



Summary of the Legal Workforce Act

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Section 1. Short Title – The bill may be cited as the Legal Workforce Act.

Section 2. Employment Eligibility Verification Process.

Section B of INA Section 274A is replaced with new language. First, it now mandates that an employee's social security number be recorded on the I-9 form (if the individual has a social security number) and if the employee does not attest to US citizenship, the employer obtains identification and employment authorization documentation specified by DHS. Plus the employer should still examine the List A, B and C documents for I-9 compliance as is the case under current law.

For list A, US passports and passport cards must be unexpired. Same for green cards and employment authorization cards. Only those items are now allowed unless DHS designates a document that contains a photo and has biometric ID data and security features.

For list B, only a social security card that is not employment authorization restricted or a certificate of birth abroad are acceptable to show employment authorization.

For list C, only an unexpired driver's license, unexpired military ID card, Native America tribal ID document or, for those under 16 (or 18 if in a state that won't provide an ID card other than a driver's license), a parent or guardian's attestation under penalty of law regarding the identity and age of the employee.

DHS is now authorized to prohibit the use of documents it deems unreliable.

Under the individual attestation requirement, individuals must still attest by signature (in writing or electronic) that he or she is a US citizen, national, lawful permanent resident employees are now required to provide their social security number if they have one and if the individual doesn't claim to be a US citizen, then employment authorization documentation or an authorization number that DHS may specify.

Creates new felonies for misusing social security numbers. Sentences of up to two years may be imposed on individuals that knowingly provide a social security number, an identification or an authorization number established by DHS that does not belong to him or her. If the crime is committed in connection with aggravated identity theft, additional fines and an additional sentence of two years may be imposed. Judges will have no discretion to issue probation or reduce the sentence and sentences may not run concurrently when there are multiple convictions. The only exception is when a judge is sentencing for multiple crimes occurring in a single prosecution.

Retention of I-9s. The rules on retention remain the same except that employers are now required to retain I-9s for a minimum of five years after the date of hire (the current rule is three years). Also, the new specifies retaining documents for five years after the date of recruiting or referring for a fee (the current law says three years). A new provision now extends the 5 years/1 year retention to employees who are rehired and re-verified.

A new section requires employers to make an inquiry using the designated verification system (E-Verify) to verify the identity and employment eligibility of an individual on or before the date of hiring or before the recruiting or referring commences. Recruiting and referring shall not commence until the entity or person receives verification.

Once an employer gets verification, it is to put a verification code on the I-9 form which will indicate final verification of identity and employment authorization.

If the employer or referrer gets a tentative non-verification, the employer/referrer must inform the applicant. If the applicant doesn't contest the non-verification in a set time period, the non-verification is considered final and the employer should record this with an appropriate code on the I-9. If the applicant does contest the non-verification, the applicant shall use the "secondary verification" process. The non-verification remains tentative until a final verification or non-verification is provided in the verification system within set time periods. Employers may not terminate employment of anyone in the middle of going through this secondary process until a final non-verification is issued (other than terminations unrelated to this process). Once final verification or non-verification is received, the employer must then annotate the I-9 with the code provided by DHS.

Extensions of a working day may be provided if an applicant can show in good faith that he or she attempted to make an inquiry. Individuals only need to assert that they tried and failed to make an inquiry to get the one day extension.

Once a final non-verification is issued, the person hiring the applicant may terminate employment. If an employer doesn't terminate, it must notify DHS that it is not terminating. Failure to notify is deemed a violation of the law and continuing employment is deemed to create a rebuttable presumption of unauthorized employment.

Seasonal agricultural employees are not considered new hires when they are returning for a new season to work for a previous employer.

Phase-in.

For employers with more than 10,000 employees, six months from the date of enactment.

For employers with 500 or more employees and less than 10,000, 12 months after enactment.

For employers with 20 or more employees and less than 500, 18 months after enactment.

For employers with 1 or more employees and less than 20, 24 months after enactment.

For companies that recruit and refer, 12 months.

For agriculture, 36 months.

The bill provides for the current INA Section 274A(b) to apply to employers before they are covered by the deadlines listed above. The current 96 Act Title IV, Section A regarding E-Verify will remain in effect for three years after enactment including the government procurement rules covered under Executive Order 13465.

