

E-Verify Changes Expected for North Carolina

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In the final days of the 2015 legislative session, the North Carolina General Assembly passed the Protect North Carolina Workers Act ("Act"). The Act will modify the E-Verify requirements applicable to contractors doing business with state and local governments, school units, and public authorities. The **E-Verify** program is a web-based system operated by the United States Department of Homeland Security in partnership with the Social Security Administration that allows participating employers to electronically verify the employment authorization of newly hired employees.

The portion of the Act concerning E-Verify creates a new statute, N.C. Gen. Stat. § 143.133.3, which prohibits boards and governing bodies of the state, state institutions, and political subdivisions, including municipalities and counties, from entering into any contract unless the contractor and the contractor's subcontractors comply with North Carolina's E-Verify requirements found at Chapter 64, Article 2 of the General Statutes. The only exception to this requirement is for certain enumerated categories of contracts as follows:

- Expenses related to travel, including transportation and lodging, for employees, officers, agents, or members of state or local boards, commissions, committees, or councils;
- Contracts solely for the purchase of goods, apparatus, supplies, materials, or equipment;
- Contracts pursuant to N.C. Gen. Stat. § 143-129(e)(1), 9, or (9a) which allow for exemptions:
 - To the competitive bidding process for certain purchase and lease contracts entered into with the government of the United States or of any other state;
 - To the competitive bidding process for purchase contracts if the contractor has entered into a similar contract with the state or any agency of the state and is willing to extend the same or more favorable prices, terms, and conditions to the local government or agency; or;
 - To the competitive bidding process for certain purchase contracts if the contractor has entered into a similar contract with the federal government and is willing to extend the same or more favorable prices, terms, and conditions as established in the federal contract.
- Contracts pursuant to N.C. Gen. Stat. § 143-129(g) which provides for exemption to the competitive bidding process where the contractor has been awarded a competitively bid contract for a substantially similar product within the last twelve months.

Thankfully, there is a statutory presumption of compliance with the new E-Verify requirement if the state or local government, school unit, or public authority includes a contractual term in its contract requiring the contractor or its subcontractors to comply with the E-Verify requirements. Many political subdivisions are accustomed to including such a provision due to prior iterations of the Act.

Enforcement of the Act

The Act also changes the enforcement options available to the North Carolina Department of Labor, which is tasked with enforcing it. Any person with a good faith belief that a violation of the E-Verify requirement has

occurred can file a complaint with the Department of Labor. The Department, assisted by the North Carolina State Bureau of Investigation, if necessary, is tasked with investigating all complaints received, unless they are based solely on race, religion, gender, ethnicity, or national origin, which complaints presumably should be directed to and investigated by, other agencies who routinely handle such matters. Individuals who knowingly file a false statement with the Department may be charged criminally.

Following its investigation, the Department will notify the governmental agency whether it is in violation of the E-Verify requirement. In addition, the Department must maintain a list of any boards, institutions, or governing bodies of the state, or of any political subdivisions that are issued notices of violation, and must make the list publically available on the Department's website.

Controversy Regarding the Act

The Act has proved quite controversial on two grounds. The first is based on the inclusion of an unrelated provision that would permanently bar North Carolina's ability to suspend the three-month limit on Supplemental Nutrition Assistance Program ("SNAP") benefits available to able-bodied adults without dependents who are required to fulfill certain work requirements to qualify for those benefits.

The second involves a controversial provision that impacts immigration. Specifically, it limits the types of identification that local law enforcement can accept from immigrants. This provision was apparently meant to reduce the number of illegal immigrants in the state, but may have the unintended consequence of hampering law enforcement's efforts to investigate crimes committed against illegal immigrants because officials will no longer be permitted to accept forms of identification other than those specifically enumerated in the statute, many of which are not possessed by illegal immigrants. For example, matricula consular cards issued by the Mexican Consulate for North Carolina or similar cards issued by consulates or embassies of other countries will no longer be acceptable forms of identification.

Since the Act passed at the end of the legislative session, Governor McCrory has 30 days to consider it. The Act was presented to him on September, 30, 2015, and will become law by the end of the October, unless vetoed by the Governor. Assuming the Governor does not veto the Act, the E-Verify provisions will apply to contracts entered after October 1, 2015.

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