

### **Part 3**

## **Employee Verification and Employer Sanctions**

#### **63G-12-301 Employing unauthorized alien -- Verification of employment eligibility.**

- (1) On and after the program start date, an employer may not knowingly employ an unauthorized alien who does not hold a permit.
- (2) On and after the program start date, a private employer employing 15 or more employees within the state for each working day in each of 20 calendar weeks or more in the current or preceding calendar year, after hiring an employee, shall verify the employment eligibility of the new employee:
  - (a) through the e-verify program if the individual does not hold a permit; and
  - (b) through the u-verify program if the individual holds a permit.
- (3) A private employer shall keep a record of the verification required by Subsection (2) for the longer of:
  - (a) the duration of the employee's employment; or
  - (b) at least three years from the date of verification.
- (4) On and after the program start date, a private employer shall terminate the employment of an undocumented individual if the undocumented individual is determined by the department to not hold a valid permit.

Enacted by Chapter 18, 2011 General Session

#### **63G-12-302 Status verification system -- Registration and use -- Performance of services -- Unlawful practice.**

- (1) As used in this section:
  - (a) "Contract" means an agreement for the procurement of goods or services that is awarded through a request for proposals process with a public employer and includes a sole source contract.
  - (b) "Contractor" means a subcontractor, contract employee, staffing agency, or any contractor regardless of its tier.
- (2)
  - (a) Subject to Subsection (5), a public employer shall register with and use a Status Verification System to verify the federal employment authorization status of a new employee.
  - (b) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.
- (3)
  - (a) Subject to Subsection (5), beginning July 1, 2009:
    - (i) a public employer may not enter into a contract for the physical performance of services within the state with a contractor unless the contractor registers and participates in the Status Verification System to verify the work eligibility status of the contractor's new employees that are employed in the state; and
    - (ii) a contractor shall register and participate in the Status Verification System in order to enter into a contract with a public employer.
  - (b)
    - (i) For purposes of compliance with Subsection (3)(a), a contractor is individually responsible for verifying the employment status of only new employees who work under the contractor's

supervision or direction and not those who work for another contractor or subcontractor, except as otherwise provided in Subsection (3)(b)(ii).

- (ii) Each contractor or subcontractor who works under or for another contractor shall certify to the main contractor by affidavit that the contractor or subcontractor has verified through the Status Verification System the employment status of each new employee of the respective contractor or subcontractor.
- (c) Subsection (3)(a) does not apply to a contract:
  - (i) entered into by the entities referred to in Subsection (3)(a) prior to July 1, 2009, even though the contract may involve the physical performance of services within the state on or after July 1, 2009; or
  - (ii) that involves underwriting, remarketing, broker-dealer activities, securities placement, investment advisory, financial advisory, or other financial or investment banking services.
- (4)
  - (a) It is unlawful for an employing entity in the state to discharge an employee working in Utah who is a United States citizen or permanent resident alien and replace the employee with, or have the employee's duties assumed by, an employee who:
    - (i) the employing entity knows, or reasonably should have known, is an unauthorized alien hired on or after July 1, 2009; and
    - (ii) is working in the state in a job category:
      - (A) that requires equal skill, effort, and responsibility; and
      - (B) which is performed under similar working conditions, as defined in 29 U.S.C., Sec. 206 (d) (1), as the job category held by the discharged employee.
  - (b) An employing entity, which on the date of a discharge in question referred to in Subsection (4) (a) is enrolled in and using the Status Verification System to verify the employment eligibility of its employees in Utah who are hired on or after July 1, 2009, is exempt from liability, investigation, or lawsuit arising from an action under this section.
  - (c) A cause of action for a violation of this Subsection (4) arises exclusively from the provisions of this Subsection (4).
- (5) On and after the program start date:
  - (a) a public employer, after hiring an employee, shall verify the employment eligibility of the new employee:
    - (i) through the status verification system if the individual does not hold a permit; and
    - (ii) through the u-verify program if the individual holds a permit; and
  - (b) a contractor is considered to be in compliance with this section if, after hiring an employee, the contractor verifies the employment eligibility of the new employee:
    - (i) through the status verification system if the individual does not hold a permit; and
    - (ii) through the u-verify program if the individual holds a permit.

