers that register and participate in E-Verify "shall be held harmless" by the Mississippi Department of Employment Security so long as employers are not directly involved in fabricating false documents, and provided employers do not knowingly and willfully accept false documents from their employees.

Employers who violate this law are subject to cancellation of their state or public contract(s); ineligible for any state or public contracts for up to three (3) years; loss of business license or other document granting the right to conduct business in Mississippi for up to one (1) year; and liable for costs incurred by the state as a result of the cancellation of the contract or loss of business license or permit.

## Missouri HB 1549

On July 7, 2008, Missouri Governor Matt Blunt signed HB 1549 into law. HB 1549 includes twenty-four new sections of law relating to "illegal aliens." *Effective January 1, 2009*, the employment verification and employer sanctions provisions of HB 1549 impose the following:

- Prohibits employers from knowingly employing, hiring for employment or continuing to employ unauthorized aliens in the State of Missouri. This provision appears to apply to ALL employers entering into public or private contracts regardless of size.
- Requires all public employers and all business entities that receive a state contract or grant in excess of \$5,000 to enroll and participate in a federal work authorization program (currently E-Verify);
- Requires employers to affirm by sworn affidavit and documentation, that the employer has enrolled and is participating in a federal work authorization program (currently E-Verify)<sup>4</sup> with respect to employees working on a state contract. This provision appears to apply to ALL employers with state contracts regardless of size.
- Participation in a federal work authorization program (currently E-Verify) is an affirmative defense to an allegation that a business entity knowingly hired an unauthorized alien;
- A general contractor or subcontractor will not be held liable under the provisions prohibiting employment of unauthorized aliens, even if the general contractor's or subcontractor's direct subcontractor hires an unauthorized alien, if the contract binding the general contractor and

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<sup>4</sup> Missouri HB 1549 defines a federal work authorization program as any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986 (IRCA).

subcontractor states that the direct subcontractor is not knowingly in violation of the prohibition and will not violate the prohibition and the general contractor or subcontractor receives a sworn affidavit under penalty of perjury attesting to the fact that the direct subcontractor's employees are lawfully present in the United States;

- Failing to provide identity information on employees within 15 business days after receiving a request from the Attorney General will result in the suspension of a business entity's local license(s), permit(s), and exemption(s) until the identity information is provided.
- Knowingly employing an unauthorized alien will result in the suspension of a business entity's local license(s), permit(s), and exemptions for 14 days. In addition, the business entity must take "corrective action," which includes making efforts to end the employment relationship, submitting a sworn-affidavit to the state, and enrolling in E-Verify. A second violation will result in suspension for a period of one year. A third or subsequent violation will result in permanent suspension of the business entity's local license(s), permit(s), and exemptions.
- Additionally, a business entity will not be permitted to count any compensation paid to unauthorized workers as a business expense deduction for state tax purposes.
- A violation of the prohibition against knowingly employing unauthorized aliens by a business entity awarded a state contract or grant or state-administered tax credit, tax abatement, or loan from the state will result in termination of the contract and suspension or debarment of the business entity from doing business in Missouri for a period of three years. A second or subsequent violation will result in termination of the contract and permanent suspension or debarment of the business entity from doing business in Missouri. The state may withhold up to 25% of the total amount due to the business entity upon termination of the contract.
- The Attorney General will promulgate rules to implement the provisions of section 285.525 to 285.550, including promulgating rules to implement the prohibition against knowingly employing, hiring for employment or continuing to employ unauthorized aliens in the State of Missouri;
- The Attorney General will maintain a database documenting any business entity whose permit, license, or exemption has been suspended or whose state contract has been terminated.
- If the federal government discontinues or fails to authorize any work authorization program, Sections 285.525 - 285.555 of HB 1549 will be reviewed by the General Assembly to determine if they need to be repealed.

## Nebraska LB 403

On April 8, 2009, Nebraska Governor Dave Heineman signed LB 403 into law. LB 403 requires public employers (*i.e.*, state agencies and political subdivisions) and public contractors to enroll and participate

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in E-Verify to determine the employment eligibility of new hires starting October 1, 2009. Nebraska LB 403 becomes operative on October 1, 2009 for all contractors and subcontractors regardless of their size.

