

PUBLICATION

Tennessee Lawful Employment Act Imposes New Immigration-Related Requirements on Employers

August 30, 2011

On June 7, 2011, Tennessee Governor Bill Haslam signed new legislation into law that threatens employers with the suspension of their business license if they fail to comply with certain immigration-related requirements. The Tennessee Lawful Employment Act is designed to curtail the employment of illegal immigrants in Tennessee by requiring businesses to collect and maintain documentation proving that employees and other persons who provide labor or services, such as independent contractors, are eligible to work in the United States.

Specifically, a business must choose one of two options to comply with the Act. First, the employer may participate in the Federal government's E-Verify program, an internet-based system whereby the employer may electronically verify an individual's employment eligibility. For those employers who do not have internet access, upon request, the Tennessee Department of Labor and Workforce Development will submit E-Verify work authorization requests on those employers' behalf free of charge. The E-Verify records must be maintained by the employer for three years after an employee's hire or one year after an employee is fired, whichever is later. Alternatively, employers may instead request and maintain a copy of any one of the following documents from the employee prior to the employee beginning work:

1. Tennessee driver's license or photo id license issued by the Tennessee Department of Safety,
2. Valid driver's license or photo id license issued by another state where requirements for licensure are at least as strict as those of Tennessee (the Tennessee Department of Labor and Workforce Development will prepare and maintain a list of such states on the department's website);
3. Official birth certificate issued by a U.S. state, jurisdiction or territory;
4. U.S. government-issued birth certificate;
5. Valid unexpired U.S. passport;
6. Report of birth abroad of a citizen of the U.S.;
7. Certificate of U.S. citizenship;
8. Certificate of naturalization;
9. U.S. citizen identification card; or
10. Valid alien registration documentation or other proof of current registration recognized by the U.S. Department of Homeland Security.

The Act incentivizes usage of E-Verify by providing an absolute defense to employers accused of employing an illegal alien. If the employer happens to hire an illegal immigrant who was cleared to work by E-Verify, the employer will not be liable under Tennessee's illegal immigrant hiring laws. In contrast, employers are not entitled to this defense if they use one of the other permissible methods of proving an individual is authorized to work. Instead, they will have to prove their innocence with other evidence.

The Act also requires businesses to confirm non-employees, such as independent contractors, are eligible to work in the U.S. However, because E-Verify is not available with respect to these individuals, the business must use one of the ten other alternative methods provided under the Act.

The Act becomes effective on January 1, 2012, and its requirements will be phased in according to business size. The Act will be applicable to government entities and private employers with 500 or more employees on January 1, 2012. Private employers with 200 to 499 employees will not be subject to the Act until July 1, 2012. Finally, on January 1, 2013, all private employers with six or more employees will be required to comply with the Act.

Violations of the Act can result in stiff financial penalties. A first-time violation may result in a \$500 fine, in addition to a \$500 penalty for each individual not properly verified. If the first-time violation was not done knowingly and the employer takes the remedial action requested by the department within 60 days, the employer will receive a warning. However, a second violation will cause a \$1,000 fine and an additional \$1,000 penalty for each individual not properly verified. Third or subsequent violations increase the penalty to \$2,500, in addition to \$2,500 for each individual not correctly verified. In addition to financial penalties, the Department of Labor and Workforce Development will publish the identity of any business against whom a violation has been found.

Perhaps the most dangerous aspect of the Act to employers is its treatment of businesses that remain in non-compliance after the Department of Labor and Workforce Development finds a violation. The business license of any employer that fails to bring itself into compliance within 60 days of such a finding shall be suspended until the violation is remedied.

As always, Baker Donelson's Labor and Employment attorneys stand ready to assist employers in ensuring compliance with the TN Lawful Employment Act. Please feel free to reach out to your Baker Donelson attorney or any of our nearly 70 Labor & Employment attorneys located in Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; and Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee.