

Georgia's Immigration Laws - Frequently Asked Questions

For the purpose of these FAQ, the term "local governing authority" applies to county, city, and consolidated governing authorities.

E-Verify Participation Questions

- Q. Who is the local governing authority required to run through the E-Verify system?
- A. The E-Verify system is meant only for new hires of the local governing authority and not for current employees. The local governing authority does not run any person who is not a new employee of the local governing authority through the E-Verify system.
- Q. Are local governing authorities required to run temporary or seasonal employees through E-Verify such as poll workers or referees for recreational sports?
- A. Yes. All new hires must be verified through E-Verify.
- Q. Are counties required to run new hires for constitutional officers through E-Verify?
- A. Only if all new hires for the county, including the employees of constitutional officers, are already processed through the county. Otherwise, the office of each individual constitutional officer is required to run their own employees.
- Q. Where do we post our E-Verify user identification number and date of authorization?
- A. If the local governing authority has a website, the E-Verify user identification number and date of authorization must be posted on the local governing authority's website. The law does not specify where on the website this information has to be posted. If the local governing authority does not have a website then the E-Verify user identification number and date of authorization must be submitted to the Carl Vinson Institute of Government of the University of Georgia to be posted.
- Q. Where should the E-Verify verification for the new hire be stored?
- A. It should be kept with the I-9 form for that employee.

E-Verify Contractor Questions

- Q. What types of contracts require that local governing authorities collect the E-Verify Contractor affidavits?
- A. The E-Verify Contractor affidavits are only required for public works contracts including contracts involving new construction or demolition of structures or

roads, and routine operation, repair or maintenance of existing structures, buildings or real property.

Q. If the contract is exclusively for goods and there are no services being provided, does the local governing authority need to collect an E-Verify Contractor affidavit?

A. No. The law only pertains to public works service contracts or contracts that provide both public works services and goods. If the contract is solely for goods, there is no requirement that an E-Verify Contractor affidavit be submitted.

Q. Does every contractor for public works contracts have to fill out an E-Verify Contractor affidavit?

A. Contractors for public works contracts must fill out an E-Verify Contractor affidavit; provided, however, that if the contractor is an independent party with no employees then they are allowed in lieu of an affidavit to present an ID or driver's license from the below listed states in order to work on a local governing authority public works project: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

Q. Does the local governing authority have to collect affidavits from subcontractors and sub-subcontractors working on local governing authority projects?

A. The local governing authority is only responsible for collecting contractor affidavits for the parties with whom the local governing authority has directly signed a contract. The contractor is responsible for collecting subcontractor affidavits, the subcontractors must collect from their sub-subcontractors, and so on.

Q. What do we do with the E-Verify Contractor affidavit once the contractor provides it to the local governing authority?

A. Once a local governing authority receives an executed E-Verify Contractor affidavit, it must retain it for five years from the date it was received. At the end of each year, starting on December 31, 2011, a report must be filed with the Department of Audits and Accounts that will include the information on this affidavit.

Q. Must a local governing authority follow the E-Verify contract requirements if there is an emergency or a situation which calls for immediate action?

A. The law, like most laws, does not contain a waiver for abnormal situations. In the event the Governor declares a state of emergency under Title 38, and dispensing with the E-Verify requirements are somehow necessary to preserve

public safety during the disaster, it may be within the Governor's emergency powers to suspend certain of these requirements during the pendency of the state of emergency.

Q. If there is only one contractor that can provide a certain service to the local governing authority and they refuse to follow the E-Verify contractor requirements, can the local governing authority contract with them?

A. Local governing authorities can only enter into public works contracts with contractors that follow the E-Verify requirements as provided in O.C.G.A. § 13-10-91.

Q. Is the local governing authority required to verify the information provided in the E-Verify Contractor affidavit?

A. No. The contractor is responsible for the information provided. If any of the information provided is determined to be erroneous, the liability is with the contractor and not the local governing authority.

