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GEORGIA REQUIRES E-VERIFY, CRACKS DOWN ON ILLEGAL IMMIGRATION

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Georgia recently enacted the **Illegal Immigration Report and Enforcement Act of 2011**, which, among other things, requires employers with more than 10 employees to use E-Verify, a federal electronic work authorization program administered by the U.S. Department of Homeland Security and the Social Security Administration. The law also provides new, harsh penalties for illegal immigrants and those who hire or help them.

E-Verify Provisions

The IIREA provides that businesses will not be able to get new or renewed business licenses, or other required business documents, unless they provide an affidavit attesting that they use the E-Verify program in accordance with federal regulations, or that they are exempted from IIREA coverage. The Georgia Attorney General will be issuing a form affidavit for this purpose by January 1, 2012.

Georgia's new law is similar to Arizona's S.B. 1070, whose E-Verify provisions were recently **upheld** by the U.S. Supreme Court. The U.S. Chamber of Commerce and immigrants' rights groups had challenged the Arizona law, saying that it was preempted by the federal Immigration Reform and Control Act of 1986. In light of the Supreme Court decision, we expect to see many more states enact similar laws.

E-Verify is a free program that allows businesses to determine the eligibility of their employees to work in the United States. It is important to remember that the E-Verify system is not a substitute for the Form I-9 process. Employers must continue to complete and maintain I-9 forms as already required.

The effective dates for the IIREA vary according to the number of full-time employees, defined as those working 35 or more hours a week, as follows:

- **January 1, 2012:** Employers with 500 or more full-time employees.
- **July 1, 2012:** Employers with 100-499 full-time employees.
- **July 1, 2013:** Employers with 11-99 full-time employees.

(Employers with 10 or fewer full-time employees are not required to use E-Verify.)

Public employers are also required to use E-Verify, and additionally must permanently post their federally issued user ID number and date of authorization on their websites. If a local public employer does not maintain a website, then it must submit the information to the **Carl Vinson Institute of Government of the University of Georgia** to be posted on the Institute's website.

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Public employers may not enter into contracts for the physical performance of services unless the contractor, subcontractor, and sub-subcontractor register and participate in the E-Verify program.

The E-Verify section of the IIREA provides for criminal penalties for “[a]ny person who knowingly and willfully submits a false, fictitious, or fraudulent statement in an affidavit.” Public employees, contractors, subcontractors, and sub-subcontractors are excluded from civil or criminal liability if they “unknowingly or unintentionally” accept bids in violation of the law.

An employer has 30 days to correct deficiencies before liability will be imposed.

Crackdown on Illegal Immigrants

The IIREA also has harsh penalties for illegal immigrants, as well as those who hire or help them.

Willfully using false identification to obtain employment is “aggravated identity fraud” under the IIREA, punishable by 1-10 years in prison, a fine of up to \$100,000, or both, for a first offense. Each subsequent violation is punishable by 3-15 years in prison and a maximum fine of \$250,000, or both. There is an exception for individuals under age 21 who did not intend to steal or appropriate “any property, resource, or thing of value.” For these individuals, the maximum punishment is three years in prison and a \$5,000 fine.

The IIREA also provides for stiff penalties (1-5 years in prison, fines of \$5000-\$20,000, or both) for a person who knowingly and intentionally transports or moves, or conceals or harbors, an illegal alien. The same penalties apply if an individual “induces” an illegal alien to enter the state with the intent to receive a profit or “any thing of value.”

The law also specifically authorizes law enforcement to verify a criminal suspect’s immigration status if the suspect is unable to provide certain types of documentation. If the authorities determine that the individual is an illegal alien, they may take any actions authorized under state or federal law, including arrest, or transportation to a federal holding facility. However, the IIREA prohibits taking action against an individual based on race, color, or national origin except as permitted by the U.S. and Georgia constitutions.

Legal Challenges to the IIREA

Not surprisingly, the IIREA is already facing legal challenges, including a **class action** lawsuit filed by the American Civil Liberties Union and other civil rights groups. According to the **ACLU**, the IIREA “endangers public safety, invites the racial profiling of Latinos, Asians and others who appear foreign to an officer and interferes with federal policy....andunlawfully interferes with federal power and authority over immigration matters in violation of the Supremacy Clause of the U.S. Constitution.”

If you have a question about Georgia immigration laws, the IRCA, or any other immigration law issue, please feel free to contact any member of Constangy’s **Immigration Practice Group**, or the Constangy attorney of your choice.

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