

Why Businesses Should Oppose Proposals to Make E-Verify Mandatory

- E-Verify federal database error rates are rampant, incorrectly flagging employment-authorized immigrants and U.S. citizens as not eligible for employment. The Social Security Administration's database contains 17.8 million errors, affecting the records of 12.5 million U.S. citizens. In addition, lawful foreign-born workers are incorrectly non-confirmed at a rate 30 times greater than that of U.S. citizens.^{1,2}
- Recognizing the program's burdens, the U.S. Chamber of Commerce has been active in supporting litigation in other states challenging mandatory use of E-Verify. The Government Accountability Office has also issued several reports to Congress on the issue, recommending that the program not be mandated because of errors in the databases, the turnaround time for work authorization status, and a fear of overloading the system.^{4, 5, 6}
- Small businesses especially face a variety of burdens:
 - The required tutorial to enroll in E-Verify takes between 5-6 hours and then the employer must be tested on the information before being registered. Small businesses rarely have designated HR personnel, making this task especially daunting.^{7, 8}
 - E-Verify affects small businesses' operating expenses, requiring either a high-speed internet connection and possible computer upgrade or the services of one of the new companies cropping up targeting small business owners with promises to take over the verification process as "designated agents" and charging significant fees for doing so.⁹
 - Under the Memorandum of Understanding (MOU) with the federal government, employers must abide by a variety of administrative requirements, including posting notices, visible to prospective employees, about the employer's participation in E-Verify; becoming familiar with the 68-page DHS E-Verify Manual; and issuing specified written right-to-appeal notices to employees who receive "tentative non-confirmation" notices.³
 - Employers who operate in multiple states are potentially faced with a labyrinth of conflicting laws and regulations, and even just a small mistake could put a small employer out of business.¹⁰
 - Only two other states – Arizona and Mississippi – have enacted laws like this, and some owners have already reported getting incorrect results for employees they know are U.S. citizens. They feel the time and investment in the program are creating significant hardships.¹⁰
- Any attempt by the General Assembly to protect from liability employers who act in "good faith" is illusory, since employees who believe they were unfairly treated will still have the right to bring suit in an attempt to vindicate their claims. Further, although federal law protects employers from liability for "good faith reliance on information provided" by E-Verify, potential liability remains for any federal discrimination claims or violations of the various procedural requirements that must be followed in making use of the system.¹¹
- Employers are barred from using E-Verify to pre-screen prospective new hires. If, after hiring, the system can't automatically confirm the employee, the employer must continue to employ that person until the new employee has been able to address the issue and correct his/her information with SSA or DHS. According to the MOU that the employer signs when registering to use E-Verify, the employee has eight days to initiate contact with SSA/DHS to resolve the error, and the government is supposed to address the appeal within ten days. In reality, it may take months to sort out. In the meantime, the employer cannot fire, demote, delay training, withhold pay or take any other adverse action against the employee. The employer therefore has to make a significant investment in an employee whose commitment to working for the employer remains in limbo.³

1 http://www.nilc.org/immsemplmnt/ircaempverif/e-verify_impacts_USCs_2008-04-09.pdf

2 <http://www.ssa.gov/oig/ADOBE/PDF/A-08-06-26100.pdf>

3 http://www.uschamber.com/NR/rdonlyvres/epssu7le6fzvb7aiu33ys5p2fmyzvap74pqz544pn6ldmwmnd4trff2nidhyfx5ev7llftk6chqiueb7hs5d6wilxxd/060627_amador_employment_verification.pdf

4 <http://www.gao.gov/new.items/d06895t.pdf>

5 <http://www.gao.gov/new.items/d05813.pdf>

6 <http://regulus2.azstarnet.com/blogs/clockingin/8616/small-businesses-bump-into-e-verify-obstacles>

7 http://www.projo.com/business/johnkostrzewa/BZ_JK0413_04-13-08_VI9N8CN_v30.3147f5d.html

8 <http://www.prweb.com/releases/2008/04/prweb840024.htm>

9 <http://www.uscis.gov/files/native/documents/MOU.pdf>

10 <http://www.azcentral.com/arizonarepublic/news/articles/0303biz-econ-restaurants0303.html>

11 117 Stat. 1944, Sec. 403(d)