Public contractors are defined as "any contractor or his or her subcontractor who is awarded a contract by a public employer for the physical performance of services within the State of Nebraska." Every contract between a public employer and contractor must contain a provision requiring the contractor to use E-Verify to determine the employment eligibility of new employees physically performing services in the State of Nebraska.

LB 403 does not require private employers to use E-Verify, but creates tax incentives for private employers that use E-Verify.

## North Carolina SB 1523

Enacted in 2006, SB 1523 requires all state agencies, offices and universities to use E-Verify for employees hired on or after January 1, 2007, except for employees of local education agencies hired on or after March 1, 2007.

## North Carolina HB 36

Effective on a staggered basis, HB 36 requires that all employers in North Carolina with 25 or more employees use E-Verify:

- Starting October 1, 2012, for employers that employ 500 or more employees;
- January 1, 2013, for employers that employ 100 or more but less than 500 employees; and
- July 1, 2013, for employers that employ 25 or more but less than 100 employees.

The North Carolina law contains a significant exception primarily impacting the agricultural and hospitality industries. The E-Verify requirement does not apply to seasonal temporary employees who are employed for 90 or fewer days during a 12-consecutive-month period.

The law also establishes penalties and a complaint procedure that expands beyond government audits. Any person with a good faith belief that an employer is violating or has violated the law may file a complaint with the Commissioner of Labor. If an employer violates the law, it is subject to the following penalties:

- Consequences of first violation: The employer must file a signed sworn affidavit with the Commissioner stating that the employer has, after consultation with the employee, requested a verification of work authorization through E-Verify.
  - If an employer fails to timely file the affidavit, the Commissioner shall order the employer to pay a civil penalty of ten thousand dollars (\$10,000).

- Consequences of second violation: The employer must file the affidavit noted above and pay a civil penalty of one thousand dollars (\$1,000), regardless of the number of required employee verifications the employer failed to make.
- Consequences of third or subsequent violation: The employer must file the affidavit noted above and pay a civil penalty of two thousand dollars (\$2,000) for each required employee verification the employer failed to make.

Finally, the law specifies that counties and municipalities must use E-Verify, in addition to the state agencies previously mandated to use E-Verify in SB 1523, described above.

### The Oklahoma Taxpayer and Citizen Protection Act of 2007 (HB 1804)

The Oklahoma Taxpayer and Citizen Protection Act of 2007 provides that:

- Starting November 1, 2007, all public employers<sup>5</sup> are required to register and utilize a “status verification system”<sup>6</sup> to verify the employment eligibility of all new employees.
- After July 1, 2008, public employers are prohibited from entering into a contract for the physical performance of services in the State of Oklahoma unless the contractor or subcontractor registers and utilizes a status verification system to verify the employment eligibility of all newly hired employees.
- After July 1, 2008, contractors or subcontractors are prohibited from entering into a contract with a public employer for the physical performance of services in the State of Oklahoma unless the contractor or subcontractor registers and utilizes a status verification system to verify the employment eligibility of all newly hired employees.
- Registration and participation in a status verification system to verify the employment eligibility of all newly hired employees is not required for contracts entered into prior to July 1, 2008, even though such contracts may involve the performance of physical services in the State of Oklahoma after July 1, 2008.

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<sup>5</sup> A “public employer” is defined as “every department, agency, or instrumentality of the state or a political subdivision of the state.”

<sup>6</sup> “Status Verification System” includes (i.) E-Verify, (ii.) the Social Security Number Verification Service, (iii.) any equivalent federal program designated by the U.S. Department of Homeland Security or any other federal agency authorized to verify the employment eligibility of newly hired employees, or (iv.) any independent, third party system with an equal or higher degree of reliability as the federal programs, systems and processes.



## South Carolina Illegal Immigration Reform Act (HB 4400), as amended by Senate Act 20 (S 20)

The South Carolina Illegal Immigration Reform Act (“HB 4400”) was signed into law on June 4, 2008, and significantly amended by Senate Act 20 (“S 20”) signed by the Governor on June 27, 2011. HB 4400 established E-Verify requirements for public employers, public contractors and private employers, with an alternative option for public contractors and private employers to accept certain approved documents in lieu of E-Verify. S 20 removes the alternative process and requires ALL EMPLOYERS in South Carolina to participate in E-Verify by January 1, 2012.

