

EMPLOYMENT LAW ALERT

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Court Upholds Rule Requiring Federal Contractors to Use E-Verify

Removing what is likely the last hurdle to implementation, last week a U.S. District Court dismissed a lawsuit challenging implementation of the E-Verify Rule for federal contractors.

The Rule provides that starting on September 8, 2009, federal departments may not enter into certain contracts unless the contractor agrees to use E-Verify to check the employment eligibility of (1) all employees hired during the contract term by the contractor to perform employment duties within the United States (including new hires not assigned to perform work on the contract), and (2) all existing employees assigned by the contractor to perform work within the United States on the contract.

Contracts to be performed in the United States that are worth \$100,000 or more and will take 120 days or more to perform are subject to the Rule. The Rule also applies to subcontracts for services or construction valued at \$3,000 or more if the subcontract flows from a prime contract that includes an E-Verify clause.

Contracts for commercially available off-the-shelf (COTS) items, or items that would be COTS items but for minor modifications, are exempt from the Rule.

Indefinite delivery or indefinite quantity contracts awarded before September 8, 2009 may be amended on a bilateral basis to include the E-Verify requirement for future orders if the remaining period of performance is at least six months.

We encourage federal contractors not enrolled in E-Verify to become familiar with the program and to audit the I-9 records of employees who will likely work on federal contracts.

To assist employers with employment eligibility verification issues, including compliance with the E-Verify Rule for federal contractors, we will hold a webinar on September 15, 2009 from 11:00 a.m. to Noon. To learn more about and to register for the program, [click here](#). If you have questions about immigration compliance, please contact [Melissa Azallion](#), [David Dubberly](#), or [David Garrett](#).

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