



EMAIL BULLETIN

**COLORADO, GEORGIA, AND LOUISIANA INTRODUCE STATE-LEVEL EMPLOYMENT ELIGIBILITY VERIFICATION REQUIREMENTS IN EXCESS OF FEDERAL REQUIREMENTS**

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In 2006, political interest in immigration enforcement led many states to enact their own legislation intended to enhance the enforcement of immigration laws in the employment context. While these laws vary substantially in their scope and effect, employers operating in these states should be aware of the laws and their potential ramifications.

Of the multiple states that enacted immigration-related laws, Colorado appears to have implemented the most far-reaching legislation. Colorado House Bill 1017 requires *every* employer in Colorado to review the work status of every employee within 20 days of hire and to retain copies of the documents establishing each worker's employment authorization. The retention requirement differs from federal law in that Colorado's statute requires employers to keep copies of the documents used to establish employment eligibility, whereas federal law requires the employer to retain only the Form I-9. Furthermore, House Bill 1017 grants the state the power to audit employers and verify proof of employees' work authorization. Finally, the bill establishes monetary penalties in excess of the corresponding federal fines for failure to comply with employment eligibility verification requirements.

Another Colorado law with the potential to affect large numbers of employers is House Bill 1343, which prohibits any non-federal government entity from entering into business agreements with contractors who knowingly employ undocumented workers. In addition, the statute requires prospective contractors to verify the employment eligibility of all their employees. Perhaps the most significant aspect of the law, however, is the requirement that all contractors doing business with state or local governments must participate in the federal government's Basic Pilot Program. This program, made voluntary by the federal government, is used to verify the employment authorization status of all employees. If a contractor discovers that it has employed an undocumented worker, it must notify a state agency within three days of the discovery.

The Colorado legislature also passed several immigration-related bills with narrower applicability. One bill requires that contractors applying for state economic development incentive awards verify the work status of their employees. Another statute provides that only individuals lawfully present in the United States are eligible to receive

licenses, permits, registrations, and certificates. Finally, Colorado state law now requires employers to withhold a percentage of a non-resident alien employee's wages if the employer does not possess a validated Social Security number or taxpayer identification number for that individual.

One month before the passage of Colorado's sweeping statutes, the Louisiana legislature enacted a bill allowing for state investigations of a contractor's hiring policies. Unlike Colorado's law, however, Louisiana's law allows *any* state agency or department to conduct the investigation if it suspects a contractor of employing unauthorized workers. If the investigation finds that the contractor did, in fact, employ individuals without employment eligibility, the attorney general or local district attorney can order the contractor to terminate the ineligible workers or face penalties of up to \$10,000.

The Georgia legislature also passed a sweeping immigration-related statute, although the direct impact on employers does not appear to be quite as acute as with Colorado's bills. Similar to Colorado's law, Georgia's statute will require *public* employers and contractors to participate in the federal Basic Pilot Program. Georgia's law also requires employers to withhold a certain percentage of wages for individuals without a proper tax identification number; however, the Georgia law does not impose employment eligibility verification or document retention requirements on private businesses in excess of federal laws, nor does it *explicitly* subject employers to audits by state agencies.

Several other states have also enacted immigration-related legislation with the potential to impact employers. Idaho, Kansas, New York, Pennsylvania, Tennessee, and Washington have passed various laws limiting employment-related benefits for undocumented workers, affecting licensure requirements for non-citizens, and prohibiting state contractors from hiring undocumented individuals. While the enforceability of some of these laws remains questionable, Tindall & Foster advises employers to determine whether these laws could potentially affect their operations. Please contact your Tindall & Foster immigration attorney for more information.