

E-Verify Legislation

E-Verify is the federal online database that checks identity (validity of Social Security numbers) and employment eligibility of new hires. Employers must still complete the I-9 form and, if presented with a List B document, can only accept one that contains a photograph. It documents that each new employee (both citizen and non-citizen) is authorized to work in the United States. Employers who are required to use E-Verify, or who chose to use E-Verify must use this within three business days of the new hire's start date.

The US Citizenship and Immigration Services Website to enroll in E-Verify is <http://www.uscis.gov/portal/site/uscis>. If you need assistance in completing the registration process you may contact the government for assistance at 888-464-4218. Clinics who do not want to learn the E-Verify program can contract with third-party businesses known as designated agents who can automate or take over the I-9 documentation and E-Verify process. These businesses handle other HR issues as well, such as background checks, employment verification if a clinic wants additional services.

Eight states currently mandate the use of E-Verify for either public entities or those who contract with the state, or both public and private employers. These states are Arkansas, Arizona, Colorado, Georgia, Mississippi, Oklahoma, Rhode Island, and South Carolina. Two states, Missouri and Tennessee, encourage the use of E-Verify. Several states require Public Agencies to use E-Verify, and even more states have pending legislation relating to the use of E-Verify. Therefore, it is important that all businesses stay up to date on this legislation and whether it will impact their business.

Arizona – HB 2779 -Fair and Legal Employment Act January 1, 2008 **all employers** must use E-Verify.

Arkansas - House Bill 1024 (Act 157) As of August 1, 2007, Arkansas state agencies are prohibited from entering into contracts with businesses that knowingly employ or contract with illegal immigrants. These certification requirements apply to all contractors seeking to enter into a contract with a state agency for professional services, technical services or construction where the value of the contract is \$25,000 or more.

Colorado – House Bill 06-1343 As of August 7, 2006 addresses contractors who provide services to state agencies and political subdivisions of the state, which includes most state and local governments, districts, and other public entities. Public contracts for services must (1) prohibit the contractor from knowingly employing or contracting with illegal aliens or using subcontractors who do so, (2) require the contractor to participate in E-Verify, and (3) require the contractor to take action if it learns that a subcontractor is employing illegal aliens.

Illinois – Legislative August 13, 2007. House Bill 1743 - It is a civil rights violation for an employer participating in the Basic Pilot Program to mistreat a worker based on “no-match” letters.

House Bill 1744 - Asserts that employers are prohibited from enrolling in Employment Eligibility Verification System until a 99% efficiency rating is achieved before relying on it.

Both of these House bills are law but under litigation at this time 12/23/08. It is important that employers in Illinois follow the progress of this litigation.

Massachusetts State agencies must use E-Verify

Missouri – House Bill 1549 - January 1, 2009 - Requires all public employers to enroll and participate in E-verify or other federal work authorization program. Also requires any business with a state contract or grant in excess of \$5,000 or any business receiving state-administered or subsidized tax credit, tax abatement or loan from the state to participate in E-Verify or other federal work authorization program.

Enrollment in E-Verify is optional for employers who do not fall into one of the categories listed above. However, participation in E-Verify is considered an affirmative defense to allegations of hiring unauthorized aliens.

South Carolina – House Bill 4400 -The South Carolina Illegal Immigration Reform Act requires employers to use E-Verify for all new hires or only employ workers who possess a valid driver’s license or identification card issued by South Carolina or other state approved by the South Carolina Department of Motor Vehicles. Implementation is in three phases:

1. 1/1/09 - All public employers and public contractors with 500 or more employees are required to comply
2. 7/1/09 - All private employers with 100 or more employees must comply by July 2009
3. 7/1/10 all employers by July 2010.

An employer can lose their business license if they do not comply with the law. Utilizing E-Verify over checking for a valid driver’s license has the added benefit of insulating the employer from being penalized if the employee turns out not to have valid work authorization.

Tennessee – Public Acts, 2007, Public Chapter No. 529, House Bill No. 729 employers who "knowingly employ, recruit or refer for a fee for employment an illegal alien" are subject to a temporary suspension of their business license; repeat offenders are subject to a one-year suspension. Employers are not required to use the E-Verify system but it provides a safe harbor for those who do use it if the employer hires an individual who is shown as eligible for employment through that system. Employers who comply

with the requirements of the current I-9 process or who verify new hires through the E-Verify can be shielded from sanctions.

Virginia – Virginia does not require E-Verification at this time but HB 926 provides that the authority of certain business entities to operate in the Virginia may be terminated involuntarily or revoked upon the conviction of the business entity for a violation of 8 U.S.C. § 1324a(f) - the pattern or practice of employing unauthorized workers.