

# CONTINUING THE PIONEER TRADITION

## Illinois' Basic Pilot/E-Verify Laws as a Model Policy

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Illinois has had an impressive history of firsts in American history, including having received the first federal land grant for rail construction in 1850 and building the world's first skyscraper in 1883. Illinois has continued to demonstrate a pioneer spirit and a dedication to leading businesses towards economic prosperity, which has included protecting the rights of its diverse and multicultural workforce. In a time when legislators in many states are rushing, without pausing to consider all the consequences, to write bills that would further restrict immigrants' rights and require employers to use the federal government's voluntary electronic employment eligibility verification system, Illinois has taken a balanced, fair, and thoughtful approach.<sup>1</sup>

On August 13, 2007, Illinois became the first state to enact laws intended to protect employers and workers who are affected by the federal Basic Pilot/E-Verify program — to protect business owners' and workers' rights, enhance antidiscrimination laws, and strengthen important privacy protections. Basic Pilot/E-Verify is an Internet-based system by which employers electronically verify the employment eligibility of new hires. Unfortunately, the program relies on Department of Homeland Security (DHS) and Social Security Administration (SSA) databases whose inaccuracy results in the misidentification of many workers as not employment-eligible. With the exception of one discrete provision, the Illinois laws became effective on January 1, 2008. Illinois' proactive legislating serves as the best model thus far for how states can take affirmative steps to protect workers and businesses from Basic Pilot/E-Verify's flaws.<sup>2</sup>

### ■ What are the laws' provisions?

The two laws, Public Act 95-0137 (HB1743) and Public Act 95-0138 (HB1744), amend the Illinois Human Rights Act and the Illinois Right to Privacy in the Workplace Act.<sup>3</sup>

HB1743 amends the Illinois Human Rights Act by explicitly stating that it is a civil rights violation for an

employer participating in Basic Pilot/E-Verify

to refuse to hire, to segregate, or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment without following the procedures under the Basic Pilot Program.

Workers who experience discrimination in violation of this law can win reinstatement, recover lost wages and compensatory damages, and win attorneys' fees and costs.

HB1744 amends the Illinois Right to Privacy in the Workplace Act by providing that before Illinois businesses may register to use Basic Pilot/E-Verify, the program's underlying DHS and SSA databases must be able to resolve within three days 99 percent of the tentative nonconfirmation notices issued to employers.<sup>4</sup> It provides that no local government may require an employer to use any electronic employment eligibility verification system as a condition of receiving a government contract or business license, or as a penalty for violating licensing or similar laws. And it codifies existing DHS procedures and responsibilities that employers are required to follow and observe both prior to verifying a worker through Basic Pilot/E-Verify, as well as afterwards.<sup>5</sup> For example, an employer must post notices in a prominent place clearly visible to prospective employees, alerting workers to the employer's participation in the program as well as advising them of available antidiscrimination protections. The Illinois Department of Labor enforces the Right to Privacy in the Workplace Act and has published a form for worker complaints, as well as a required form for employers who use Basic Pilot/E-Verify to attest that they have complied with HB1744's notice-posting and training requirements.<sup>6</sup>

On September 24, 2007, the federal government, on behalf of DHS, filed a lawsuit against Illinois in the U.S. District Court for the Central District of Illinois, challenging only the provision of HB1744 prohibiting employers from participating in the program until



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DHS and SSA databases are able to resolve 99 percent of tentative nonconfirmations. The lawsuit did not challenge the anti-discrimination protections added by HB1743 or any of the other protections added to the Right to Privacy in the Workplace Act by HB1744. These provisions went into effect on January 1, 2008.