E-Verify Private Employer Questions

The requirements of this section go into effect on January 1, 2012 for public employers with 500 or more employees, on July 1, 2012 for public employers with more than 100 employees, and on July 1, 2013 for employers with more than 10 employees.

Q. What documents require an E-Verify Private Employer affidavit?

A. The E-Verify Private Employer affidavit must be collected from people applying for occupational tax certificates and business licenses. It is also required for any document required by the local governing authority to operate a business (e.g. certificates of occupancy or alcohol licenses if they are required to operate that business in your local governing authority). Please consult your local governing authority attorney to determine which documents fall under this requirement.

Q. What do we do with the E-Verify Private Employer affidavit when it is collected from an applicant?

A. Once you receive an executed E-Verify Private Employer affidavit you retain it per your local governing authority's records retention schedule. At the end of each year, starting on December 31, 2012, you will be required to file a report with the Department of Audits and Accounts that will include the information on this affidavit.

Q. Are we required to collect multiple E-Verify Private Employer affidavits if a private employer comes in for multiple licenses?

A. No, one affidavit per calendar year will meet the requirements of the law.

SAVE Public Benefits Questions

Q. What are the “public benefits” that require a local governing authority to collect a SAVE affidavit?

A. The list of public benefits in Georgia law is broad. Local governing authorities, generally, issue some of the following public benefits: Employee Retirement Benefits, Employee Health Benefits, Employee Disability Benefits, Alcoholic Beverage Licenses, Occupational Tax Certificates (Business Licenses), Taxicab Licenses, Auctioneer Licenses, Pawn Broker Licenses, Massage Therapist Licenses, Billiard Hall Licenses, Precious Metals and Gems Dealer Licenses, Flea Market Licenses, Peddler and Itinerant Trader Licenses, Transient Business Licenses, Fortune Teller Licenses. Additionally, the local governing authority is required to collect a SAVE affidavit from any party with whom the local governing authority enters into a contract. If you have a question about whether a benefit that your local governing authority provides is a “public benefit” please consult your local governing authority’s attorney.

Q. Are Insurance Company Licenses for municipalities considered a public benefit?

A. No. Although there is a section of law authorizing municipalities to impose and collect a license fee from insurance companies for the privilege of engaging in the business of insurance within the municipality, Georgia law states that only the Commissioner of Insurance can issue a certificate of authority to conduct business in Georgia to an insurance provider. The license fee that municipalities are allowed to impose, therefore, are only issued to show payment, and are not considered a commercial license which requires a SAVE affidavit for a public benefit.

Q. How often should health benefits for local governing authority employees under SAVE be verified?

A. The law recognizes health benefits as a public benefit. The Attorney General’s list of public benefits suggests that verification through E-Verify may be sufficient verification for new hires.

Q. How are “contracts” defined as it applies to public benefits under SAVE and why are contracts considered to be a public benefit?

A. Georgia law requires verification for any public benefit provided through the local governing authority. The state law defining public benefits in O.C.G.A. § 50-36-1 is tied to the federal definition of state and local public benefits in 8 U.S.C. 1621 which includes “any contract.” There is no definition of “any contract” in this context in state or federal law. Therefore, “any contract” requires a SAVE affidavit.

Q. Are building permits considered to be a public benefit?

A. No.

Q. May a person provide the SAVE affidavit or the required identification to the local governing authority electronically?

A. The SAVE affidavit can be provided in person, electronically, or by mail. The required secure and verifiable document can either be presented in person or electronically but cannot be submitted via mail. Electronic transmissions of either the SAVE affidavit or the secure and verifiable document are governed by the provisions of the Uniform Electronic Transactions Act, found in Chapter 12 of Title 10 of the Georgia Code.

Q. What type of identification must the local governing authority require to accept a SAVE affidavit, starting on January 1, 2012?

