

S T A T E O F N E W Y O R K

2217

2011-2012 Regular Sessions

I N A S S E M B L Y

January 14, 2011

Introduced by M. of A. CASTELLI, KATZ -- read once and referred to the
Committee on Labor

AN ACT to amend the labor law, in relation to requiring public and private employers to register for and participate in the E-verify program for verification of employment eligibility; and to amend the tax law, in relation to establishing a tax credit for employers with less than fifty employees that register for the E-verify program by a certain time

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The labor law is amended by adding a new section 219-b to
2 read as follows:
3 S 219-B. EMPLOYER VERIFICATION OF EMPLOYMENT ELIGIBILITY; E-VERIFY
4 PROGRAM. 1. FOR THE PURPOSE OF THIS SECTION, THE FOLLOWING WORDS SHALL
5 BE DEFINED AS FOLLOWS:
6 (A) "EMPLOYER" MEANS ANY PERSON, ENTITY, BUSINESS, CORPORATION, LIMIT-
7 ED LIABILITY COMPANY, OR ASSOCIATION EMPLOYING ANY INDIVIDUAL IN ANY
8 OCCUPATION, INDUSTRY, TRADE, BUSINESS OR SERVICE;
9 (B) "PUBLIC EMPLOYER" MEANS EVERY DEPARTMENT, AGENCY, OR INSTRUMENTAL-
10 ITY OF THE STATE OR POLITICAL SUBDIVISION OF THE STATE;
11 (C) "EMPLOYEE" MEANS ANY PERSON OR ENTITY EMPLOYED FOR HIRE BY A
12 PUBLIC OR PRIVATE EMPLOYER IN ANY EMPLOYMENT; AND
13 (D) "E-VERIFY PROGRAM" MEANS THE ELECTRONIC EMPLOYMENT VERIFICATION
14 PROGRAM THAT IS AUTHORIZED BY THE ILLEGAL IMMIGRATION REFORM AND IMMI-
15 GRATION RESPONSIBILITY ACT OF 1996, PUBLIC LAW 104-208, DIVISION C,
16 SECTION 403(A); 8 U.S.C. SECTION 1324(A)(H)(3), AND JOINTLY ADMINISTERED
17 BY THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY AND THE SOCIAL
18 SECURITY ADMINISTRATION, OR ITS SUCCESSOR PROGRAM.
19 2. EVERY PUBLIC OR PRIVATE EMPLOYER SHALL REGISTER FOR AND PARTICIPATE
20 IN THE E-VERIFY PROGRAM, OR ITS SUCCESSOR PROGRAM, FOR THE PURPOSE OF

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 VERIFYING THE EMPLOYMENT ELIGIBILITY STATUS OF SUCH EMPLOYER'S NEWLY
2 HIRED EMPLOYEES BY THE FOLLOWING DATES:

3 (A) FOR AN EMPLOYER WITH ONE HUNDRED OR MORE EMPLOYEES, NO LATER THAN
4 JULY FIRST, TWO THOUSAND TWELVE;

5 (B) FOR AN EMPLOYER WITH AT LEAST FIFTY EMPLOYEES BUT FEWER THAN ONE
6 HUNDRED EMPLOYEES, NO LATER THAN JANUARY FIRST, TWO THOUSAND THIRTEEN;

7 (C) FOR AN EMPLOYER WITH AT LEAST TWENTY-FIVE EMPLOYEES BUT FEWER THAN
8 FIFTY EMPLOYEES, NO LATER THAN JANUARY FIRST, TWO THOUSAND FOURTEEN;

9 (D) FOR ALL OTHER EMPLOYERS, NO LATER THAN JANUARY FIRST, TWO THOUSAND
10 FIFTEEN.

11 IF AN EMPLOYER FAILS TO COMPLY WITH THE PROVISIONS OF THIS SUBDIVI-
12 SION, SUCH EMPLOYER SHALL BE SUBJECT TO THE CIVIL PENALTIES SET FORTH IN
13 SUBDIVISION FOUR OF THIS SECTION.

