

FRAGOMEN

E-Verify Issues

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With you today...

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E-Verify Topics

- Federal Legislation
- State Laws
- Employer Issues
- Going Paperless



Federal Legislation



This Session of Congress

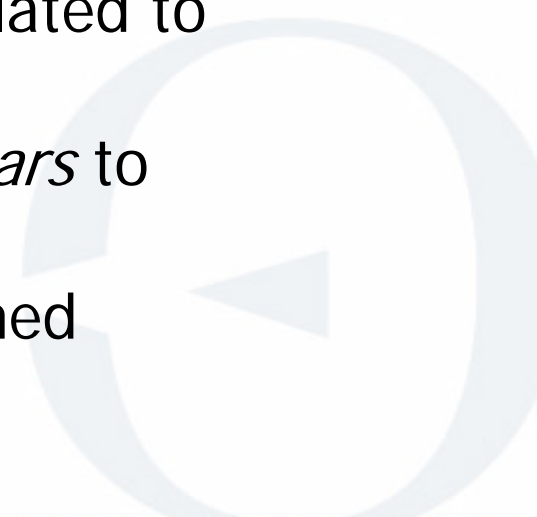
- Schuler/Tancredo SAVE Act
 - Requires all employers to verify/reverify all employees within a 4-year period using current approach
- Johnson NEVA Bill
 - Mandatory electronic verification system to replace E-Verify and I-9
 - Reverify/verify all employees within 3-year period

So, What's the Problem with a Mandatory National Electronic Verification System?

- Current approach requires both I-9 completion AND electronic verification
- E-Verify currently supports 66,000 employers, less than 1% of 7 million US employers
 - Would be 13,000% increase in users
- Social Security and DHS database error
 - SSA has 4.1% error rate (12.7% of errors relate to native-born US citizens)
- 1 in 25 new hires would receive a TNC (11,000/day)
- 50-60 million E-Verify queries per year (3.6 million in 2007)

So What's the Problem with a Mandatory National Electronic Verification System?

- SSA has 751,000 disability claim backlog
 - Average wait of 499 days
 - 50% of calls to SSA receive a busy signal
 - 78 million boomers to become eligible for SSA benefits
 - 1 million claims per year increase for next ten years
- 3.6 million extra visits or calls to SSA related to verification
- SSA would need 2,000 – 3,000 work *years* to address increased demand
- 47% of employers improperly prescreened employees with E-Verify



State Legislation



Enacted Legislation

- Employment eligibility verification requirements or attestations
- Penalties for state contractors who hire unauthorized workers
- Restrictions on commercial or professional licensure
- Required use of E-Verify
- Limitation on unemployment benefits
- Validity of state driver's license or ID tied to visa status
- Restrictions on employment of non-US citizens and nonresident aliens by state agencies
- Penalize landlords who rent to undocumented aliens

Proposed Legislation

- More states considering provisions similar to those already approved in other states
- Proposals also include:
 - Requiring/encouraging cooperation by local police with ICE officials
 - Banning government benefits to USC children of undocumented aliens
 - Prohibiting employers from deducting wages of undocumented workers
 - Requiring higher mandatory withholding from undocumented workers
 - Contractors may lose contracts, pay fines and/or be barred from state contracts for up to 5 years
 - Hiring undocumented workers would be a state felony
 - Requiring employers to cover medical expenses for work injuries to an undocumented worker

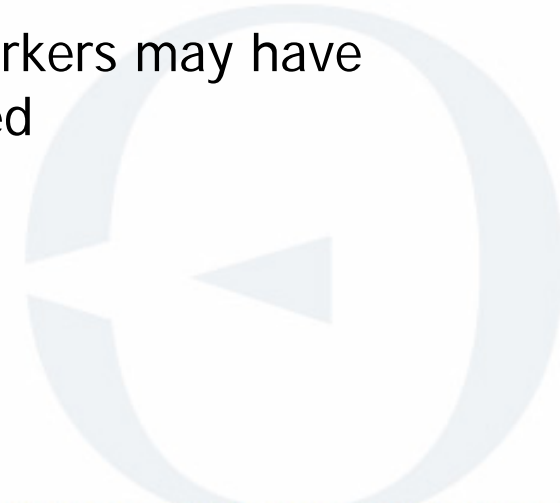
States Requiring Use of E-Verify

- States where state agencies must use E-Verify
 - Arizona
 - Colorado
 - Georgia
 - Idaho
 - Mississippi
 - Missouri
 - North Carolina
 - Oklahoma
 - Pennsylvania
 - Utah



States Requiring Use of E-Verify

- Arizona
 - All employers in the state must participate in E-Verify
 - State contractors and applicants for economic incentives must demonstrate enrollment in E-Verify
 - Penalties:
 - Businesses that employ undocumented workers may have their business license suspended or revoked



States Requiring Use of E-Verify

- Colorado
 - Any individual or entity that seeks to enter into a contract for the procurement of services with a state agency must participate in E-Verify
 - Informal contacts indicate that state contractors must use E-Verify nationwide, not just for employees in Colorado
 - Penalties:
 - If a contractor violates a provision of the contract, the state agency may terminate the contract. If so, the contractor may be liable for actual and consequential damages to the state agency.

