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Getting with the Program: All Businesses Must Use E-Verify by January 1, 2012

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Amendments to the South Carolina Illegal Immigration Reform Act take effect January 1, 2012. The Act has recently been challenged for its immigration enforcement requirements. However, it also has important ramifications for South Carolina businesses.

Starting January 1, 2012, all employers in South Carolina must use the U.S. Department of Homeland Security's E-Verify system to verify an employee's authorization to work legally. E-Verify is a free Internet-based system. Failure to enroll and use E-Verify to verify new hires will result in probation for the employer or suspension/revocation of the employer's business license.

Here's how it works. In addition to completing and maintaining the federal employment eligibility verification form, more commonly known as the Form I-9, all South Carolina employers have three business days after hiring a new employee to verify the employee's work authorization through E-Verify. Employers may no longer confirm a new employee's employment authorization with a driver's license or state identification card.



As of January 1, 2012, failure to comply with the new law will result in increased penalties. If an employer knowingly or intentionally employs an unauthorized worker, the following penalties apply:

First offense – The employment license is suspended for 10 to 30 days. The business can get the license reinstated if it terminates the unauthorized worker(s) and pays a fee not to exceed \$1,000, per unauthorized employee. Employers can avoid the penalty for a first offense if they remedy the problem within 72 hours of receiving the violation notice.

Second offense – The employment license is suspended for 30 to 60 days. The business can get the license reinstated if it terminates the unauthorized worker(s) and pays a fee not to exceed \$1,000, per unauthorized employee.

Third offense – The employment license is revoked. The business can petition for a provisional license after 90 days if it:

- agree to be on probation for three years and provides quarterly reports to the Director of Labor, Licensing, and Regulation;
- terminates the unauthorized employee(s);
- pays a fee not to exceed \$1,000, per unauthorized worker.

Subsequent offenses – The employment license is revoked for five years. The business can petition to get the license back after five years, if it:

- agrees to be on probation for 3 years and provide quarterly reports to the Director of Labor, Licensing, and Regulation;
- terminates the unauthorized employee(s);
- pays a fee not to exceed \$1,000, per unauthorized worker.

More Information: To enroll in E-Verify, go to www.dhs.gov/e-verify. To read the law and to learn about upcoming training programs across the state, go to: www.llronline.com/immigration.

Aisha Grant Taylor is a senior associate practicing in employment law and workers' compensation defense. Aisha regularly appears before state courts and administrative boards on both hearing and appellate matters. She has developed particular experience in the defense of workers' compensation based in retaliatory discharge claims as well as EEOC discrimination claims. Contact her via email at ataylor@collinsandlacy.com.

