



FEDERAL CONTRACTORS MUST COMPLY WITH EMPLOYEE E-VERIFICATION REQUIREMENTS

Effective **January 15, 2009**, federal departments and agencies that enter into certain contracts must require that the contractor agree to use the E-Verify Program to verify the employment of: (i) all persons hired during the contract term by the contractor to perform employment duties within the United States; and (ii) all persons assigned by the contractor to perform work within the United States on the Federal contract.

The E-Verify system, formerly known as the Basic Pilot/Employment Eligibility Verification Program, is an Internet-based system operated by the Department of Homeland Security (DHS) and U.S. Citizenship and Immigration Services (USCIS) in partnership with the Social Security Administration (SSA) that allows participating employers to electronically verify the employment eligibility of their newly hired employees.

Federal law currently requires all employers in the United States to complete an Employment Eligibility Verification Form (Form I-9) for each newly hired employee to verify each employee's identity and employment eligibility. Under the new rule, Federal contractors will additionally be required to enter the worker's identity and employment eligibility information into the E-Verify system which checks that information against information contained in SSA, USCIS and other government databases.

If SSA or DHS is unable to verify information presented by the worker the agency will issue a "Tentative Nonconfirmation" notice. The notice then triggers the obligation of the worker to resolve or contest the discrepancy. If the worker fails to contest the nonconfirmation notice or resolve the discrepancy, the employer will receive a notice of final nonconfirmation and the worker's employment may be terminated as a result.



Jaeckle Fleischmann & Mugel, LLP

BUFFALO

12 Fountain Plaza
Buffalo, New York 14202-2292
Phone: 716.856.0600
Fax: 716.856.0432

AMHERST

400 Essjay Road, Suite 320
Amherst, New York 14221-8228
Phone: 716.250.1800
Fax: 716.250.1806

IMMIGRATION ATTORNEYS

Thomas E. Brydges (NY)
tbrydges@jaeckle.com; 716.843.3812

Daniel P. Joyce (NY)
djoyce@jaeckle.com; 716.843.3945

Tehsheng (Abby) Ma (NY)
ama@jaeckle.com; 716.843.3905

PARALEGAL

Sharon L. Darisse
sdarisse@jaeckle.com; 716.843.3946

ADMISSIONS INFORMATION

by state, follows respective attorney name

Page - 2

E-Verify provides a means of verifying employment authorization information in addition to the traditional I-9 process. Participation in the E-Verify program does not exempt the employer from the responsibility to complete, retain and make I-9 Forms available for inspection for its employees. Additionally, it does not eliminate any requirements of applicable regulations or laws.

FEATURES OF THE NEW MEASURE:

- Requires the insertion of the E-Verify clause for prime contracts above the "simplified acquisition" threshold (\$100,000).
- Requires inclusion of the clause in subcontracts over \$3,000 for services or for construction.
- Requires contractors and subcontractors to use E-Verify to confirm the employment eligibility of all existing employees who are directly performing work under the covered contract.
- Applies to solicitations issued and contracts awarded after the January 15, 2009 effective date.
- Instructs federal departments and agencies to amend existing indefinite-delivery/ indefinite-quantity contracts to include the clause for future orders if the remaining period of performance extends at least six months after January 15, 2009.
- Federal contractors participating in the E-Verify program for the first time are allowed 90 calendar days from enrollment to begin using the system for new and existing employees.
- Contractors are allowed 30 calendar days to initiate verification of existing employees who have not previously gone through the E-Verify system when they are newly assigned to a covered Federal contract.
- Exempts contracts that are for commercially available off-the-shelf (COTS) items and items that would be COTS items but for minor modifications.
- The E-Verify clause need not be inserted into prime contracts with performance terms of less than 120 days.

If you have any questions or would like more information regarding the E-Verify requirement discussed in this Alert, please contact Dan Joyce at 716.843.3935 or djoyce@jaeckle.com.

