CHAPTER 14

Unauthorized Aliens and Public Employment

**SECTION 8‑14‑10.** Definitions.

 As used in this chapter, the term:

 (1) “Contractor” means any person having a contract with a public employer except a political subdivision, where the total value of the contract to be performed in a twelve‑month period exceeds twenty‑five thousand dollars, or, if the public employer is a political subdivision, where the total value of the contract to be performed in a twelve‑month period exceeds fifteen thousand dollars. A contractor may also be a private employer.

 (2) “Director” means the director of the Department of Administration.

 (3) “End product” means movable personal property described in the solicitation and in final form and ready for the use intended including, without limitation, commodities or equipment.

 (4) “Federal work authorization program” means the E‑Verify Program maintained and operated by the United States Department of Homeland Security and the Social Security Administration, or any successor program.

 (5) “Public employer” means every department, agency, or instrumentality of the State or a political subdivision of the State.

 (6) “Service contract” means a contract that involves the physical performance of manual labor, if the total cost of such labor exceeds (i) thirty percent of the total cost of all labor, or (ii) five percent of the total contract price. The term does not include:

 (a) a contract with a public employer, other than a political subdivision, with a total value of less than twenty‑five thousand dollars, or a contract with a political subdivision with a total value of less than fifteen thousand dollars;

 (b) a contract primarily for the acquisition of an end product; and

 (c) a contract that is predominantly for the performance of professional or consultant services.

 (7) “Subcontractor” means any person having either: (a) a services contract with a contractor; or (b) a contract with a sub‑subcontractor. A subcontractor may also be a private employer.

 (8) “Sub‑subcontractor” means any person having a services contract with a subcontractor. A sub‑subcontractor may also be a private employer.

 (9) “Private employer” means any:

 (a) person or entity that transacts business in this State, is required to have a license issued by an agency, department, board, commission, or political subdivision of this State that issues licenses for the purposes of operating a business in this State, and employs one or more employees in this State, as defined in Section 12‑8‑10;

 (b) person or entity carrying on any employment and the legal representative of a deceased person or the receiver or trustee of any person; or

 (c) person or entity for whom an individual performs a service or sells a good, of whatever nature, as an employee, as defined in Section 12‑8‑10.

HISTORY: 2008 Act No. 280, Section 3, eff June 4, 2008; 2011 Act No. 69, Section 2, eff January 1, 2012.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

Effect of Amendment

The 2011 amendment rewrote the definition of “Private employer”.

LAW REVIEW AND JOURNAL COMMENTARIES

Preemption and United States v. South Carolina: Undermining our nation’s border and the Constitution’s border between State and Federal sovereignty. Honorable George E. “Chip” Campsen, III, 65 S.C. L. Rev. 901 (Summer 2014).

United States Supreme Court Annotations

Deportation or removal, federal law preempts most of Arizona immigration law, see Arizona v. U.S., 2012, 132 S.Ct. 2492, 183 L.Ed.2d 351. Aliens, Immigration, and Citizenship 103; States 18.43

State immigration statutes and preemption by federal law, see Arizona v. U.S., 2012, 132 S.Ct. 2492, 183 L.Ed.2d 351.

**SECTION 8‑14‑20.** Public employer participation in federal work authorization program; service contractors and private employers.

 (A) Every public employer shall register and participate in the federal work authorization program to verify the employment authorization of all new employees.

 (B) A public employer may not enter into a services contract with a contractor for the physical performance of services within this State unless the contractor agrees to register and participate in the federal work authorization program to verify the employment authorization of all new employees and require agreement from its subcontractors, and through the subcontractors, the sub‑subcontractors, to register and participate in the federal work authorization program to verify the employment authorization of all new employees.

 (C) Private employers shall comply with the provisions of Chapter 8, Title 41.

HISTORY: 2008 Act No. 280, Section 3, eff June 4, 2008; 2011 Act No. 69, Section 3, eff January 1, 2012.

