

Florida Passes SB1718, a State Bill That Will Require Many Florida Employers to Use E-Verify and Increase Penalties for Employment of Aliens without Employment Authorization



Client Alert

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On May 10, 2023, Governor Ron DeSantis approved Florida Senate Bill 1718 ("SB1718"). Among other things, the bill will amend and expand the current Florida statutes related to employment of aliens without employment authorization. The primary purpose of the bill as it relates to immigration is to strengthen enforcement and penalties against Florida employers for the hiring of aliens without employment authorization and new requirements for Florida employers related to verification of work authorization through E-Verify. Previously, Florida employers were not required to use E-Verify under state law and the penalty against employers for employment of aliens without authorization was relatively minor.

Below are the key takeaways and a detailed summary of the bill.

Here are the key things to know about the new bill:

- **When does it take effect?** The law will be in effect beginning July 1, 2023, however, penalties for violations of the law will not go into effect until July 1, 2024.
- **Does every Florida employer have to use E-Verify now?** No, only employers with 25 or more employees will be required to use the E-Verify system now. However, employees with less than 25 employees will still be required to verify employee's work authorization either through the Form I-9 or E-Verify system.
- **What is E-Verify?** E-Verify is an Internet-based system created by the federal government that compares information entered by an employer from an employee's Form I-9, Employment Eligibility Verification, to records available to the U.S. Department of Homeland Security and the Social Security Administration to confirm employment eligibility. See more information at <https://www.e-verify.gov/>.
- **Does this affect Contracts with Public Agencies?** Yes, Public agencies will be required to put in any contract that the contractor(s) and subcontractor(s) must use E-Verify.
- **What is considered a violation?**
 - Knowingly hiring an alien without work authorization.
 - For employers with less than 25 employees, failing to verify a new employee's work authorization (through Form I-9 or E-Verify).
 - For employers with 25 or more employees, failing to use **E-Verify** to verify a new employee's work authorization.
- **What are the penalties for a violation?**
 - For the first violation, the employer will receive a one-year probation with quarterly reporting requirements.
 - A second violation within the same 24 months will result in suspension or revocation of the company's licenses for a designated time period or indefinitely, depending on the number of unauthorized employees.
 - A third violation within the same 24 months will result in a fine of \$1,000 per day and suspension of the company's licenses until the noncompliance is cured.
- **Does this affect record retention requirements?** Yes, the employer must retain a copy of the Form I-9 and verification documentation, as well as any official verification from E-Verify, for at least three years.
- **Does this affect tax requirements?** Yes, employers that are required to use the E-Verify system must certify to tax service providers on the first return each calendar year that the employer is in compliance with the E-Verify requirements under the new law when making contributions to or reimbursing the state's unemployment compensation or reemployment assistance system. Consult with a Florida tax attorney or tax service provider for additional information.

Below is a more detailed summary of SB1718:

• **EMPLOYMENT VERIFICATION –**

- **Beginning July 1, 2023**, private employers with 25 or more employees shall use the E-Verify system within 3 business days after the first day the new employee begins working with pay. ("Employee" is defined as an individual filling a permanent position under the control of employer. Independent contractors and casual laborers are not considered employees.)
 - § If the E-Verify system is unavailable, the employer must use the I-9 to verify employment eligibility and document the unavailability of the E-Verify system by retaining a screenshot of the webpage or public notice of the unavailability of the system.
- Public agencies will also be required to put in any contract that all contractors and subcontractors must use E-Verify. Failure to use E-Verify will be grounds for termination of the contract and the contractor or subcontractor will not be awarded another contract with a public agency for at least one year.
- Exception: If the company is an *employee leasing company* under F.S. part XI of chapter 468 and has a

written agreement with a client company placing the primary obligation for compliance on the client company, employment verification by the employee leasing company of employees of the client company is not required.

- **PENALTIES** – Penalties will go into effect on **July 1, 2024**, as follow:
 - Instead of receiving a citation and civil fine for violation of F.S. 448.09 (employment of unauthorized aliens), upon finding a violation of this law by an employer, the Department of Economic Opportunity (“DEO”) will do the following:
 - § The DEO will provide the employer 30 days to cure noncompliance after receiving notice.
 - § Upon the first violation, the DEO will place the employer on a one-year probation period and require quarterly reports to demonstrate compliance.
 - § If a second violation takes places within 24 months of the previous violation, the DEO may suspend or revoke licensing of the Employer as follows:
 - 1-10 unauthorized employees – suspension of all applicable licenses held by private employer for up to 30 days;
 - 11-50 unauthorized employees – suspension of all applicable licenses held by private employer for up to 60 days;
 - 50+ unauthorized employees – revocation of all applicable licenses held by private employer.
 - § If the DEO determines that an employer failed to use the E-Verify system as required *three times in any 24-month period*, the DEO must impose a fine of \$1,000 per day until the employer provides sufficient proof that the noncompliance is cured. Noncompliance is grounds for suspension of all licenses until the noncompliance is cured.
 - § If applicable, the DEO will also issue an order to the employer in violation requiring repayment of any economic development incentive pursuant to F.S. 288.061(6).
- **RECORD RETENTION REQUIREMENTS** – *For at least three years*, the employer must retain a copy of the verification documentation, as well as any official verification generated.
- **ANNUAL CERTIFICATION -**
 - Employers that are required to use the E-Verify system must certify to tax service providers on the first return each calendar year that the employer is in compliance with the E-Verify requirements under the new law when making contributions to or reimbursing the state's unemployment compensation or reemployment assistance system.
 - An employer that voluntarily uses the E-Verify system *may* make such a certification on its first return each calendar year in order to document such use.
 - Consult with a Florida tax attorney or tax service provider for additional information.
- **ENFORCEMENT** – Employers must comply with the following agencies relating to any request for documentation related to employment verification:
 - Department of Law Enforcement;
 - Attorney General;
 - State Attorney (in the circuit where employee works);
 - Statewide prosecutor; and
 - Department of Economic Opportunity.
- **DEFENSES** –
 - Employers that use the E-Verify system have a rebuttable presumption that they have not violated this law.
 - Employers that use the same documentation as USCIS on the Form I-9 have an affirmative defense to an alleged violation under this law.

As noted above, the law goes into effect on July 1, 2023, but the penalties will not be enforced until July 1, 2024. If you have any questions regarding the E-Verify process, please feel free to let us know. We are happy to assist. Our firm also has an immigration department that exclusively deals with business immigration and can provide additional advice.