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## Alabama eAuthority

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### **As Compliance Deadline Nears, the Eleventh Circuit Leaves Employer Provisions of Alabama's Immigration Law Intact**

by [Alysonne O. Hatfield](#) and [Lisa Karen Atkins](#)

Effective April 1, 2012, the Beason-Hammon Alabama Taxpayer and Citizen Protection Act will prohibit Alabama employers from knowingly hiring, employing, or continuing to employ unauthorized aliens. Every employer in the state of Alabama will be required to verify the immigration status (entitlement to be present within the United States) of its employees. Although enforcement of several provisions of the law has been blocked by the courts, most employer provisions remain in place. On March 8, 2012, the Eleventh Circuit Court of Appeals struck two additional sections of the law. First, the court blocked enforcement of Section 27 of the law, which prohibited Alabama courts from enforcing the terms of any contract knowingly made between an unlawful alien and another party. As such, Alabama courts must continue enforcing the terms of legally binding contracts between any of its residents. The court also held that Section 30 of the law, which criminalized attempts by any unlawful alien to conduct business transactions with the state, could not be enforced. This particular provision had created some enforcement difficulties because it was not entirely clear what constituted a "business transaction," and city and local governments had interpreted the statute to require all applicants for basic services (such as sewer and water) to provide proof of lawful presence in the state.

Importantly for Alabama employers, the Eleventh Circuit's ruling does not affect the law's requirements that all businesses operating within the state refrain from hiring or retaining workers who are not authorized to work in the United States, and that all Alabama employers register and begin using the federal E-Verify program to verify the employment eligibility of new hires by April 1, 2012. In addition, contractors on projects paid for by the state, a state-funded entity, or a political subdivision of the state must provide a sworn affidavit stating that the contractor does not knowingly employ, hire, or maintain the employment of any unauthorized alien and has been using E-Verify since January 1, 2012. The contractor also must state that it has given notice of Alabama immigration compliance requirements to its subcontractors. A similar affidavit must be completed by subcontractors.

Any business with a contract or grant funded by the state, a state-funded entity, a city, or a county will be required by the awarding agency to produce the affidavit attesting to compliance with these requirements, as well as a copy of the Memorandum of Understanding (MOU) completed during its E-Verify registration. To the extent required by the funding agency, the contractor also must provide a similar affidavit from any subcontractor it retains to perform work under the contract or grant. Draft forms of these affidavits may be found on the Alabama Secretary of State's [website](#).

Finally, absent actual knowledge that a direct subcontractor is in violation of the Act, a contractor who obtains the affidavits discussed above will not be liable for a subcontractor's violation of the statute. The law is silent as to a contractor's obligations if it learns that a subcontractor may be violating the Act during the pendency of a contract, however. In such a case, we recommend that the contractor immediately present its concerns to the subcontractor and allow the subcontractor five to seven business days to ascertain whether it is, in fact, in violation of the Act, and if so, to terminate any unauthorized workers. Moreover, the contractor should require that the subcontractor resubmit a sworn affidavit attesting that any unlawful workers have been terminated and that it does not and will not hire or retain any other undocumented workers.

### **Additional Information**

Should you have any questions about the Act or its enforcement, contact the Ogletree Deakins attorney with whom you normally work or the Client Services Department by phone at (866) 287-2576 or via email at [clientservices@ogletreedeakins.com](mailto:clientservices@ogletreedeakins.com).