



LABOR, IMMIGRATION &
EMPLOYEE BENEFITS DIVISION
U.S. CHAMBER OF COMMERCE

June 29, 2011 – Brief summary of Lamar Smith and Chuck Grassley E-Verify bills introduced 6/14/2011

Issue

H.R. 2164 (Rep. Smith Legal Workforce Act)

S. 1196 (Sen. Grassley Achieving Accountability Through Electronic Verification Act)

Preemption

Yes, preempts state and local laws related to hiring, continued employment, and status verification for unauthorized aliens. However, state and local licensing authority is retained with the right to penalize an employer who does not use the federal E-Verify system when mandated by federal law.

No, state and local laws mandating E-Verify, establishing state or local enforcement and investigation concerning employment verification, or otherwise related to hiring, continued employment or status verification of unauthorized aliens are not preempted. State and local laws that would prohibit participation in E-Verify are preempted.

Reverification of entire current workforce

No, the entire current US workforce is not subject to mandatory E-Verify. Instead, all new hires are subject to E-Verify (after a fast phase-in of employers, based on company size), and once an employer is phased-in to E-Verify it will be required to run E-Verify queries on certain current workers where SSA identifies a multiple use SSN and the rightful owner of that SSN or if SSA identifies a mismatched SSN for wage reporting. State and federal contractors must reverify current workforce if workers are working on contracts over the simple acquisition threshold, do not have federal security clearances, are not overhead administrative personnel, or are not providing solely COTS goods or services (as defined by the Federal Acquisition Regulation).

Yes, employers are obligated to run E-Verify queries on the entire US workforce of over 130M workers within 3 years of enactment.



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Direct employees vs subcontractors

Employers have an employment verification obligation for their direct employees. Recruiters and referrers for a fee as well as union hiring halls, state workforce agencies, and day laborer organizations must also verify employment authorization for referred or recruited workers.

An employer can be deemed liable for the employment verification of both direct hires as well as any workers hired through subcontracts or other agreements for labor services.

Safe harbor

Yes, strong safe harbor provided for good faith employers. A good faith employer may not be liable to a job applicant or employee (or to the federal, state or local government) for any employment-related action made in reliance on information provided in E-Verify. Moreover, once an employer shows good faith use of E-Verify it has established compliance with its employment verification obligations absent a showing by DHS by clear and convincing evidence that the employer had knowledge that an employee is unauthorized. In addition, good faith employers cannot be penalized for de minimus technical or procedural violations and must be provided at least 30 days to correct any technical or procedural violation.

There is an attempt to limit employer liability regarding employment actions based on E-Verify, however, there are no other provisions protecting good faith employers.



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Integrated I-9 and E-Verify	Yes, within 6 months of enactment DHS must provide both a fully electronic E-Verify system that integrates the I-9 into E-Verify as well as a telephonic option. The fully electronic option will provide reminders to employers as well as reporting options.	No, neither a fully electronic system or telephonic option is mandated, although a study is required.
Phase-in	Short phase-in of 2 years after enactment for all employers (except those in agriculture) to use E-Verify for new hires, with phase-in schedule based on company size. Agricultural employers are phased-in after 3 years, and a seasonal worker who returns to the same employer is not considered a new hire.	Short phase-in of 1 year for all 6.05M employers.
Government data share	No expanded data share, meaning that data provided as part of the employment verification process may only be used by the federal government to enforce federal immigration law and federal criminal law.	Yes, vast amounts of otherwise private information must be shared among government agencies and provided by employers to the government on any employee not confirmed in E-Verify.