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## E-Verify Expanding in the States—Laws to Impact Hiring Practices in South Carolina, Mississippi and Utah

On July 1, 2010, three states -- South Carolina, Mississippi and Utah -- had E-Verify related laws go into effect that will significantly impact the hiring practices of employers. A combination of these types of state law mandates and the Federal Contractor (FAR) E-Verify rule (effective September 8, 2009) has significantly increased the number of employers that have registered to use the E-Verify program. Unfortunately, due to inconsistencies found from state to state, the varying laws serve to confuse and overburden employers trying to achieve immigration-related compliance. Participation in E-Verify should be taken very seriously as there are significant responsibilities for employers associated with the program. These include establishing E-Verify related best practices, auditing the company's I-9 and E-Verify processes, and monitoring the system for abuse and incorrect usage.



The toughest of the new laws belongs to [South Carolina](#), which can now be counted among states like Arizona in terms of imposing strict immigration requirements on employers. Public employers and public contractors in South Carolina are now required to use the E-Verify program to electronically verify the employment eligibility of new employees. Moreover, all private employers are now required to use E-Verify or employ only workers who possess or qualify to obtain a South Carolina driver's license or identification card. Employers who fail to comply could be subject to fines of \$100 to \$1000 per violation. South Carolina has already audited over 1,500 employers under the part of the law that has applied to employers with more than 100 employees since



July 1, 2009. Although the state has waived penalties for many first-time violators pending remediation, it expects to increase audits as small employers become subject to the law statewide. Violators of the law may lose their business license, and/or be charged under the felony provisions of federal immigration laws. Finally, the law provides for a civil cause of action by a person who is terminated for the purpose of being replaced by a worker who is not authorized to work in the US.

Furthermore, Mississippi has now entered the third of four phases of its implementation of the [Mississippi Employment Protection Act](#). This law, which will eventually require all Mississippi employers to use E-Verify for new hires, went into effect as follows:

- Phase One: 250 or more employees on July 1, 2008;
- Phase Two: 100 to 249 employees on July 1, 2009;
- *Phase Three: 30 to 99 employees on July 1, 2010; and*
- Phase Four: fewer than 30 employees on July 1, 2011

The authority to seek penalties under the Act and to bring charges for noncompliance against any employer or employee rests with the Mississippi Department of Employment Security, State Tax Commission, Secretary of State, Department of Human Services and the Attorney General.

Finally, in Utah, under [S.B. 81](#) and [Substitute S.B. 251](#), either E-Verify or Social Security Number Verification Service (SSNVS) participation is now required for all private employers with 15 or more employees. The stated exception to this requirement is for employers of foreign nationals with H-2A or H-2B visa employees. With the growing incidence of identity theft, it is interesting to note that S.B. 81 also provides for a Fraudulent Documents Identification Unit to be set up to investigate, apprehend and prosecute individuals or entities participating in the sale or distribution of fraudulent documents used for identification purposes. In addition to being ineligible to enter into Utah state contracts, violators may be held civilly liable under state law.

The [GT Business Immigration and Compliance](#) team will continue to report on the enactment and implementation of various laws impacting employers as more and more states and localities adopt increasingly strict measures aimed at controlling illegal immigration.

#### Resources

- [Form I-9, Employment Eligibility Verification](#)
- [OSC's 10 Steps to Avoid Discrimination](#)
- [Form M-396, Guide to Selected U.S. Travel and Identity Documents](#)
- [Handbook for Employers M-274 - Instructions for Completing the Form I-9 \(revised July 2009\)](#)
- [E-Verify Memorandum of Understanding](#)
- [Federal Contractor E-Verify Memorandum of Understanding](#)
- [E-Verify User Manual for Designated Agents \(June 2010\)](#)
- [E-Verify User Manual for Employers \(June 2010\)](#)
- [E-Verify User Manual for Federal Contractors \(June 2010\)](#)
- [E-Verify Enrollment Quick Reference Guide \(March 2010\)](#)
- [E-Verify Federal Contractor FAQs](#)
- [E-Verify Federal Contractor Supplement](#)
- [E-Verify Dos and Don'ts](#)

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[Greenberg Traurig’s Business Immigration and Compliance Group](#) has broad experience in advising multinational corporations on how to minimize exposure and liability regarding a variety of employment-related issues, particularly I-9 employment eligibility verification matters. In addition to assisting in H-1B (Labor Condition Application) audits, GT develops immigration-related compliance strategies and programs and performs internal I-9 compliance inspections. GT has also defended businesses involved in large-scale government worksite enforcement actions, I-9 Audits and Department of Labor Wage and Hour investigations. GT attorneys provide counsel on a variety of compliance-related issues, including penalties for failure to act in accordance with government regulations, IRCA anti-discrimination laws-Office of Special Counsel Investigations, and employers’ responsibilities when faced with traditional no-match situations, as well as more serious workplace identity theft or other alleged misrepresentations made by employees.

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