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The Future of E-Verify: What is it and will it become mandatory for Pennsylvania Employers?

At the recent 30th Annual Immigration Law Update, one topic that came up during numerous seminars was the topic of E-Verify.

WHAT IS E-VERIFY?

Section 274A of the Immigration and Nationality Act requires employers to verify that all employees are authorized to work and have established their identities using Form I-9.

The United States Department of Homeland Security and the Department of Labor together implemented a free, voluntary, Web-based system enabling employers to electronically verify the legal status and social security numbers of their newly hired employees. This system was known as the Basic Pilot/Employment Eligibility Verification Program. E-Verify is a renamed and enhanced version of this system which also now includes things such as a new photo screening tool to help employers detect forged immigration documents.

With E-Verify, employers can expeditiously compare information from the Form I-9 used for all new hires against more than 425 million records in the Social Security Administration's database and more than 60 million records in the Department of Homeland Security's immigration database. If the data matches, the prospective employee is able to work. If not, there are procedures in place for further investigation. E-Verify does not substitute Form I-9 compliance.

Employers who use E-Verify may not selectively verify potential new hires and must verify all hires while participating in the program. In addition, the program may not be used to prescreen applicants for employment, to delay training or an actual start date pending confirmation of employment authorization, re-check employees hired before the company signs the agreement to use E-verify, or re-verify employees who have temporary work authorization.

POSITIVE ASPECTS OF E-VERIFY:

- Eliminates Social Security mismatch letters
- Improves the accuracy of wage and tax reporting
- Protects jobs for authorized U.S. workers
- Helps U.S. employers maintain a legal workforce
- Provides quick and easy electronic employment eligibility verification
- "Multiple site registration" allows one worksite to verify new hires at all sites
- Use of E-Verify presumes an employer has not knowingly hired an unauthorized alien

NEGATIVE ASPECTS OF E-VERIFY:

- Relies on government databases that have high error rates and/or are not sufficiently up to date

- Employers may use the program to take adverse action against workers
- Although 100,000 employers are registered for the program (as of January 2009), only half of those enrolled use the program
- Qualified workers do not have a chance to prove they are eligible to work, because often employers conduct the search before the employee's first day of work or when negative results come back, the employer tells the individuals that the process for contesting the result takes too long
- Provides quick and easy electronic employment eligibility verification
- Mandatory participation has significant cost implications, especially since many undocumented workers have not yet been legalized and it would place a greater burden on businesses trying to survive in today's crippled economy
- Mandatory participation would create more bureaucratic backlog, especially for the Social Security Administration

THE FUTURE OF E-VERIFY: WILL IT BECOME MANDATORY FOR PENNSYLVANIA EMPLOYERS?

Although E-Verify is highly controversial, Arizona, Mississippi, and South Carolina require all employers to use E-Verify. Eleven states have mandated the use of E-Verify for public employers in the state and/or any person or entity doing business within the state. These states include: Rhode Island, Missouri, Oklahoma, Arizona, Colorado, Georgia, Utah, Minnesota, Mississippi, North Carolina, and South Carolina. Illinois does not allow employers to use E-Verify. You should be aware of the E-Verify regulations for the states where you do business, since there is no consistent pattern to the application of regulation.

Pennsylvania could mandate the use of E-Verify for all employers. Currently, there is no legislation requiring the use of E-Verify in Pennsylvania. However, Pennsylvania has already passed legislation prohibiting employment of unauthorized workers. Based on what was discussed at the 30th Annual Immigration Law Update, it is expected Pennsylvania will require E-Verify.

In today's climate of Immigration Customs Enforcement raids, all companies are advised to establish a comprehensive Form I-9 compliance policy and program. Pennsylvania employers should familiarize themselves with E-Verify and determine how it could positively or negatively impact their business.

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