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## Staggered Implementation of North Carolina's E-Verify Law to Commence in October 2012

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On June 23, 2011, North Carolina's E-Verify legislation (HB 36) was signed into law. The law requires all cities, counties, and private employers with 25 or more employees in North Carolina to verify the employment authorization of new hires through E-Verify. E-Verify is an internet-based system, administered by the government, which allows businesses to determine the eligibility of their employees to work in the United States. North Carolina is one of 19 states that has some form of E-Verify requirement for employers.

Public universities, community colleges, and other North Carolina state agencies were previously required to use E-Verify under a separate law—SB 1523. Under HB 36, all counties and municipalities were required to begin using E-Verify by October 1, 2011. For private sector employers, participation is phased in more gradually according to the employer's size, and the E-Verify requirement will go into effect in stages as follows:

- October 1, 2012: private employers that employ 500 or more employees in North Carolina
- January 1, 2013: employers that employ 100 or more, but fewer than 500 employees, in North Carolina
- July 1, 2013: employers that employ 25 or more, but fewer than 100 employees, in North Carolina

The E-Verify requirement does not apply to seasonal temporary employees who are employed for 90 days or fewer during a consecutive 12-month period. The law also does not apply to employers that employ fewer than 25 employees in North Carolina.

Employers must register and participate in E-Verify by the applicable date. An employer covered by the legislation is required to enter a newly-hired employee's information, as reported on the Form I-9, Employment Eligibility Verification, into the E-Verify system to confirm the eligibility of the employee to work in the United States.

### *Penalties for Violating North Carolina's E-Verify Law*

Employers that knowingly employ unauthorized workers will be penalized as follows:

- For a first violation of the law, the employer must file a signed, sworn affidavit, within three business days, stating that the employer has, after consultation with the employee, requested a verification of work authorization through E-Verify. Failure to timely file the affidavit will result in a civil penalty of \$10,000.
- For the second violation, the employer is required to pay a civil penalty of \$1,000 regardless of the number of required employee verifications the employer failed to make.
- A third violation results in a civil penalty of \$2,000 for each required employee verification that the employer failed to make.

The law contains a provision allowing an employer to appeal any determination within 15 days of the decision.

### *Complaints Regarding Violations of the E-Verify Law*

Any person with a good faith belief that an employer is violating, or has violated, the E-Verify law may file a complaint with the North Carolina Commissioner of Labor. The Commissioner will investigate valid complaints and has the power to issue a subpoena for production of employment records as part of the investigation. If a complaint is found to be valid, the Commissioner will hold a hearing to determine whether a violation has occurred and issue fines if necessary. If the Commissioner concludes that there is a "reasonable likelihood" that an employee is an undocumented worker, the Commissioner must notify Immigration and Customs Enforcement (ICE) and local law enforcement agencies.

For advice or questions regarding compliance with the North Carolina E-Verify law, please contact the Ogletree Deakins attorney with whom you normally work.

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