HB 4400 required every public employer to register and participate in E-Verify to verify the employment eligibility of all newly hired employees on or after January 1, 2009. A contractor or subcontractor who contracted to provide services with the State of South Carolina was required to register and participate in E-Verify *or* only employ workers who have or are eligible for a valid South Carolina license/ID or who have another license/ID from a list of acceptable states, as follows:

- Contractors and subcontractors with 500 or more employees must comply effective January 1, 2009;
- Contractors and subcontractors with 100-499 employees must comply effective July 1, 2009;
- All contractors and subcontractors must comply effective January 1, 2010.

HB 4400 required private employers not subject to the contractor provisions to verify the employment eligibility of all newly hired employees either through E-Verify or by employing only workers who have or are eligible for a valid South Carolina license/ID or who have another license/ID from a list of acceptable states:

- Effective July 1, 2009 for all private employers of 100 or more employees;
- Effective July 1, 2010 for all remaining private employers.

This law establishes substantial penalties for noncompliant employers and threatens to temporarily suspend or revoke business licenses and/or fine businesses up to \$1,000 for each violation.

Effective January 1, 2012, S 20 mandates that employers in South Carolina will no longer have the alternative of accepting one of the approved identification documents in lieu of using E-Verify. This applies both to employers contracting with a public entity and to private employers within the state that do not have a public contract. Therefore, as of January 1, 2012, ALL EMPLOYERS in South Carolina must use E-Verify.

## Tennessee HB 1378

Effective on a staggered basis, HB 1378 requires that all employers of 6 or more workers either use E-Verify or require all newly hired employees to provide one of the following identity and employment authorization documents:

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- A valid Tennessee driver's license or photo identification;
- A valid driver's license or photo identification from another state where the license requirements are at least as strict as those in Tennessee;
- A birth certificate issued by a U.S. state, jurisdiction or territory;
- A U.S. government issued certified birth certificate;
- A valid, unexpired U.S. passport; A U.S. certificate of birth abroad;
- A certificate of citizenship;
- A certificate of naturalization;
- A U.S. citizen identification card;
- A lawful permanent resident card; or
- Other proof of the employee's immigration status and authorization to work in the United States.

This provision becomes effective on the following dates:

- January 1, 2012 for all state and local government entities and private employers with 500 or more employees;
- July 1, 2012 for all private employers with 200 to 499 employees; and
- July 1, 2013 for all private employers with 6 to 199 employees.

In addition, employers with 6 or more employees must also maintain one of the listed documents from "non-employees" as well, which includes independent contractors ("any individual other than an employee, paid directly by the employer in exchange for the individual's labor or services"). However, employers should keep in mind that they should never use E-Verify for non-employees.

Further, the law requires that employers maintain the E-Verify records for each inquiry (or other identification records per the above) for three years after the date of the employee's hire or for one year after the employee's employment is terminated, whichever is later. This is the same as the I-9 retention period.

The law also establishes an office of employment verification assistance, which employers without internet access can use as an agent for completing E-Verify inquiries at no charge.

Any lawful state resident can file a complaint with the Commissioner of Labor and Workforce Development regarding an employer's failure to comply with these requirements. The penalties for violation of the Act are as follows:

- First offense: \$500 civil penalty and \$500 penalty per worker not verified;
- Second Offense: \$1,000 civil penalty and \$1,000 penalty per worker not verified;
- Third or Subsequent Offense: \$2,500 civil penalty and \$2,500 penalty per worker not verified.

Employers who subsequently fail to provide evidence of compliance will be subject to suspension of business licensure. Employers who knowingly misclassify an individual to avoid verification requirements may face additional sanctions.

## Utah Illegal Immigration Act (SB 81), the SB 251 Substitute and HB 116 Amendment

The Utah Illegal Immigration Act provides:

- Starting July 1, 2009, public employers are prohibited from entering into a contract for the physical performance of services in the State of Utah unless the contractor or subcontractor registers and participates in a status verification system (E-Verify or SSNVS) to verify the employment eligibility of all newly hired employees.
- The requirement to register and participate in a status verification system is limited to contractors or subcontractors who enter into a contract with a “public employer” in the State of Utah for the physical performance of services within the state.

Registration and participation in a status verification system is not required for contracts entered into prior to July 1, 2009 even though such contracts may involve the performance of physical services in the State of Utah after July 1, 2009.