Renumbered and Amended by Chapter 18, 2011 General Session

**63G-12-303 Liability protections.**

- (1) On or after the program start date, a private employer may not be held civilly liable under state law in a cause of action for the private employer's unlawful hiring of an unauthorized alien if:
  - (a) the private employer complies with Subsection 63G-12-301(2); and
  - (b) the information obtained after verification under Subsection 63G-12-301(2) indicates that:
    - (i) the employee's federal legal status allowed the private employer to hire the employee; or
    - (ii) on and after the program start date, the employee held a valid permit.

- (2) On or after the program start date, a private employer may not be held civilly liable under state law in a cause of action for the private employer's refusal to hire an individual if:
  - (a) the private employer complies with Subsection 63G-12-301(2); and
  - (b) the information obtained after verification under Subsection 63G-12-301(2) indicates that the employee:
    - (i) was an unauthorized alien; and
    - (ii) on and after the program start date, does not hold a valid permit.
- (3) This chapter does not create a cause of action, on the basis of discrimination or otherwise, for not hiring an individual who holds a permit.
- (4) This section applies to a private employer that verifies the employment eligibility of a new employee as described in Subsection 63G-12-301(2) regardless of whether the private employer has less than 15 employees within the state.

Enacted by Chapter 18, 2011 General Session

**63G-12-304 Voluntary registration by private employer certifying participation in verification.**

- (1)
  - (a) On or after the program start date, a private employer may register with the department certifying that the private employer is in compliance with Subsection 63G-12-301(2).
  - (b) A private employer may register with the department under this section regardless of whether the private employer is required to comply with Subsection 63G-12-301(2).
- (2) To register or renew a registration with the department under this part, a private employer shall:
  - (a) file a registration statement with the department that certifies compliance with Subsection 63G-12-301(2); and
  - (b) pay a fee established by the department in accordance Section 63J-1-504 that reflects the cost of registering employers under this section and publishing the list described in Subsection (5).
- (3) A registration under this part expires every two years on the anniversary of the day on which the registration is filed with the department.
- (4) In accordance with Chapter 3, Utah Administrative Rulemaking Act, the department may make rules to provide for:
  - (a) the form of a registration statement under this section;
  - (b) the process of filing a registration statement under this section; and
  - (c) the process of renewing a registration statement under this section.
- (5) On and after the program start date, the department shall publish electronically a list of private employers who register under this section on a website accessible to the general public without a charge.
- (6) The department shall coordinate with the Department Commerce to transfer the registration operated by the Department of Commerce to the department effective on the program start date.

Enacted by Chapter 18, 2011 General Session

**63G-12-305 Administrative actions -- Defenses.**

- (1) On and after the program start date and in accordance with Chapter 4, Administrative Procedures Act, the department may bring agency action against a private employer who violates Subsection 63G-12-301(1) to impose a penalty described in Section 63G-12-306.

- (2)
  - (a) To determine whether an employee is an unauthorized alien for purposes of Subsection (1), the department shall consider only the federal government's determination pursuant to 8 U.S.C. Sec. 1373(c).
  - (b) The federal government's determination creates a rebuttable presumption of the employee's lawful status. The department may request the federal government to provide automated or testimonial verification pursuant to 8 U.S.C. Sec. 1373(c).
- (3) For the purposes of this part, proof of verifying the employment authorization in accordance with Subsection 63G-12-301(2) creates a rebuttable presumption that an employer did not knowingly employ an unauthorized alien who does not hold a valid permit.
- (4)
  - (a) For the purposes of this section, an employer that establishes that the employer has complied in good faith with the requirements of 8 U.S.C. Sec. 1324a(b) establishes an affirmative defense that the employer did not knowingly employ an unauthorized alien.
  - (b) An employer is considered to have complied with the requirements of 8 U.S.C. Sec. 1324a(b), notwithstanding an isolated, sporadic, or accidental technical or procedural failure to meet the requirements, if there is a good faith attempt to comply with the requirements.

