



MEMORANDUM

To: County Officials

From: Jim Grubiak, General Counsel

Date: June 29, 2007 (REV 7/2/07)

Subject: Georgia Security and Immigration Compliance Act of 2006

This is a reminder that the Georgia Security and Immigration Compliance Act of 2006 (GSICA) becomes effective on July 1, 2007. In addition to other provisions of the law related to income tax withholding, trafficking, and misrepresentation of immigration services, the following are matters that relate directly to counties and other public agencies:

I. Federal Work Authorization Program Registration

As of July 1, 2007, the GSICA requires counties and other public employers, along with contractors and subcontractors doing business with public agencies, to register and participate in a federal work authorization program to verify work eligibility of all new employees.

[OCGA § 13-10-91 (a)]

Registration/Access. According to regulations of the Georgia Department of Labor, the applicable federal work authorization program is the "Employment Eligibility Verification (EEV)/ Basic Pilot Program" operated by the U.S. Citizenship and Immigration Services Bureau and the U.S. Department of Homeland Security. An employer's participation in EEV is currently free to employers. Users can access the web-based program at <https://www.vis-dhs.com/EmployerRegistration>. To participate, an employer must register online and accept the electronic Memorandum of Understanding (MOU). If you need assistance in completing the registration process or need additional information relating to EEV, call the Office of Verification toll free at 1-888-464-4218.

[Georgia Department of Labor Rules, §§ 300-10-1-.01 and .02]

Certification of Registration and Participation. Each county and other public employer must certify that it has registered and is participating in the Federal EEV/Basic Pilot Program. For counties, certification is accomplished by transmitting a copy of all documents required for registration and participation including the required Memorandum of Understanding and the EEV/Basic Pilot Program ID number to the chairman/CEO/mayor of the county or consolidated government.

[Georgia Department of Labor Rules, § 300-10-1-.04]

Monitoring New Employee Work Eligibility. Each county and other public employer must designate an individual to monitor compliance with the employee eligibility verification requirements of the new law and maintain necessary records.

[Georgia Department of Labor Rules, § 300-10-1-.05]

II. Agreements Between Public Employers and Contractors/Subcontractors

The GSICA also phases in a requirement that bars counties and other public employers from entering into agreements with contractors/subcontractors for the “physical performance of services” unless the contractor/subcontractor registers and participates in a federal work authorization program to verify work eligibility. Under GSICA, a subcontractor is defined to include subcontractors, contract employees, staffing agencies, or contractors.

[OCGA § 13-10-91 (b) (1) and (2) and Georgia Department of Labor Rules, § 300-10-1-.02]

Phase-In Schedule. The contracting requirements of the GSICA are to be implemented as follows:

(a) Beginning July 1, 2007, public employers, contractors and subcontractors with 500 or more employees.

(b) Beginning July 1, 2008, public employers, contractors and subcontractors with 100 or more employees.

(c) Beginning July 1, 2009, all public employers, contractors and subcontractors.

[OCGA § 13-10-91 (b) (3) and Georgia Department of Labor Rules, § 300-10-1-.02]

Evidence of Contractor/Subcontractor Compliance. Each agreement between a public employer and a contractor/subcontractor for the physical performance of services will have to include a provision that compliance with OCGA § 13-10-91 is a condition of the contract. In addition, each contract must include a requirement that the contractor/subcontractor execute an affidavit verifying compliance with OCGA § 13-10-91. The affidavit must be in a form consistent with the sample affidavits included in the Georgia Department of Labor Rules.

[Georgia Department of Labor Rules, §§ 300-10-1-.03 and .07]

Public Transportation Contracts. The Georgia Department of Labor Rules applies generally to contracts between a public employer and a contractor/subcontractor. Exception: rules and forms related to agreements relating to “public transportation” are to be promulgated by GDOT.

[OCGA § 13-10-91 (d)]

III. Access to Federal, State and Local Benefits

Counties and other public agencies must verify that a person who applies for federal, state or local benefits (as defined in 8 U.S.C. Sections 1611 and 1621) is lawfully within the United States by requiring the applicant to sign an affidavit specifying that he or she is a citizen, legal permanent resident, or a qualified alien or nonimmigrant.

[OCGA § 50-36-1]

Verification. For aliens seeking benefits that claim to be lawfully present in the U.S., eligibility for benefits must be determined through the Systematic Alien Verification of Entitlement (SAVE) program operated by the U.S. Department of Homeland Security. Contact the SAVE Program at (202) 272-8720.

Public Benefits Defined. Generally, public benefits are defined to include any grant, contract, loan, professional license, or commercial license provided by federal, state or local government; and, any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment assistance or similar benefit. *[8 U.S.C. Sections 1611 and 1621]*

Benefits Excluded. Generally, the verification requirements do not apply when the following public benefits are applied for:

- (1) Treatment of emergency medical conditions;
- (2) Short term, non-cash emergency disaster relief;
- (3) Immunizations;
- (4) Certain in kind programs or services (such as soup kitchens and crisis counseling) delivered by public and nonprofit agencies that are necessary for the protection of life or safety when approved by the U.S. Attorney General;
- (5) Prenatal care;
- (6) Postsecondary education under specified circumstances;
- (7) Certain community development assistance or financial assistance programs administered by HUD; and
- (8) Other Federal programs including certain social security and medicare benefits under specified conditions. *[OCGA § 50-36-1 (c) and 8 U.S.C. Sections 1611 and 1621]*

Note that it is unlawful for a county or other public agency to provide any federal, state or local benefit in violation of *OCGA § 50-36-1*. An annual report is to be prepared regarding the requirements of the new law.

Regarding the details of the verification requirements, benefits covered and exclusions, please see the Federal statutes cited above.

IV. Inmates in County Jails

When any person charged with a felony or DUI is confined in a county jail, the sheriff must make a reasonable effort to determine the nationality of the inmate. If the inmate is a foreign national, the sheriff must make a reasonable effort to verify that the inmate has been lawfully admitted to the United States.

If verification of lawful admission cannot be determined from documents in the possession of the inmate, verification must be made within 48 hours through a query to the Law Enforcement Support Center (LESC) of the U.S. Department of Homeland Security. If the inmate is not lawfully within the U.S., the sheriff must notify Homeland Security. Nothing in GSICA, however, allows the bond to be denied or to prevent a

person from being release from confinement if the person is otherwise eligible for release.

GSICA specifies that the Georgia Sheriffs Association will prepare and issue guidelines and procedures to use to implement the inmate provisions.

[O.C.G.A. § 42-2-14]

V. Conclusion

Please review the requirements of the Georgia Security and Immigration Compliance Act with your county attorney to ensure proper implementation. Additional details, including the statute, the Department of Labor rules, sample affidavits, Federal code provisions, and other related information will be posted on the ACCG website for your information.

JFG:rp