A. The following is a list of acceptable identification: United States Passport, United States Passport Card, United States Military ID, a Driver's License or ID from one of the 50 states, Puerto Rico, Washington D.C., Guam, U.S. Virgin Islands, Northern Marianas Islands, American Samoa, and the Swain Islands, a tribal identification ID from a federally recognized Native American tribe, a United States Permanent Resident Card, an Alien Registration Receipt Card, an Employment Authorization Document, a passport of a foreign government, a Merchant Mariner Document, a Merchant Mariner Credential, a Free and Secure Trade (FAST) Card, a NEXUS Card, a Secure Electronic Network for Travelers Rapid Inspection (SENTRI) Card, a Canadian driver's license, a United States Certificate of Citizenship, a United States Certificate of Naturalization, or any other document required to be accepted by a particular federal law. You cannot accept a Matricula Consular de Alta Seguridad card, matricula consular card, consular matriculation card, consular identification card, or any other similar card for identification purposes. This list of acceptable identification documents will be updated annually by the Attorney General and will be posted on the Department of Law website.

Q. Do business owners need to sign the SAVE affidavit every time a benefit is renewed?

A. Yes. A new affidavit must be signed every time a public benefit is renewed, even if the renewal is for a U.S. citizen. This is because it is possible that a person's legal status may have changed since the last application for the benefit.

Q. Is a local governing authority required to collect multiple SAVE affidavits if an applicant comes in for multiple public benefits?

A. No, one affidavit will meet the requirements of the law if the person has come in for multiple public benefits at one time. If a person comes in for multiple benefits over a period of time (one benefit in November, a second benefit in December, etc) then that person will need to submit a SAVE affidavit for each time a benefit is requested.

Q. Who can sign and present the SAVE affidavit on behalf of an applicant for a public benefit?

A. Any person who is 18 years of age or older and who is authorized to execute binding legal documents on behalf of an individual, business, corporation, partnership, or other private entity requesting a public benefit may sign the SAVE affidavit and present identification on behalf of said entity.

Q. Should naturalized citizens be verified through the SAVE program?

A. No. Naturalized citizens are U.S. citizens and should be treated as such. However, legal permanent residents should be run through the SAVE program.

Q. What if someone who has applied for a public benefit refuses to sign the SAVE affidavit?

A. If someone refuses to sign the SAVE affidavit then the local governing authority should not provide the benefit. The local governing authority has signed a contract with the Department of Homeland Security that requires the local governing authority to verify eligibility prior to granting a public benefit. This includes business, alcohol and insurance licenses.

Q. When does the local governing authority have to start requiring the presentation of identification in order to provide a public benefit?

A. January 1, 2012. Any public benefit including license renewals issued before January 1, 2012 will not require an identification document. Please see the list above for a list of public benefits for SAVE or consult your local governing authority attorney and the list above of allowed identification documents for SAVE.

Q. What does the local governing authority do with the SAVE affidavit once it has been collected?

A. When the local governing authority collects a SAVE affidavit, it should be retained for three years in accordance with the Georgia Retention Schedule for Local Governments. If the applicant has checked the field for "legal permanent resident" or checked the field for "qualified alien" the local governing authority is required to run the applicant through the SAVE program.

Q. What reporting requirements are mandated by SAVE?

A. Effective on January 1, 2010, local governments that provide or administer public benefits were to have begun filing annual reports with DCA. The first annual reports were due no later than January 1, 2011. DCA's online Public Benefits Reporting System (PBRs) is the sole method by which public entities can meet this annual reporting requirement. These reports must identify public benefits provided and/or administered by the local governing authority as authorized through the Department of Homeland Security and a listing of each public

benefit for which SAVE authorization for verification through the Department of Homeland Security has not been received. The latter requirement does not apply to the applicants through the local governing authority that were denied, but to the actual local governing authority that was denied the authority to verify a particular public benefit by the Department of Homeland Security. Go to www.dca.state.ga.us to file the required DCA report.