

The Legal Workforce Act

AN ACT prohibiting the employment of unauthorized aliens; requiring registration in and use of the E-Verify program; and prohibiting the deduction of payments to unauthorized aliens for tax purposes.

Be it enacted by the Legislature of the State of [State]:

Section 1. Definitions. As used in this act:

(a) “Alien” means any person who is not a citizen or national of the United States, as described in Title 8, Section 1101 of the United States Code, et seq., and any amendments thereto.

(b) “Employee” means any person directed, allowed, or permitted to perform labor or service of any kind by an employer, with the exception of casual domestic labor hired to work in or around an individual’s personal abode. The employees of an independent contractor working for a business entity shall not be regarded as the employees of the business entity, for the purposes of this section.

(c) “Business entity” means any person or group of persons performing or engaging in any activity, enterprise, profession or occupation for gain, benefit, advantage or livelihood, whether for profit or not-for-profit. “Business entity” shall include, but not be limited to:

(1) Self-employed individuals, business entities filing articles of incorporation, partnerships, limited partnerships, limited liability companies, foreign corporations, foreign limited partnerships, foreign limited liability companies authorized to transact business in this state, business trusts and any business entity that registers with the secretary of state.

(2) Any business entity that possesses a business license, permit, certificate, approval, registration, charter or similar form of authorization issued by the state, any business entity that is exempt by law from obtaining such a business license, and any business entity that is operating unlawfully without such a business license.

(d) “Public employer” is defined as any department, agency, or instrumentality of the state or a political subdivision of the state.

(e) “Unauthorized alien” means an alien who is not authorized to work in the United States, as defined in Title 8, Section 1324a(h)(3) of the United States Code.

(f) “E-Verify” means the electronic verification of federal employment authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, P.L. 104-208, Division C, Section 403(a); 8 U.S.C. 1324(a), and operated by the United States Department of Homeland Security, or its successor program.

Section 2. Prohibition of employment of unauthorized aliens.

(a) It is unlawful for an employer to knowingly hire or to recruit or refer for a fee for employment in the State of [State] an unauthorized alien as defined in Title 8, Section 1324a(h)(3) of the United States Code. If, in the case when an employer uses a contract, subcontract or other independent contractor agreement to obtain the labor of an alien in this state, the employer knowingly contracts with an unauthorized alien or with a person

who employs or contracts with an unauthorized alien to perform the labor, the employer violates this subsection.

(b) The provisions of this section may be enforced in the courts of the State of *[State]* by any district attorney or county attorney, or by the attorney general.

(c) The attorney general shall prescribe a complaint form for a person to allege a violation of subsection (a) of this section. The complainant shall not be required to list the complainant's social security number on the complaint form or to have the complaint form notarized. On receipt of a complaint on a prescribed complaint form that an employer allegedly knowingly employs an unauthorized alien, the district attorney, county attorney or attorney general shall investigate whether the business entity has violated subsection A of this section. If a complaint is received but is not submitted on a prescribed complaint form, the district attorney, county attorney or attorney general may investigate whether the employer has violated subsection (a) of this section. This subsection shall not be construed to prohibit the filing of anonymous complaints that are not submitted on a prescribed complaint form. The district attorney, county attorney or attorney general shall not investigate complaints that are based solely on race, color or national origin. A complaint that is submitted to a district attorney or county attorney shall be submitted to the county attorney in the county in which the alleged unauthorized alien is or was employed by the business entity. The county sheriff or any other local law enforcement agency may assist in investigating a complaint. When investigating a complaint, the district attorney, county attorney or attorney general shall verify the work authorization of the alleged unauthorized alien with the federal government pursuant to Title 8, Section 1373(c) of the United States Code. A state, county or local official shall not attempt to independently make a final determination on whether an alien is authorized to work in the United States. A person who knowingly files a false and frivolous complaint under this subsection is guilty of a class 3 misdemeanor.

(d) If the district attorney, county attorney, or attorney general elects to bring an action to enforce this section in the courts of *[State]*, the district attorney, county attorney, or attorney general shall so notify United States Immigration and Customs Enforcement. The district attorney, county attorney or attorney general shall not bring an action against any business entity for a violation that occurs before January 1, 2022.

(e) On a finding of the first violation of this section by a business entity, the court:

(1) shall order the suspension of all licenses issued by the state or any subdivision of the state that are held by the business entity for a minimum of one day and a maximum of thirty days,

(2) shall order the business entity to terminate the employment of all unauthorized aliens, and

(3) Shall order the business entity to file a signed sworn affidavit the relevant county attorney or district attorney within three business days. The affidavit shall state that the business entity has terminated the employment of all unauthorized aliens in this state and that the business entity will not intentionally or knowingly employ an unauthorized alien in this state. The court shall order the appropriate agencies to suspend all licenses subject to this subdivision that are held by the business entity if the business entity fails to file a signed sworn affidavit with the county attorney within three business days after the order is issued. All licenses that are suspended under this subdivision shall remain suspended until the

business entity files a signed sworn affidavit with the county attorney.

