

Oct, 2011

I-9 Compliance Bulletin



House bills would create nationwide E-Verify requirement

A pair of federal bills championed by Texas Republican Lamar Smith would create a nationwide requirement for all employers to use E-Verify. The bills appear to have little chance of passing in their present form.

The bills would create a new system to replace E-Verify, but the new system would perform most of the same functions as the present E-Verify.

Two versions of the bill are before House subcommittees, both with the same short title: "Legal Workforce Act." HR 2164 was introduced June 14 and stalled before the House Subcommittee on Social Security a week later. HR 2885, introduced Sep. 12, is currently before the House Ways and Means committee.

Neither bill would offer relief from the patchwork of state bills with E-Verify requirements, such as the nine states with E-Verify requirements for all employers. Both bills expressly permit states to use their authority over business licensees to create penalties for failure to use the new E-Verify system.

The two bills are broadly the same with a few key differences. The later bill, HR 2885, would require employers to fill in the I-9 form (or whatever new form is created by regulation) on the same day a new employee is hired. The later bill also deletes an employer-friendly section that would have allowed employers to make a job offer conditional on final verification of employment eligibility.

Both bills would reduce the number of documents that could be used to demonstrate identity and employment eligibility, make it a felony for a job seeker to misuse an SSN, and increase fines for both paperwork violations and for knowingly hiring a non-authorized worker.

Under either bill, employers face new responsibilities and a shorter timeframe for responding to no-match letters. Employers would also be obligated to report to an employee when notified that another person has used the employee's SSN to seek employment. The employer would also have to re-verify the employee in this situation.

Similar bills at the federal level have failed in the past. And President Barack Obama is thought to be unlikely to sign the bill with E-Verify requirements unless it's part of a larger overhaul of immigration laws that he seeks.

Federal court leaves E-Verify provisions in place in Alabama

U.S. District Court in Alabama has ordered Alabama to stay enforcement of several provisions of the state's new immigration law. However, as expected, the court left in place a requirement that employers use E-Verify. [See our I-9 Compliance Bulletin for August](#) for details about the case.

Bottom line

Although the latest attempt at the federal level to require E-Verify faces many hurdles, more E-Verify requirements at the state level are likely and a federal requirement is likely to be created eventually. **Employers should implement an electronic I-9 solution that includes an E-Verify option or prepare to begin using E-Verify directly.**

For a copy of the federal E-Verify bills before Congress, please send an email to pkrieshok@talx.com with "federal bills" in the subject line. To learn about the TALX I-9 solution with optional E-Verify integration, please contact Pete Krieshok at 314-214-7325 or pkrieshok@talx.com with "E-Verify integration" in the subject line.

Please note: These bulletins are provided to help you conduct research into these matters. TALX is not providing legal counsel. Please consult an attorney for legal advice.

States that States that have passed E-Verify laws for all employers:

Arizona
Alabama
Georgia
Louisiana
Mississippi
North Carolina
South Carolina
Tennessee
Utah

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