

Immigration Compliance Alert

New Illinois Law Places Additional Obligations on Employers Using E-Verify

Effective January 1, 2010, the Illinois Right to Privacy in the Workplace Act (the "Act") places new obligations on employers using E-Verify. E-Verify is an electronic employment eligibility verification system operated by the U.S. Department of Homeland Security (DHS). E-Verify allows employers to electronically confirm the biographical and immigration data of their employees utilizing DHS and Social Security Administration (SSA) databases. Under this new law, Illinois employers must complete additional attestations at the time of enrollment in E-Verify and confirm certain information on the Illinois Department of Labor's (IDOL) "E-Verify Employer Attestation Form" (copy attached). Those employers who have already enrolled in E-Verify must complete the attestation form *before January 30, 2010*.

The employer must confirm the following: (1) the employer and all employees using the E-Verify program have received the training materials and completed the online computer-based training provided by DHS; (2) the employer has posted the required notice from DHS in a visible location indicating that the company is enrolled in E-Verify; (3) the employer maintains the original signed attestation form as well as online computer-based training certificates of completion and makes them available for copying and inspection at the request of the IDOL; and (4) the employer has posted the required anti-discrimination notice issued by the Office of Special Counsel for Immigrant-Related Unfair Employment Practices (OSC) in a place that is clearly visible.

Violations of the Act include the following: (1) failing to display the notices supplied by DHS and OSC in a place clearly visible to both prospective and current employees; (2) allowing an employee to use the E-Verify system prior to having completed the computer-based training; (3) allowing employees that have not taken the computer-based training to use the E-Verify program under an employee's user

identification or password that has taken the training; (4) using the E-Verify program as a pre-screening mechanism for prospective employees; (5) terminating an employee prior to that employee's receiving a final non-confirmation notice from the SSA or DHS; (6) failing to notify the employee, in writing, of the employer's receipt of a tentative non-confirmation notice and of the employee's right to contest that tentative non-confirmation letter; and (7) failing to safeguard the information contained in the E-Verify program database. The Act also prohibits an individual from falsely posing as an employer to enroll in E-Verify, and prohibits an employer from using E-Verify to access information regarding someone who is not their employee.

If it is determined that the employer violated the law, the IDOL, an employee or applicant for employment can file an action in Circuit Court to enforce the provisions of the Act. If the employer is found to have violated the Act, penalties can include fines of \$500 to \$1000 per employee, in addition to reasonable attorneys' fees, costs, and actual damages. Failure to comply with the order may result in the employer or his/her representative being found in contempt as well as guilty of a petty offense, which carries a maximum penalty of \$1000.

Lastly, the Illinois Department of Human Rights has been granted investigation powers when an employee or applicant believes that the employer refused to hire, promote or renew employment, or discharged or disciplined the employee or applicant without following the procedures of the E-Verify program. Under these circumstances, the employee or applicant will be referred to the Illinois Department of Human Rights, where the employee or applicant's case will be submitted for review and possible investigation under the Illinois Human Rights Act.

You may recall that, as of September 9, 2009, most federal contractors and many federal subcontractors are required to register for the E-Verify system. Unless exempt, all prime federal contracts awarded and solicitations issued after September 8, 2009 must include a clause mandating the use of E-Verify for all employees hired during the contract period as well as for all existing employees assigned to perform work under the contract. The same clause will also be required in subcontractors' contracts valued at over \$3,000 for services or construction. Consequently, we anticipate that many Illinois employers will soon be required to register for E-Verify and also comply with the provisions of the Illinois Right to Privacy in the Workplace Act.

Please contact your Vedder Price attorney or a member of our Immigration Practice Group should you have any questions regarding these issues.

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For Office Use Only

Date Received:

File #:

Reviewed by:

**E-Verify
Employer Attestation Form**

Under penalty of perjury, I attest that:

1. _____ has received the E-Verify training materials from
(insert Company or Business Name)
the Department of Homeland Security (DHS) and all Employer personnel administering the E-Verify System have completed the Computer Based Tutorial (CBT);
2. Employer has posted in a prominent place that is clearly visible to prospective employees:
 - i) the notice from DHS indicating that Employer is enrolled in E-Verify; and
 - ii) the anti-discrimination notice issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), Civil Rights Division, U.S. Department of Justice.

Signature of Employer or Authorized Representative

Date

Print Name of Signatory: _____

Print Title of Signatory: _____

Employer Name: _____

Employer Address: _____

City: _____ State: _____ Zip: _____

Telephone #: _____ Fax #: _____

Pursuant to Section 12(b) of the Right to Privacy in the Workplace Act, 820 ILCS 55,
as amended, **effective January 1, 2008**