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Immigration:

Is your Company in Compliance?

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Illegal aliens and possible immigration reform are hot button issues both in Alabama and the rest of the United States. Immigration reform bills are looming in the federal government, and the issues are likely to become more acute given recent immigration laws passed in states like Arizona. Alabama is no different from the rest of the nation in that it too is considering how to react to the questions surrounding immigration and illegal aliens. One such way these issues are addressed is with regard to employment practices, and Alabama businesses need to be up to date on their knowledge of the current law and alert to changes in the future. The Alabama Legislature currently has several bills pending which address the employment of illegal aliens and the possible implementation of requirements and substantial fines for companies which fail to follow the law, up to and including the loss or suspension of business licenses. General Contractors may be affected given the likelihood of having numerous employees who are not United States Citizens. As a result, General Contractors need to be vigilant in ensuring that their company is complying with the current immigration laws and watching carefully for upcoming legislation in Alabama.

The federal government provides specific guidelines for employers to verify the employment eligibility of potential employees. To minimize risk of inadvertent noncompliance with the law, companies and their employees should be knowledgeable of current immigration procedures and policies. In particular, everyone should be familiar with how to complete Form I-9, Employment Eligibility Verification, correctly as well as organizing associated documentation that may be needed and the correct inspection procedures of various documents presented to establish eligibility. Employers need to be sure their company is making a "good-faith effort"

to comply with the law to avoid liability. The U.S. Citizen and Immigration Services (USCIS) provides detailed information in a handbook for employers which is a useful guideline for implementing the correct immigration policies in your company. General Contractors should review these policies in detail to be sure they are in compliance, and thereby avoid possible fines and penalties. The handbook for employers can be found at the USCIS website, <http://www.uscis.gov/files/nativedocuments/m-274.pdf>.

An additional tool your company may want to consider using is E-Verify, an online service which assists employers in determining the employment eligibility of a potential employee. E-Verify is free to all employers in the United States, and gives the employer access to an online database of employment authorization that is accessed in conjunction with the information provided in the traditional Form I-9. The employer must fill out and provide all of the documentation required for the Form I-9 but then submits an electronic query using E-Verify containing the information gathered from certain sections of the Form I-9. However, E-Verify is a program that an employer must participate in exclusively and register accordingly. Once a company is enrolled in E-Verify, for example, they must use the E-Verify system for each potential employee including U.S. Citizens. More information and the requirements for registering in the E-Verify system can be found online at <http://www.dhs.gov/E-Verify>.

E-Verify is also important to consider since many federal contracts now require the contractors to participate in the E-Verify program. In addition, several of the pending bills in the Alabama Legislature involve E-Verify and the possibility of requiring all companies in Alabama to use the system under

threat of substantial penalties and fines. Your company may also want to consider using E-Verify voluntarily, as a way to demonstrate good faith compliance with immigration laws.

There are several other ways a company can protect itself from liability for failure to follow immigration laws and to help show a good faith effort to comply. First of all, it is important that your company stay up to date with all the current forms and changes in immigration law. Forms, for example, may be updated periodically so it is important to check for the most current version. Consider implementing a written immigration policy stating your company's intent to comply with current immigration policy, and include an outline of your company's procedures showing their compliance with the Immigration Reform and Control Act of 1986. Employees should also sign a document acknowledging they understand the company's policies and will abide by them. You may want to keep all immigration documents separate from other employee files, in order to assist your company in responding to any inquiries or the U.S. Immigration and Customs Enforcement Agency (ICE).

If you have any questions or concerns about your company's compliance with current regulations, your company should consult with your legal counsel who can review the policy. While this article gives a brief update on some of the effects of immigration laws on Alabama contractors, it should not be substituted for legal advice regarding the immigration and employment issues specific to your company.

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