

## Many Tennessee Employers Will Soon Be Required To Use E-Verify

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Tennessee's state immigration law just received an important update by the state legislature and Governor, and many employers in the state will soon be impacted. Beginning January 1, 2017, all Tennessee businesses with 50 or more employees will be required to use the E-verify system in order to determine workers' eligibility for employment. If you currently do not use E-Verify, the time to begin preparing is now.

### **Background: State Law Currently Provides A Choice**

By way of background, the Tennessee Lawful Employment Act (TLEA) is a relatively new state law; it was signed into law in 2011 and phased into effect by size of employer. By 2013, it applied to all Tennessee employers with six or more employees.

The TLEA currently provides employers with a choice: you must either use E-Verify or request and retain certain documents from each employee. If you choose to use E-Verify, you log in to a free internet-based system that compares information from an employee's Form I-9 to data from U.S. Department of Homeland Security and Social Security Administration records and confirms employment eligibility.

If you instead go with the document retention option, you are required to request from the employee and keep a copy of one of 11 possible documents to prove eligibility. They include a valid driver's license, a birth certificate, a passport, naturalization paperwork, or other similar documentation.

Documents from the list would normally be presented in the Form I-9 employment verification processes required by the federal immigration law. Federal law does not require you to maintain copies of any documents presented in the employment verification process, whereas state law does. Further, although federal law does not include similar requirements for contracted non-employees (such as independent contractors), state law requires you to obtain and maintain one of these 11 documents.

### **E-Verify Will Be Required In The New Year For Many**

On April 21, 2016, the Governor signed into law an amendment to the TLEA that will drop the document retention option in favor of mandatory E-Verify use for all Tennessee employers with 50 or more employees. This change will take effect January 1, 2017.

If you have 50 or more employees and do not presently use E-Verify, you should take the time now to begin the process of enrollment well prior to the effective date of the amendment. The new legislation also shortens the time that you have to remedy a non-compliance finding if you receive an initial order for violation of the TLEA. Currently you would have 60 days, but as of January 1 you will only have 45 days, which is another incentive to ensure you are presently in compliance.

### **Enforcement Is On The Rise**

From its inception until very recently, we had not encountered much, if any, enforcement action related to the TLEA. Over the last several months, however, numerous clients have received Requests for Information to document compliance with the law, signaling an increase in enforcement. In fact, some Tennessee employers have received initial notices of violation including fines of over \$100,000. While these may be reversed or waived after the employers further present their positions, you want to avoid a similar fate.

You are therefore advised to review your procedures and records as soon as possible to ensure that you are in compliance. While the state may waive penalties for first time violations for employers who willfully violate the law but bring their employment verification records in to compliance, it is safer to ensure that records are in compliance before


receiving a notice from the state. Penalties for violation of the TLEA include possible suspension of your business licenses, being publicly listed as non-compliant on the state website, and monetary fines as follows:

first offense – \$500 penalty + \$500 per employee or non-employee not verified or copy of documentation maintained;  
second offense – \$1,000 penalty + \$1,000 per employee or non-employee not verified or copy of documentation maintained; and  
third offense – \$2,500 penalty + \$2,500 per employee or non-employee not verified or copy of documentation maintained.

If you have any questions about the amended TLEA or how it may affect your business, please contact your Fisher & Phillips attorney or one of the attorneys in our Memphis office at 901.526.0431.

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*This Legal Alert provides an overview of a specific Tennessee law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*

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