

ALABAMA'S IMMIGRATION LAW: EMPLOYER IMPACT

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OVERVIEW

- Beason-Hammon Alabama Taxpayer & Citizen Protection Act (Act 2011-535)
 - Definitions
 - Primary Employer Requirements
 - Penalties
 - Defenses and Safe Harbors

DEFINITIONS

- **Business Entity:** Any person or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood, whether for profit or not. “Business Entity” includes:
 - Self-employed individuals, domestic and foreign corporations, domestic and foreign LLCs, domestic and foreign partnerships, business trusts, and any business entity that registers with Secretary of State.
 - Any business that has business license, permit, certificate, approval, registration, charter, or similar form of authorization issued by the state, any business entity exempt by law from obtaining such a license, and any business operating unlawfully without a license.
- **Contractor:** A person, employer, or business entity that enters into an agreement to perform any service or work or to provide a certain product in exchange for valuable consideration. This includes general contractors, subcontractors, independent contractors, contract employees, project managers, or a recruiting or staffing entity.

DEFINITIONS

- **Employee:** Any person directed, allowed, or permitted to perform labor or service of any kind by an employer. The employees of an independent contractor working for a business entity shall not be regarded as the employees of the business entity for purposes of this act.
- **Employer:** Any person, firm, corporation, partnership, joint stock association, agent, manager, representative, foreman, or other person having control or custody of any employment, place of employment, or of any employee, including any person or entity employing any person for hire within the State of Alabama, including a public employer. This terms shall not include the occupant of a household contracting with another person to perform casual domestic labor within the household.

DEFINITIONS

- State-Funded Entity: Any governmental entity of the state or a political subdivision thereof or **any other entity** that receives **any** state monies.
- Subcontractor: A subcontractor, contract employee, staffing agency, or any contractor, regardless of its tier.

PRIMARY EMPLOYER REQUIREMENTS

- Prohibition on “knowingly” employing, hiring, or continuing to employ illegal aliens
 - A person acts knowingly or with knowledge with respect to either of the following:
 - Person’s conduct or attendant circumstances when the person is aware of the nature of the person’s conduct or that those circumstances exist.
 - A result of the person’s conduct when the person is reasonably aware that the person’s conduct is likely to cause that result.
- State Contracts / State-Funded Projects
 - Must submit affidavit to State attesting to compliance with Immigration Law
 - <http://immigration.alabama.gov/docs/Compliance-Form-Business-Entity-Employer-Contractor.pdf>
 - Subcontractors must also submit affidavit to State
 - <http://immigration.alabama.gov/docs/Subcontractor-Compliance.pdf>
- Mandatory enrollment in E-Verify by April 1, 2012 for businesses

ALABAMA E-VERIFY MESSAGE

- Effective April 1st, all Alabama businesses, regardless of size, must enroll in the federal E-Verify program to be in compliance with Alabama's new immigration law.
- Director Collier urged all businesses to utilize the resources that the United States Federal Government provides at www.uscis.gov/everify.
- The E-Verify requirement only pertains to new hires. Director Collier stated: "The Alabama Department of Homeland Security is committed to facilitating compliance to Alabama's new immigration law."
- The Alabama Department of Homeland Security also provides an employer agent service to the E-Verify program via the internet at <http://immigration.alabama.gov> or by calling 1-855-VERIFY-6, for businesses with 25 or fewer employees.

PENALTIES

- State Contracts / State-Funded Contracts
 - First Violation for Hiring/Employing
 - Deemed breach of contract
 - Contract may be terminated
 - Business License / Permits may be suspended up to 60 days
 - Will be reinstated 1 business day after employer's legal representative submits affidavit of compliance and E-Verify MOU.
 - Employer must file affidavit with local district attorney within 3 days of court order stating:
 - Employer has terminated all illegal aliens AND
 - Employer will not knowingly violate hire or employ illegal aliens.
 - SUBCONTRACTORS ONLY
 - May be barred from doing business in State

PENALTIES

- State Contracts / State-Funded Contracts
 - Second Violation for Hiring/Employing
 - Deemed breach of contract
 - Contract terminated
 - Business License / Permits may be permanently suspended

PENALTIES

- All Employers
 - First Violation for Hiring/Employing
 - Must terminate illegal alien
 - Three-year probation
 - Must file quarterly reports to local district attorney regarding each new employee hired in the state for three years
 - File affidavit with local district attorney attesting to present and future compliance
 - Suspension of business license / permits for up to 10 days at the specific business location where the illegal alien performed services.
 - Will be reinstated 1 business day after employer's legal representative submits affidavit of compliance and E-Verify MOU.

PENALTIES

- All Employers
 - Second Violation for Hiring/Employing
 - Permanent revocation of business license / permits at the specific business location where the illegal alien performed services
 - Third Violation for Hiring / Employing
 - Permanent revocation of business license / permits throughout State

SAFE HARBOR AND DEFENSES

- State Contracts
 - Contractor not liable for violations by subcontractor if:
 - Contractor was not aware of violation AND
 - Subcontractor gave contractor a sworn affidavit of good faith compliance
 - <http://immigration.alabama.gov/docs/Subcontractor-to-be-Given-to-Contractor-Compliance.pdf>
- All Contracts
 - Enrollment and use of E-Verify as to work authorization of specific employees is a defense to “knowingly” employing/hiring that employee

SAFE HARBOR CONT'D

- A business entity or employer (including public employer) that complies with E-Verify, shall not be found to be in violation of “knowingly” hiring or employing unauthorized aliens.
- A subcontractor that is enrolled in the E-Verify program during the full period of performance of the subcontract shall not be found to be in violation of this act

HB 658 PROPOSED AMENDMENTS IN 2012 SPECIAL FIRST SPECIAL SESSION CONVENED ON MAY 17, 2012

- Narrowing scope of "Contractor" to **exclude** those who merely "provide a certain product" in exchange for consideration
- Clarifying that agreements a Contractor enters into must either be required to be competitively bid (i.e., over \$7,500) or submitted to Joint Legislative Contract Review Oversight Committee
- Clarifying definition of "State-Funded Entity" to mean **only** those entities that received 50% of revenue in 1 of preceding 3 years from a public source
- Clarifying that "Business Entity," "Contractor," "Employee," "Employer," and "Subcontractor," apply only to those persons employed in or performing a labor or service **in the state**.
- Providing that a Contractor would not be liable for his direct subcontractor **unless** it is shown by **clear and convincing evidence** that the Contractor has actual knowledge that the direct subcontractor violated the section.

HB 658 PROPOSED AMENDMENTS IN 2012 SPECIAL FIRST SPECIAL SESSION CONVENED ON MAY 17, 2012

- Implementing a **three-tier penalty scheme**, with the 2nd and subsequent penalty provisions being triggered only if the offenses fall within 5 years of the previous offense. The penalties would include terminating employees, terminating a contract, subjecting the business entity to probation, and suspending the licenses or permits of the business.
- Providing that Section 9 of the act **does not** apply to agreements by the state, any political subdivision thereof, or any state-funded entity relating to debt obligations by such entities.

QUESTIONS

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