

E-Verify & Immigration Reform

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In 2013, the National Immigration Law Center (NILC) is fighting for [a roadmap to first-class citizenship](#)¹ for the 11 million aspiring Americans living and laboring in our communities. NILC continues to strongly oppose a federal requirement that all employers use E-Verify, because of the program's database error rates, lack of worker protections, lack of due process, insufficient privacy protections, and the significant amount of employer misuse of the program. However, a final immigration reform bill may, unfortunately, include an E-Verify mandate. Any mandatory electronic employment eligibility verification regime should, at a minimum, address these concerns.

RECOMMENDATIONS

ANY BILL THAT mandates the use of an electronic employment eligibility verification system (EEVS) should be reasonably implemented and contain strong worker protections. Specifically, it should:

1. Enact immigration reform that protects workers' labor and employment rights.

Instead of focusing on ineffective "solutions," Congress should pass commonsense legislation that overhauls our nation's immigration system and protects all workers' rights. Unlike E-Verify, which would decrease contributions to state and federal tax revenue, passage of immigration reform would provide an estimated \$1.5 trillion dollar benefit to the gross domestic product over 10 years, in addition to a \$66 billion boost in federal tax collection.² If implemented as part of broad and inclusive immigration reform, protections for workers' labor and employment rights can "help rid the system of bottom-feeding employers who hire and underpay and otherwise exploit cheap immigrant labor, dragging down wages and workplace standards for everyone."³ In addition to creating E-Verify worker protections, immigration reform should include the Protect Our Workers from Exploitation and Retaliation Act (POWER Act, H.R. 2169, S.1195) and other essential safeguards to ensure that workers can enforce their workplace rights.⁴

2. Ensure that E-Verify is not used to undermine workers' rights under labor and employment law.

Too often workers are subjected to egregious violations of their most basic workplace rights. When these workers complain about the unlawful treatment, they face retaliation in the form of firing, suspension, or even physical abuse. Some workers are retaliated against for merely asserting their right to work in the U.S.⁵

¹ www.nilc.org/nilcirpriorities2013.html.

² "The Cost of Partisan Politics," *The Financialist*, Feb. 4, 2013, www.thefinancialist.com/the-cost-of-partisan-politics/ (see especially the graphic on this webpage titled "Immigration Reform").

³ "Immigration Reform and Workers' Rights" (editorial), *New York Times*, Feb. 20, 2013, www.nytimes.com/2013/02/21/opinion/immigration-reform-and-workers-rights.html.

⁴ For more information, see "Strengthening Our Country and Promoting Shared Prosperity: Workers' Rights Priorities for Immigration Reform 2013" (National Immigration Law Center, Feb. 14, 2013), www.nilc.org/workerpriorities2013.html.

⁵ "Justice Department Settles with Florida Janitorial Services Company Over Immigration and Nationality Act Violations," U.S. Dept. of Justice press release, Sept. 27, 2012, www.justice.gov/opa/pr/2012/September/12-crt-1169.html.

LOS ANGELES (Headquarters)
3435 Wilshire Blvd., Suite 2850
Los Angeles, CA 90010
213 639-3900
213 639-3911 fax



WASHINGTON, DC
1444 Eye Street, NW, Suite 1110
Washington, DC 20005
202 216-0261
202 216-0266 fax

Because E-Verify compounds workers' vulnerability and undermines labor law, the program should explicitly prohibit the use of E-Verify to undermine workers' rights under labor and employment law. This prohibition should come with meaningful penalties. Because worksite enforcement undermines the enforcement of labor law, the U.S. Dept. of Labor should be given additional resources that would allow it to expand labor law enforcement in states mandating E-Verify's use.

3. Create a review process that would allow citizens and work-authorized individuals to correct errors in their records and maintain their jobs.

Workers who are issued an erroneous "tentative nonconfirmation" (TNC) or "final nonconfirmation" (FNC) by the E-Verify system have had no formal way to resolve the error, get their job back, or get compensation for the time they were out of a job due to the government's mistake. U.S. Citizenship and Immigration Services should create a process to allow U.S. citizens and work-authorized individuals to correct TNCs and FNCs easily, remain on the job while they correct these government errors, and receive compensation for any time they are out of a job due to E-Verify errors.

4. Prohibit employer misuse of E-Verify.

There continues to be significant employer misuse of E-Verify—including prescreening of workers and adverse action against workers who receive TNCs. Workers who report mistreatment should be treated as whistleblowers. Absent significant penalties for employer mistreatment, and if strong worker protections aren't in place, employer misuse flourishes. We should learn from the failure of the employer sanctions regime created by the Immigration Reform and Control Act of 1986 (IRCA)⁶ and ensure that the penalties do not result in *employee* sanctions, as has been the case with IRCA. As a result of IRCA, employees who speak up in the face of abusive treatment are often fired or detained and deported, while the employer simply turns around to hire another unauthorized worker, without suffering any penalties.

5. Before any expansion of E-Verify as part of immigration reform, ensure that the program meets specified requirements regarding database accuracy, low error rates, privacy, and measurable employer compliance.

Requiring that all employers in the U.S. use E-Verify would represent an enormous increase in utilization of the program, from only 20 million name checks — by only 7 percent of U.S. employers — in fiscal year 2012 to over 60 million name checks, even if only new hires were checked. Moving forward without addressing problems within the system will result in harm to all workers and businesses. In Georgia, the implementation of a state mandate that employers use E-Verify resulted in over 1,000 doctors and other medical practitioners temporarily losing work eligibility because of insufficient staffing at local licensing offices.⁷ Performance evaluations should address, at a minimum, wrongful terminations due to system errors, employer compliance with program rules, and the impact of the system on workers' privacy. The best way to ensure accurate implementation of mandatory E-Verify is to set standards for system performance up front, clear benchmarks that need to be met, and timelines for meeting those metrics. These metrics should be met *before* any expansion of E-Verify is implemented.

FOR MORE INFORMATION, CONTACT

Emily Tulli, Policy Attorney, NILC | tulli@nilc.org | 202.384.1276

⁶ 8 USC §§ 1324a-1324b.

⁷ Jim Burrell, "Georgia Immigration Law Trips up Doctors and Nurses," *Shots: Health News from NPR*, Nov. 12, 2012, www.npr.org/blogs/health/2012/11/12/164950641/georgia-immigration-law-trips-up-doctors-and-nurses.