E-VERIFY

The Impact of Its Mandatory Use on Ohio Workers and Business

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Requiring U.S. employers to use E-Verify will harm Ohio'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 Ohio'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 Ohio 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. Ohio currently experiences 8.6 percent unemployment.[5] Requiring employers to participate in E-Verify will discourage Ohio's hiring in a market already devastated by lay-offs.

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

- E-Verify would actually exacerbate Ohio's unemployment. According to government sources, under a mandatory E-Verify system, a conservative estimate is that between 1.2 million and 3.5 million U.S. citizens and lawful immigrants would either have to correct their records or lose their jobs.[6] This translates to approximately between 47,147 and 135,548 citizen and lawful immigrant workers in Ohio.[7]
- 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 has been unemployed for several months.[8] Her story will be the story of many Ohioans if E-Verify is made mandatory.
- 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.[9] Many such workers must 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 Ohio businesses, especially small businesses.

- In Ohio, 4,450 businesses — or 2.2 percent of all Ohio businesses — are enrolled in E-Verify.[10] 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.[11] 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.[12]
- In Ohio, there are over 195,830 small businesses, and small employers account for 98.1 percent of the state's employers.[13] 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. Many farms and other small businesses do not have high-speed Internet access, which E-Verify requires.[14]
- Requiring E-Verify would cut at the heart of Ohio's top five industries, including various service-based sectors, such as restaurants, hospitals, sales and waste management.[15] Ohio's top five industries employ 2,876,042 employees, and if E-Verify were mandated, a conservative estimate is that 23,008 U.S. citizen and legal workers in these industries alone could be told they are not qualified to work.[16]

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

- In 2007, the state of Arizona passed 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.[17]
  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.[18]
  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 is depriving the state of income-tax revenue at the same time the state is facing a $3 billion budget gap.

Notes

[1] For more information about E-Verify, see *Facts About E-Verify* (NILC, Jan. 2011), http://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: Ohio* (U.S. Bureau of Labor Statistics, July 2011), www.bls.gov/eag/eag.oh.htm (last visited July 16, 2011).

[6] There are currently 153,421,000 million 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, July 8, 2011), 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 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 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 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 labor force of the state. Ohio's labor force in May 2011 was 5,893,400. See *Economy at a Glance*: *Ohio, supra* note 5. The high end of the range of workers who could lose their jobs was arrived at by multiplying Ohio's labor force by 2.3 percent (the average error rate experienced by Los Angeles County—see note 6, *supra*).

[8] 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), http://www.nilc.org/document.html?id=337.

[9] Richard M. Stana, *Report to the Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives: Employment Verification, Federal Agencies Have Taken Steps to Improve E-Verify, but Significant Challenges Remain* (Government Accountability Office, Dec. 2010, GAO-11-146), www.gao.gov/new.items/d11146.pdf, p. 22.

[10] "Total Employers Registered for E-Verify (by State) as of July 11, 2011" (USCIS, July 2011), data provided to Immigration Policy Center and Center for American Progress by U.S. Citizenship and Immigration Services on July 11, 2011. There are a total of 199,647 firms in Ohio. See *Statistics of U.S. Businesses: 2008: All Industries: Ohio* (U.S. Census Bureau, 2008), www.census.gov/epcd/susb/2008/oh/OH--.HTM. The 2.2 percent figure was reached by dividing the number of E-Verify memorandums of understanding that have been entered into in Ohio by the total number of firms in the state.

[11] Westat, *supra* note 4, p. 64.

[12] Jason Arvello, "'Free' E-Verify May Cost Small Businesses $2.6 Billion: Insight," *Bloomberg*, Jan. 28, 2011, www.iandcsolutions.com/uploaded/file/%C2%B9Free%C2%B9%20E-Verify%20May%20Cost%20Small%20Business%20$2_6%20Billion_%20Insight.pdf.

[13] U.S. Census Bureau, *supra* note 10. The percentage of businesses that are considered small was calculated by adding the firms with 1-499 employees and dividing that by the total number of firms in the state.

[14] "U.S. Pays the Price for Absence of National Immigration Law," INQUIRER.NET, Apr. 10, 2008, www.globalnation.inquirer.net/news/news/view/20080410-129490/US-Pays-the-Price-for-Absence-of-National-Immigration-Law.

[15] *Statistics of U.S. Businesses: 2008: All Industries: Ohio, supra* note 10.

[16] *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*.

[17] 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.

[18] Richard M. Stana, *supra* note 9, p. 22.