14 3. THE COMMISSIONER SHALL PROMULGATE AND ADMINISTER RULES AND REGU-
15 LATIONS AS HE OR SHE MAY DEEM APPROPRIATE AND NECESSARY TO EFFECTUATE
16 THE PROVISIONS OF THIS SECTION. THE COMMISSIONER SHALL BE AUTHORIZED TO
17 INSPECT ANY EMPLOYER'S BUSINESS RECORDS CONCERNING SUCH EMPLOYER'S
18 REGISTRATION AND PARTICIPATION IN THE E-VERIFY PROGRAM. IF SUCH EMPLOYER
19 FAILS TO REGISTER OR PARTICIPATE IN SUCH PROGRAM PURSUANT TO SUBDIVISION
20 TWO OF THIS SECTION, THE COMMISSIONER SHALL BE AUTHORIZED TO IMPOSE THE
21 CIVIL PENALTIES SET FORTH IN SUBDIVISION FOUR OF THIS SECTION.

22 4. IF AFTER INVESTIGATION THE COMMISSIONER MAKES A FINDING THAT AN
23 EMPLOYER HAS WILLFULLY OR INTENTIONALLY FAILED TO REGISTER FOR OR
24 PARTICIPATE IN THE E-VERIFY PROGRAM, AS REQUIRED BY SUBDIVISION TWO OF
25 THIS SECTION, THE COMMISSIONER SHALL BY AN ORDER WHICH SHALL DESCRIBE
26 PARTICULARLY THE NATURE OF THE VIOLATION, ASSESS THE EMPLOYER A CIVIL
27 PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS FOR THE FIRST SUCH
28 VIOLATION AND NOT MORE THAN TWO THOUSAND DOLLARS FOR A SECOND SUCH
29 VIOLATION. SUCH PENALTY SHALL BE PAID TO THE COMMISSIONER FOR DEPOSIT IN
30 THE TREASURY OF THE STATE. UPON A THIRD VIOLATION, AN EMPLOYER SHALL BE
31 SUBJECT TO THE CANCELLATION OF ANY STATE OR PUBLIC CONTRACT, RESULTING
32 IN INELIGIBILITY FOR ANY STATE OR PUBLIC CONTRACT FOR UP TO FIVE YEARS;
33 THE LOSS OF ANY LICENSE, PERMIT, CERTIFICATE OR OTHER DOCUMENT GRANTED
34 TO THE EMPLOYER BY ANY AGENCY, DEPARTMENT OR GOVERNMENT ENTITY IN THE
35 STATE OF NEW YORK FOR THE RIGHT TO DO BUSINESS IN NEW YORK FOR UP TO ONE
36 YEAR, OR BOTH. THE EMPLOYER SHALL BE LIABLE FOR ANY ADDITIONAL COSTS
37 INCURRED BY THE AGENCIES AND INSTITUTIONS OF THE STATE OF NEW YORK, OR
38 ANY OF ITS POLITICAL SUBDIVISIONS, BECAUSE OF THE CANCELLATION OF THE
39 CONTRACT OR LOSS OF ANY LICENSE OR PERMIT TO DO BUSINESS IN THE STATE.

40 S 2. Section 210 of the tax law is amended by adding a new subdivision
41 22-a to read as follows:

42 22-A. CREDIT FOR REGISTRATION FOR E-VERIFY PROGRAM. (A) GENERAL. A
43 TAXPAYER, WHO HAS FEWER THAN FIFTY EMPLOYEES, SHALL BE ALLOWED A CREDIT
44 AGAINST THE TAX IMPOSED BY THIS ARTICLE, FOR REGISTERING FOR THE E-VERI-
45 FY PROGRAM, AS DESCRIBED IN SECTION TWO HUNDRED NINETEEN-B OF THE LABOR
46 LAW, BETWEEN JANUARY FIRST, TWO THOUSAND TWELVE AND DECEMBER
47 THIRTY-FIRST, TWO THOUSAND TWELVE.

48 (B) AMOUNT OF CREDIT. A CREDIT SHALL BE ALLOWED IN THE AMOUNT OF TWO
49 HUNDRED FIFTY DOLLARS FOR THE TAXABLE YEAR IN WHICH SUCH TAXPAYER REGIS-
50 TERED FOR THE E-VERIFY PROGRAM.

51 (C) CARRYOVER. IF THE AMOUNT OF CREDIT ALLOWABLE UNDER THIS SUBDIVI-
52 SION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR SUCH TAX
53 YEAR, THE EXCESS MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS, AND
54 MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

55 S 3. This act shall take effect immediately.