

E-Verify for Federal Contractors: Final Rule on Implementation

On May 21, 2009, federal contractors and subcontractors will be required to use the U.S. Citizenship and Immigration Services' (USCIS) E-Verify system, to verify their employees' eligibility to legally work in the United States. Currently, employers are required to verify the work authorization of their employees by maintaining paper records. However, E-Verify is an Internet-based system operated by USCIS and the Social Security Administration (SSA) and provides an automated link to federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers. E-Verify is currently a voluntary program for employers.

Federal contractors who are awarded contracts will have to agree to a contractual provision committing government contractors to use E-Verify. The same clause will also be required in subcontracts over \$3,000 for services or construction. Contracts exempt from this rule include those that are for less than \$100,000 and those that are for commercially available off-the-shelf items. Federal contractors will be required to enroll in E-Verify within 30 days of the contract award date. They will also need to begin using the E-Verify system to confirm that all of their new hires and their employees directly working on federal contracts are authorized to legally work in the United States.

However, many critics believe that the E-Verify system will hurt businesses and employers because of significant problems with the system. In a 2007 study, the federal government identified the inability of E-Verify to accurately verify the work status of employees. SSA has estimated that the problems with E-Verify will result in the misidentification of more than 3.6 million employees as ineligible to work per year. There have been several documented cases of American citizens who were found ineligible by E-Verify. Additionally, many employers have not started using E-Verify because it is not easy or efficient to use.

The most troubling aspect is the potential for E-Verify to create costs and burdens on employers and employees alike. Employers will be subjected to additional work and costs to verify eligible employees. Federal contractors that are also small business owners may not have the personnel or expertise to implement and use the new E-Verify system.

This article is not intended as legal advice, but to provide information regarding federal requirements. You should contact the appropriate federal agency or consult with an attorney to determine what is appropriate to your specific situation.