

Know Your Rights About E-Verify

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E-Verify (formerly known as the Basic Pilot program) is a voluntary, Internet-based program that allows participating employers to electronically verify workers' employment eligibility with the U.S. Department of Homeland Security (DHS) and the Social Security Administration (SSA). E-Verify is supposed to be used only *after* a worker is hired, and after the employer verifies the worker's employment eligibility using an official government form called "Form I-9, Employment Eligibility Verification," usually referred to as the "I-9 form."¹ Because the government databases upon which E-Verify relies contain errors that may affect you and many employers do not follow program rules, it is important that you know what your rights are.

■ Your Rights²

- You have the right to know whether your employer is using the E-Verify program. The employer is required to post, in an area clearly visible to applicants and new employees, a notice provided by DHS that says the company is participating in E-Verify.
- You have the right to choose which documents, of those listed on the reverse side of the I-9 form, you present to your employer to prove your identity and employment eligibility. If you present an I-9

form "List B" document as proof of your identity, however, your employer can accept it only if the document includes a photograph.

- You do *not* have to comply with requests for additional documents after you have presented those required for completing the I-9 form.
- You have the right not to have your information entered into the E-Verify system until *after* you have been offered a job and have completed the I-9 form.
- Your employer should *not* resubmit your information to E-Verify after the initial verification process at hire (for example, to retaliate against you if you file a wage-and-hour claim against the employer). However, your employer is allowed to reverify your employment eligibility if it receives a contract or subcontract from the federal government.³
- You have the right to know if E-Verify cannot confirm your information, the right to receive and review a "Notice to Employee of Tentative Nonconfirmation" in English or Spanish, the right to receive a "Referral Notice" to SSA or DHS, and the right to challenge the finding. Notices in other languages are not currently available.
- You have the right to be provided eight federal working days after receipt of the "Notice to Employee of Tentative Nonconfirmation" in which to challenge an E-Verify finding with DHS or SSA.

¹ All employers are required to verify newly hired employees' work eligibility using the I-9 form. To enable employers to complete the form, workers are required to present documents proving their identity and employment eligibility. A copy of the I-9 form can be found on the U.S. Citizenship and Immigration Services (USCIS) website, at www.uscis.gov/files/form/I-9.pdf (last visited Nov. 9, 2009).

² See also *Employees — You Should Know Your Rights and Responsibilities Under E-Verify* (Dept. of Homeland Security and Social Security Admin., Jan. 18, 2008), www.uscis.gov/files/nativedocuments/e-ver-employee-rights.pdf (last visited Nov. 7, 2009).

³ The Federal Acquisition Rule (FAR) that was published in the Federal Register on Nov. 14, 2008 (73 FR 67651–705) mandates the use of E-Verify for certain federal contracts and allows its use to verify the employment eligibility of *existing* employees in some circumstances. For more information on the FAR, see *Summary of Final Rule: Federal Acquisition Regulation: Employment Eligibility Verification* (NILC, Aug. 2009), www.nilc.org/immsemplmnt/ircaempverif/e-verify-FAR-summary-2009-08-31.pdf (last visited Nov. 7, 2009).



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This *does not* mean that you *resolve* the nonconfirmation within that time, just that you *initiate* contact with DHS or SSA within eight federal working days.

- You have the right *not* to be terminated, or for any adverse employment action to be taken against you (for example, pay cut, demotion, suspension, etc.), while you challenge an E-Verify finding, regardless of how long it takes the government to resolve the error.

■ How to Protect Your Rights

If you have reason to believe that an employer is using its access to government databases under E-Verify in violation of the rules and procedures explained above, you or an advocate should contact one or more of the agencies listed below.

If you are in a labor union, you should notify your union representative or steward immediately if your employer is not following the E-Verify rules. Any adverse action by your employer will most likely violate the “just cause” and nondiscrimination clauses of your union contract. Your contract may also have specific provisions that protect you from employer misuse of E-Verify. You should also tell your employer that you want a union representative present at any meetings that may lead to you being disciplined or losing your job because of questions about your employment eligibility.

- **Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC).** Contact OSC if you believe you have been discriminated against based on your national origin or citizenship status — for example, if the employer is stating a preference for hiring U.S. citizens or

permanent residents because it is “easier” to verify their work eligibility.

- Information and Worker Hotline:
1-800-255-7688; or TDD for those with hearing impairment: 1-800-362-2735
- **Equal Employment Opportunity Commission (EEOC).** Contact EEOC if you believe you have been discriminated against based on national origin, race, color, gender, religion, age, disability, or pregnancy. For example, it is unlawful for employers to use E-Verify to verify the employment eligibility of workers of a certain race or ethnicity while not subjecting workers of other races or ethnicities to the process.
 - Contact information for EEOC field offices: www.eeoc.gov/field/index.cfm.
 - If there is no field office in your immediate area, call 800-669-4000; or TDD for those with hearing impairment: 800-669-6820.
- **National Labor Relations Board (NLRB).** Contact NLRB if your employer has retaliated against you for organizing or joining a labor union, or for acting collectively with other workers to improve your working conditions. For example, it is unlawful for an employer to use E-Verify to verify or reverify the employment eligibility only of those workers who are either collectively complaining about working conditions or organizing a union.
 - Information Hotline:
1-866-667-NLRB (1-866-667-6572);
or TDD for those with hearing impairment:
1-866-315-NLRB (1-866-315-6572)

FOR MORE INFORMATION, CONTACT

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