

**WORKPLACE IMMIGRATION  
ENFORCEMENT UPDATE**  
*COMPLIANCE AND ENFORCEMENT IN 2010*

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**Melissa Azallion**  
Immigration Attorney

**David Dubberly**  
Certified Specialist in Employment and Labor Law

# Agenda

- *Overview of SC Immigration Law*
  - *The Basics: Who? When? How?*
  - *E-Verify option*
- *SC Enforcement Issues*
  - *Role of LLR*
  - *Audit expectations*
  - *Potential penalties*
- *I-9 Compliance Tips*
- *NP Immigration Checklist*



# South Carolina Illegal Immigration Reform Act

- Effective June 4, 2008
- *Comprehensive* law covering many different topics
  - Taxes, benefits, immigration services and employment verification provisions
- Employment verification requirements phased in beginning January 1, 2009



# Employment Verification

Who Must Comply?

# Employment Verification Rules

- Applies to ALL employers in SC
- 3 categories of employers:
  - Public employers
  - Contractors, subcontractors, and sub-subcontractors doing business with public employer
  - Private employers

# Key Definitions

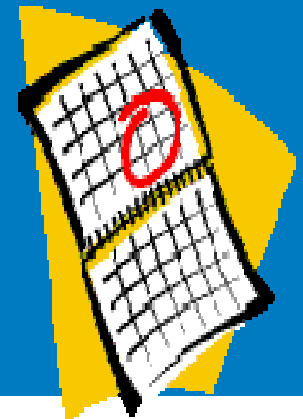
- **Public Employer** – “Every department, agency, or instrumentality, or political subdivision of the State”
  - Examples: State of SC, Town of Bluffton
- **Contractor** - Any person doing business with a public employer involving a services contract for the physical performance of manual labor with annual value exceeding \$25,000 (\$15,000 if public employer is a political subdivision of the State)
  - Examples: Construction, manufacturing

# Employment Verification Rules

When To Comply?

# Employment Verification - Compliance Clock

- **January 1, 2009**
  - All public employers
  - Contractors working with public employer w/ 500 + e'ees
- **July 1, 2009**
  - Contractors working with public employer w/ between 100 and 499 e'ees
  - Private employers with more than 100 employees
- **July 1, 2010**
  - All other employers



# Employment Verification

## How to Comply

## Employment Verification - *Public Employer*

- **MUST** register and participate in E-Verify program
- May not enter into “services contract” unless contractor agrees to comply with Act
- Must obtain written statement (contract language) from contractor certifying compliance with Act’s requirements

# Employment Verification - *Contractors and Private Employers*

- Applies only to **NEW EMPLOYEES HIRED AFTER** effective compliance date (July 1, 2009 or July 1, 2010)
- *2 options:*
  - Use E-Verify, OR
  - Confirm that individual possesses (or qualifies for) driver's license or identification card from acceptable state (SC, NC, GA, FL among others are OK)
- See [www.llr.state.sc.us](http://www.llr.state.sc.us) for list of acceptable states

## Employment Verification - *Contractor*

- Contractors and subcontractors in public contract business chain (i.e. sub-subs) must also comply with the employment verification rules for private employers
  - Obtain written assurance of compliance from subs but not required to verify credentials of sub's employees

# Key Points

- Employer must choose one verification route and consistently use it
- Important to keep documentation to confirm employment verification for SC compliance
  - E-Verify receipt or copy of license/identification card
- Employer has five (5) business days after hire to comply with verification procedures

# E-Verify - Good or Bad?

- For more information: [www.dhs.gov/E-Verify](http://www.dhs.gov/E-Verify)
- Web-based, free and voluntary
  - Checks DHS, DOS and SSA databases
  - **General rule:** New hires only; Exception: Federal Contractors
- Pros and cons

# E-Verify Access Methods

- **Employer**
  - Allows company to electronically verify employment eligibility of newly hired employees
  - Employer can register some locations but not others
- **Corporate Administrator**
  - Use when multiple offices or locations and want to centralize administration
  - CANNOT perform E-Verify queries unless registered as “Employer”
- **Designated Agent**

# E-Verify Enrollment Issues

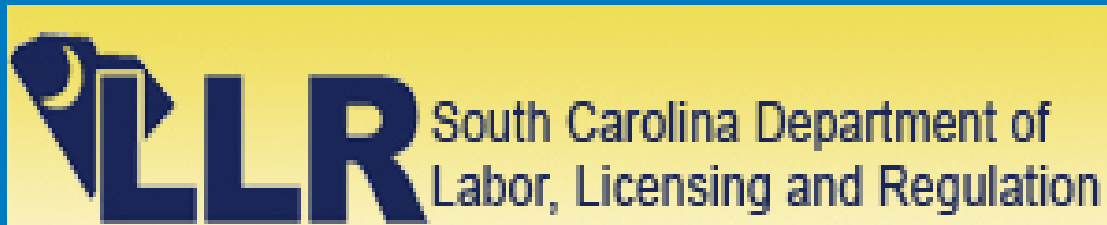
- Employer executes Memorandum of Understanding (MOU) with DHS and SSA
  - Who will review and sign?
- User name, password and E-Verify web address emailed within 24 to 48 hours
- Read user manual and complete web-based tutorial/online training

