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Georgia's Recently Adopted Illegal Immigration Reform and Enforcement Act of 2011 - House Bill 87 (HB 87)

ejwong · Friday, June 3rd, 2011

On May 13, 2011, Georgia Governor Nathan Deal signed into law the Illegal Immigration Reform and Enforcement Act of 2011 - commonly referred to as House Bill 87 or HB 87. HB 87 amends and makes additions to portions of Titles 13, 16, 17, 35, 36, 42, 45, and 50 of the Official Code of Georgia Annotated ("O.C.G.A."). These amendments and additions result in new powers and obligations for Georgia's local governments, state departments and agencies, public officers and employers, law enforcement officers, penal institutions, and private companies. The new requirements and penalties affect private companies with more than ten employees, and private companies contracting with the State, counties, and municipalities, as well as their departments and agencies. In some circumstances, the requirements also affects their subcontractors of all tiers.

Companies wishing to do business with any state department, agency, or instrumentality of Georgia, or a political subdivision of the state, shall be able to enter contracts requiring the physical performance of services (meaning the building, altering, repairing, improving, or demolishing of any public structure or building or any public real property, including construction or maintenance of a public road; or any other performance of labor) only if the companies and the state entities comply with certain requirements. The most significant of these requirements is that the public entities must register and participate in the federal work authorization program — E-Verify— and the private company contractor and its subcontractors also must register and participate in E-Verify. E-Verify is an internet-based program run by the Department of Homeland Security in partnership with the Social Security Administration. The program compares information from an employee's Employment Eligibility Verification Form I-9 to data from federal government records. If the information matches, that employee is eligible to work in the United States. If the information does not match, E-Verify alerts the employer and the employee is allowed to work while he or she resolves the problem. The employee must contact the appropriate agency to resolve the data discrepancy within eight federal government work days from the alert date.

The private company contractor must provide to the public entity employer a signed, notarized affidavit attesting to their continued participation in and compliance with E-Verify. Contractors and their subcontractors who opt to use independent

contractors rather than employees shall provide to the public entity employer a copy of the state-issued driver's license or identification card of each independent contractor within five (5) days of the contractor's receipt of the employee's identity verifying documents, instead of participating in E-Verify.

HB 87 provides for civil and criminal penalties for contractors, subcontractors, and individuals that violate its requirements. Contractors and subcontractors who knowingly and willfully make a false statement in an affidavit are subject to prosecution under O.C.G.A. §16-10-20. If convicted of making a false statement, the contractor and subcontractors can receive sentences of between one and five years, as well as a fine of up to \$1,000. Furthermore, the offending company shall be prohibited from bidding on public contracts for a period of 12 months following the conviction. The new law is harsher on those who willfully and fraudulently use fake identifying information for the purposes of obtaining employment. The offense is called aggravated identity fraud and carries the penalties of one to fifteen years of imprisonment and fines up to \$250,000.

HB 87 also impacts business that do not have contracts with public entity employers or a public entity employer's contractors and subcontractors. Under the new law, any businesses with more than ten employees must register and use E-Verify before a county or municipal corporation may issue a business license, occupational tax certificate, or other document required to operate a business. This requirement has a phased implementation schedule. Private employers with 500 employees or more must comply as of January 1, 2012; private employers employing between 100 and 500 employees must comply by July 1, 2012; and private employers with more than 10 but fewer than 100 employees must comply by July 1, 2013. To prove compliance, businesses must provide an affidavit in the form provided by the Attorney General. That form of affidavit will include the federally-assigned employment eligibility verification system user number. Presenting false or misleading evidence of state licensure constitutes a misdemeanor, unless presented knowingly, which triggers the false statement penalties of O.C.G.A. § 16-10-20.

A number of national and local groups have promised to challenge HB 87's constitutionality on a number of fronts. However, it is important to note that Section 21 of HB 87 provides that if "any provision or part of any provision of this Act ... is held invalid or unconstitutional, the invalidity shall not affect the other provisions or applications of this Act..." Furthermore, the United States Supreme Court's recent ruling upholding the constitutionality of Arizona's controversial SB 1070, which contained similar provisions to HB 87, suggests that at a minimum, the E-Verify component of Georgia's new immigration law will go into effect as scheduled on July 1, 2011.

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