

**THE ILLEGAL IMMIGRATION REFORM AND ENFORCEMENT ACT OF 2011
WHAT DOES IT DO TO YOU?**

In 2006, the Georgia legislature passed the Georgia Security and Immigration Compliance Act. That act required by July 1, 2009, all contractors and subcontractors directly or indirectly contracting with any department, agency, or instrumentality of the State or any political subdivision of the State to register with the federal government's E-Verify program and use the E-Verify program to verify information on all new employees. Depending on your size you have had two to three years to digest the old law, but now you need to go back and look again. The Illegal Immigration Reform and Enforcement Act of 2011 has made significant changes to the Security and Immigration Compliance sections of the Georgia Code (OCGA §§ 13-10-90, 91). In addition you will now have to begin using E-Verify, even if you do no work with the state or any of its political subdivisions.

What Was Already Required

Those of you doing work for the State or any county or municipality have been required to use E-Verify at least since July 1, 1999. In addition, since July 1, 2010, you have been required to give every public owner you work for an affidavit stating 1) you are registered with and authorized to use E-Verify, 2) your E-Verify user ID and date of authorization, and 3) that you are using and will continue to use E-Verify throughout the contract period. In addition, you have been prohibited from subcontracting with any company that did not participate in E-Verify. This requirement also applied to subcontractors. Since last July, both you and your subcontractors have been required to provide affidavits from you subcontractors or sub-subcontractors attesting to the

subcontractor or sub-subcontractors name, address, E-Verify user ID, and date of authorization.

The 2010 changes also made it a crime to knowingly and willfully make a false, fictitious or fraudulent statement in any of the affidavits discussed above. Anyone convicted of knowingly and willfully make such a false, fictitious or fraudulent statement is banned from entering into any public contract for 12 months following the conviction.

What Is New?

The scheme described above remains in place. The most significant changes in the new Act put additional burdens and penalties on public owners who fail to comply with their obligation to contract only with contractors and subcontractors who use E-Verify. From the contractor side, the affidavit requirements have been changed so that identical affidavits are required from contractors, subcontractors, suppliers and sub-subcontractors and suppliers at every tier. Regardless of your level in the contracting chain for a public contract, you are required to obtain affidavits from everyone you contract with and to give notice of receipt of those affidavits to the party immediately above you. This notice must be given within five business days of receipt of the affidavit. This five day notice requirement of affidavits and notices flows up to contracting chain to the contractor working directly for the public owner. In addition it appears that copies of affidavits must also be sent up the chain, because the contractor is required to provide copies of all affidavits, drivers licenses and state IDs (see below) “required by this subsection” to the public owner within five business days of receipt.

A contractor, subcontractor, or sub-subcontractor **who has no employees** and does not hire or intend to employees to perform its part of a public contract, at any tier,

must in place of an affidavit provide a copy of its state issued drivers license or state issued ID card and a copy of the state issued drivers license or state issued ID card of each independent contractor used to perform any part of the public contract. Note that this second requirement would apply only to an independent contractor who has no employees and doesn't intend to hire any. Copies and notices must be provided exactly as with affidavits. And there is another major wrinkle. State issued drivers licenses and state issued IDs can only be from states that verify lawful immigration status before issuing the drivers license or ID. The Attorney General is to provide a list of acceptable states on the State Law Department's website no later than July 1, 2011.

If a contractor, subcontractor, sub-subcontractor or supplier with no employees decides it needs to hire employees to perform its part of the public contract, it must comply with the affidavit requirement before hiring. Given the way E-Verify works, it would appear that this affidavit requirement would also be invoked if a contractor, sub, sub-sub, or supplier with no employees decided to hire employees for any reason.

In addition to the affidavit changes, the Commissioner of Labor has been given the power to rule that a contractor, subcontractor, sub-subcontractor or supplier is in violation of the E-Verify requirements. Anyone found by the Commissioner of Labor to have violated the requirements of OCGA § 13-10-91, is to be listed by the Department of Labor on www.open.georgia.gov or other official website of the State with public information regarding the violation, including the name of the violator, the nature of the contract and the date of conviction. A second or subsequent violation brings a 12 month bar from working on any public contract. Presumably, the Department of Labor will

update its regulations (Chapter 300-10) to establish a procedure for adjudicating alleged violations.

There are some protections in the new provisions. First, you cannot be held civilly liable or criminally responsible if you unknowingly or unintentionally contract with a party in violation of their E-Verify obligations. Second, the new law establishes a rebuttable presumption that anyone acting upon an affidavit that conforms to the requirements of the statute does so in good faith. You are entitled to rely on the affidavits you receive as being true and correct. Note this is a rebuttable presumption. If you know someone is in violation of their E-Verify obligations, you cannot contract with them – affidavit or no affidavit.

Non-Government Contractors

For all of you who avoided E-Verify by not doing public work, time has run out. Every private employer with more than 10 employees will now be required to use E-Verify to qualify for a business license. This requirement phases in over a year and a half. Employers with 500 or more employees must begin January 1, 2012. Employers with 100 or more employees must begin July 1, 2012, and everyone with more than 10 employees must start July 1, 2013. The Attorney General is directed to prepare an affidavit form that all private businesses will have to use. The affidavit is to be posted on the Department of Law's website no later than January 1, 2012.

This has been a brief summary. I encourage everyone to obtain a copy of the new law and read in its entirety. Send me an email and I will send back a copy – cwsurasky@smithcurrie.com.