States Requiring Use of E-Verify

- Georgia
 - All public employers and their contractors and subcontractors (for services only) must register and participate in the “federal work authorization program” (i.e., E-Verify) to verify the status of newly hired employees.
 - SB 529 becomes effective in three phases:
 1. July 1, 2007 for public employers and state contractors or subcontractors with 500 or more employees.
 2. July 1, 2008 for state contractors with 100 or more employees.
 3. July 1, 2009 for those with 99 or fewer employees.

States Requiring Use of E-Verify

- Illinois
 - Prohibits employers from using E-Verify until DHS and SSA are able to resolve, within three days, 99% of the “tentative non-confirmation” letters they issue. Employers using E-Verify must meet training, notice, and attestation requirements.
 - Employers that participate in E-Verify may not take employment related actions, such as refusing to hire an applicant, without properly following the program's procedures.
 - Lawsuit pending – The prohibition is delayed until April 15, 2008 at the earliest. The training, notice, and attestation requirements took effect on January 1, 2008.
 - DHS indicates that they will ‘protect’ Illinois employers who choose to use E-Verify.

States Requiring Use of E-Verify

- Minnesota
 - Any business seeking to enter into a state contract in excess of \$50,000 must participate in E-Verify.
 - Businesses must certify that they do so on a standardized form found on the state's Department of Administration website.



States Requiring Use of E-Verify

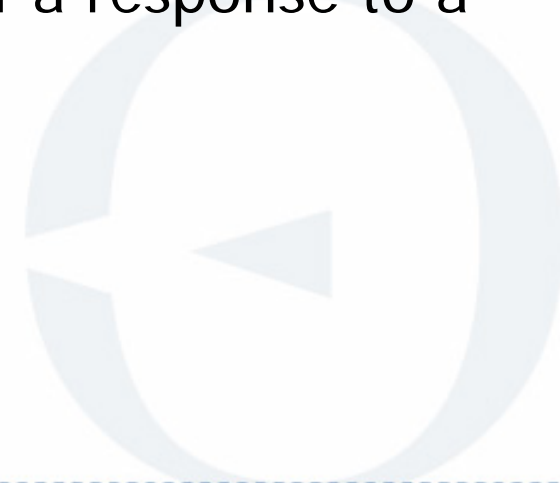
- Mississippi
 - All employers in Mississippi must use E-Verify, effective as follows:
 - July 1, 2008 - All public employers, all public contractors and subcontractors, and private employers with 250 or more employees
 - July 1, 2009 - Private employers with between 100 and 200 employees
 - July 1, 2010 – Private employers with between 20 and 99 employees
 - July 1, 2011 - All private employers
 - Penalties:
 - Employers that do not use E-Verify by the applicable effective date may: (1) have all state contracts terminated and become ineligible for public contracts for three years; (2) have any license, permit, or certificate allowing it to do business in Mississippi suspended for one year; or (3) both.
 - Employers that discharge an authorized worker while retaining an unauthorized one may be civilly liable to the discharged employee.

States Requiring Use of E-Verify

- Oklahoma
 - Public employers and state contractors and subcontractors must use a "status verification system" to verify the immigration status of employees. E-Verify and the Social Security Number Verification Service (SAVE) are acceptable.
 - Only applies to contracts entered into for the physical performance of services after the effective date of the Act and only to new employees hired after the effective date of July 1, 2008.

States Requiring Use of E-Verify

- Rhode Island
 - All persons and businesses, including grantees, contractors and their subcontractors, and vendors doing business with the State of Rhode Island must register with and utilize E-Verify. They must certify their participation in E-Verify as part of a response to a offer for a bid.

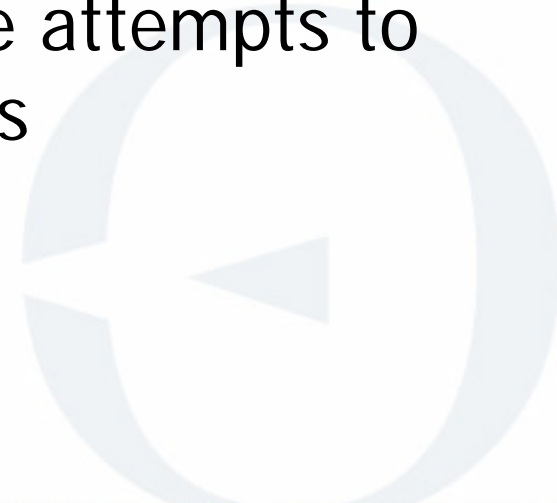


States Requiring Use of E-Verify

- Utah
 - Public employers and state contractors and subcontractors must use a "status verification system" to verify the immigration status of employees. E-Verify and the Social Security Number Verification Service (SAVE) are acceptable.
 - Only applies to contracts entered into for the physical performance of services after the effective date of the Act and only to new employees hired after the effective date of July 1, 2009.

