
E-VERIFY

The Impact of Its Mandatory Use on New York Workers and Business

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Requiring U.S. employers to use E-Verify will harm New York'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 New York'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 New York 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. New York currently experiences 8.2 percent unemployment.⁵ Requiring employers to participate in E-Verify will discourage New York's hiring in a market already devastated by layoffs.

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

- E-Verify would actually exacerbate New York'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 77,000 to 221,000 citizen and authorized immigrant workers in New York would have to correct their records in order to avoid being fired.⁷
- In New York, approximately 25.8 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 64,307 legal workers in New York.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 New Yorkers 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 1,121,640 workers in New York 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 New York businesses, especially small businesses.

- In New York, 7,177 businesses — or 1.6 percent of all New York 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 New York, there are over 440,685 small businesses, and small employers account for 99 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 New York's top five industries, including various service-based sectors, such as restaurants, finance, hospitals, and sales.²¹ New York's top five industries employ 3,812,727 employees, and if E-Verify were mandated, a conservative estimate is that 30,502 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: New York* (U.S. Bureau of Labor Statistics, Feb. 2013), www.bls.gov/eag/eag.ny.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. New York's labor force in Dec. 2012 was 9,593,400. See *Economy at a Glance: New York*, *supra* note 5. The high end of the range of workers who could lose their jobs was arrived at by multiplying New York's labor force by 2.3 percent (the average error rate experienced by Los Angeles County—see note 6, *supra*).

⁸ *New York: 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 25.8 percent was calculated by dividing the

number of foreign-born individuals “in 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, Dec. 2010), www.gao.gov/new.items/d11146.pdf, p.44.

¹⁰ There are 9,593,400 workers in New York’s labor force and according to the 2011 American Community Survey 1-Year Estimates, 25.8 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 64,307 figure was arrived at by multiplying the number of foreign-born workers (2,473,358) 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 9,539,400 workers in New York’s labor force. See note 7, *supra*. The 1,144,728 figure was arrived at by multiplying 12 percent by the number of workers in New York’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-NM-SC.xls. There are a total of 440,685 firms in New York. 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 1.6 percent figure was reached by dividing the number of E-Verify memorandums of understanding that employers had entered into in Florida 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.