

**GEORGIA'S E-VERIFY LAW:
WHAT IT REQUIRES AND WHO DOES IT AFFECT**

by

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In 2011, the Georgia legislature adopted a set of laws to deal with the problem of illegal immigration in this state. One of those laws imposed requirements on the issuance of business and other licenses by local governments to persons and other entities doing business in the state. This law, O.C.G.A. §36-60-6, commonly known as the "E-Verify Law", extends the requirement to register with and utilize the "federal work authorization program" that was previously imposed on all contractors and subcontractors doing business with a Georgia governmental entity to all private employers having more than 10 employees. The program referred to is defined as "any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify employment eligibility information of newly hired employees, commonly known as E-Verify, or any subsequent replacement program."

The effective date of this requirement was staggered, with those employers having 500 or more employees required to be in compliance by January 1, 2012, those employers with 100 or more employee by July 1, 2012, and those employers with more than 10 employees by July 1, 2013. As of those dates, a city or county government can not issue or renew a business license or any other governmental certificate or permit required for a particular business to lawfully conduct its activities unless the business first presents to the local government entity an affidavit in the form approved by the Georgia Attorney General's Office that states the business is authorized to and does use the federal work authorization program or that it has less than 11 employees.

The date for determining whether a business has less than 11 employees is January 1 of the year in which the affidavit is submitted. For purposes of the E-Verify Law, only individuals (i) "whose work is performed under the direction and supervision of the employer and whose employer withholds FICA, federal income tax, or state income tax from such individual's compensation or whose employer issues to such individual for purposes of documenting compensation a form I.R.S. W-2 but not a form I.R.S. 1099" and (ii) who are "employed to work not less than 35 hours per week" will be considered employees. In other words, independent contractors and employees who are not expected to work at least 35 hours per week don't count.

The Georgia Attorney General's Office has issued approved affidavits for use by employers and has also issued guidance on when those affidavits have to be initially completed. For employers with 500 or more employees, the affidavit has to be completed

on or before June 30, 2012, for employers with 100 or more employees on or before June 30, 2013, and for employers with more than 10 employees on or after July 1, 2013. These affidavits can be submitted electronically if the local government entity consents. Each such entity is required to submit a report to the state government each year which report lists the names of all the persons or businesses to which it issued licenses or other governmental certificates or permits covered by the E-Verify Law during the preceding calendar year and the federally assigned employment eligibility system user number of each such person or business.

The Attorney General is given the authority to investigate and bring criminal charges against any person or business that does not comply with the requirements of the E-Verify Law. The knowing submission of a false or misleading affidavit is a felony punishable by a fine of up to \$1,000 and/or imprisonment from one to five years. However, if the person or business can show that they “acted in good faith and made a reasonable attempt to comply with the requirements” of the law, they will have 30 days to show the Attorney General that they have come into compliance with the requirements of the E-Verify Law and thereby, avoid prosecution.

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