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E-Verify

OVERVIEW OF TOPICS:

Florida has sparked a debate with its new E-Verify mandate.

Some things Don't Change:

- Don't lose sight of I-9
 - Requirements
 - Penalties

Some things Change:

- E-Verify
 - Not Federally Required
 - How it Works
 - Benefits of using it
- Florida mandate – A sign of things to come?

Florida E-Verify Law:

- Sparked a national HR controversy
- Basically requires E-Verify for employers with 25 or more employees
 - Prior to law, only public employers and private employers doing business with government.
- State has high number of individuals who may not be legally able to work in the U.S.
 - Impact on potential employees
 - Impact on employers (especially midsize)
- Governor running for President – Does Florida translate to U.S. if he wins?

Putting Florida (and possibly politics) in perspective:

- States that require E-Verify for private employers: Tennessee, Alabama, Mississippi, Georgia, North and South Carolina, Utah, and Arizona.
- States that require E-Verify for public employers and some contractors: Idaho, Colorado, Nebraska, Oklahoma, Texas, Missouri, Indiana, Virginia, and Pennsylvania
 - Pennsylvania: Currently requires E-Verify for certain “public” construction work (Act 75, October 7, 2020)
- Every state: Federal contractors and subcontractors almost always should have an E-Verify clause in their contracts requiring its use for most (not all) employees.

(Note: Some local municipalities in some states also require E-Verify for certain work.)

Some things stay the same - I-9 Compliance :

With the exception of some options during COVID, this has NOT changed with E-Verify:

- Forget E-Verify for a moment – it is ALWAYS the employer’s responsibility to ensure its workers are legally permitted to work in the U.S.
 - E-Verify does not change that.
- Employers which don’t take reasonable steps to ensure that their workforce is legally eligible to work in the U.S. face liability
 - E-Verify does not change that.
- The Federal penalties are significant for illegal workers and employers who look the other way
 - E-Verify does not change that.
- There are complaint mechanisms for employees to report employers which violate I-9 eligibility rules.
 - E-Verify does not change that.

I-9 Refresher:

- Within three business days of starting, employer must verify eligibility of employee to work in U.S.
- List of documents that employer must review in-person to establish eligibility (some leeway during COVID)
 - Documents must “reasonably appear to be genuine and relate to the employee.”
 - Employer’s responsibility to record documentation.
 - Do you keep a copy?
 - Technical form errors.
- Employee attestation.
- I-9 must be made available for inspection (Dept. of Labor, Dept. of Homeland Security (ICE), Dept. of Justice).
 - Keep separate from personnel file.
 - 3 days notice.
 - Some states have additional rules (e.g. notifying employees of audit).
- Retain for 3 years after hire or one year after termination – whichever is longer.
- Employee does NOT have to be a citizen (discrimination issue).
 - Issues with internal audits (not required).

I-9 Penalties:

- I-9 Paperwork Deficiencies: \$272 to \$2,701 per Form I-9
- Knowingly Employing Unauthorized Alien (First Order): \$676 to \$5,404 per violation
- Knowingly Employing Unauthorized Alien (Second Order): \$5,404 to \$13,508 per violation
- Knowingly Employing Unauthorized Alien (Third or More Order): \$8,106 to \$27,018 per violation
- Criminal penalties
- Barred from certain licenses/contracts.
- Additional state issues.
- Note: If acting in discriminatory way or retaliating against employees, there are different additional penalties.

What is E-Verify:

- Dates back to 1996.
- Operated by Dept. of Homeland Security
- Optional – with state law and Federal contracting exceptions

Employers who participate in E-Verify **must**:

- Enroll
- Follow E-Verify procedures for each employee for whom an E-Verify case is created.
- Notify each job applicant of E-Verify participation by clearly displaying the Notice of E-Verify Participation and the Right to Work posters in English and Spanish. You may also display the posters in other languages provided by DHS.
- Complete Form I-9 for each newly hired employee before creating a case in E-Verify.
- Obtain a Social Security number (SSN) from each newly hired employee on Form I-9.
- Ensure that Form I-9 List B identity documents have a photo.
- Create a case for each newly hired employee no later than the third business day after he or she starts work for pay.
- Enter the employee's email address in E-Verify if it was provided on Form I-9.
- Provide each employee with notice of and the opportunity to take action on a Tentative Nonconfirmation (mismatch).
- Ensure that all personally identifiable information is safeguarded.

