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HR 2164 - Legal Workforce Act - House Judiciary Chairman Lamar Smith Bill on Mandatory Employment Verification. Brief Summary Key Points

On June 14, 2010, Lamar Smith introduced H.R. 2164, the Legal Workforce Act. This is a Mandatory Employment Verification Bill that would, if passed, implement a new electronic system for all employers and all workers.

- Must use E-verify before hiring at the time of the offer: The current limitation on use of the system before hiring is eliminated. Instead, individuals and employers could use the system before hiring following the offer. The offer could be made contingent upon the verification of the worker. Referrers would use the system before referral.
- Phase-in over 2 years: Large to small employers. 6 months for employers with 10,000 employees, 12 months for those with more than 500 but less than 10,000. Under 500 employees - 18 months, under 20 employees given - 2 years.
- Application to those who hire or who recruit and refer (eliminated "for a fee"). The system will require those who hire, recruit or refer to participate. This will specifically include union hiring halls and other not for profits. It will also apply to recruiters that solicit employees with the goal of referring them for employment.
- Agriculture: There is a 3 year period (from the date of enactment) before this industry is required to use the system. Additionally, seasonal workers hired in previous seasons as current employees who need not be re-verified.
- Current Federal Acquisition Regulations (FAR) provisions for E-Verification: The Executive Order would be replaced, but the current FAR exemptions regarding reverification would be maintained pursuant to the FAR Executive order.
- Employer liability to workers: Employers are relieved of most liability to workers so long as they participate in E-Verify and rely on the government's information in good faith.
- Employer Safe Harbors from government imposed penalties. Employers who act in good faith will not be liable under any state or federal, civil or criminal law for any employment-related action taken in reliance on information provided through E-Verify. Employers who act in good faith have established compliance with their employment verification obligations unless DHS shows by clear and convincing evidence that the employer had knowledge that an employee is an unauthorized alien. Employers who act in good faith may have penalties waived or reduced and good faith employers may not be penalized for de minimus violations.
- Re-verification: Not required generally with certain (sometimes broad) exceptions (critical infrastructure, worker assigned to federal or state contract, federal, state and local government employees, workers with expiring employment authorization).

- Re-verification: It is an employer option as long as it is not used in a discriminatory basis and for all employees.
- Re-verification: Required if the employer receives an SSA no-match letter (which SSA is required to send if there is a mismatch), or if SSA notifies the employer that a worker may have an invalid SSN (because the employer has multiple employees with the same number). There will be several million no match issues/letters. In addition, the penalty for employers who knowingly put a false SSN through the system includes jail time and fines. This provision almost codifies the no-match rule, except under this proposal employers only get 30 days instead of 90 days to comply.
- Due Process claims: Government liability limited to tort claims actions by individuals and/or injunctive relief. No relief for employers.
- Fines and Penalties for workers using false SSN or DHS identification numbers. Amends the federal criminal code to include fines and jail time for workers who knowingly provide a false SSN or identification number or employers who knowingly submit a false SSN or identification number to the EEVS. Requires SSA and/or DHS to block SSNs that have been used multiple times in the system or have been suspected or determined to be compromised by identity theft or other misuse unless an individual can show he or she is the legitimate holder, and SSNs of individuals with a final removal order, expired visa/employment authorization or those that have voluntarily departed. Also establishes a program to permit victims of identity theft to suspend or limit the use of their SSN.
- Preemption: There would be preemption of all state, local and municipal laws relating to hiring, continued employment or status verification for employment eligibility of unauthorized aliens. The language would nullify all current state, local and municipal laws at the date of enactment. It would allow states and local political subdivisions to continue to exercise their authority businesses licensing and similar laws to penalize employers for not using the system.
- Union halls and nonprofit employment agencies: Union halls and others who provide employment services, including nonprofits and others who do not charge a fee, would be required to use E-Verify.
- Blocking Social Security numbers: There are sections that require SSA and/or DHS to block social security numbers that "have been identified to be subject to unusual multiple use", and an individual worker can block the use of a number if that worker was confirmed by the system and the individual claims that use by others was not authorized.
- Biometric pilot: A pilot program that relies on identification via private credit agencies that would participate in creation of a federal database. Participation in the pilot would be voluntary for employers but mandatory for workers hired by those employers.
- Penalties for Employers: Increases penalties for first, second and third offenses along the lines negotiated in other immigration bills. Employers could incur penalties for knowingly hiring or employing undocumented workers and for

engaging in a pattern or practice of violations. There would be penalties for failure to use the system or for providing information that the employer knows or reasonably appears to be false.

- Debarment Penalty: Repeat violators or employers who commit crimes under the bill can be considered for debarment from federal contracts; however any decision to debar an entity is reviewable pursuant to the Federal Acquisition Regulation. Those without federal contracts will be referred to the Administrator of General Services to determine whether to list the employer on the "List of Parties Excluded from Federal Procurement."