Employers are required to re-verify employment authorization using E-Verify in the 30 days before the end of an employee's work authorization. The same phase in periods will apply here as noted above. The process is the same as the initial verification except that DHS shall designate employers to put the verification code on a new form that DHS will create.

DHS is required to issue a notice to the employer when employment authorization expires (though there is no language regarding what happens if notice is not provided).

Within six months of enactment, an employer must make a verification inquiry for employees of federal, state and local governments, employees on "critical infrastructure sites" designated by DHS or presidential directive or order and federal and state contractors.

Social Security Mismatches.

If an employer mandated to use E-Verify or who is voluntarily using E-Verify gets an SSA mismatch letter, the employer must run the employee's name in E-Verify within 30 days of receiving the letter. The same employers covered here are also required to make a verification inquiry when it gets notified by SSA that more than one employer is reporting an employee using a particular SSN. Employers are also required to tell employees covered in the notice and make information available to report suspected identity theft. Employees must be notified within 10 days of receiving the SSA notice. Employees who indicate identity theft will have the SSNs locked for employment eligibility purposes and the employers of the suspected identity thieves are to be notified that the worker may not employment authorized. Those employers then have seven days to make a verification inquiry. SSA would also have to issue notices to employers submitting mismatched or corrected wage statements and employers would have 30 days of receiving the notice to make a verification inquiry (which is faster than the 90 days required under the rescinded no-match rule).

Early compliance.

30 days after enactment, DHS is authorized to begin requiring employers covered under the federal contractor rule to comply with the new law. Employers voluntarily using the E-Verify now as well as any other employers desiring to do so, can start operating under the new system within 30 days.

Employers may keep copies of documents presented by employees as part of the new system.

Employers may not use the forms or information on the forms for anything other than compliance with INA Section 274A.

Employers are protected if they violate but attempted in good faith to comply. However, that protection goes away if the violation is serious and if the employer is given notice of the deficiencies. When notified, employers have 30 days to correct. Also, employers with a pattern or practice of violations are not protected.

Section 3 – Employment Eligibility Verification System

While Section 2 deals with requiring employers to use E-Verify and what to do with the data it provides, this section actually covers requirements for the system itself. This section replaces INA Section 274A(d).

Employment Eligibility Verification System. DHS shall establish and run a verification system which responds 24/7 to inquiries through a toll-free phone line and other toll-free electronic media concerning a person's identity and employment authorization. The system must maintain records of the inquiries made, of verifications provided and the codes provided to inquirers to document compliance with the requirements outlined in Section 2 above.

The system must provide a verification or tentative non-verification within 3 working days of the inquiry. The system must provide an appropriate code indicating the finding. For secondary non-verifications described in Section 2, DHS shall consult with SSA to set up a process to confirm the validity of information provided and provide a final verification or non-verification within 10 working days from the date of tentative non-verification.

The system shall be designed and operated to maximize reliability and ease of use and protect the privacy and security of the information in the system. It shall be designed to respond to all inquiries. It shall have appropriate safeguards to prevent unauthorized disclosures of personal information. It shall have safeguards to prevent against unlawful discrimination based on national origin or citizenship status including preventing people from selectively using the system to verify eligibility or excluding individuals from employment as a result of a perceived likelihood that additional verification will be required beyond what is required of most job applicants. The system is limited to verifying only job applicants during the period starting on the date the application is submitted and ending on the date the application is denied or the date the individual starts work. It also applies to current employees covered as provided in Section 2 and individuals seeking to confirm their own employment eligibility on a voluntary basis.

SSA , in consultation with DHS must set up a reliable, secure method to compare names and social security numbers.

DHS , in consultation with any designee of DHS, shall establish a reliable, secure method to compare the name and alien identification or authorization number which are provide in an inquiry in the system.

Offenses. Anyone who knowingly tries to verify a social security number or identification or authorization number that does not belong to an individual noted above shall be subject to fines and imprisonment of up to two years.

Updating Information. SSA and DHS shall update their information in a way that promotes maximum accuracy and shall set up a system for the prompt correction of erroneous information including if they learn of this during a secondary verification process.

Limits on Use of System. Agencies may not use the information in the system for any other purposes other than what it is intended for. And nothing shall be construed to authorize the creation of a national identification card.

