
E-VERIFY

The Impact of Its Mandatory Use on California Workers and Business

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Requiring U.S. employers to use E-Verify will harm California's economy and U.S. workers while doing little to end unauthorized employment. Unless currently unauthorized workers are provided a path to legalizing their immigration status, E-Verify will impose new costs on employers, drive jobs into the underground economy, increase unemployment, and deprive the government of revenue.¹

■ Requiring employers to use E-Verify will not create new jobs for California's workers.

- Some policymakers have simplistically and falsely asserted that requiring employers to use E-Verify will decrease unemployment. But requiring employers to use E-Verify will not free up jobs. In fact, its effect will be to drive more workers and employers into the underground economy, costing California valuable tax revenue.²
- According to the Cato Institute, “[I]t is misleading to assert that every low-skilled immigrant we can round up and deport will mean a job for an unemployed American. . . . Low-skilled immigrants, whether legal or illegal, do not compete directly with the large majority of American workers.”³
- E-Verify isn't even effective at preventing unauthorized work: 54 percent of unauthorized workers for whom E-Verify checks were run were erroneously confirmed as being work-authorized.⁴
- Deliberately doing something that will increase unemployment during a fragile economic recovery defies common sense. California currently experiences 9.8 percent unemployment.⁵ Requiring employers to participate in E-Verify will discourage California's hiring in a market already devastated by layoffs.

■ Requiring the use of E-Verify will cause many California workers to lose their jobs.

- E-Verify would actually exacerbate California's unemployment. According to estimates based on government sources, if the entire U.S. workforce were required to have its employment eligibility verified through E-Verify, a conservative estimate is that between 1.2 and 3.5 million U.S. citizens and authorized immigrants would either have to correct their records or lose their jobs.⁶ Extrapolating from these estimates, approximately 148,000 to 425,000 citizen and authorized immigrant workers in California would have to correct their records in order to avoid being fired.⁷
- In California, approximately 31.2 percent of the labor force is comprised of foreign-born workers.⁸ Foreign-born workers authorized for employment have encountered a disproportionate E-Verify error rate 20 times greater than that for U.S.-born employees.⁹ If we were to use the rough estimate, this would affect up to 149,846 authorized workers in California.¹⁰

- For example, after initially being hired for a position, a U.S. citizen telecommunications worker lost the job due to an E-Verify error. Despite her pleas to government officials, she was unemployed for several months after being fired.¹¹ Her story will be the story of many Californians if all employers in the U.S. are required to use E-Verify.
- Employers that audit their own E-Verify data report higher error rates than federal government estimates.¹² When Intel Corporation audited its use of E-Verify, it found that 12 percent of its E-Verify findings were erroneous.¹³ This translates into approximately 2,216,196 workers in California who would either have to correct their records or lose their jobs.¹⁴
- When workers are notified that there is a problem with their database record, they face significant burdens trying to correct the information. A government-commissioned study found that 49.5 percent of such workers lost partial or complete days of work, and 14 percent lost more than 2 days of work.¹⁵ It's not uncommon for such workers to have to make multiple trips to a Social Security Administration (SSA) office and wait in long lines to try to correct their record.

■ E-Verify will place burdens on all California businesses, especially small businesses.

- In California, 33,242 businesses — or 4.8 percent of all California businesses — are enrolled in E-Verify.¹⁶ Mandating E-Verify would not result in ridding the state of undocumented immigrants but, rather, in creating headaches for a majority of the businesses in the state.
- The exact impact of E-Verify on small businesses is still unknown because employers currently enrolled in E-Verify are not representative of all U.S. employers. Although 73 percent of businesses in the U.S. have fewer than 10 employees, only 12 percent of E-Verify users are small businesses.¹⁷ According to data compiled by Bloomberg, if use of E-Verify were mandatory, it would have cost small businesses \$2.6 billion in fiscal year 2010.¹⁸
- In California, there are over 684,953 small businesses, and small employers account for 99.2 percent of the state's employers.¹⁹ Small, family-owned businesses do not have the resources to meet the demands of an electronic verification system. Because most such businesses do not have staff dedicated exclusively to personnel matters, they will have to divert scarce management time to E-Verify's training requirements and to tracking verification records. Furthermore, many farms and other small businesses do not have high-speed Internet access, which E-Verify requires.²⁰
- Requiring employers to use E-Verify would cut at the heart of California's top five industries, including various service-based sectors, such as restaurants, hospitals, waste management, and sales.²¹ California's top five industries employ 6,786,593 employees, and if E-Verify were mandated, a conservative estimate is that 54,293 U.S. citizen and authorized immigrant workers in these industries alone could be told they are not qualified to work.²²

■ Arizona provides a glimpse into the impact of requiring all employers to use E-Verify.

