

2009 -- H 5143

LC00326

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2009

A N A C T

RELATING TO LABOR AND LABOR RELATIONS

Introduced By: Representatives Brien, Gemma, Mattiello, Gablinske, and Trillo

Date Introduced: January 22, 2009

Referred To: House Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 28 of the General Laws entitled "LABOR AND LABOR
2 RELATIONS" is hereby amended by adding thereto the following chapter:

3 CHAPTER 6.13

4 E-VERIFY COMPLIANCE

5 **28-6.13-1. Legislative declaration -- Definitions -- Employee's work eligibility status**
6 **-- Federal basic employment verification pilot program -- Department of labor and**
7 **employment -- Duties. -- (a) The general assembly hereby finds and determines that:**

8 (1) Ensuring that Rhode Island employers employ persons eligible to work within Rhode
9 Island is an issue of statewide concern.

10 (2) It is in the best interest of the employers in Rhode Island for all employers to follow
11 federal law as it applies to the hiring of persons who are authorized to work in the United States.

12 (3) Employers who violate the federal employment laws with respect to the hiring of
13 persons who are unauthorized to work in the United States, place an undue economic burden on
14 employers who attempt to hire only persons who are authorized to work in the United States.

15 (b) The general assembly further finds and determines that it is in the best interest of the
16 state for all employers to verify the employment authorization of newly hired employees and that
17 it is important that every employer in the state of Rhode Island apply for participation in the
18 federal electronic employment authorization verification program, known as E-Verify, or any
19 successor program for the purpose of verifying the work eligibility status of newly hired

1 employees.

2 (c) As used in this chapter:

3 (1) "Employee" means any individual for whom an employer is required to file a form W-
4 2 wage and tax statement with the federal internal revenue service.

5 (2) "Employer" means a person transacting business in Rhode Island who, at any time,
6 employs three (3) or more persons to perform services of any nature and who has control of the
7 payment of wages for such services or is the officer, agent, or employee of the person having
8 control of the payment of wages; except that "Employer" does not include the federal
9 government, another state, or a political subdivision of Rhode Island or another state.

10 (3) "Program" means the federal electronic employment authorization verification
11 program, known as E-Verify, or any successor program, created pursuant to 8 U.S.C. sec. 1324a,
12 as expanded to include all fifty states in the "Basic Pilot Program Extension and Expansion Act of
13 2003", Pub. L. No. 108-156.

14 **28-6.13-2. Participation in the program. --** (a) Each employer in Rhode Island shall
15 apply to participate in the program for the purpose of verifying the work eligibility status of each
16 of the employer's newly hired employees by the following dates:

17 (1) An employer with two hundred (200) or more employees shall apply to participate in
18 the program no later than January 1, 2010;

19 (2) An employer with at least fifty (50) employees but fewer than two hundred (200)
20 employees shall apply to participate in the program no later than July 1, 2010; and

21 (3) An employer with fewer than fifty (50) employees shall apply to participate in the
22 program no later than January 1, 2011.

23 (b) An employer shall submit an application to participate in the program no less
24 frequently than every sixty (60) days until the employer is accepted into the program. An
25 employer that is accepted into the program shall agree to participate in the program. An employer
26 shall retain records for audit purposes that show that the employer has applied to the program
27 and, following acceptance, show that the employer is an active participant in the program.

28 (c) All employers subject to the provisions of this section shall notify the department of
29 labor that the employer has complied with the provisions of this chapter shall, within seven (7)
30 business days of making the application pursuant to subsection (a) of this section and within
31 seven (7) business days of being accepted into the program pursuant to subsection (b) of this
32 section. The department shall prepare and provide forms for such notification. The notification
33 form provided shall:

34 (1) require the employer to provide the E-Verify company identification number issued to

1 the employer upon registration; and

2 (2) be sworn and subscribed to under penalties of perjury by a representative of the
3 employer. The signing and provision of any such notification which the person knows contains
4 any statement which is false or erroneous, or defective in any important particular, and which, to
5 his or her knowledge, is intended to mislead the department, shall have committed the offense of
6 giving a false document pursuant to section 11-18-1.

7 (d) The department of labor and training shall provide a list of all employers who fail to
8 comply with the provisions of this section or who fail to notify the department of labor and
9 training of their compliance to the Investigations Division of the U.S. Bureau of Immigration and
10 Customs Enforcement.

11 (e) The department of labor and training, with the cooperation of the secretary of state,
12 shall put a mechanism in place to notify each employer of the requirements of this section and
13 how to comply and shall make the information available on the department's website.

14 (f) An employer shall immediately terminate the employment of an employee upon
15 receipt of a final notice from the department of homeland security of nonconfirmation of work
16 eligibility concerning such employee and after any applicable contest periods stipulated by
17 federal law and/or regulation have run.

18 (g) An employer who, in good faith relies on the program to verify the employment
19 eligibility of its employees, shall be exempt from liability, or suit arising from any action under
20 this section; provided, however, that nothing contained herein shall be construed to limit remedies
21 or relieve obligations and/or penalties under state anti-discrimination laws.

22 **28-6.13-3. Severability clause. -- If any provision of this section or the application of a**
23 **provision shall for any reason be judged invalid, that judgment shall not affect, impair, or**
24 **invalidate the remainder of the section, but shall be confined in this effect to the provisions or**
25 **application directly involved in the controversy giving rise to the judgment.**

26 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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RELATING TO LABOR AND LABOR RELATIONS

1 This act would establish the E-Verify compliance chapter. It would also require all non-
2 governmental employers within the state with three (3) or more employees to apply to participate
3 in the E-Verify program and to participate if accepted.

4 This act would take effect upon passage.

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