

By Commissioner Newsome

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1 A proposal to create
2 a new section in Article X of the State Constitution
3 to establish requirements on employers to verify the
4 employment eligibility of new employees using the
5 Employment Authorization Program or any successor
6 program administered by the Federal Government and to
7 provide for enforcement by the Department of Business
8 and Professional Regulation.
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10 Be It Proposed by the Constitution Revision Commission of
11 Florida:

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13 A new section is added to Article X of the State
14 Constitution to read:

15 ARTICLE X
16 MISCELLEANOUS

17 (a) PUBLIC POLICY.

18 (1) An employer who knowingly or intentionally employs an
19 unauthorized alien violates the employer's licenses.

20 (2) Effective July 1, 2020, every employer shall, after
21 making an offer of employment which has been accepted by an
22 employee, verify the employment eligibility of each new employee
23 using the employment authorization program. Such verification
24 must occur within the period stipulated by federal law or
25 regulations after the hiring of the employee.

26 (3) The provisions of this section are enforceable without
27 regard to race, religion, gender, ethnicity, or national origin.

28 (b) DEFINITIONS. As used in this section, the term:

29 (1) "Department" means the Department of Business and
30 Professional Regulation or its successor agency.

31 (2) "Employee" means any person who performs employment
32 services in this state for an employer pursuant to an employment

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33 relationship between the person and employer.

34 (3) "Employer" means any individual or type of organization
35 transacting business in this state which holds or has applied
36 for a license issued by an agency in this state and employs
37 individuals who perform employment services in this state. The
38 term does not include an entity that hires a bona fide
39 independent contractor or the occupant or owner of a residence
40 who hires casual domestic labor to perform work customarily
41 performed by a homeowner entirely within a residence.

42 (4) "Employment authorization program" means the E-verify
43 program (formerly the "Basic Pilot Program") under Pub. L. No.
44 104-208, Div. C, title IV, Subtitle A, 110 Stat. 3009-655 (Sept.
45 30, 1996), as amended, or any successor program designated by
46 the federal government for verification that an employee is not
47 an unauthorized alien.

48 (5) "Employment of unauthorized alien" means an employment-
49 related act designated as unlawful under section 274A of the
50 Immigration and Nationality Act, 8 U.S.C. s. 1324a, as amended.

51 (6) "License" means an agency permit, certificate,
52 approval, registration, charter, or similar form of
53 authorization that is required by law and that is issued by any
54 agency or political subdivision of this state for the purpose of
55 operating a business in this state, excluding professional
56 licenses, but including employment licenses, articles of
57 organization, articles of incorporation, a certificate of
58 partnership, a partnership registration, a certificate to
59 transact business, or similar forms of authorization issued by
60 the state.

61 (7) "Unauthorized alien" means an unauthorized alien as

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62 defined by 8 U.S.C. s. 1324a(h) (3).

63 (c) COMPLIANCE.

64 (1) The department shall adopt rules necessary for the
65 implementation and enforcement of this section by July 8, 2019.
66 If the department does not adopt rules within the timeframe set
67 forth in this paragraph, a resident of this state has standing
68 to seek judicial relief to compel compliance with this
69 paragraph.

70 (2) The department shall develop and administer a statewide
71 random auditing program to inspect employers for compliance with
72 this section. The department and its inspectors, agents, or
73 designees, upon proper presentation of credentials to the owner,
74 manager, or agent of the employer, may enter at reasonable times
75 and have the right to question, either publicly or privately,
76 any employer, owner, manager, or agent and the employees of the
77 employer and inspect, investigate, reproduce, or photograph
78 original business records relevant to determining compliance
79 with this section.

80 (3) Any person who has actual or constructive knowledge
81 that an employer has employed an unauthorized alien within the
82 preceding 90 days may file a complaint with the department. A
83 person who knowingly files a false and frivolous complaint under
84 this subsection commits a misdemeanor of the second degree,
85 punishable as provided in s. 775.082 or s. 775.083, Florida
86 Statutes (2017).

87 (4) An employer who fails to verify eligibility of new
88 employee within three business days is subject to the following
89 penalties:

90 a. For a first violation by an employer, the department

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91 shall place the employer on probation for a period of one year,
92 during which time the employer must submit quarterly reports to
93 the department demonstrating compliance.

94 b. A subsequent violation within three years of the first
95 violation results in the suspension of the employer's licenses
96 for at least ten days, but not more than thirty days.

97 (5) An employer who knowingly or intentionally employs an
98 unauthorized alien is subject to the following penalties:

99 a. If the department has determined that a licensee
100 knowingly or intentionally employs an unauthorized alien, the
101 department must, upon seventy-two hours written notice, suspend
102 all licenses held by the employer. The employer's licenses must
103 be reinstated when the employer demonstrates to the satisfaction
104 of the department that the unauthorized alien has been
105 terminated, and the employer has paid a reinstatement fee equal
106 to the cost of investigating and enforcing the matter, not to
107 exceed \$1,000 for each investigation.

108 b. If the investigation determined that at least five
109 unauthorized aliens were employed by the licensee on the same
110 date, the department must suspend the licenses for at least an
111 additional seven days, but not more than thirty days, following
112 compliance by the employer with the requirements of subparagraph
113 a. For a subsequent violation under this subparagraph, within
114 three years of the first suspension, the employer's licenses are
115 suspended for at least an additional thirty days, but not more
116 than sixty days, following compliance with subparagraph a. For a
117 third violation within six years of the first suspension, and
118 for each subsequent violation of this subparagraph, the
119 employer's licenses are suspended for an additional 180 days.

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120 c. During the period of suspension, an employer is
121 prohibited from engaging in activities for which the suspended
122 license or licenses was required by law.

123 (6) The department shall take the following measures in
124 order to assist employers in complying with the requirements of
125 this section:

126 a. The department shall establish a website to provide
127 assistance to employers in complying with this section. On the
128 website, the department shall post and maintain a public
129 database disclosing employers who have violated the requirements
130 of this section.

131 b. All license applications must include a notice of the
132 requirements of this section.

133 c. The department shall submit a report of each
134 investigation for which a penalty has been imposed pursuant to
135 paragraphs (4) or (5) to United States Immigration and Customs
136 Enforcement or its successor agency.

137 (d) SEVERABILITY. The provisions of this section are
138 severable and if any clause, sentence, paragraph, or section of
139 this measure, or an application thereof, is adjudged invalid by
140 any court of competent jurisdiction, other provisions shall
141 continue to be in effect to the fullest extent possible.

142 (e) LEGISLATION. This section does not limit the
143 legislature from enacting laws consistent with this section.

144 (f) PRESUMPTION OF COMPLIANCE. An employer who in good
145 faith verifies the immigration status of a new employee pursuant
146 to the employment authorization program is presumed to have
147 complied with the requirements of this section. An employer who
148 terminates an employee in order to comply with the requirements

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149 of this section is not subject to a civil action for wrongful
150 termination of the employee.