

South Carolina Illegal Immigration Reform Act Now in Effect for ALL Employers

On July 1, 2010, the new South Carolina immigration requirements went into effect for all employers. The new requirements are a part of the South Carolina Illegal Immigration Reform Act.

The main focus of the Act is to put the burden on employers to verify employment authorization. This state law provides new requirements for South Carolina employers in addition to the federal immigration laws already in place, i.e. the Form I-9. Pursuant to the Act, all South Carolina employers are considered to have an "implied" employment license that can be suspended or revoked as a penalty for violating the Act.

In addition to completing the standard I-9 forms, all South Carolina employers must satisfy a supplementary verification requirement within five business days after hiring a new employee. This additional verification may be fulfilled through one of two options:

Option 1: E-Verify

An employer can sign up for E-Verify at <https://e-verify.uscis.gov/enroll/StartPage.aspx?JS=YES>. The employer should print the verification sheet for each employee and keep it in a file (separate from their I-9s) that can easily be produced in case of an audit. There is a presumption of compliance in favor of a private employer who opts to use E-Verify.

Option 2: Employers can require new employees to provide one of the following:

- a. South Carolina Drivers License or ID Card;
- b. Evidence that he/she is eligible to obtain a South Carolina Drivers License or ID Card; or
- c. Drivers License or ID Card from state with requirements that are as stringent as South Carolina. In this regard, the South Carolina Department of Motor Vehicles has issued a list of other drivers licenses/ ID cards that are acceptable, and it is available at: http://www.scdmsonline.com/DMVNew/default.aspx?n=sc_illegal_immigration_reform_act. At present, the following states appear on the list: Alaska, Arizona, Connecticut, Delaware, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Maine (credentials issued after 11/15/08), Maryland, Massachusetts, Michigan, Missouri, Montana, New Hampshire, New Jersey, North Carolina, Pennsylvania, Rhode Island, Tennessee, Texas, Virginia, West Virginia and Wisconsin. This list may change overtime so it should be checked periodically.

Employers should make an copy of the document produced by the employee and keep it in a file (separate from their I-9s) that is easy to produce in case of a future audit. It is important that the employer's request for a driver's license be done separately from the completion of the I-9 and the request for supporting documents for the I-9. For purposes of the I-9, an employer is not allowed to request a specific document to support the I-9 but should instead provide employees with the list of approved documents printed on the most recent I-9 form and let the employee pick which document(s) to produce.

The contents of this alert was provided by our friends at Buist Moore Smythe McGee P.A. in Charleston, South Carolina. If you have any questions about South Carolina's new Illegal Immigration Reform Act, please contact David McCormack at dmccormack@buistmoore.com or Adriane Malanos Belton at abelton@buistmoore.com.



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