

Everify: A Pancea or Burden For Employers?

By Vinh Duong

Tuesday, September 6, 2011

Traditionally a federal responsibility, immigration reform has become a hot-button topic for state lawmakers across the United States.

According to the National Conference of State Legislatures, in the first quarter of 2011, state legislators in the 50 states and Puerto Rico introduced 1,538 immigration-related bills and resolutions. This surpassed the first quarter of 2010, when 1,180 bills were introduced.

In particular, state legislatures continue to pass legislation aimed at curtailing the hiring of undocumented workers by requiring employers to utilize the E-Verify program. E-Verify is a Web-based system operated by the Department of Homeland Security that allows employers to determine whether their employees are eligible to work in the United States.

E-Verify is voluntary for all employers, although a growing list of states have passed laws requiring businesses to participate and mandating its use by public employers. Indeed, thus far in 2011, eight states have enacted legislation requiring employers to enroll and participate in E-Verify, including Alabama, Florida (by executive order), Georgia, Indiana, North Carolina, Tennessee, Utah and Virginia.

Currently, 18 states have laws requiring employers to enroll and participate in E-Verify. The linked table below provides a snapshot of states requiring participation in E-Verify.

For multistate employers, the growing patchwork of state immigration laws requiring participation in E-Verify, coupled with the recent U.S. Supreme Court ruling upholding a state's right to require mandatory use of E-Verify, means that those employers must align their work-site compliance strategy with both the applicable state immigration laws currently in effect in the state(s) in which they operate, as well as with federal immigration laws.

E-Verify was conceived with the intent of curtailing the hiring of undocumented workers. As of January 2011, over 243,000 employers have registered to use it. Although E-Verify has grown in popularity over the years, the program is not without its flaws.

U.S. Citizenship and Immigration Services reported in fiscal 2010 that 98.3 percent of all queries submitted to E-Verify resulted in confirmations with 24 hours. Despite the quick turnaround on queries, the accuracy and reliability of the program remains divisive for a number of reasons.

- E-Verify has been controversial because of alleged error rates in the databases used. The Social Security Administration estimates that 17.8 million records contain discrepancies related to name, date of birth or citizenship status; 12.7 million of these pertain to U.S. citizens;

- Approximately half of all unauthorized workers screened by E-Verify were incorrectly confirmed as work-authorized;
- E-Verify remains vulnerable to identity fraud (i.e., the use of a legitimate name and identification by someone other than the true owner), which results in a high rate of erroneous confirmations;
- Name mismatches (multiple or hyphenated names) still lead to tentative nonconfirmation notices.

Despite its flaws, proponents of E-Verify maintain that the program is the most effective tool currently available to protect U.S. workers from businesses that hire undocumented foreign workers. To be sure, some of the advantages of participating in E-Verify are that the program:

- Assists employers in maintaining a legal workforce.
- May serve as a good-faith defense that an employer is not hiring an undocumented workers.
- Helps eliminate Social Security no-match letters.
- Improves accuracy of wage and tax reporting.
- Gives employers more confidence that the employees they are hiring are authorized to work in the U.S.
- Positive for an employer's public image.

There is a growing movement at the federal level to require all U.S. employers to enroll and participate in E-Verify and eliminate the I-9 employment verification process. Such a bill, the Legal Workforce Act of 2011, was introduced in Congress on June 4. Its effectiveness for U.S. businesses remains open for debate, but the likelihood is that proponents of E-Verify, both in state and federal governments, will continue to push the E-Verify agenda and lay the groundwork for making E-Verify mandatory.

As state legislatures continue to enact E-Verify legislation, employers should expect that more and more states will be encouraged to pass laws regulating the hiring of undocumented workers and mandating the use of E-Verify, thereby imposing additional compliance burdens on employers operating in multiple states.

Between the one-two punch of federal and state immigration laws, employers will face the daunting task of trying to comply with the growing patchwork of laws aimed at curbing illegal immigration.

<http://www.workforce.com/article/20110906/NEWS02/309069996>