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Compliance Bulletin



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A number of new laws affecting employers have taken force in 2010 and eight states have introduced E-Verify legislation. Here's a round-up of key developments that employers should bear in mind.

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[Eight states introduce laws with E-Verify requirements](#)

Since the beginning of 2010, eight states have introduced laws with requirements for some employers in the state to use E-Verify, the federal online system for checking the work eligibility of new employees.

The laws have varying requirements. Two of the proposed laws require vendors to the state and public employers to use E-Verify. Six require the use of E-Verify for all employers as a condition of doing business in the state.

The six states with proposed laws requiring all employers to use E-Verify are Alabama, Idaho, Kansas, Rhode Island, Tennessee and Virginia.

The two states with proposed laws requiring state contractors and public employers to use E-Verify are Indiana and Pennsylvania.

It is difficult to predict which of these bills will become law, but most of the six bills requiring all employers to use E-Verify seem to have strong prospects. Whichever laws eventually pass, the amount of legislative activity is a strong indicator of growing support for use of E-Verify nationwide.

Illinois law requires employers to attest to E-Verify training, notifications

Illinois' new E-Verify law went into effect Jan. 1, 2010. The law requires employers using E-Verify to attest that, 1) the company has received the training materials from the Department of Homeland Security (DHS), and all those administering the program have completed the course, 2) the company has posted the E-Verify anti-discrimination notice in a conspicuous place, and 3) the company must keep the signed attestation and training certificate available for inspection by the Illinois Department of Labor.

This new law also allows room for employees to file discrimination charges against employers for not following the E-Verify program procedures.

[This recent TALX blog](#) post covered the law in greater detail.

Non-binding resolutions on E-Verify

On Jan. 21, U.S. Representative Jason Chaffetz (R-UT) introduced a non-binding resolution in support of E-Verify. The resolution, H. RES. 1026, has 37 co-sponsors, including a number of Democrats, but has no enforcement consequences even if passed. In addition to urging that E-Verify be made mandatory, the resolution also calls for better border control and opposes amnesty for illegal immigrants.

The Alabama Legislature also recently passed a non-binding resolution that supports making E-Verify mandatory.

Arizona, Mississippi, and South Carolina have already made E-Verify mandatory for all employers. Six other states have introduced bills that would do the same, though it may be months before any of those bills become law. (See the top item, above.) The non-binding resolutions are an additional indicator of growing support for E-Verify.

Government contractors must use E-Verify

A Federal Acquisition Regulation (FAR) has taken effect which requires all federal contractors and subcontractors with a covered contract to use E-Verify to confirm the work authorization of all new employees as well as existing employees working on a covered federal contract. The FAR, authorized by Executive Order 13,465, became applicable on Sep. 8, 2009 and affects federal contractors as contracts come up for renewal. The United States District Court for the District of Maryland, Southern Division, dismissed a legal challenge to the FAR in October last year, clearing the way for its enforcement.

South Carolina E-Verify provisions kick in

South Carolina continues to phase in an employment verification law for employers within the state. The South Carolina Illegal Immigration Reform Act requires employers to either use E-Verify or review a qualifying driver's license. As of Jan. 1, 2010, all public contractors and private employers with 100 or more employees are subject to the law. On July 1, 2010, remaining employers (private employers with less than 100 employees) will also need to meet the E-Verify or driver's license requirement.

DHS rescinds no-match rule

As of November, 2009, DHS has rescinded its "no-match/safe harbor" rule (8 CFR Part 274a). The rule explained steps employers could take to obtain "safe harbor" in the event of receiving a "no-match letter." However, it is important to note that while the rule is no longer in effect, the DHS still plans to issue no-match letters. Employers should devise a consistent policy to deal with these notices in the absence of clear guidance from the DHS. The letters could serve as indicators of "constructive knowledge" of an employer having illegal workers if a good-faith effort to respond to a no-match letter is not made. You can read about the history of the rule and the reason it was rescinded on the DHS web site at [this link](#) (pdf).

New York changes some new employee requirements

Effective Oct. 26, 2009, the NY Labor Law requires employers to provide all employees hired on or after that date written notice of their rate of pay, regular paydays, and overtime pay rate (for hourly or salaried nonexempt employees). The notice must be given to employees at the time of hire, before they do any work. Employees must sign a statement acknowledging receipt of the written notice, and employers must keep the signed statement for at least six years.

In addition to the new notice requirement regarding employee compensation, employees must complete required tax forms and receive benefits disclosures. Any other forms, such as non-compete agreements and equal employment opportunity identification forms should also be presented.

DOL and IRS set to increase enforcement efforts

Late last year, the DOL announced a significant increase in its investigation and enforcement practices, hiring 250 new wage and hour investigators - a staff increase of more than one third. The substantial increase in investigators is an attempt to provide enhanced enforcement efforts and ensure prompt response to complaints of federal employment law violations. The DOL is expected to focus on violations of wage and hour laws and misclassification of employees as independent contractors.

In the DOL's announcement, Secretary of Labor Hilda Solis said, "[t]here is no excuse for employers who disregard federal labor standards – especially those that are designed to protect the most vulnerable in the workplace." Secretary Solis cited the fact that the DOL has recently recovered substantial sums of money through settlement of enforcement investigations – suggesting there is much more to come.

The Internal Revenue Service, following the DOL's lead, announced that it will audit approximately 6,000 companies over a three year period beginning in Feb. 2010. To accomplish this goal, the IRS is forming an "Employment Tax National Research Project," the first of its kind since the 1980s. The project will study significant changes in business practices concerning employment tax issues and determine compliance with employment tax areas.

In light of the DOL and IRS's aggressive enforcement positions, employers should conduct a thorough review of all employment practices and procedures, including employee classification and pay practices, to ensure they are in compliance with federal employment labor laws and to minimize exposure.

Minnesota and Wisconsin end tax reciprocity

Effective Jan. 1st, Minnesota ended its tax reciprocity agreement with Wisconsin, which has been in effect for 41 years. This decision means that residents who work in one state, but reside in another will now have to file tax returns in both states. The Minnesota Department of Revenue stated that a change was necessary due to the wide disparity in numbers – over twice as many residents of Wisconsin cross the border for work as the reverse – and the 17 month lag time in recovery from the state of Wisconsin. Minnesota



officials estimate that this decision will add another \$131 million to the state budget for 2010-2011.

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Editor:
Gordon Middleton,
Compliance Specialist