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LABOR AND EMPLOYMENT BULLETIN

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MISSISSIPPI REQUIRES EMPLOYERS TO USE “E-VERIFY” SYSTEM

The Mississippi Legislature has passed, by veto-proof margins, the Mississippi Employment Protection Act (“the Act”), which aims to curb the employment of undocumented aliens in Mississippi. The Governor is expected to sign it by March 17, 2008. The Act deserves the careful attention of every employer and employee doing business in Mississippi.

The Act requires all employers doing business in Mississippi to clear all new Mississippi employees through the federal E-Verify program, jointly administered by the Department of Homeland Security (DHS), the United States Citizenship and Immigration Services (USCIS), and the Social Security Administration (SSA). E-Verify cross-references the information provided by the employees on Form I-9 with DHS and SSA databases. Although imperfect, E-Verify gives participating employers their best, readily available opportunity to confirm that new employees are authorized to work in the United States.

The Act eliminates any distinction between employees and independent contractors. If you report payments to a worker on IRS Form 1099, the Act makes that person your employee, just as if you had used Form W-2. This means that employers must verify the legal status of consultants and contractors through E-Verify.

Most other provisions of the Act are confusing and some are quite troublesome. For example, it will be a “discriminatory practice” to discharge a legal employee or contractor —



apparently without regard to the reason — while retaining an unauthorized alien in a similar job, but the Act omits fired employees from its list of persons authorized to bring enforcement actions.

That list names the Attorney General, the Department of Employment Security, the State Tax Commission, the Secretary of State and the Department of Human Services. Each may “bring charges” for “noncompliance.” The Act does not say whether these will be administrative proceedings, civil suits, or something else. Available “penalties” include State contract cancellation (with damages owed the State), and license revocation. It is unclear what other penalties, if any, might be sought by the Attorney General in any enforcement action.

The worst news, however, is reserved for undocumented aliens. The Act makes it a felony criminal offense for an illegal alien to accept employment for compensation in Mississippi.

The Act leaves many important questions unanswered, and this space does not allow for a full discussion of the law and the many important issues that might arise under it. However, one thing does seem clear: beginning July 1, 2008, employers who do business in Mississippi are at risk unless they are using the E-Verify system for all new hires. For more information, please call us or go to <http://www.dhs.gov/e-verify>.



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