

Important Changes to Georgia's Immigration Mandates 2013

FAQ

During the 2013 legislative session, SB 160 passed which makes significant changes to Georgia's state immigration laws and the immigration mandates placed on Georgia's cities. These changes DO NOT take effect until July 1, 2013, and should only be enforced on or after such date. The FAQ is not and should not be treated as legal advice. You should consult with your legal counsel taking any action based on this FAQ. This FAQ has been developed to help cities answer questions about the changes to the state immigration laws.

Q: What changes have been made to the definition of "physical performance of services"?

A: Under the law before July 1, 2013, "physical performance of services" basically meant any contract with the city involving physical labor. This meant contracts for any amount of money, even a one cent contract. Under this definition cities had to collect an E-Verify Contractor affidavit for any contract with the city involving physical labor.

The 2013 changes, which will take effect on July 1st, altered the definition of "physical performance of services" to mean contracts with the city involving both physical labor and any services over \$2499.99 in value. Additionally, any contract between the city and an individual licensed under Title 26, Title 43, or the State Bar of Georgia will not be included in this definition. Title 43 constitutes all of the licenses issued by the Georgia Secretary of State, including but not limited to, accountants, social workers, architects, auctioneers, engineers and land surveyors, operators of hotels, contractors, plumbers, real estate appraisers, and pest control. Title 26 is most likely not of consequence for cities and the State Bar regulates attorneys.

While these changes will expand the definition of "physical performance of services" beyond just physical labor contracts to include contracts for services as well, there will now be a monetary bottom floor for such requirement and exceptions are provided for contracts with a number of professions. Cities would be wise to consult their city attorney regarding this new definition until such time as statewide clarification of the definition has been provided. Neither current law nor the law set to go into effect requires the E-Verify Contractor affidavit for contracts involving the purchase of goods.

Q: Has the definition of "public employer" changed?

A: Yes. Previously cities with one or zero city employees were not required to collect the E-Verify Contractor affidavit or register for the E-Verify program. This will change on July 1, 2013, and all cities, regardless of the number of employees will be required to register for the E-Verify program and collect such affidavit for any applicable contracts involving the "physical performance of services."

Q: Are we still required to collect an E-Verify Private Employer affidavit when we issue business licenses to businesses with a certain number of employees? How has this changed?

A: The requirement to collect an E-Verify Private Employer affidavit from businesses receiving a business license or any other document required to operate a business will still exist in the law,

but there have been substantial changes to this requirement, which will all take effect on July, 1, 2013.

Under current law the E-Verify Private Employer affidavit must be collected from businesses annually. Remember, on July 1, 2013, any business receiving such license which has more than 10 employees is required to submit this affidavit when applying for a business license. After the law changes, businesses will not have to submit this affidavit every year upon license renewals. Instead, the business will merely have to provide their E-Verify number annually or assert they are exempt if they have already submitted the affidavit once. The best way for a city to use this change to an administrative advantage would be to include a required line on the business license renewal form for the E-Verify number. That way, when the business files their license renewal, they are taken care of for the E-Verify Private Employer affidavit. It is important to note that the E-Verify number must not change from year to year. If it does the business has to explain why it has changed as required by state law. (For this section, any affidavit, not just those of United States citizens, falls under the exception and businesses can save time by submitting their E-Verify number on the business license renewal form, so long as the city has an original affidavit.)

Q: Do we still have to get the SAVE Public Benefits affidavit for all contracts?

A: No. Under previous law the definition of "public benefits" in Title 50 of the Georgia Code included the incorporation of a federal definition. That federal definition included "any contracts" as a public benefit. This meant that all contracts, no matter the amount, for labor, services, or goods, with the city required a SAVE affidavit. Beginning on July 1, 2013, this will no longer be the case because this federal definition has been struck from the state definition of "public benefit." Cities will no longer be required to collect the SAVE affidavit for contracts. Remember, however, that the city still may be required to collect the E-Verify Contractor affidavit for some contracts.

Q: Can we collect SAVE affidavits and secure and verifiable documents by mail?

A: Under the changes in the law cities will now be allowed to collect affidavits and secure and verifiable documents in person, electronically, or by mail. Previously, the language of the law did not allow for certain documents to be collected by mail.

Q: Will we be able to accept a secure and verifiable document for SAVE purposes before the application is completed?

A: Beginning on July 1, 2013, a city will be allowed to accept a secure and verifiable document from an applicant at any time within nine months prior to the date of application for a public benefit so long as the secure and verifiable document remains valid through the licensing or approval period.

Q: Are we still required to collect the SAVE affidavit for license renewals even if the person has already submitted the affidavit in a previous year?

A: Yes and No. If the person originally filled out the SAVE affidavit and checked the box for Legal Permanent Resident or Qualified Alien, then that person must continue to submit the SAVE affidavit and provide a secure and verifiable document annually. However, if the person stated that they are a United States citizen when they filled out their SAVE affidavit and provided a secure and verifiable document then the city shall rely on the original affidavit and secure and verifiable document and not require the United States citizen to fill out the affidavit annually.

Q: Has the definition of “secure and verifiable document” changed?

A: Yes. Birth certificates issued by a state or local authority in the United States will now be considered secure and verifiable documents. Also, any foreign passport must contain a valid United States Homeland Security Form I-94 or other federal document verifying the person's lawful immigration status or proof of lawful presence in the United States. (There is no requirement that municipal employees or officials become trained on knowing what these secure and verifiable documents or forms look like and violations of the law must be proven by a knowing and willing standard.)

Q: Is the provision of utilities a public benefit?

A: While this was questionable under the previous law, language has been added to the new state immigration law to make absolutely clear that the provision of utility services related to basic human necessities are not public benefits.

Q: Do we still have to complete three annual reports, going to two agencies, due on two different dates?

A: No. The new law will require only one report to be submitted to the Department of Audits and Accounts annually. The information required under the previous reports will still be collected but now it will be collected in one report instead of three. The Department of Audits and Accounts is currently developing their new reporting system so cities would be wise to continue to gather the information required by the reports in the Excel spreadsheet format previously used by the Department of Audits and Accounts and just copy and paste when the new reporting system is functional. The reporting period for this new report will be from December 1 of the previous year to November 30 of the year in which the report is due. The report will be due annually on December 31st.

Q: Is there a more detailed breakdown of the overall mandates of Georgia's immigration laws on municipalities?

A: Yes, GMA issued the first edition of its newest publication “Immigration Mandates on Municipalities: A Guide to Georgia's Immigration Laws, Affidavits, and Reports for Municipal Officials” in January of 2013. Because of the above described changes in Georgia's immigration laws a new edition of the publication is being released in July 2013.