



HR for Business - ConsultStu LLC

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Information Paper: Small Business Primer

Topic: Employers Using E-verify – Know the rules, comply and be careful!

E-verify use by employers is growing, and so are the problems and pitfalls that come from using it improperly. E-Verify is a free Internet-based electronic verification system used by employers and administered by USCIS that confirms an individual's employment eligibility. Violations of the E-verify rules and allegations of immigration discrimination are referred to the U.S. Department of Justice, Office of Special Counsel for investigation and prosecution. If your company uses E-verify, watch out that you follow the rules and comply with required process. Deviation from the standards may result in a threat of legal action from the DOJ. [Check out recent DOJ press releases.](#)

A typical, not uncommon action happened in January 2014, when the DOJ reached an agreement with a MA staffing company (aka Atwork Personnel Services Inc.), resolving claims that the company engaged in citizenship status discrimination in violation of the Immigration and Nationality Act (INA). DOJ received a referral from the U.S. Citizenship and Immigration Services (USCIS) and its investigation found that the company misused the E-Verify program, and required work-authorized, non-U.S. citizens to produce specific documents, but did not do the same for U.S. citizens. Back pay, a civil money penalty, mandated training, changes in hiring practices and 2 years of DOJ monitoring was the outcome.

Lesson: *Employers using E-verify must ensure that its human resources personnel are properly trained and do not take actions that violate the anti-discrimination provisions of the INA.*

Tips to avoid problems with E-verify

- ❖ Check if your state (or state where employee is being hired to work) requires use of E-verify (Florida does not require E-verify).
- ❖ Read and understand all commitments in the MOU when signing up for program.
- ❖ Irregular use and improper handling of cases could result in DHS site visit.
- ❖ Maintain documentation of staff training on E-verify, access to training manuals
- ❖ Each trained user should have their own separate user ID and password (not generic access)
- ❖ Post E-verify posters (Eng/Span) at all hiring locations
- ❖ Complete I9 within 3 days of hire, then create new E-verify case within 3 days of hire (don't create duplicate cases for same person)
- ❖ Do not use E-verify for pre-employment screening of applicants.
- ❖ After signing the MOU, you must E-verify all new hires at the company, not a select group (unless exception applies)
- ❖ I9, List B documents must have a photo – compare the photo to the E-verify photo.



- ❖ Follow the rules for tentative non-confirmations (photo, SSA or DHS related). The employee must be allowed to continue working without change, while resolving the TNC. Print and review TNC notice with the employee.
- ❖ Print and provide TNC notice and letter (in language needed) for employee.
- ❖ Revisit open cases regularly and check for updates on contested cases. Close cases as needed and directed. Employees who do not contest and a final non-confirmation is issued are subject to termination.
- ❖ Do not ask the employee for SSA printouts or other documentation from SSA, the agency will update in E-verify when complete (8 business days, unless more time needed).
- ❖ DHS non-confirmations take about 10 federal government business days to close.
- ❖ Federal contractors have additional responsibilities (see MOU).
- ❖ Do not e-verify employees that were hired prior to date of MOU agreement.
- ❖ Who is a new hire? Follow the rules for I9 completion and be consistent when determining when to open a new case. According to the I9 Manual, there are situations when a hire is not considered to take place, despite an interruption in employment. Determine whether the employee is continuing in employment and has a reasonable expectation of employment at all times. Situations constituting continued employment (not new hire) include: approved leave (paid or unpaid), promotion, temporary layoff for lack of work, labor dispute, reinstatement after suspension, transfer, seasonal employment, and continued employment with a related, successor or re-organized employer in some cases. Read pages 25-26, [in M-274 Handbook for Employers](#) on I9s.

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