



South Carolina Department of Labor, Licensing & Regulation

NOTICE TO ALL SOUTH CAROLINA EMPLOYERS: **You Must Verify All New Hires through** **E-Verify Effective January 1, 2012**

Amendments to the “South Carolina Illegal Immigration and Reform Act” were signed into law by Governor Nikki Haley on June 27, 2011. The amended law requires all employers to enroll in the U.S. Department of Homeland Security’s E-Verify system beginning January 1, 2012 and to verify the legal status of all new employees through E-Verify within three business days. Failure to enroll in and use E-Verify to verify new hires will result in probation for the employer or suspension/revocation of the employer’s business licenses.

Verification Requirements

In addition to completing and maintaining the federal employment eligibility verification form, more commonly known as the Form I-9, all South Carolina employers must within three business days after employing a new employee:

1. Verify the employee’s work authorization through the E-Verify federal work authorization program administered by the U.S. Department of Homeland Security.
2. Employers may no longer confirm a new employee’s employment authorization with a driver’s license or state identification card.

E-Verify

E-Verify is a free Internet-based system maintained by the U.S. Department of Homeland Security. E-Verify compares the information an employee provides on Form I-9, Employment Eligibility Verification, against millions of government records maintained by the Department of Homeland Security and the Social Security Administration. The database generally provides results in three to five seconds. If the information matches, the employee is eligible to work in the United States. If there's a mismatch, E-Verify will alert the employer and the employee will be allowed to work while he or she resolves the problem. To enroll in E-Verify, go to www.dhs.gov/e-verify.

License

Under the law, all private employers in South Carolina are imputed a South Carolina employment license which permits a private employer to employ a person in the state. A private employer may not employ a person unless the private employer’s South Carolina employment license and any other applicable licenses as defined in Section 41-8-10 are in effect and are not suspended or revoked. Under Section 41-8-10, a “license” means an agency permit, certificate,

approval, registration, charter, or similar form of authorization that is required by law and that is issued by any agency political subdivision of the state for the purpose of operating a business in the state. Professional licenses are excluded, but “license” includes employment licenses, articles of organization, articles of incorporation, a certificate of partnership, a partnership registration, a certificate to transact business, or similar forms of authorization issued by the South Carolina Secretary of State, and any transaction privilege tax license.

Employment of Unauthorized Alien Prohibited

Section 41-8-30 provides that a private employer who knowingly or intentionally employs an unauthorized alien violates the private employer’s licenses.

Enforcement

The South Carolina Department of Labor, Licensing and Regulation (LLR) is charged with investigating complaints and conducting random audits of private employers to assure compliance. The agency must: (1) notify the United States Immigration and Customs Enforcement (ICE) of suspected unauthorized aliens employed by a private employer; and (2) notify state and local law enforcement agencies responsible for enforcing state immigration laws.

Failure to Comply

For a first occurrence by a private employer, prior to July 1, 2012, of failure to verify a new hire through the E-Verify federal work authorization program within three business days, an employer must swear or affirm in writing to the South Carolina Department of Labor, Licensing and Regulation that the employer has complied with the provisions of the federal law covering employment of unauthorized aliens (8 U.S.C. Section 1324a) from January 1, 2012 until notification by LLR of a violation, and comply with the state law on verification of new hires within three business days.

For a first occurrence by a private employer, after July 1, 2012, of failure to verify a new hire through the E-Verify federal work authorization program within three business days, the Department of LLR must place the employer on probation for a period of one year, during which time the private employer must submit quarterly reports to the agency demonstrating compliance with the law. A subsequent violation within three years of the law’s verification requirements must result in the suspension of the private employer’s licenses for at least 10 days but not more than 30 days.

A private employer who knowingly or intentionally employs an unauthorized alien must have his licenses suspended by the Department of LLR on a first occurrence for at least 10 days but not more than 30 days. During the period of suspension, the private employer may not engage in business, open to the public, employ an employee, or otherwise operate. The private employer’s licenses are reinstated when the employer demonstrates that the unauthorized alien has been terminated, and pays a reinstatement fee equal to the cost of investigating and enforcing the matter, not to exceed \$1,000. For a second occurrence, the employer’s licenses must be suspended for at least 30 days but not more than 60 days. Following a third occurrence, the private employer’s licenses are revoked.

For More Information

To read the law and to learn about upcoming training programs across the state, go to: www.llronline.com/immigration.