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## Alabama Passes Landmark Immigration Reform Bill

*Summary: New legislation has sweeping impact on Alabama employers including mandating the use of the federal E-Verify program.*

One week after the U.S. Supreme Court upheld Arizona's controversial immigration legislation the Alabama Legislature passed its own similar reform bill designed to combat the presence and employment of unauthorized aliens within the State. HB56, the Beason-Hammon Alabama Taxpayer and Citizen Protection Act (the Act), cleared the Legislature on June 2 and was sent to Governor Bentley for his signature which is almost assuredly forthcoming.

While the 72 page bill has broad impact on all sectors of government, the portions of greatest importance to employers are as follows.

**Applies to All Employers** – All public and private employers regardless of size are prohibited from hiring or continuing to employ unauthorized aliens in Alabama.

**Use of E-Verify** – All Alabama employers are required to enroll and use E-Verify no later than April 1, 2012. All business entities that receive any state contract, grant, or incentive must enroll and use E-Verify a few months earlier – no later than January 1, 2012. There is a safe harbor for usage of E-Verify because all employers using E-Verify are deemed not to have knowingly hired or employed any unauthorized alien. Employers must be prepared to prove that they used E-Verify on the employee in question.

**E-Verify for Small Employers** – Employers with 25 or fewer employees can use the Alabama Department of Homeland Security to run its E-Verify checks for free. This is designed to allow small employers who may not have internet access to still comply with the Act.

**Prohibitions on Employees** – The Act makes it unlawful for a person who is an unauthorized alien to knowingly apply for work, solicit work in a public or private place, or perform work as an employee or independent contractor.

**Penalties for Violation** – Penalties for violations are stiff. Upon a first violation, a court can order the employer to terminate the employment of the subject employee and any state contracts can be terminated. The employer is put on a three year probationary period during which it must file quarterly reports with the local district attorney listing each new employee hired. The employer must also file a sworn affidavit with the district attorney within three days of the court order stating that it has terminated the employment of all unauthorized aliens and will not continue to employ unauthorized aliens. The business license can also be suspended for up to 10 days at the location of the violation and reinstatement of the license requires enrolling in E-Verify and an affidavit verifying compliance with the Act. Upon a second violation of the Act, the business license of the location of the violation is permanently revoked. Upon a third violation, all business licenses of the employer throughout the state are permanently revoked, effectively shutting down the business' operations within the State of Alabama. Failure of a public agency to suspend a business license, as required by the Act, is itself a violation subjecting the agency to penalties.

**Requirements for Contractors and Subcontractors with Government Contracts** – As a condition to receiving a contract, grant, or incentive by the state or local government, contractors and subcontractors must attest by sworn affidavit that they have not knowingly employed, hired, or continued to employ any unauthorized alien. The business must also provide documentation establishing that it is enrolled in the E-Verify program.

**Contractor Liability for Subcontractor Violations** – Contractors are not liable for a subcontractor who violates the Act provided the contractor receives a sworn affidavit from the subcontractor attesting to compliance with the Act.

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**Independent Contractors** – The Act does not apply to independent contractor relationships or casual domestic labor. Accordingly, employers are not held responsible for compliance by their temporary employment agencies or other independent contractors.

**Lawsuit Immunity** – The Act provides immunity for all wrongful termination claims if the subject employee is discharged in compliance with the Act.

**Private Enforcement** – Any resident of the state can petition the Attorney General to bring enforcement actions by submitting a written signed petition describing the suspected violation.

**Tax Deductions** – Wages paid to unauthorized aliens are not allowed as a deductible business expense on the employer's income tax return. The penalty for claiming such wages is ten times the deduction claimed.

**Discrimination Claims** – The Act creates a new discrimination cause of action. It will be unlawful discrimination to refuse to hire or to fire either a U.S. Citizen or an alien authorized to work in the U.S. while also retaining or hiring a person that the employer knew, or should have known, was an unauthorized alien. Courts may award compensatory damages, such as back wages and mental anguish, but no punitive damages. Attorneys' fees are also allowed but are capped by the amount paid in attorneys' fees for the defense of the employer, a rather unusual provision. Interestingly, the bill does not seem to provide as a defense the fact that the employee was discharged for good cause. The mere fact that the employee was discharged, even with just cause, would appear to be a violation of the Act if an unauthorized alien is retained.

Any questions regarding the impact of HB56 on your organization, necessary changes to your current policies, and the use of E-Verify may be directed to Tom Scroggins at (205) 633-0227 or Brooke Nixon at (205) 633-0236.



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## Speakers Available



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