



Labor and Employment News Alert

September 8, 2009

E-Verify To Go Into Effect September 8, 2009

Effective today, September 8, 2009, all federal contractors must comply with a new rule that requires them, in specified circumstances, to enroll in the federal E-Verify system. E-Verify is an internet-based system operated jointly by the Department of Homeland Security ("DHS") and the Social Security Administration ("SSA") for the purpose of enabling employers to determine whether employees are legally authorized to work in the United States. The system works by allowing employers to compare information from an employee's Form I-9, Employment Eligibility Verification, against SSA and Department of Homeland Security databases. According to DHS, more than 141,000 employers are already enrolled in the program, with over 7 million queries run through the system in fiscal year 2009 (as of August 8, 2009).

Participation in the E-Verify system generally is voluntary, but special rules now apply to employers who are federal contractors. Here are the details:

Q: I am a federal contractor. What do I need to do on September 8, 2009?

Nothing, yet. Although the new E-Verify requirement goes into effect on September 8, 2009, federal contractors will not be immediately affected. Federal contractors are not required to enroll in E-Verify until they have been awarded a federal contract or subcontract that specifically requires participation in E-Verify. For existing indefinite delivery/indefinite quantity contracts, federal contractors should anticipate contract modifications from the contracting agency to include the new E-Verify participation requirement if the performance period of the contract extends beyond March 8, 2010, and the remaining amount of work or number of orders is expected to be "substantial."

Q: Which contracts are included in the new E-Verify rule?

An E-Verify clause will be inserted into prime federal contracts longer than 120 days and worth more than \$100,000. Subcontracts are included only if the prime contract includes the clause and the subcontract is for services or construction with a value over \$3,000.

Q: What do I need to do if my company is awarded a federal contract with an E-Verify clause?

Affected employers must enroll within 30 days of the contract, and must initiate verification queries within 90 days for (a) all new employees, and (b) for all other employees who will be working on the contract.

Q: Do I have to notify employees that my company is using E-Verify?

Yes. Employers who use E-Verify must post notices that are provided by DHS, and must also post an anti-discrimination notice issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices at the Department of Justice. These notices will be made available as part of the E-Verify enrollment process.

Q: What if I am not a federal contractor? Can I still use E-Verify?

Yes. As noted above, many employers already use E-Verify. But employers other than federal contractors are permitted to enroll in and use E-Verify only to verify the employment eligibility of newly hired employees.

Also note that certain states and counties require that employers use E-Verify for all new employees. For example, Arizona now requires all employers to use E-Verify. Clark County here in Washington is in the process of instituting a rule that all county contractors with contracts over \$1,000,000 enroll in and use E-Verify.

Please call on any of us if you would like additional information regarding the new E-Verify rules.

Obama Administration Moves To Drop Controversial No-Match Rule

Employers may recall that in 2007 the Bush Administration announced a controversial "No-Match Rule." The rule never took effect because enforcement was blocked by a federal district court in California after objections by employers and human rights groups. Last month, the Obama Administration announced that it is officially withdrawing the rule.

A No-Match Letter is a notice that is used by SSA to inform employers that it is unable to find a legitimate social security number that matches the number that was reported by the employer for a particular employee. The proposed "No Match Rule" would have required employers to comply with a very specific set of investigative processes upon receipt of a No-Match Letter in order to avoid potential criminal and civil liability. The rule also required employers to fire employees for whom a No-Match Letter had been received if the discrepancy could not be quickly resolved.

Although the No-Match Rule no longer exists, employers still must be diligent when they receive a No-Match Letter from SSA or DHS. Employers must take reasonable steps to determine whether the discrepancy is the result of an SSA administrative error or another type of administrative error, or whether the discrepancy has a more problematic cause, such as a false social security number from an employee who is not legally authorized to work in the United States. When a discrepancy cannot be resolved after reasonable inquiry, employers should consider termination of employment, but only after checking with outside counsel, as incomplete or overly zealous efforts to resolve No-Match Letters could trigger claims for unlawful race or national origin discrimination.

Please call on any of us if we can assist you in addressing any No-Match Letter that arrives on your desk.

As always, should our clients or friends have any questions about this or any other labor or employment related matter, please do not hesitate to contact us.

Save These Dates

September 23, 2009 **Breakfast Briefing -**
Walking the Wage and Hour Tightrope:
Avoiding Missteps that Lead to Litigation

October 7, 2009 **Breakfast Briefing -**
Buying and Selling A Business:
Due Diligence and Beyond

November 18, 2009 **Breakfast Briefing -**
Employee Blogging and Social Networking:
What's All the Twitter About?

Seating is limited so please reserve your space by calling 206.389.1710 or sending an email to ktran@riddellwilliams.com.

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