CTR Can Help!

- E-Verify Integration is available! (w/ CTR's Paperless Onboarding)
- CTR creates a bridge from isolved to E-Verify to reduce the redundancy of completing the screens twice.
- If an employee uses Onboarding and the I-9 is completed, a case would be created in E-Verify section of the system. The case would then be transmitted it E-Verify using the data completed within isolved.

If you are interested in adding this service, please e-mail Jason Simmons at jason.simmons@ctrhcm.com

PRIVACY GUIDELINES OVERVIEW:

- **Allow *only* authorized users to use E-Verify.**
Ensure that only appropriate users handle information and create cases.
- ***Secure* access to E-Verify.**
Protect passwords used to access E-Verify and ensure that unauthorized persons do not gain access to E-Verify.
- **Protect and *store* employee information properly.**
Ensure that employee information is stored in a safe and secure location and that only authorized users have access to this information.
- **Discuss E-Verify results in *private*.**
Ensure that all case results including Tentative Nonconfirmations (Mismatches) and Final Nonconfirmations are discussed in private with the employee.
- **State Requirements!**

Note:

Still complete an I-9 – E-Verify does not change this!

Create an E-Verify Case for each new hire

Optional for rehires (may depend on whether a document expired)

Case Results Overview:

Employment Authorized	The employee's information matched records available to SSA and/or DHS.
E-Verify Needs More Time	This case was referred to DHS for further verification.
Tentative Nonconfirmation (Mismatch)	Information did not match records available to SSA and/or DHS. Additional action is required.
Case in Continuance	The employee has visited an SSA field office or contacted DHS, but more time is needed to determine a final case result.
Close Case and Resubmit	SSA or DHS requires that you close the case and create a new case for this employee. This result may be issued when the employee's U.S. passport, passport card, or driver's license information is incorrect.
Final Nonconfirmation	E-Verify cannot confirm the employee's employment eligibility after the employee visited SSA or contacted DHS.

Tentative Nonconfirmation (Mismatch):

A case can result in a mismatch with SSA because:

- The employee's citizenship or immigration status was not updated with SSA.
- The employee did not report a name change to SSA.
- The employee's name, Social Security number and/or date of birth are incorrect in SSA records.
- SSA records contain another type of mismatch.
- The employer entered the employee's information incorrectly in E-Verify.

A case can result in a mismatch with DHS because the employee's:

- Name, Alien Number, Form I-94 number and/or foreign passport number are incorrect in DHS records.
- U.S. passport, passport card, driver's license, state ID, or foreign passport information could not be verified.
- Information was not updated in the employee's DHS records.
- Citizenship or immigration status changed.
- Record contains another type of error.
- Employer entered information incorrectly in E-Verify.
- Photo did not match.

Employers may not terminate, suspend, delay training, withhold or lower pay, or take any other adverse action against an employee because the employee received a mismatch, until the mismatch becomes a Final Nonconfirmation.

NOTE:

Affirmative obligation on employer to timely notify employee and complete “referral process” – asap but always within ten Federal government working days.

BENEFIT – E-Verify match shows presumptive “reasonableness” (compliance) for employer.

Back to Florida:

E-Verify required for private employers with 25 or more employees for new employees starting July 1, 2023.

- Annual employer certification required when making contributions to or reimbursing the state's unemployment compensation or reemployment assistance system.
- Penalties for noncompliance start July 1, 2024: Businesses have 30 days to cure noncompliance and the new law requires notification to a business prior to issuing penalties for violations. If the DEO determines that an employer failed to use the E-Verify system as required three times in any 24-month period, the department must impose a fine of \$1,000 per day until the employer provides sufficient proof that the noncompliance is cured. An employer's first violation results in a one-year probationary period with reporting requirements to put a business on a path to compliance prior to any licenses being revoked.

Random compliance audits.

Complaint procedures.

NOTE: In 2021, Florida passed a law requiring an employer which does not use E-Verify to keep copies of documents. Different from Federal law. 2021 was when Florida first required E-Verify for public employers.

Thank you for attending!