- In 2007, the state of Arizona enacted a law that requires every employer in the state to enroll in E-Verify and creates state penalties for employers that do not comply with the law. Results of the Arizona law include the following:
 1. Employers aren't using the system. Though Arizona employers made 1.3 million new hires in the fiscal year that ended in September 2009 and were required by state law to

check all of them via E-Verify, they actually checked only 730,000 of them — or slightly more than half.²³

2. Employers are coaching undocumented workers how to get around the system. U.S. Immigration and Customs Enforcement (ICE) officials report that unscrupulous employers ask employees whom they suspect are not work-authorized to provide identity document that successfully get those workers through E-Verify.²⁴
3. Workers are moving off the books into the underground economy. In 2008, the first year the law was in effect, income tax collection dropped 13 percent from the year before. Sales taxes, however, dropped by only 2.5 percent for food and 6.8 percent for clothing. Analysts have concluded that workers weren't paying income taxes, but were still earning money to spend — meaning that the underground economy was growing. This shift deprived the state of income-tax revenue at the same time it was facing a \$1.2 billion budget gap.²⁵

Notes

¹ For more information about E-Verify, see *Facts About E-Verify* (NILC, Jan. 2011), www.nilc.org/document.html?id=325.

² According to the Congressional Budget Office, making use of E-Verify mandatory (without also providing a way for unauthorized workers to become work-authorized) would increase the number of employers and workers who resort to the black market, outside of the tax system. This would decrease federal revenue by more than \$17.3 billion over ten years. See Letter to Rep. John Conyers, Chair, Committee on the Judiciary, U.S. House of Representatives, from Peter Orszag, Director, Congressional Budget Office, Apr. 4, 2008, www.cbo.gov/ftpdocs/91xx/doc9100/hr4088ltr.pdf.

³ Dan Griswold, *ICE Worksite Enforcement—Up to the Job?: Testimony Before the Subcommittee on Immigration Policy and Enforcement, Committee on the Judiciary, U.S. House of Representatives* (Cato Institute, Jan. 26, 2011), www.cato.org/pub_display.php?pub_id=12730, emphasis added.

⁴ *Findings of the Web-Based E-Verify Program Evaluation* (Westat, Dec. 2009), www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf, p. 118.

⁵ *Economy at a Glance: California* (U.S. Bureau of Labor Statistics, Feb. 2013), www.bls.gov/eag/eag.ca.htm (last visited Feb. 20, 2013).

⁶ There are currently 154,794,000 workers in the U.S. labor force. See *Economic News Release: Table A-1: Employment Status of the Civilian Population by Sex and Age* (Bureau of Labor Statistics, Feb. 20, 2013), www.bls.gov/news.release/empsit.t01.htm. According to Westat, 0.8 percent of work-authorized individuals receive a tentative nonconfirmation (TNC). See Westat, *supra* note 4, p. xxx. The 1.2 million figure was arrived at by multiplying 0.8 percent by the number of workers in the U.S. labor force. However, when Los Angeles County audited its use of E-Verify for county workers, it found that 2.0 to 2.7 percent of E-Verify findings it received from the Social Security Administration (SSA) were erroneous in 2008–09. Therefore, the 3.5 million figure was arrived at by multiplying the average (mean) error rate Los Angeles experienced (2.3 percent) by the number of workers in the U.S. labor force. See Marc Rosenblum, *E-Verify: Strengths, Weaknesses, and Proposals for Reform* (Migration Policy Institute, Feb. 2011), www.migrationpolicy.org/pubs/E-Verify-Insight.pdf. Of the Los Angeles County workers processed through E-Verify in 2008, 254 out of 9,958 initially received a TNC and all but 2 of the TNCs were resolved. In 2009, 79 workers out of 4,397 received a TNC and all but 1 were resolved.

⁷ The low end of the range of workers who would have to correct their records or lose their jobs was arrived at by multiplying the 0.8 percent Westat statistic by the state's labor force. California's labor force in Dec. 2012 was 18,468,300. See *Economy at a Glance: California*, *supra* note 5. The high end of the

range of workers who could lose their jobs was arrived at by multiplying California's labor force by 2.3 percent (the average error rate experienced by Los Angeles County—see note 6, *supra*).

⁸ *California: S0501: Selected Characteristics of the Native and Foreign-Born Populations: 2011 American Community Survey 1-Year Estimates* (U.S. Census, Dec. 2011), http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_11_1YR_S0501&prodType=table (last visited Feb. 20, 2013). The figure of 31.2 percent was calculated by dividing the number of foreign-born individuals in the labor force by the number of all individuals in the state's labor force.