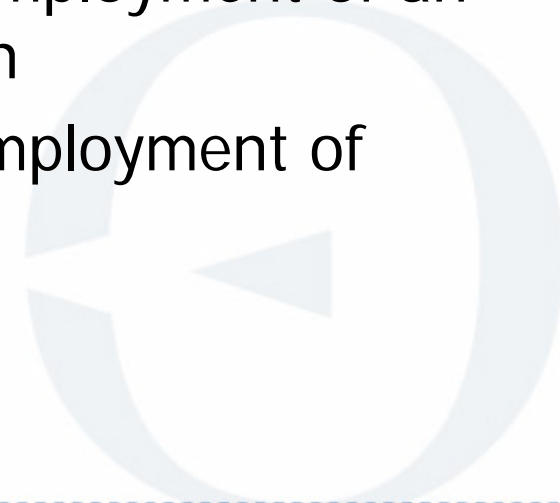
Employer Concerns

- Time involved in registration and education of employees who will be doing verification
- Memorandum of Understanding provisions
- Social Security and DHS database errors
- Agency responsiveness to employee attempts to resolve Tentative Non-Confirmations
- Delays in starting employees



MOU Provisions

- Employer responsibilities
 - Become familiar and comply with E-Verify Manual
 - Accept only List B documents with a photograph
 - Make photocopies of green cards and EAD's
 - Fine of \$500 - \$1,000 for continuing employment of an employee with a final non-confirmation
 - Rebuttable presumption of knowing employment of unauthorized worker
 - Prohibited from prescreening
 - Follow non-confirmation procedures



MOU Provisions

- Employer responsibilities (cont.)
 - Record E-Verify case number on I-9
 - Allow DHS or SSA to:
 - Make periodic visits to review E-Verify related records
 - Interview employer representatives
 - Interview employees hired during E-Verify
 - Make employment and E-Verify related records available to DHS and SSA
 - Make tentative non-confirmations based on photographic non-match or inability to determine match

Employee Concerns

- TNC's for US citizens and others who do not update SSA records such as:
 - Married women
 - Foreign born US citizens
- Need to go to SSA or DHS to resolve database errors
- Prescreening by employers



GOING PAPERLESS



Electronic Signature & Storage of I-9s

- Cannon Bill effective April 28, 2005, regulations published June 15, 2006
- Permits, but does not require, employers to complete, sign and store I-9s electronically
- No specific technology mandated
- The new law allows employers to go “paperless”



Electronic Signature and Storage

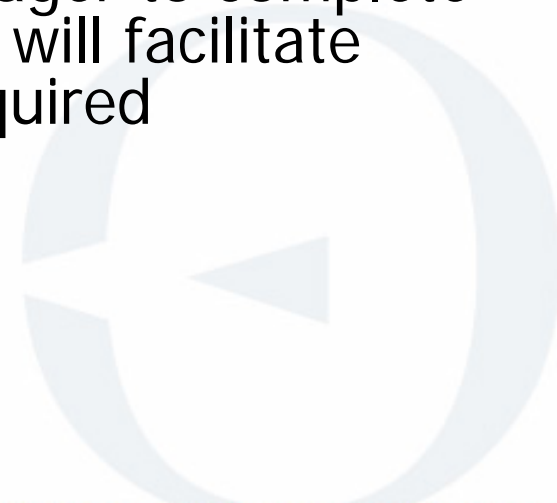
- Permits employers to adopt any electronic storage technology so long as it meets certain minimum standards, including adequate security features that:
 - limit access to authorized personnel;
 - insure data integrity;
 - provide means for producing hard copies; and
 - include search and indexing mechanisms.

What to Look for in an On-line I-9 Tool

- Fully electronic, web-based completion, signature, storage, maintenance and administration of I-9s
- Legal guidance and support during all phases of the I-9 process
- Ongoing education and training of company representatives
- Assistance with “historical” I-9 forms
- Secure electronic document storage
- Cohesion with internal immigration programs
- Eliminate the need to courier I-9 Forms for internal storage
- Implementation which will eliminate the improper and unnecessary completion of multiple I-9’s per employee

Efficiencies/Compliance

- Completion of I-9 anywhere there is web access
- Integrate with other onboarding activities
- Completion of I-9 online to eliminate paperwork errors, substantially reducing exposure to audit liability
- System needs to allow any authorized manager to complete Section 2 of an I-9 for any new hire, which will facilitate completion within three days of hire, as required



Recommendations

- Conduct a thorough internal I-9 audit to determine potential exposure and need for E-Verify
- Consider whether E-Verify will work for your company at this time
- Review the MOU with general counsel, consider internal cost of use of E-Verify
- Consider online I-9 products

