

Tennessee Adopts Worker-Verification Law

By Minnie Fu, Sean G. Hanagan, William J. Manning and Otieno B. Ombok

June 13, 2011

Tennessee has joined the increasing number of states attempting to curtail the employment of unauthorized aliens by passing its own employment eligibility verification law. The Tennessee Lawful Employment Act (SB 1669, HB 1378), signed by Governor Bill Haslam on June 7, 2011, requires employers to use the E-verify program, with exceptions, as soon as January 1, 2012.

The bill was co-sponsored by Senator Jim Tracy (R-Shelbyville) and Representative Joe Carr (R-Lascassas). It was unanimously approved by the House and passed in the Senate on a near-unanimous vote of 29-2.

E-Verify Program Participation

The new law requires employers to enroll in the free, federal, online E-Verify program prior to hiring an employee, verify the work authorization status of the new employee using the E-Verify program, and maintain a record of any results generated by the E-Verify program for that particular employee.

An amendment added just prior to the law's passage allows employers, *in the alternative*, to request and retain one of the following documents from the employee before employment begins:

- A valid Tennessee driver license or photo identification license issued by the department of safety;
- A valid driver license or photo identification license issued by another state where the issuance requirements are at least as strict as those in Tennessee, as determined by the department of safety;
- An official birth certificate issued by a U.S. state, jurisdiction or territory;
- A U.S. government-issued certified birth certificate;
- A valid, unexpired U.S. passport;
- A U.S. certificate of birth abroad;
- A report of birth abroad of a citizen of the U.S.;
- A certificate of citizenship;
- A certificate of naturalization;
- A U.S. citizen identification card; or
- Valid alien registration documentation or other proof of current immigration registration recognized by the U.S. Department of Homeland Security that contains the individual's complete legal name and current alien admission number or alien file number.

While this list is extensive, it is less broad than the list of acceptable documents for Form I-9 purposes and, in fact, includes documents that are not presently acceptable under federal law (i.e., certificates of citizenship and naturalization).

For Form I-9 purposes, employers cannot specify which documents an employee will provide to prove employment eligibility. Accordingly, any requests for a specific document may be made for compliance with the Tennessee law only.

If an employer chooses to use E-Verify, it must do so for all new hires, regardless of whether it obtains one of the listed documents.

Non-employees

The law imposes the document requirement on an employer's "non-employees" as well. Employers must request and retain one of the documents listed above for any non-employee individual with whom it contracts for labor. Under federal law, employers are prohibited from contracting with individuals they know to be unauthorized to work, but there is no affirmative requirement that employment authorization be verified.

Consequences of a Violation

Meet the Authors



[Minnie Fu](#)

Principal
Washington, D.C. Region 703-483-8311
[Email](#)



[Sean G. Hanagan](#)

Principal
New York Metro
White Plains 914-872-6879
[Email](#)



[William J. Manning](#)

Principal
New York Metro
White Plains 914-872-6891
[Email](#)

Violation of the law with respect to both employees and non-employees may result in civil penalties ranging from \$500 to \$2,500, depending on whether it is a first or subsequent violation. In the case of a first violation that was deemed to have not been committed knowingly, an employer will be given 60 days to correct the violation before a final order of violation will be issued. Once a final order has been issued, in addition to paying any assessed penalties, the employer must submit evidence of compliance within 60 days of the final order. Failure to do so may result in suspension of the employer's business license.

E-Verify Phased In

Governmental entities and private employers with at least 500 employees must comply with the law beginning January 1, 2012.

Private employers with 200-499 employees must comply beginning July 1, 2012. Any employer with 6-199 employees must comply beginning January 1, 2013.

* * *

This is only a brief summary of the new law. Jackson Lewis attorneys are available to provide details and assist employers in achieving compliance with its requirements.

©2021 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on labor and employment law since 1958, Jackson Lewis P.C.'s 950+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable and diverse, and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee. For more information, visit <https://www.jacksonlewis.com>.



Otieno B. Ombok

Principal
New York Metro
White Plains 914-872-6895
Email