

# Legal Workforce Act (H.R. 1772)

## SUMMARY OF ITS MAIN PROVISIONS

JUNE 2013

**T**he Legal Workforce Act (H.R. 1772), which was introduced in the U.S. House of Representatives by Rep. Lamar Smith (R-TX), passed the House Judiciary Committee on June 26, 2013.<sup>1</sup> The bill mandates the use of an electronic employment eligibility verification system (EEVS) by every employer in the U.S.<sup>2</sup> Below is a summary of its key provisions.

- **Conditional job offers.** Unlike current law, which requires employers to use E-Verify *after* the worker is hired, the Legal Workforce Act allows employers to condition a job offer on a worker's final verification by the EEVS.
- **Phased-in over 2 years.** Beginning 6 months after enactment, employer participation in the EEVS is phased in from large to small employers (including those with one employee). Entities that recruit and refer workers must use the system 12 months after enactment.
- **Rules for agriculture.** Employers that employ agricultural workers must use the EEVS 24 months after enactment.
- **Mandatory reverification of current workers' employment eligibility using the EEVS.** Within 6 months of enactment, the following members of the current workforce must have their employment eligibility reverified through the EEVS: critical infrastructure employees; workers assigned to a federal contract; and federal, state, and local government employees. The requirement does not apply to workers whose employment eligibility has previously been verified through E-Verify. Employers must also use the EEVS, according to the phase-in timeline for employers based on their size, for workers with expiring work authorization. Employers must also reverify a worker using the EEVS if the Social Security Administration

<sup>1</sup> H.R. 1772, as introduced, is available at [www.gpo.gov/fdsys/pkg/BILLS-113hr1772ih/pdf/BILLS-113hr1772ih.pdf](http://www.gpo.gov/fdsys/pkg/BILLS-113hr1772ih/pdf/BILLS-113hr1772ih.pdf).

<sup>2</sup> The EEVS in the Legal Workforce Act is explicitly "patterned on" E-Verify (see p. 34 of the bill as introduced). For more information about E-Verify, see *Facts About E-Verify* (National Immigration Law Center, Feb. 2011), [www.nilc.org/everifyinfo.html](http://www.nilc.org/everifyinfo.html).

On April 16, 2013, a bipartisan group of U.S. senators introduced the Border Security, Economic Opportunity and Immigration Modernization Act of 2013 (S.744), which also includes a national mandate for employers to use an EEVS. Unlike the Legal Workforce Act, the Senate bill provides for a road to citizenship for non-U.S. citizens who currently lack legal immigration status. Moreover, the Senate bill's EEVS mandate differs significantly from the Legal Workforce Act's in that, among other things, it provides due process protections for workers and affirmative penalties for employers who misuse the EEVS. The text of the bill as reported out of the Senate Judiciary Committee is available at [www.judiciary.senate.gov/legislation/immigration/MDM13780.pdf](http://www.judiciary.senate.gov/legislation/immigration/MDM13780.pdf). For more information about S. 744, see [www.nilc.org/irsenate2013.html](http://www.nilc.org/irsenate2013.html).

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(SSA) notifies the employer that the worker may not be employment-authorized because the worker is using another person's Social Security number (SSN).

- **Verification using the E-Verify photo-matching tool.**<sup>3</sup> An amendment adopted by the House Judiciary Committee requires employers who use the E-Verify system's photo-matching tool to match the worker's photo-tool photograph to both the photograph on the worker's work document and the worker's face.
- **Voluntary reverification of current employees using the EEVS.** Beginning 30 days after the bill is enacted, an employer may voluntarily use the EEVS to reverify the employment eligibility of *any* current employee, as long as the employer reverifies all of its employees. An employer's voluntary decision to reverify its current workforce is shielded from consideration by any governmental agency in any proceeding under the Legal Workforce Act.
- **Limits documents that may prove employment eligibility and identity.** Makes many documents currently accepted to prove employment eligibility and identity no longer acceptable.
- **Verification requirements for union hiring halls and nonprofit employment agencies.** Union halls and others who facilitate the hiring of laborers, including nonprofits and others that do not charge a fee, would be required to use the EEVS.
- **Employer safe harbor.** Employers are relieved of liability (to worker and to governmental entities) for any employment action taken with respect to a worker if the employer has verified the worker's identity and employment eligibility and relied on information provided by the EEVS in good faith, unless there is clear and convincing evidence that the employer had knowledge that the worker was unauthorized and still hired him/her.
- **Employer penalties.** Substantially increases penalties for employers who knowingly hire or employ unauthorized workers and who fail to use the EEVS or knowingly submit false information to the EEVS, but fines for knowingly hiring or employing an unauthorized worker may be waived if the employer establishes that it acted in good faith.
- **Limited remedies for workers.** If a worker is fired due to an error in the EEVS, the worker may seek compensation and injunctive relief to correct the error through the Federal Tort Claims Act; class action lawsuits, however, are prohibited. The bill does not include an administrative or judicial appeal process for citizen and work-authorized immigrant workers who are victims of an EEVS error and lose their employment.
- **Preemption.** Preempts states and localities from passing employer sanctions and employment eligibility verification laws, but allows states to use business licensing and similar laws to penalize employers for not using the EEVS. Allows a state, at its own cost, to enforce the provisions of the Legal Workforce Act as long as it follows the federal regulations, rules, and guidance implementing the act. An employer may not be subject to federal and state enforcement, including investigation and audit, for the same violation. If a state initiates an enforcement action under the act before the federal government does, the state will have the right of first refusal to proceed. The state may then collect any fines assessed under the act.

**FOR MORE INFORMATION, CONTACT**

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<sup>3</sup> Information about E-Verify photo matching is available at <http://tinyurl.com/4lfuszs>.