



ADAMS AND REESE LLP CLIENT ALERT

EDUCATION AND PUBLIC ENTITY

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READY, SET, E-VERIFY! COMPLIANCE FOR SCHOOLS STARTS JULY 1, 2008

Despite growing national concerns and criticisms, Mississippi joins the ranks of six other states mandating the use of the federal E-Verify system – an Internet-based system operated by the federal government that permits participating employers to verify electronically the employment eligibility of new hires. The stated intent of Mississippi’s law, titled the “Mississippi Employment Protection Act,” is to discourage illegal immigration by penalizing the illegal immigrant and Mississippi employers who hire them.

What Does Mississippi Require?

The newly enacted statute provides that employers in the State of Mississippi shall only hire employees who are legal citizens of the United States of America. To ensure compliance, all employers, including third-party employers that conduct business in Mississippi, must register with and utilize the E-Verify system to verify the federal employment status of all newly hired employees. While appearing redundant, the statute separately requires all contractors and subcontractors to register and utilize the E-Verify system, particularly those contracting with a public employer on or after July 1, 2008.

When Must You Comply?

The compliance deadline for political subdivisions, which includes public school districts, is July 1, 2008. In addition, all state agencies, public contractors and public subcontractors must comply by this date.

What’s At Stake?

Exactly how a school district’s non-compliance with the law will be handled is unclear. The Act is written to restrict an employer who violates the law from

conducting business in the state for up to one year and/or entering into any public contract for up to three years. Literal enforcement could potentially cause a violating school district to be effectively shut down, although, practically speaking, such an outcome seems extreme. Selected State agencies, such as the Attorney General and Tax Commission, are also authorized to seek penalties against any employer or employee violating the statute.

In a provision unique to Mississippi, any person who accepts or performs employment for compensation knowing (or recklessly disregarding the fact) that he is an unauthorized alien is subject to felony charges. The statute provides, “upon conviction, a violator shall be subject to imprisonment for not less than one year nor more than five years, a fine of at least \$1,000 and as much as \$10,000, or both.”

What is Considered a Violation of the Act?

Exactly how you can be “found” in violation of the statute is far from clear. The statute provides that employers who terminate an employee who is a U.S. citizen or permanent resident while continuing to employ similarly situated unauthorized immigrants shall be liable for unlawful discrimination. However, enrollment and use of the E-Verify system appears to provide a safe harbor for employers from liability under this provision.

The Act also makes it unlawful to hire unauthorized immigrants. Presumably any new hire not “cleared” should be terminated. This creates a sticky dilemma. Front and center in the debate over E-Verify is the criticism that it is notoriously error-prone with limited avenues for workers to correct inaccurate federal data. Further, federal E-verify guidelines state that employers must provide employees with an opportunity to challenge tentative non-confirmation

responses before taking adverse action against them. Thus, an employer should exercise caution and consult with its legal counsel prior to terminating a new hire based on any tentative non-confirmation response.

Under the Act, third party employers must provide proof of registration and participation in the E-Verify system to any Mississippi employer with whom they do business.

This suggests that Mississippi employers who utilize third-party employers, including out-of-state entities, without first receiving proof of compliance may be found in violation.

How Do I Get Started?

The United States Citizenship and Immigration Services has developed comprehensive guidelines for the registration and use of the E-Verify system. These documents are accessible through the USCIS website (www.uscis.gov) by clicking on the E-Verify icon. It is important that you are familiar with and in compliance with the federal guidelines as well as any requirements under Mississippi law.

For your convenience, links to the E-Verify manual and a separate document on using the system are provided below.

References:

“I Am an Employer . . . How Do I Use E-Verify?”
www.uscis.gov/files/nativedocuments/E4_english.pdf

“E-Verify User Manual”
www.uscis.gov/files/nativedocuments/E-Verify_Manual.pdf

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