A contractor is individually responsible for verifying the employment eligibility of only newly hired employees under the contractor’s supervision or direction and not those newly hired employees who work for another contractor or subcontractor. However, each contractor or subcontractor who works under or for another contractor must certify to the main contractor by affidavit that the contractor or subcontractor has verified the employment eligibility of newly hired employees through a status verification system.

Starting July 1, 2009, it will be a state class A misdemeanor for any person to transport, conceal, harbor or shelter from detection any alien within the State of Utah for commercial advantage or private financial gain *“knowing or in reckless disregard of the fact that the alien is in the United States in violation of federal law.”*

Further, effective July 1, 2010, Senate Bill 251 (SB 251 Substitute) requires that all private employers in Utah with 15 or more employees participate in a status verification system (E-Verify or SSNVS). This requirement does not apply to private employers of H-2A and H-2B workers. HB 116 creates a state work authorization program, and permits verification through the above means or the newly-created state verification program (named U-Verify). This provision is effective July 1, 2013, or earlier if the Governor finds the state program is authorized before that date.

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## Virginia HB 737 E-Verify Program

*Effective December 1, 2012*, HB 737 requires that all state agencies be enrolled in the E-Verify Program and to use it for each newly hired employee who is to perform work within the Commonwealth.

On March 21, 2011, Gov. Bob McDonnell ordered all executive branch state agencies to use E-Verify by *June 1, 2011*, eighteen months earlier than mandated in the legislation. The Governor stated that, after consultation with state agencies and improvements in E-Verify, he felt the agencies could implement E-Verify more quickly than anticipated in the legislation.

## Virginia HB 1859 / SB 1049

*Effective December 1, 2013*, any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with any agency of the Commonwealth to perform work or provide services must use E-Verify for newly hired employees performing work pursuant to the contract.

WHAT STATES DO NOT REQUIRE PARTICIPATION IN E-VERIFY, BUT REQUIRE EMPLOYERS TO CERTIFY, WARRANT OR AFFIRM THAT THEY DO NOT EMPLOY ILLEGAL IMMIGRANTS?

Arkansas HB 1024

*Effective February 28, 2007*, Arkansas HB 1024 prohibits any entity of state government from contracting with businesses that employ illegal immigrants and requires contractors and subcontractors to certify that they do not employ illegal immigrants prior to executing a public contract for services.

Specifically, Arkansas HB 1024 provides the following:

- Prohibits Arkansas state agencies<sup>7</sup> from entering into or renewing a public contract for services<sup>8</sup> with a contractor who knowingly employs or contracts with illegal immigrants to perform work under the contract.
- Prohibits Arkansas state agencies from entering into or renewing a public contract for services with a contractor who knows that a subcontractor employs or contracts with illegal immigrants to perform work under the contract.
- Prior to executing a public contract, contractors<sup>9</sup> are required to certify that they do not, at the time of certification, employ or contract with illegal immigrants. The certification requirement applies to all contractors entering into a contract with a state agency for professional services, technical and general services or construction in which the value of the contract is \$25,000 or greater. HB 1024 does not mandate that E-Verify be used to verify the employment eligibility of employees.
- If a contractor uses subcontractors, the subcontractors must also certify, within 30 days after executing the subcontract, that the subcontractors do not employ or contract with illegal immigrants.
- The subcontractor certification must be maintained on file by the contractor for the duration of the subcontract.

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<sup>7</sup> "State agency" means any agency, institution, authority, department, board, commission, bureau, council, or other agency of the state supported by appropriation of state or federal funds.

<sup>8</sup> "Public contract for services" means any type of agreement between a state agency and a contractor for the procurement of services and all categories of construction with a state agency in which the total dollar value of that contract is twenty-five thousand dollars (\$25,000) or greater.

<sup>9</sup> "Contractor" means a person having a public contract with a state agency for professional services, technical and general services, or any category of construction in which the total dollar value of the contract is twenty-five thousand dollars (\$25,000) or greater.

- Contractors may terminate the subcontract, if the contractor learns that the subcontractor employs or contracts with illegal immigrants. Such termination will not be considered a breach of contract.

## Connecticut Public Act No. 07-89 (SB 931)

*Effective October 1, 2007*, Connecticut SB 931 holds public contractors criminally liable for hiring undocumented workers and provides a civil penalty of \$1000 for each day this provision is violated.