Enacted by Chapter 18, 2011 General Session

**63G-12-306 Penalties.**

- (1) As used in this section:
  - (a) "Applicable license" means a license issued under:
    - (i) Title 32B, Alcoholic Beverage Control Act;
    - (ii) Title 58, Occupations and Professions; or
    - (iii) Title 61, Securities Division - Real Estate Division.
  - (b) "First violation" means the first time the department imposes a penalty under this section, regardless of the number of individuals the private employer hired in violation of Subsection 63G-12-301(1).
  - (c) "Second violation" means the second time the department imposes a penalty under this section, regardless of the number of individuals the private employer hired in violation of Subsection 63G-12-301(1).
  - (d) "Third or subsequent violation" means a violation of Subsection 63G-12-301(1) committed after a second violation.
- (2)
  - (a) On or after the program start date, a private employer who violates Subsection 63G-12-301(1) is subject to a penalty provided in this section under an action brought by the department in accordance with Section 63G-12-305.
  - (b) For a first violation of Subsection 63G-12-301(1), the department shall impose a civil penalty on the private employer not to exceed \$100 for each individual employed by the private employer during the time period specified in the notice of agency action who is an unauthorized alien who does not hold a valid permit.
  - (c) For a second violation of Subsection 63G-12-301(1), the department shall impose a civil penalty on the private employer not to exceed \$500 for each individual employed by the private employer during the time period specified in the notice of agency action who is an unauthorized alien who does not hold a valid permit.
  - (d) For a third or subsequent violation of Subsection 63G-12-301(1), the department shall:

- (i) order the revocation of the one or more applicable licenses that are issued to an owner, officer, director, manager, or other individual in a similar position for the private employer for a period not to exceed one year; or
  - (ii) if no individual described in Subsection (2)(d)(i) holds an applicable license, impose a civil penalty on the private employer not to exceed \$10,000.
- (3)
- (a) If the department finds a third or subsequent violation, the department shall notify the Department of Commerce and the Department of Alcoholic Beverage Services once the department's order:
    - (i) is not appealed, and the time to appeal has expired; or
    - (ii) is appealed, and is affirmed, in whole or in part on appeal.
  - (b) The notice required under Subsection (3)(a) shall state:
    - (i) that the department has found a third or subsequent violation;
    - (ii) that any applicable license held by an individual described in Subsection (2)(d)(i) is to be revoked; and
    - (iii) the time period for the revocation, not to exceed one year.
  - (c) The department shall base its determination of the length of revocation under this section on evidence or information submitted to the department during the action under which a third or subsequent violation is found, and shall consider the following factors, if relevant:
    - (i) the number of unauthorized aliens who do not hold a permit that are employed by the private employer;
    - (ii) prior misconduct by the private employer;
    - (iii) the degree of harm resulting from the violation;
    - (iv) whether the private employer made good faith efforts to comply with any applicable requirements;
    - (v) the duration of the violation;
    - (vi) the role of the individuals described in Subsection (2)(d)(i) in the violation; and
    - (vii) any other factor the department considers appropriate.
- (4) Within 10 business days of receipt of notice under Subsection (3), the Department of Commerce and the Department of Alcoholic Beverage Services shall:
- (a)
    - (i) if the Department of Commerce or Alcoholic Beverage Services Commission has issued an applicable license to an individual described in Subsection (2)(d)(i), notwithstanding any other law, revoke the applicable license; and
    - (ii) notify the department that the applicable license is revoked; or
  - (b) if the Department of Commerce or Alcoholic Beverage Services Commission has not issued an applicable license to an individual described in Subsection (2)(d)(i), notify the department that an applicable license has not been issued to an individual described in Subsection (2)(d)(i).
- (5) If an individual described in Subsection (2)(d)(i) is licensed to practice law in the state and the department finds a third or subsequent violation of Subsection 63G-12-301(1), the department shall notify the Utah State Bar of the third and subsequent violation.

Amended by Chapter 447, 2022 General Session