

**E-VERIFY –**  
**IS IT RIGHT FOR YOUR BUSINESS?**

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On July 1, 2009, South Carolina businesses with more than 100 employees became subject to the employment verification provisions for new hires set forth in the South Carolina Illegal Immigration Reform Act. By July 2010, all South Carolina businesses must comply with the employment verification rules. These requirements have led many businesses to question whether E-Verify enrollment is appropriate for their business. The law clearly states that E-Verify participation is a ‘safe harbor’ for South Carolina businesses. However, the legislature left an open door for employers to comply with the employment verification provisions in an alternative manner by accepting a driver’s license or identification document from a qualifying state. Before making a business decision about its compliance measures under the State law, employers must understand the main components and employer responsibilities associated with the E-Verify program.

E-Verify is an Internet-based system operated by the Department of Homeland Security (DHS) and Social Security Administration (SSA) designed to provide employers with information about the identity and employment eligibility of new hires. It is administered by the U.S. Citizenship and Immigration Services (USCIS) and is free, voluntary, and available to employers in all 50 states. Currently, approximately 130,000 employers are enrolled in E-Verify.

**E-Verify Registration and MOU Requirements**

Employers can register for E-Verify online by going to [www.dhs.gov/E-Verify](http://www.dhs.gov/E-Verify) and choosing “E-Verify Registration” under the Related Links tab. The website provides information about the *Memorandum of Understanding* (MOU) that the employer will need to execute as part of the enrollment process. Before enrolling in the program, employers should thoroughly review the MOU in order to understand their responsibilities, rights, and obligations associated with E-Verify enrollment.

For example, in most circumstances, an employer can only E-Verify new hires not current employees and must run the E-Verify query within three days of hire. Moreover, E-Verify employers can only accept List B documents with a photograph. Finally, E-Verify participants must agree to have their E-Verify records reviewed by DHS and to have company officials and employees participate in E-Verify interviews upon request. These rules, and many others, are set forth in the MOU between the employer, DHS, and SSA.

## **User Accounts and Access Methods**

The employer is responsible for setting up user and access options in the E-Verify system. The E-Verify enrollment screen asks a series of questions that help identify the best access method for the employer's registration in the system.

### *Access Methods*

There are four types of access methods in the E-Verify registration system:

**-Employer**, allows the company to verify employment eligibility of newly hired employees.

**-Corporate Administrator**, useful when the company has multiple offices or locations. It allows corporate administrators to create, manage, and oversee E-Verify accounts for various offices/locations, and to review reports, administer new and existing E-Verify user accounts, and terminate E-Verify participation. It does not allow administrators to perform an E-Verify query on a new employee unless they register as "Employer."

**-Designated Agent**, permits an agent to act on behalf of company to verify employment eligibility of new employees (i.e. a payroll company verifying one of its clients).

**-Web Services**, requires the company to develop software that interfaces with CIS to perform verification. This can be used by designated agents and employers

### *User Accounts*

Once the access method is selected, the E-Verify system requires the designation of user roles. The types of user accounts and responsibility levels include:

**-General Users**, main function is to perform verification queries. They; may review reports only of their own activity on the E-Verify system, and each user must have his or her own user ID and password.

**-Program Administrators**, responsible for creating user accounts at the E-Verify site for other program administrators and general users. They can also view reports at a specific location, perform queries, update profiles, reset passwords, and unlock user accounts

**-Corporate Administrators**, who are able to manage multiple company accounts from central location; can also unlock accounts, view reports for multiple company sites and register/administer company sites and user accounts

## **Importance of Training**

Training is an important element of E-Verify participation. After registering, all users must review the E-Verify user manual and participate in mandatory online training which explains the various functions and capabilities of the different types of access and user accounts. In order to properly use E-Verify, users must have a solid grasp of federal I-9 compliance rules and should undergo periodic training to stay current on any changes in local, state, and/or federal laws related to E-Verify.

## **E-Verify Poster Requirements**

According to the MOU, the employer must display E-Verify notices in a prominent place that is clearly visible to prospective employees as well as to all employees who are to be verified through the system. The E-Verify poster and a non-discrimination poster from the office of special counsel must be displayed. The E-Verify notice requirements apply to both electronic media and physical locations. These posters can be found at the following links:

<http://www.usdoj.gov/crt/osc/pdf/publications/RtoWPoster.pdf>

<http://www.uscis.gov/files/natedocuments/e-ver-employee-rights.pdf>

## **The Future of E-Verify?**

Recently, the Obama Administration announced it will implement the DHS rule requiring certain federal contractors to use E-Verify for new hires effective September 8, 2009. In addition, the Senate recently passed the DHS 2010 Appropriations Bill (S. 2892) which included an amendment by Senator Sessions (R-AL) to make E-Verify a 'permanent' program and to require all federal contractors, regardless of the size, type, or duration of the contract, to use E-Verify. In the coming months, the DHS rule and federal legislation will need to be reconciled. There have also been legislative proposals to mandate E-Verify for new hires as well as current employees for all businesses. Employers should also know that in December 2008, DHS and ICE signed an MOU on sharing information about E-Verify employer participants.

## **Conclusion**

South Carolina employers should remain abreast of the ever-changing immigration landscape, including E-Verify requirements and various state and federal agency interpretations of employer compliance. Before enrolling in E-Verify, employers need to evaluate E-Verify to determine if it is the right choice for its immigration compliance plan.

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