⁹ *Employment Verification: Federal Agencies Have Taken Steps to Improve E-Verify, but Significant Challenges Remain* (U.S. Government Accountability Office, GAO-11-146, Dec. 2010), www.gao.gov/new.items/d11146.pdf, p. 44.

¹⁰ There are 18,468,300 workers in California's labor force and, according to the 2011 American Community Survey 1-Year Estimates, 31.2 percent of those workers are foreign-born. See note 7, *supra*. According to Westat, 2.6 percent of work-authorized foreign-born individuals receive a tentative nonconfirmation (TNC). See Westat, *supra* note 4, p. 210. The 149,946 figure was arrived at by multiplying the number of foreign-born workers (5,763,315) by the TNC percentage rate of 2.6.

¹¹ For more examples of U.S. citizens and lawful immigrants affected by E-Verify, see *How Errors in E-Verify Databases Impact U.S. Citizens and Lawfully Present Immigrants* (NILC, Feb. 2011), www.nilc.org/document.html?id=337.

¹² For example, a large multinational employer reported that 15 percent of the queries it submitted to E-Verify resulted in erroneous findings. See "Comments on Proposed Rule Published at 73 Fed. Reg. 33374 (June 12, 2008)," American Council on International Personnel, Aug. 11, 2008, <http://tinyurl.com/c7oh9ly>.

¹³ "FAR Case 2007-013: Comments on Proposed Employment Eligibility Regulations Implementing Executive Order 12989 (as amended), 73 Federal Register 33374 (June 12, 2008)," Intel Corporation, Aug. 8, 2008, www.weareoneamerica.org/sites/weareoneamerica.org/files/intel-ltr-re-e-verify.pdf.

¹⁴ There are 18,468,300 workers in California's labor force. See note 7, *supra*. The 2,216,196 figure was arrived at by multiplying 12 percent by the number of workers in California's labor force.

¹⁵ Westat, *supra* note 4, p. 204. The 49.5 percent figure was arrived at by dividing the 99 total number of respondents by 49, the number of those who reported that they lost partial or complete days at work in order to resolve their TNC.

¹⁶ *E-Verify Employers and Federal Contractors List* (U.S. Citizenship and Immigration Services, Sept. 12, 2012), www.uscis.gov/USCIS/Verification/E-Verify/About%20the%20Program/E-Verify%20Employers%20and%20Federal%20Contractors%20List/Employers-FedContractors-CA-CT.xls. There are a total of 684,953 firms in California. See *Statistics of U.S. Businesses: 2010: States, NAICS Sectors* (U.S. Census Bureau, 2010), www2.census.gov/econ/susb/data/2010/state_naicssector_2010.xls. The 4.8 percent figure was reached by dividing the number of E-Verify memorandums of understanding that employers had entered into in California by the total number of businesses in the state.

¹⁷ Westat, *supra* note 4, p. 64.

¹⁸ Jason Arvello, "'Free' E-Verify May Cost Small Businesses \$2.6 Billion: Insight," *Bloomberg*, Jan. 28, 2011, www.globalimmigrationcounsel.com/uploads/file/bloomberg.pdf.

¹⁹ U.S. Census Bureau, *supra* note 16. The percentage of businesses that are considered small was calculated by adding up the number of firms with 1 to 499 employees and dividing that by the total number of firms in the state.

²⁰ "U.S. Pays the Price for Absence of National Immigration Law," INQUIRER.NET, Apr. 10, 2008, <http://globalnation.inquirer.net/news/news/view/20080410-129490/US-Pays-the-Price-for-Absence-of-National-Immigration-Law>.

²¹ U.S. Census Bureau, *supra* note 16.

²² *Id.* To calculate the number of workers who could potentially lose their jobs, the 0.8% error rate was multiplied by the number of workers. See note 6, *supra*.

²³ Jahna Berry, “Most Arizona Employers Aren’t Using E-Verify,” *The Arizona Republic*, July 28, 2010, www.azcentral.com/arizonarepublic/news/articles/2010/07/28/20100728arizona-employers-ignoring-e-verify.html.

²⁴ *Employment Verification*, *supra* note 9, p. 22.

²⁵ Daniel Gonzalez, “Illegal Workers Manage to Skirt Arizona Employer-Sanctions Law,” *The Arizona Republic*, Nov. 30, 2008, www.azcentral.com/news/articles/2008/11/30/20081130underground1127.html.