



LOUISIANA LEGISLATURE KICKS IMMIGRATION COMPLIANCE UP A NOTCH OR TWO

The Louisiana legislature passed recently two laws aimed at immigration compliance which have the effect of: (1) **requiring** employers and subcontractors that do business with the State to use E-Verify; and (2) giving employers that are not required to use E-Verify a “safe harbor” from immigration penalties if they choose to use E-Verify. Both bills were signed into law by Governor Bobby Jindal on July 6th, 2011, and will take effect on August 15th, 2011. So Louisiana employers have a little less than a month to prepare for compliance.

House Bill (HB) 342 enacts Revised Statute 38:2212.10 - - which is applicable to public contracts. Specifically, employers who bid on or contract with the State on or after January 1, 2012, must: (1) participate in E-verify; (2) continue to participate in E-verify for the term of the contract; and (3) require all subcontractors to comply with the requirements of participating in E-verify. The employer and any subcontractors must submit sworn affidavits attesting to the three requirements of the law.

E-Verify is a free, Internet-based system operated by the U.S. Department of Homeland Security (“DHS”) in partnership with the Social Security Administration (“SSA”). The system allows participating employers to electronically verify their employees’ employment authorization – whether the employees are both authorized to work in the United States and authorized to work for the employer running the check.

For more information on E-Verify, generally see [May 2008 E*Zine](#).

The penalties for violating the new Louisiana law include cancellation of public contracts, costs incurred by the public entity due to cancellation, and ineligibility to bid or work on public contracts for up to three years. In order for an employer to be penalized for the violation of a subcontractor, the employer must have actual knowledge of the subcontractor’s failure to comply. Employers who comply with the law and who receive verification that a worker’s federal legal status allows him/her to be hired will not be liable under State law for hiring or continuing to employ an unauthorized alien. The Louisiana law does not address what would happen if the employer had actual knowledge that the individual was not authorized to work. Under Federal law, an employer will be subjected to penalties for employing an individual that it knows is unauthorized to work – even if the individual “passed” E-Verify. An employer who receives a result indicating that the employee is an unauthorized alien will not be liable under State law for refusal to hire such person.

HB 646 amends Revised Statute 23:995, which makes it unlawful to employ, hire, or recruit for employment an alien who is not authorized to reside or work in the U.S. and provides for verification of citizenship and authorization for employment. La. RS 23:995 provides a safe harbor from penalties for employers that copy and retain verification documents presented by employees, one of which must be a picture identification. Note, Federal law does not have such safe harbor provisions and does not require employers to copy and retain these documents. Moreover, the list of documents in this State law is more restrictive than the list of acceptable documents for I-9 compliance. The amendments also provide that employers who have verified every employee will not be subject to penalties under the law, and an employer who uses E-verify for an employee is presumed to be acting in good faith.



The amendments also significantly increase the penalties for violating the State's employment verification requirements as follows:

- First violation penalty increased from \$250 to \$500
- Second violation penalty increased from \$500 to \$1,000
- Third or subsequent violation penalty increased from \$1,000 to \$2,500 along with suspension of the company's permit or license to do business in the State for 30 days to 6 months.

The penalty provisions do not apply to health care facilities or entities licensed by the Department of Health and Hospitals. With respect to such entities, the Louisiana Workforce Commission will inform the governing or licensing authority of the violation, and the rules for suspension of a license will be followed.

PRACTICE TIPS

To get ready to comply with these new laws, Louisiana employers should:

1. sign up for E-Verify if required to do so;
2. if required to use E-Verify, ensure that agreements with subcontractors mandate the use of E-Verify and add or supplement existing contracts with subcontractors;
3. because E-Verify is only as useful as the information obtained from I-9 forms, make sure individuals tasked with completing those forms know what to do;
4. audit your I-9s if you will have to use E-Verify. You'll be needing the I-9s for your current and future workforce; and
5. if you are not required to use E-Verify, consider whether you should choose to do so.

—[Laurie M. Chess](#) and [Mary Ellen Jordan](#)



Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

Sidney F. Lewis, V
Partner, Jones Walker
201 St. Charles Avenue
New Orleans, LA 70170-5100
504.582.8352 *tel*
504.589.8352 *fax*
slewis@joneswalker.com

Labor & Employment Practice Group

H. Mark Adams
Jennifer L. Anderson
Norman E. Anseman, III
Timothy P. Brechtel
Susan K. Chambers
Laurie M. Chess
Amy C. Cowley
Tracy P. Curtis
Kathryn W. Drey
Jennifer L. Englander

Virginia W. Gundlach
Jane H. Heidingsfelder
Cornelius R. Heusel
Thomas P. Hubert
R. Scott Jenkins
Mary Ellen B. Jordan
Tracy E. Kern
Jennifer F. Kogos
Celeste C. Laborde
Joseph F. Lavigne
Sidney F. Lewis, V

Joseph J. Lowenthal, Jr.
Ian A. Macdonald
Christopher S. Mann
James Rebarchak
Kirkland E. Reid
Veronica Rivas-Molloy
Victoria J. Sisson
Mary M. Spell
David K. Theard
Patrick J. Veters
Kary B. Wolfe

This newsletter should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your own attorney concerning your own situation and any specific legal questions you may have.

To subscribe to other E*Bulletins, visit <http://www.joneswalker.com/ecommunications.html>.