On December 14, 2007, the court stayed both the federal lawsuit and the state's enforcement of the challenged provision of HB1744 in order to allow the Illinois Legislature to consider a bill offered by supportive legislators that would have rendered the lawsuit moot (SB1878). This bill would have *discouraged*, but not prohibited, Illinois employers from participating in Basic Pilot/E-Verify until the program "is able to automatically verify the work-authorization status of 99% of employees." The bill also mandated that Illinois not participate in the program until its accuracy is improved, unless the state is required to by federal law. Finally, the bill contained a strengthened enforcement mechanism for the law's notice-posting, training, and privacy requirements. The bill unanimously passed the Illinois Senate on April 9, 2008, but failed to pass the House. Since that time, both the lawsuit and the challenged provision of HB1744 have remained stayed and legislators and advocates are currently considering next steps.

### ■ Why were these bills introduced in Illinois?

Illinois legislators introduced and passed HB1743 and HB1744 because they recognized that Basic Pilot/E-Verify is unable to accurately and quickly confirm the employment eligibility of a significant number of U.S. citizen and employment-eligible immigrant workers. Worker advocates in Illinois who supported the laws were motivated by the case of Fernando Tinoco, an Illinois resident who became a U.S. citizen in 1989 but was fired on his first day of work at a Tyson Foods factory in Chicago after the company ran his information through Basic Pilot/E-Verify and was unable to verify his work eligibility.<sup>7</sup>

### ■ Why were the Illinois laws successfully enacted?

The laws were successfully enacted because they promote fairness and justice *for all workers*, not just immigrant workers. Legislators understood that all residents of the state, regardless of their immigration status, could be negatively impacted if employers were required to use Basic Pilot/E-Verify. In their messaging, they focused on how employers have abused the program, how it fails to provide adequate due process,

and how frequently it misidentifies workers as being employment-ineligible. Advocates supporting these laws were successful also because they created a diverse coalition of members, including business groups, labor unions, immigrant rights groups, and faith-based organizations. The Illinois Chamber of Commerce, the Illinois AFL-CIO, and the Chicago Lawyer's Committee for Civil Rights were especially vital to the work being done by state advocates. The Chamber was especially concerned that employers be provided with accurate tools that would allow them to check employment eligibility during the hiring process before being subjected to additional burdens.

### ■ Why is Illinois' approach a good model for other states?

Since its inception, Basic Pilot/E-Verify has been plagued by problems related to inaccurate databases that deprive lawful workers of jobs, its being used by employers as a pretext or means to discriminate against workers, weak technology and infrastructure that do not protect personal data from cyber threats and that threaten privacy rights, and increased administrative burdens for federal agencies such as SSA.<sup>8</sup> Illinois' approach is a good model for other states because:

- It is pragmatic, recognizing the harm that Basic Pilot/E-Verify can do to businesses, workers and the state's economy.
- It sends the message that human rights in the workplace are a priority at the state and local levels.
- It encourages states to use state labor, privacy, and antidiscrimination statutes to protect workers and businesses.
- It encourages monitoring of employer abuse by state officials.

### ■ What tools will I need to advocate for Basic Pilot / E-Verify legislation in my state?

You should conduct an assessment of your organization's own capacity, your best allies, and the level of community and legislative support for the issue. Do you have the collective tools necessary to maximize your chances of success? The following checklist is a good start for determining if you have many of the tools you will need:

- Support from diverse local and state groups such as the business community, local unions, faith-based organizations, immigrant rights advocates, civil

rights groups, or other social justice organizations. This can be demonstrated through using tools such as sign-on letters that show legislators that there is broad support for a bill.

- ☑ Support from local and state legislators, or even just one elected “champion.”
- ☑ General information about Basic Pilot/E-Verify.<sup>9</sup>
- ☑ National and state-specific statistics about who would be affected if use of Basic Pilot/E-Verify were mandatory.<sup>10</sup> For examples tailored to your state, check government agency websites such as the U.S. Census Bureau’s and the Bureau of Labor Statistics’, which maintain up-to-date information on the workforce, economy, and foreign-born population organized by state, county, and congressional district.