Notwithstanding any other law, on filing of the affidavit the suspended licenses shall be reinstated immediately by the appropriate agencies.

(f) On a finding of the second violation of this section by a business entity, the court shall order the suspension of all licenses that are held by the business entity for a minimum of thirty days and a maximum of one year.

(g) On a finding of the third violation of this section by a business entity, the court shall order the permanent suspension of all licenses that are held by the business entity as well as the revocation of the business entity's registration as a corporation, limited liability company, or limited partnership in the state of *[State]*, if applicable.

(h) In enforcing the provisions of this section, no state, county, or local official in the state of *[State]* shall attempt to independently determine whether an individual is an unauthorized alien or an alien not lawfully present in the United States. Such determination shall only be made by verifying the alien's immigration status with the federal government, pursuant to Title 8, Section 1373(c), of the United States Code.

(i) For the purposes of this section, when making a determination of whether an employee is an unauthorized alien, a court shall only consider the federal government's determination pursuant to Title 8, Section 1373(c), of the United States Code. The court shall take judicial notice of any verification of the immigration status previously provided by the federal government. The court may, and at the request of a party shall, request the federal government to provide, in automated, documentary, or testimonial form, a new verification of the immigration status of the employee pursuant to Title 8, Section 1373(c), of the United States Code. The most recent determination of the immigration status of an employee by the federal government shall create a rebuttable presumption as to the employee's immigration status.

(j) For the purposes of this section, a business entity that has complied in good faith with this section through enrollment in E-Verify and as used E-Verify to confirm the employment authorization of any employee in question will benefit from a rebuttable presumption that the business entity did not knowingly employ an unauthorized alien.

(k) For the purposes of this section, a business entity that has complied in good faith with the requirements of Title 8, Section 1324a(b), of the United States Code establishes an affirmative defense that the business entity did not knowingly employ an unauthorized alien.

Section 3. Mandatory employer registration and use of the E-Verify program for new employees.

(a) Every business entity doing business within the State of *[State]* that employs one or more employees shall register with and utilize E-Verify to verify the employment authorization of all new employees.

(b) All business entities shall be in compliance with this section by January 1, 2022. The business entity shall retain all documentation received in connection with its participation in E-Verify that verifies the employment authorization of every employee verified through E-Verify for at least three years after the termination of the employment of the employee. This documentation shall be provided to any district attorney or county attorney or to the attorney general upon request.

(c) The provisions of this section may be enforced in the courts of the State of *[State]* by any district attorney or county attorney, or by the attorney general.

(d) On a finding of a violation of this section by a business entity, the court shall order the suspension of all licenses issued by the state or any subdivision of the state that are held by the business entity for a minimum of ten days and a maximum of one year.

(e) On or before September 1, 2021, every public employer within the State of *[State]* shall register with and utilize E-Verify to verify the employment authorization of all new employees.

(f) After September 1, 2021, no public employer shall enter into a contract for the performance of services within this state unless the contractor registers and participates in E-Verify to verify the employment authorization of all new employees. The provision in this subsection shall not apply to any contracts entered into prior to the effective date of this section even though such contracts may involve the performance of labor within this state after September 1, 2021.

Section 4. Payments made to unauthorized aliens not deductible for tax purposes.

(a) On or after January 1, 2022, no wage or remuneration for the performance of services paid to an individual shall be allowed as a deductible business expense for state income tax purposes by a taxpayer if the individual is an unauthorized alien. The provision of this subsection shall apply whether or not an Internal Revenue Service Form 1099 is issued in conjunction with the wages or remuneration.

(b) On or after January 1, 2022, a taxpayer shall not be allowed a deductible business expense for state income tax purposes of a wage or remuneration for the performance of services paid to an independent contractor who is not registered with and utilizing the E-Verify system to verify the federal employment authorization of all new employees under his employ.

(c) All employers shall submit an affidavit to the Department of Revenue accompanying the annual tax return required under state law. This affidavit shall be signed by the employer under penalty of perjury and shall specifically state the following:

(1) Whether the employer utilized a business expense or business loss deduction in determining federal adjusted gross income;

(2) Whether the employer employed any employees or independent contractors for the tax year in questions and the number of such;

(3) Whether the employer is enrolled in and is actively participating in E-Verify;

(4) Whether the employer has used E-Verify to confirm the employment eligibility of every employee in his or her employ hired on or after January 1, 2022;

(5) Whether the employer has confirmed that any independent contractor paid by the employer is an independent contractor who is registered with and utilizing E-Verify to verify the employment authorization of all new employees.

(6) The employer's identification number signifying the employer's enrollment in E-Verify.

(d) The Department of Revenue may audit any employer who fails to timely submit the affidavit required under this section. The Department of Revenue may also audit any

employer about which the Department develops probable cause to believe the employer is out of compliance with this section.

(e) If the Department of Revenue determines that the employer has knowingly made material misrepresentations of fact regarding information contained in the affidavit required under this section, the employer shall be required to add back business deductions taken in determining the employer's adjusted gross income used to calculate the employer's state tax liability, to the extent such deductions constitute wages or remuneration paid to employees whose employment authorization was not verified using E-Verify.