

**The Effects of Georgia's New Immigration Law on the Employment Verification
Process**
By
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On Monday, April 17, Governor Sonny Perdue signed into law the Georgia Security and Immigration Compliance Act which targets illegal immigrants and the employers who hire them. The new law will have a significant impact on the employment verification process for Georgia's utility contractors.

As it concerns the employment verification process, the Georgia Security and Immigration Compliance Act (GSICA) requires that a contractor or subcontractor doing business with any state or local government agency register and participate in a federal work authorization program to verify the legal status of all *new* hires. Contractors who contract with a public entity but subcontract a portion of that public project work are required to ensure their subcontractors are also registered with and participating in the federal work authorization program. For contractors or subcontractors with 500 or more employees, the law takes effect on July 1, 2007. For contractors or subcontractors with between 100 and 499 employees, the law takes effect on July 1, 2008. The law takes effect on July 1, 2009 for all other contractors and subcontractors.

The "federal work authorization program" referred to in the GSICA is the Basic Pilot Program administered jointly by the Department of Homeland Security's U.S. Citizenship and Immigration Services Bureau (DHS) and the Social Security Administration (SSA). The Basic Pilot Program involves verification checks of the SSA and DHS databases using an automated system to verify the employment authorization of all newly hired employees.

A contractor or subcontractor registers for and participates in the Basic Pilot Program by using the internet. The employer first enters into a Memorandum of Understanding with the SSA and DHS. Per the terms of the Memorandum of Understanding, the employer agrees to use the Basic Pilot Program only to verify new employee's employment eligibility and not to discriminate against employees based on national origin or citizenship status. The program is not to be used to screen employees, but rather to verify employment eligibility **after** the employee has been hired.

After completing a slightly modified version of the current I-9 process, which requires presentation of a document with a photograph if the job applicant relies upon separate documents to establish identity and work eligibility, the employer must go online within three (3) days after hiring the individual and submit the new employee's name, date of birth and Social Security number to be checked against the SSA's database.

If the employee is a U.S. citizen and the information given by the employee matches SSA records, the employer immediately receives a message indicating the employee is eligible to work and no further action is required. If the new employee is foreign-born, the employee information must also be electronically checked against the

DHS's database to determine the employee's legal work status. DHS is to respond within no more than three (3) days. If the information submitted also matches the DHS database, nothing further is required.

If the name and social security number submitted do not match, the employer receives a tentative notice of nonconfirmation. The employer must give written notification to the new employee of the nonconfirmation notice within three (3) days, ask the employee whether he or she wants to contest the tentative nonconfirmation, and give the employee the telephone number and address of the SSA. Similarly, written notice must be given to the employee within three (3) days if the DHS gives a tentative nonconfirmation notice.

If the employee wants to challenge the tentative nonconfirmation, the employee checks a box on the notice form given by the employer and the employee must contact the SSA or DHS within eight (8) federal work days to contest the tentative nonconfirmation. During the period the employee is contesting a tentative nonconfirmation notice, the employer cannot take any adverse action against the employee. If the discrepancy is not resolved within ten days, the employer is notified that the employee is not eligible to work. Likewise, if the employee does not contest a tentative nonconfirmation notice within 8 days, the tentative nonconfirmation is treated as a final nonconfirmation. At that point, the employer must terminate the employee or face liability for employing an illegal alien unless the employer can prove that the government was wrong and the employee was authorized to work. A final nonconfirmation has the legal effect of creating a rebuttable presumption that the employer is employing an unauthorized worker. If the employer does not terminate the employee after a final nonconfirmation, the employer must notify the DHS. Failure to notify DHS subjects the employer to a civil penalty between \$500 and \$1,000.

Until the GSICA takes effect, employers are still required to verify employment of hired individuals through use of the I-9 form. However, the Basic Pilot Program has been available to all employers on a voluntary basis at no charge since 2004. If an employer voluntarily chooses to participate in the Program, the employer must use the Program for all new employees; the Program cannot be used selectively or only for certain prospective employees.

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