# South Carolina Department of Labor, Licensing & Regulation

## SC Enforcement Issues

# Enforcement Authority

- **LLR's Office of Immigrant Worker Compliance investigates employers for alleged violations**
  - Receipt of written and signed complaint or
  - Investigation initiated by agency for good cause
- **Agency has also developed statewide random auditing program to inspect private employers**



# Enforcement Authority

- **All private employers in SC imputed employment license**
  - Permits employer to hire employees
  - May not employ in SC unless license is in effect
  - Remains in effect as long as compliant with SCIIIRA
- **Presumed to be in compliance if good faith use of E-Verify**

# Penalties

- **41-8-20 - Failure to properly verify**
  - Monetary penalties range from \$100 to \$1,000 per violation
  - For “first occurrence,” employer has 72 hours from notification of violation to remedy and incur no penalty
  - For “subsequent occurrence,” employer can remedy violation if no other violation within previous 5 years

# Penalties

- **41-8-30 – Knowingly/intentionally violate law**
  - Suspension or revocation of “imputed license” to employ workers
  - 1<sup>st</sup> occurrence: 10-30 day license suspension
  - 2<sup>nd</sup> occurrence: 30-60 day license suspension
  - 3<sup>rd</sup> occurrence: license revoked and may petition for provisional license after 90 days
  - Subsequent occurrences: license revoked and can’t seek reinstatement for 5 years

# Penalties

- **41-8-30 – continued**
  - **To reinstate business license, private employer must:**
    - **Demonstrate terminated unauthorized alien**
    - **Pay reinstatement fee equal to cost of investigation/enforcement action up to \$1,000**
  - **If employer engages in business or hires new employee while suspended:**
    - **License shall be revoked**
    - **Not reinstated for 5 years**

# Penalties

- **Notify ICE and state and local law enforcement**
- **Criminal penalties for false documents or statements**
  - **Felony**
  - **Fined and/or imprisoned for up to 5 years**

# Wrongful Discharge Action

- **Creates civil cause of action for wrongful termination against employer when lawful worker terminated if:**
  - Purpose is to replace with person employer knew or should have known to be unauthorized
  - Replacement occurred within 60 days of termination
- **Potential recovery includes:**
  - Reinstatement to former position
  - Actual damages and collection of lost wages
- **Claim must be brought within 1 year**
- **Does not apply to private employer who terminates employee to comply with employment verification provisions**

# Initial Enforcement Issues

- **Requesting I-9's**
  - Only handful of federal agencies have right to see them
- **No advance notice**
  - ICE gives three days
- **Request to interview employees randomly**
  - No basis if documents are in order
- **Inspecting for employees hired before July 1, 2009**
  - No basis absent evidence of “knowing or intentional” violation
- **Selection process**
  - Raises constitutional issues

# Resolution of Most Enforcement Issues

- Not asking for I-9's and affirmatively telling employers not to produce them
- Giving three days advance notice through letter sent week before inspection
- Providing “Affirmation of Legal Worker Status” instead of inspecting for violations and interviewing employees hired before July 1, 2009
- Not “automatically” interviewing employees hired on or after July 1, 2009

# I-9 Compliance Tips

- Treat I-9 and SC compliance separately!
- Remember to use current I-9 version
  - Latest version: 8/7/2009; 2/2/2009 still acceptable
  - List A – Watch for new Green Card design
  - List B – Change in Puerto Rico birth certificate rules
- Follow I-9 retention rules
- Avoid 'constructive knowledge' issues

# Internal Audits

- Demonstrating good faith efforts in completing and correcting I-9 forms is important!
- I-9 corrections
  - New form (lost I-9) with current dates
  - Correction noted by initials of corrector, current date, and “per audit” notation (missing/incorrect I-9)
  - Use explanatory memo if appropriate

## I-9 Enforcement Issues

- ICE audits remain *key focus* for Obama administration
- Typically initiated by personal service of Notice of Inspection on company by ICE agent
- ICE checks I-9 form for thorough completion
  - Penalties typically assessed for missing/incomplete information
- Audits may result in civil fines and/or criminal penalties

# NP Immigration Checklist

- Encourage 'compliance culture' at your company concerning federal and state immigration issues
- Support periodic immigration compliance training for key personnel
- Conduct annual audit/self assessment of federal and state immigration compliance issues
- Evaluate E-Verify as option

# NP Immigration Checklist

- Ensure good binder system
  - Keep separate I-9 and SC compliance binders
  - No I-9 forms in state binder; only E-Verify receipt or DL/ID information
- Designate appropriate audit liaison and review process for dealing with auditor

# Questions?

**Melissa Azallion**

**(843) 689-6277 or (877) 278-6757**

**MAzallion@nexsenpruet.com**

**David Dubberly**

**(800) 825-6757**

**DDubberly@nexsenpruet.com**