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:

Section 1. The labor law is amended by adding a new section 219-b to read as follows:

S 219-B. EMPLOYER VERIFICATION OF EMPLOYMENT ELIGIBILITY; E-VERIFY PROGRAM. 1. FOR THE PURPOSE OF THIS SECTION, THE FOLLOWING WORDS SHALL BE DEFINED AS FOLLOWS:

(A) "EMPLOYER" MEANS ANY PERSON, ENTITY, BUSINESS, CORPORATION, LIMITED LIABILITY COMPANY, OR ASSOCIATION EMPLOYING ANY INDIVIDUAL IN ANY OCCUPATION, INDUSTRY, TRADE, BUSINESS OR SERVICE;

(B) "PUBLIC EMPLOYER" MEANS EVERY DEPARTMENT, AGENCY, OR INSTRUMENTALITY OF THE STATE OR POLITICAL SUBDIVISION OF THE STATE;

(C) "EMPLOYEE" MEANS ANY PERSON OR ENTITY EMPLOYED FOR HIRE BY A PUBLIC OR PRIVATE EMPLOYER IN ANY EMPLOYMENT; AND

(D) "E-VERIFY PROGRAM" MEANS THE ELECTRONIC EMPLOYMENT VERIFICATION PROGRAM THAT IS AUTHORIZED BY THE ILLEGAL IMMIGRATION REFORM AND IMMIGRATION RESPONSIBILITY ACT OF 1996, PUBLIC LAW 104-208, DIVISION C, SECTION 403(A); 8 U.S.C. SECTION 1324(A)(H)(3), AND JOINTLY ADMINISTERED BY THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY AND THE SOCIAL SECURITY ADMINISTRATION, OR ITS SUCCESSOR PROGRAM.

2. EVERY PUBLIC OR PRIVATE EMPLOYER SHALL REGISTER FOR AND PARTICIPATE 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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VERIFYING THE EMPLOYMENT ELIGIBILITY STATUS OF SUCH EMPLOYER'S NEWLY HIRED EMPLOYEES BY THE FOLLOWING DATES:

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

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

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

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

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

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

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

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

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

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

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

S 3. This act shall take effect immediately.