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FLORIDA'S BUSINESS LAW FIRM

CLIENT ALERT: FLORIDA'S NEW IMMIGRATION LAW AND IMPLICATIONS FOR PRIVATE EMPLOYERS

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Florida's newly enacted E-Verify law (Florida Senate Bill 1718), which was signed into law by Florida Governor Ron DeSantis on May 10, 2023, is a significant piece of immigration-related legislation recently enacted in Florida. The new law requires Florida employers with twenty-five (25) or more employees to use the U.S. Department of Homeland Security's E-Verify system to confirm employees' eligibility to work in the U.S., beginning **July 1, 2023**. However, it does not apply to existing employees and will not require employers to E-Verify past or existing hires.

The E-Verify program is a free web-based employment eligibility verification system that is administered by the U.S. Citizenship and Immigration Services (USCIS). The system electronically matches information provided by employees on the Form I-9 against records available to the Social Security Administration (SSA) and the Department of Homeland Security (DHS).

The key provisions of Florida's E-Verify law include the following:

- **Employment Eligibility Verification**: For all employees hired on or after July 1, 2023, the e-verification process must be completed by the employer via the federal government's E-Verify portal within three (3) business days after the employee commences work. If E-Verify is unavailable for three (3) business days after the employee commences work, the employer must use Form I-9 to verify employment eligibility and must document the unavailability of E-Verify by submitting proof of employer's lack of access.
- **Record Retention**: The employer must retain a copy of the documentation, as well as any official verification generated, for at least three (3) years.
- **Annual Certification**: The employer must certify compliance on its first tax return when making contributions to or reimbursing the state's unemployment compensation or reemployment assistance system.
- **Notice of Noncompliance**: If the Florida Department of Economic Opportunity (DEO) determines that an employer failed to use the E-Verify system when required to do so, the DEO will notify the employer of the noncompliance. The employer will then have 30 days to fix the noncompliance.
- **Penalties for Noncompliance**: If the DEO determines that an employer failed to use the E-Verify system three (3) times in any 24-month period, it may impose a fine of $1,000 per day until the employer provides satisfactory evidence that it has rectified the noncompliance. The DEO may also suspend an employer's business and professional licenses until the noncompliance is cured. Penalties will go into effect on **July 1, 2024**.
- **Employment Agencies**. Covered employers who obtain services from staffing agencies should review their agreements and, where appropriate, require the staffing agencies to provide E-Verify confirmation for employees from the agencies who work for the covered employer.

We recommend that employers who are subject to SB 1718 and its E-Verify requirements enroll in the system at their earliest convenience to familiarize with the web-based platform before July 1, 2023. Enrollment

information for E-Verify can be found here.

This list is not exhaustive of the new E-Verify laws requirements governing employers. Berger Singerman will continue to monitor developments with respect to SB 1718. For more information on relevant considerations for your business, please contact Leonard K. Samuels, Andrew B. Zelman, Ruth Vafek, or Nikki Branch.

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