- ☑ Written materials for dissemination, such as fact sheets, issue briefs, quotations, sign-on letters, and human interest stories.
- ☑ Model legislative language tailored for your state.<sup>11</sup>
- ☑ State and local media contacts, and the ability to draft press releases.
- ☑ A unified strategic message from your coalition.

Not all these tools are necessary, but the more collective resources you have, the better you will be able to demonstrate to your state legislator(s) that affirmative legislation such as what Illinois enacted is supported by constituents and positive for your state, for businesses in your state, and for all workers.

### FOR MORE INFORMATION, CONTACT

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## NOTES

<sup>1</sup> Daniel C. Vock, “Immigrant Friendly: On Immigration, Illinois Is at the Forefront of Bucking a National Trend,” *Illinois Issues*, April 2008, <http://illinoisissues.uis.edu/features/2008apr/immigration.html>.

<sup>2</sup> For more information, see the resources available at [www.nilc.org/immsemplymnt/ircaempverif/index.htm#eevs](http://www.nilc.org/immsemplymnt/ircaempverif/index.htm#eevs).

<sup>3</sup> To access the bills’ text, go to [www.ilga.gov/legislation/](http://www.ilga.gov/legislation/), then search for the bills by number (left-hand column).

<sup>4</sup> Employers receive a “tentative nonconfirmation” notice from either SSA or DHS when the agencies are unable to automatically confirm a worker’s employment eligibility. A “tentative nonconfirmation” notice is not an indication of an immigration violation, and workers have the right to contest the finding with the appropriate agency.

<sup>5</sup> Provisions in HB1744 track certain requirements in the Memorandum of Understanding (MOU) that employers sign with DHS and SSA. For a copy of the MOU, see <http://www.uscis.gov/files/article/MOU.pdf>.

<sup>6</sup> Complaint form: [www.state.il.us/agency/idol/forms/pdfs/LAWPITW01.PDF](http://www.state.il.us/agency/idol/forms/pdfs/LAWPITW01.PDF).

Attestation form:

[www.state.il.us/agency/idol/Forms/PDFs/attest.pdf](http://www.state.il.us/agency/idol/Forms/PDFs/attest.pdf).

<sup>7</sup> See Griff Witte, “Expanded Worker Checks Would Use Faulty System,” *Washington Post*, May 26, 2006, [www.washingtonpost.com/wp-dyn/content/article/2006/05/24/AR2006052402400.html](http://www.washingtonpost.com/wp-dyn/content/article/2006/05/24/AR2006052402400.html).

<sup>8</sup> See *Basic Pilot/E-Verify: Not a Magic Bullet* (NILC, Jan. 4, 2008), [www.nilc.org/immsemplymnt/ircaempverif/e-verify\\_nomagicbullet\\_2008-01-04.pdf](http://www.nilc.org/immsemplymnt/ircaempverif/e-verify_nomagicbullet_2008-01-04.pdf).

<sup>9</sup> See note 2.

<sup>10</sup> For national estimates, see *Basic Pilot/E-Verify: Not a Magic Bullet*; see also *How Errors in Basic Pilot/E-Verify Databases Impact U.S. Citizens and Lawfully Present Immigrants* (NILC, Apr. 2008), [www.nilc.org/immsemplymnt/ircaempverif/e-verify\\_impacts\\_USCs\\_2008-04-09.pdf](http://www.nilc.org/immsemplymnt/ircaempverif/e-verify_impacts_USCs_2008-04-09.pdf). For examples of state-specific estimates, see *Erecting Its Own Tombstone: Arizona’s Mandatory Basic Pilot/E-Verify Law* (NILC, Apr. 2008), [www.nilc.org/immsemplymnt/state\\_local/AZ\\_factsheet\\_2008--04-25.pdf](http://www.nilc.org/immsemplymnt/state_local/AZ_factsheet_2008--04-25.pdf).

<sup>11</sup> Advocates may contact NILC directly for assistance with drafting model language.