## Idaho Executive Order 2006-40

Idaho Executive Order (“EO”) 2006-40, which went into effect *December 13, 2006*, requires:

- The Division of Human Resources to verify the employment eligibility of all newly hired employees working for any agency<sup>10</sup> of the State of Idaho (i.e. for the executive branch of the state government).
- The Department of Administration to develop and implement procedures to verify and ensure that contracts for services performed for the State in Idaho are with persons and businesses that employ individuals who are eligible under federal and state law to work in the United States. This provision of the EO 2006-40 appears to apply to all persons or businesses contracting with the State of Idaho (not just persons or businesses contracting with the executive branch of the state government). If your company has a contract for services with the State of Idaho, your company will be subject to EO 2006-40.

The term “contract for services” is not defined in the EO, so it is not clear whether the term refers to the physical performance of services in the State of Idaho or some other type of service.

The Purchasing Division of the Department of Administration, pursuant to the Solicitation Instructions to Vendors, requires vendors to use the State’s signature page when submitting a bid or proposal. By signing the signature page, the vendor warrants that it accepts the State of Idaho Standard Contract Terms and Conditions and the Solicitation Instructions to Vendors. One of the terms of the Solicitation Instructions to Vendors requires:

1. If the Vendor is a corporation, partnership, sole proprietorship or other legal entity, and employs individual persons, by submitting its Bid, Proposal or Quotation, the vendor warrants that any contract resulting from this Solicitation is subject to Executive Order 2006-40 [[http://gov.idaho.gov/mediacenter/execorders/eo06/eo\\_2006-40.html](http://gov.idaho.gov/mediacenter/execorders/eo06/eo_2006-40.html)]; it does not knowingly

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<sup>10</sup> The term “agency” refers to all offices, departments, divisions, bureaus, boards, and commissions of the State of Idaho, excluding the legislative and judicial branches of government.

hire or engage any illegal aliens or persons not authorized to work in the United States; it takes steps to verify that it does not hire or engage any illegal aliens or persons not authorized to work in the United States; and that any misrepresentation in this regard or any employment of persons not authorized to work in the United States constitutes a material breach and shall be cause for termination of its contract; or

2. If the Vendor is a natural person eighteen (18) years of age or older,
  - by submitting its Bid, Proposal or Quotation, the vendor warrants that its Bid, Proposal or Quotation is subject to Idaho Code section 67-7903 [<http://www3.state.id.us/cgi-bin/newidst?sctid=670790003.K>] and, pursuant thereto, by submitting its Bid, Proposal or Quotation, attests, under penalty of perjury, that it is a United States citizen or legal permanent resident or that it is otherwise lawfully present in the United States pursuant to federal law; and
  - prior to being issued a contract, the Vendor will be required to submit proof of lawful presence in the United States in accordance with Idaho Code section 67-7903.

Interestingly, the Solicitation Instructions to Vendors requires vendors to *“take steps to verify that it does not hire or engage any illegal aliens or persons not authorized to work in the United States.”* The instructions DO NOT expressly require vendors to register and participate in E-Verify and do not make a distinction between verifying newly hired employees and existing employees. It appears that employers may satisfy the employment verification requirements by either completing Form I-9 or participating in E-Verify. However, if an employer elects to utilize E-Verify, the employer may only use it to verify the employment eligibility newly hired employees.

Lastly, in a footnote in the Notice to Agency Personnel, the Department of Administration states that “[t]he services must be performed in the state to be subject to Executive Order 2007-09.” Thus services performed outside Idaho would not be subject to EO 2006-40.

### Iowa Senate File (SF) 562

Iowa SF 562 requires that contracts for businesses that receive economic development assistance from the state include provisions stating that all of the business's employees are authorized to work in the U.S. pursuant to federal law. This law became effective *July 1, 2007*.

### Louisiana SB 753

This Louisiana law, *effective June 23, 2006*, allows any state agency or department to conduct an investigation of a contractor's hiring policies if the agency suspects the contractor is knowingly employing unauthorized workers. This provision applies only to contractors with more than 10

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employees. The district attorney can issue an order to fire undocumented workers and the contractor is subject to penalties of up to \$10,000 as well as suspension or revocation of its business license.

