



Client Advisory

July 2008

E-Verify System Participation Required of All Federal Agencies and Contractors

Executive Order No. 12989, as Amended, Issued by President Bush on June 6, 2008

It was announced on June 9, 2008, that President Bush has amended Executive Order No. 12989 of February 13, 1996, to require that all federal agencies and contractors must use E-Verify for new and current hires who are working on any federal contract. E-Verify is the "system of choice," as designated by Department of Homeland Security (DHS) Secretary Michael Chertoff, to be used to verify the employment eligibility and legal status of new hires. This system is operated by the United States Citizenship and Immigration Service (USCIS) in partnership with the Social Security Administration, and works electronically for those employers enrolled in the system. This amendment to the 12-year-old Executive Order requires that federal contractors MUST enroll in the system and verify their workers' eligibility to participate in the federal workforce.

The system, originally voluntary for employers, is free and available on the Internet. The DHS reports that more than 69,000 employers are currently enrolled in the system, and there have been more than 4 million verification queries made so far in fiscal year 2008. The Department further reports that 99.5 percent of the queries are automatically cleared, and that the remaining percentage is most often cleared in several days upon review of the employer's or employee's records.

I am a Federal contractor. What if I fail to comply?

Prior to this amendment to the Executive Order, individual states had already begun to enact their own laws requiring employers to participate in the E-Verify system. Employers who fail to comply are subject to sanctions, fines and penalties. A majority of states now have E-Verify enrollment mandated or bills pending with regard to employer verifications and sanctions for hiring and employing illegal foreign nationals. New Mexico and South Carolina mandate E-Verify for all employers and both have other bills pending. Currently four other states mandate some employers to participate and have no new bills pending, while two additional states have E-Verify mandated for some employers with more bills pending.

New Jersey, New York, Pennsylvania, and Delaware all have verification and employer sanction bills pending; however E-Verify has not been mandated by these states.

Based upon the Executive Order, failure to comply will result in the revocation of federal funds, as well the potential for ICE (Immigration and Custom Enforcement) enforcement raids and D.O.L. audits.

This is currently an area of serious debate. Many employers and employees feel the system does not provide accurate or quick information. It is the opinion of some participants that the system does not have an adequate means of preventing identity fraud, and that biometrics will be necessary to prevent accuracy.

For more information on what President Bush's Executive Order means to your company, please contact Gregory J. Palakow at (908) 788-9700 or gpalakow@archerlaw.com

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