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Georgia Weighs in on Immigration Debate by Imposing Stringent Employment Eligibility Verification Requirements on Public Employers and Contractors

On July 1, 2007 the first phase of Georgia's Security and Immigration Compliance Act (SB-529) went into effect. Promulgated out of frustration with Congress' inability to agree on comprehensive immigration reform, Georgia decided to take action through the state legislature to curb the flow of illegal immigration and to penalize what they considered to be bad-faith employers. The burden on employers continues to increase as state laws and federal regulations grow increasingly complex. Immigration and Customs Enforcement's (ICE) ongoing investigations of "egregious" employers focusing on criminal indictments are forcing management and owners to take notice of immigration compliance issues.

The legislation takes effect on different dates depending on the size of the employer:

- **July 1, 2007 for employers with over 500 employees;**
- **July 1, 2008 for employers with over 100 employees; and**
- **July 1, 2009 for employers with less than 100 employees.**

SB-529 implements measures to ensure that unlawful aliens do not perform work on public service contracts. The State now requires all public contractors, their contractors and their sub-contractors who enter into a public service contract with the state of Georgia to verify or attempt to verify, a new hire's work eligibility through participation in a federal employment verification program. A public employer is defined by SB-529 as "every department, agency, or instrumentality of the state or a political subdivision of the state. As of July 2007, each State contractor is now required (according to the phase in schedule above) to register for the Department of Homeland Security's Basic Pilot Program in addition to completing the Form I-9 as required by the Immigration Reform and Control Act (IRCA) of 1986. At the federal level, this program allows employers to voluntarily confirm the employment eligibility of all newly hired employees through the use of government databases. Specifically databases from the Social Security Administration and U.S. Department of Homeland Security (DHS) are utilized. The system uses information provided on [the Form I-9](#) including Social Security numbers, alien registration numbers and I-94 numbers to perform the verification checks. The Basic Pilot Program has been routinely criticized for possessing many flaws that have yet to be corrected.



Department of Homeland Security
U.S. Citizenship and Immigration Services

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Employment Eligibility Verification

Please read instructions carefully before completing this form. The instructions must be available during completion of this form. ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work eligible individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because of a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification. To be completed and signed by employee at the time employment begins.

Print Name: Last	First	Middle Initial	Maiden Name
Address (Street Name and Number)		Apt. #	Date of Birth (month/day/year)
City		State	Zip Code
		Social Security #	

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

A citizen or national of the United States

A Lawful Permanent Resident (Alien #) A _____

An alien authorized to work until _____ (Alien # or Admission #) _____

Employee's Signature _____ Date (month/day/year) _____

Preparer and/or Translator Certification. (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Preparer's/Translator's Signature _____ Print Name _____

Address (Street Name and Number, City, State, Zip Code) _____ Date (month/day/year) _____

Section 2. Employer Review and Verification. To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number and expiration date, if any, of the document(s).

List A	OR	List B	AND	List C
Document title: _____		_____		_____
Issuing authority: _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): _____		_____		_____

CERTIFICATION - I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) _____ and that to the best of my knowledge the employee is eligible to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative _____ Print Name _____ Title _____

Business or Organization Name _____ Address (Street Name and Number, City, State, Zip Code) _____ Date (month/day/year) _____

Section 3. Updating and Reverification. To be completed and signed by employer.

A. New Name (if applicable) _____ B. Date of Rehire (month/day/year) (if applicable) _____

C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment eligibility: Document Title: _____ Document #: _____ Expiration Date (if any): _____

I attest, under penalty of perjury, that to the best of my knowledge, this employee is eligible to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative _____ Date (month/day/year) _____

NOTE: This is the 1991 edition of the Form I-9 that has been rebranded with a current printing date to reflect the recent transition from the INS to DHS and its components. Form I-9 (Rev. 05/31/05) Page 2

In spite of these of flaws and concerns, Georgia now joins the state of Colorado in mandating the use of the program to verify work eligibility. Public employers who work on state contracts will be required to register online for the program and complete a certificate of registration confirming their participation in the Basic Pilot Program. They will also be required to provide and make available a fully executed copy of the required Memorandum of Understanding to the public employer's agency head or to a person designated by the agency to review these documents.

Furthermore, similar to the recent legislation enacted in Colorado, under the proposed rule, Georgia will now require employers who work under public contracts, their contractors and their sub-contractors to make the following attestations in public contracts:

1) Compliance with the employment eligibility verification requirements of the Georgia Security and Immigration Act is a requirement of the public contract;

- 2) A provision listing the date with a space provided for the employer to check what phase-in category applies to them, to determine on which date the legislation is effective for that particular company;
- 3) That the employer must secure from any sub-contractors information relating to their phase-in category; and
- 4) A notarized affidavit completed by the employer and attached to the contract confirming that the employer is in compliance with all employment eligibility verification provisions.

In connection with the proposed rule, the Georgia Department of Labor has provided rules for the contractors on their website at: http://www.dol.state.ga.us/pdf/rules/300_10_1.pdf. The State is also requiring affidavits to verify compliance. Examples are found at



http://www.dol.state.ga.us/pdf/rules/sb529_sample_contractor_affidavit.pdf and the subcontractor affidavit at http://www.dol.state.ga.us/pdf/rules/sb529_sample_subcontractor_affidavit.pdf.

Further, the Department of Labor guidance requires public employers in Georgia to maintain written copies of all employment verification documents for public inspection. This is above and beyond the federal I-9 requirements. To ensure compliance with these requirements the Georgia Department of Labor also reserves the right to conduct random audits of public employers to ensure that they are in compliance with the provisions of the Georgia Security and Immigration Compliance Act. Under the proposed rule, if the employers records do not satisfy the requirements of the Act, the Georgia Department of Labor will notify the employer as well as the DHS that the employer's records do not sufficiently verify work eligibility.

Another component of the legislation requires that businesses compensating unlawful workers more than \$600 a year may not claim the wages as an allowable business expense. In addition, the provision requires a 6% withholding tax for all nonresident aliens. The legislation defines nonresident aliens as those who cannot provide a taxpayer ID number, who provide an incorrect taxpayer ID number or who provide a nonresident taxpayer ID number. This provision of the legislation took effect on July 1, 2007.

The Greenberg Traurig Business Immigration and Compliance Group has extensive experience in advising employers on a variety of employment related issues, including I-9 compliance, worksite enforcement operations, employer sanctions and minimization of liabilities. GT attorneys regularly conduct I-9 training, internal audit services and represent employers in government actions. It is critical for employers subject to the Georgia Security and Immigration Compliance Act to contact immigration counsel to ensure that they are compliant with the provisions of the legislation, as the penalties for non-compliance are severe.



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