Effect of Amendment

The 2011 amendment rewrote the section.

United States Supreme Court Annotations

Deportation or removal, federal law preempts most of Arizona immigration law, see Arizona v. U.S., 2012, 132 S.Ct. 2492, 567 U.S. 387, 183 L.Ed.2d 351, on remand 689 F.3d 1132. Aliens, Immigration, and Citizenship 103; States 18.43

Immigration Reform and Control Act, unauthorized alien employment law, preemption, Illegal Immigration Reform and Immigrant Responsibility Act, see Chamber of Commerce of U.S. v. Whiting, 2011, 131 S.Ct. 1968, 563 U.S. 582, 179 L.Ed.2d 1031.

**SECTION 8‑14‑30.** Enforcement of chapter; pre‑award protest process.

 The provisions of this chapter are enforceable without regard to race, religion, gender, ethnicity, or national origin. Section 11‑35‑4210 provides the exclusive remedy for violations of this chapter for any contract governed by Title 11, Chapter 35. A pre‑award protest process appearing in a procurement ordinance adopted by a political subdivision pursuant to Section 11‑35‑50 or Section 11‑35‑70 provides the exclusive remedy for violations of this chapter for any contract governed by that procurement ordinance.

HISTORY: 2008 Act No. 280, Section 3, eff June 4, 2008.

**SECTION 8‑14‑40.** Certification from contractor as compliance by public employer.

 A public employer complies with this chapter if it obtains a written statement from the contractor certifying that the contractor will comply with the requirements of this chapter and agrees to provide to the public employer any documentation required to establish either: (a) the applicability of this chapter to the contractor, subcontractor, and sub‑subcontractor; or (b) the compliance with this chapter by the contractor and any subcontractor or sub‑subcontractor. A public employer need not audit or independently verify a contractor’s compliance with this chapter.

HISTORY: 2008 Act No. 280, Section 3, eff June 4, 2008.

**SECTION 8‑14‑50.** Good faith compliance as defense.

 A contractor or public employer who in good faith complies with the requirements of this chapter may not be sanctioned or subjected to any civil or administrative action for employing an individual not authorized for employment in the United States.

HISTORY: 2008 Act No. 280, Section 3, eff June 4, 2008.

RESEARCH REFERENCES

Treatises and Practice Aids

Employment Coordinator Employment Practices Section 42:6, Scope of Federal Prohibitions.

**SECTION 8‑14‑60.** Filing false or fraudulent statement or report; penalty.

 A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony, and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both.

HISTORY: 2008 Act No. 280, Section 3, eff June 4, 2008.

**SECTION 8‑14‑70.** Local ordinances or policies affecting enforcement of chapter.

 A local government must not enact any ordinance or policy that limits or prohibits a law enforcement officer, local official, or local government employee from seeking to enforce the provisions of this chapter.

HISTORY: 2008 Act No. 280, Section 3, eff June 4, 2008.

**SECTION 8‑14‑80.** Forms and regulations; publication on Department of Administration’s website.

 Except as otherwise provided in this chapter, the director shall prescribe all forms and promulgate regulations necessary for the application of this chapter to contracts or agreements and may publish these regulations on the Department of Administration’s website in accordance with the provisions of Chapter 23 of Title 1 of the South Carolina Code of Laws.

HISTORY: 2008 Act No. 280, Section 3, eff June 4, 2008.

Code Commissioner’s Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

**SECTION 8‑14‑90.** Forms and regulations promulgated by director of Department of Transportation; publication on website.

 Except as otherwise provided in this chapter, the director of the Department of Transportation shall prescribe forms, promulgate regulations, and adopt rules necessary for the application of this chapter to a contract or agreement relating to public transportation and shall publish these rules and regulations on the Department of Transportation’s website in accordance with the provisions of Chapter 23 of Title 1 of the South Carolina Code of Laws.

HISTORY: 2008 Act No. 280, Section 3, eff June 4, 2008.