Remedies. If an individual alleges he or she was dismissed over an error in the verification system, the individual may seek compensation only through the Federal Tort Claims Act and injunctive relief to correct the error. Class actions are barred. Employers and referrers cannot be held civilly or criminally liable for any action taken in good faith reliance on information provided through the system.

Section 4. Recruitment and Referral.

Makes changes to Section 274A(a) of the INA.

“Referring” is amended to include referring even without a fee involved. The section broadens 274A’s provisions to more explicitly include recruiters and referrers. A definition of “refer” is now added at INA Section 274A(h). It states that referrers are generally only covered if they are paid, but that union hall hiring for dues paying members are now included whether or not the union is compensated. “Recruit” is also defined here to mean “the act of soliciting a person, directly or indirectly, and referring the person to another with the intent of obtaining employment for that person.”

This section takes effect one year from the date of enactment.

Section 5. Good Faith Defense.

Broadens the good faith defense at INA Section 274A(a)(3) to insulate employers, recruiters and referrers, from liability to both job applicants and to government agencies if they can document a good faith reliance on information provided through the system established by this act. The defense depends on an employer showing that it didn’t have actual knowledge that an employee is unauthorized.

The good faith defense is not available to employers who fail to verify existing employees when they become subjected to the E-Verify system.

If E-Verify registers that inquiries were not responded to in a timely manner, the person can still be covered by the defense if they made an inquiry by the end of the work day following the failed attempt. If no response is provided in the required time frame, the defense remains available.

Section 6. Preemption. The language in the 1986 IRCA law that was subject to the recent Supreme Court case is altered to bar states and localities from lawmaking in this area except to revoke or suspend or otherwise penalize in the area of business licenses for employer failing to use the E-Verify system as required in this act.

Section 7. Repeal

The E-Verify provisions of the 1996 Act are repealed and replaced with this system. Technically speaking, E-Verify is replaced with EEVS, though it's not clear that the brand name for the system must change. This takes effect 36 months after the date of enactment.

Section 8. Penalties.

Expands ICE potential penalties significantly with minimum fines going from \$250 to \$2000 and maximum fines going from \$2500 to \$5000 for first violations and maximum fines for repeat violators from \$10,000 to \$25,000 per violation.

I-9 paperwork violations rise from a minimum \$100 to \$1000 and a maximum from \$1000 to \$25,000 per violation. Fines are no longer to be adjusted based on the size of the employer and only on the good faith of the employer.

Makes it a new violation to fail to sign up for E-Verify if required.

Two strikes you're out. Employers are exempt from penalties for first violation of hiring unauthorized worker.

DHS shall have the authority to debar employers from receiving Federal contracts, grants or cooperative agreements if an employer is a repeat violator. For employers that don't currently hold contracts, DHS will notify the General Services Administration to see if the employer should be listed on the procurement debarment list. If the employer already has contracts, DHS can notify the agencies holding the contracts or grants requesting that they debar the employer from working with the agency. Employers can have decisions to debar reviewed pursuant to Section 9.4 of the Federal Acquisition Regulation.

Criminal penalties are increased to a fine of \$15,000 per unauthorized worker and imprisonment for not less than a year, or both.

Section 9. Protection of Social Security Administration Programs.

SSA and DHS shall enter in to an agreement beginning in fiscal year 2013 to provide the funds to SSA to cover setting up and running the new system. If an agreement can't be reached in time, the latest agreement between the two agencies shall be deemed in effect on an interim basis.

Section 10. Fraud Prevention.

DHS and SSA shall establish a system to block the use of social security numbers found to have been used fraudulently in the E-Verify system unless the true holder can prove he or she is the true holder.

DHS , in consultation with SSA, shall set up a program to provide a reliable, secure way for identity fraud victims to suspend the use of their social security account for purposes of employment authorization.

Aliens with final orders of removal, voluntary departure orders, is voluntarily returned or is a nonimmigrant with an expired work authorization shall have their social security numbers blocked for use in E-Verify.

Section 11. Biometric Employment Eligibility Program.

Creates authorization to establish a biometric E-Verify program to provide for identification and employment eligibility verification. Private contractors can be used to help establish the program.

Section 12. Administrative Procedures.