## Massachusetts Executive Order 481 (EO 481)

*Effective February 23, 2007*, Massachusetts EO 481 requires all contractors with the executive branch of the states to warrant:

- It does not knowingly use any unauthorized workers in connection with the contract;
- It has verified the employment eligibility of all assigned workers and does not engage in unlawful discrimination; and
- It does not knowingly or recklessly engage in document fraud.

A material breach of the contract may result in sanctions, including monetary penalties, withholding of payments and loss of contract.

## Nevada Assembly Bill (AB) 383

*Effective June 2, 2007*, holders of business licensees that are found to employ illegal aliens on a willful, flagrant or otherwise egregious basis will be subject to an administrative fine. The bill also requires verification of an employee's Social Security number.

## Texas House Bill 1196 (HB 1196)

*Effective September 1, 2007*, any business that applies for a public subsidy from any level of government within the state must certify that it and its affiliates do not and will not knowingly employ an undocumented worker. Public subsidies include any public program, benefit or assistance.

## Virginia House Bills 926 and 1298 (HB 926 and HB 1298)

All contractors for goods or services with any public body in Virginia must certify compliance with IRCA (I-9 verification). Failure to comply with IRCA will constitute a breach of contract.

## West Virginia Code

West Virginia Code §21-1B-2 requires employers to verify the work authorization of all employees and empowers the state's commissioner of labor to inspect the personnel documents of any employer.



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An employer who employs unauthorized workers is guilty of a misdemeanor, punishable by fines of up to \$10,000 and incarceration for repeat offenses, as well as suspension or revocation of the employer's business license.

Employers are also prohibited from claiming a state income tax deduction for wages or remuneration of \$600 or more paid to an individual who is not authorized to work, if the employer has been convicted of employing, hiring, recruiting or referring the unauthorized worker.

ARE FEDERAL CONTRACTORS REQUIRED TO PARTICIPATE IN E-VERIFY?

Executive Order 12989 (EO 12989)

The regulation requiring certain federal government contractors and subcontractors to enroll and participate in E-Verify took effect on September 8, 2009. The regulation only affects federal contractors who are awarded a new contract after September 8, 2009 that includes the Federal Acquisition Regulation (FAR) E-Verify clause. Federal contractors may NOT use E-Verify to verify current employees until they are awarded a contract that includes the FAR E-Verify Clause.

The regulation exempts certain types of contracts from its requirements:

- Contracts that include only commercially available off-the-shelf (COTS) items (or minor modifications to a COTS item) and related services;
- Contracts of less than the simplified acquisition threshold (\$100,000);
- Contracts less than 120 days; and
- Contracts where all work is performed outside the United States.

Other than those exceptions, a federal contractor participant in E-Verify is required to use E-Verify for:

- All new employees, following completion of the Employment Eligibility Verification Form I-9 (Form I-9); and
- All existing employees who are classified as "employees assigned to the contract."

Federal contractors who are subject to the FAR E-Verify Clause must also ensure that the following subcontractors enroll in E-Verify pursuant to the federal contractor requirements:

- Subcontracts for commercial or noncommercial services or construction;
- Except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item)
- With a value of more than \$3,000; and
- That include work performed in the United States.

If your company has not yet enrolled in E-Verify, then you have 30 days from the date of contract award to enroll, and 90 days from the date you enroll with E-Verify to initiate verification queries for employees already on your staff who will be working on the contract and to begin using the system to verify newly hired employees.

If your company is already enrolled in E-Verify, but not designated as a federal contractor in E-Verify, you must:

- Update your company profile in E-Verify and designate your company as a federal contractor within 30 calendar days of the award date of a contract that contains the FAR E-Verify clause or an existing contract that has been modified to include the FAR E-Verify clause;
- Begin verifying all newly hired employees within 90 calendar days of designating your company as a federal contractor in E-Verify.
- Initiate verification of all existing employees assigned to the qualifying contract within 90 calendar days of designating your company as a federal contractor in E-Verify.
- Initiate verification of all existing employees within 180 calendar days of notifying us that you've chosen to verify your entire workforce.

This regulation 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 the employment eligibility of their employees. The amended Executive Order reinforces the policy, first announced in 1996, that the federal government intends to only do business with companies that have a legal workforce. The regulation requires federal contractors to agree, through language inserted into their federal contracts, to use E-Verify to confirm the employment eligibility of all persons hired during a contract term, and to confirm the employment eligibility of federal contractors' current employees who perform contract services for the federal government within the United States.