

The State of the States: E-Verify Laws 2012

STATE LAWS AND EXECUTIVE ORDERS THAT MANDATE E-VERIFY'S USE

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STATE & EFFECTIVE DATE	PUBLIC AGENCIES	PUBLIC CONTRACTORS	ALL EMPLOYERS
Alabama HB 56 (1/1/12)	X (4/1/12)	X (1/1/12) (includes subcontractors and independent contractors)	X (4/1/12) (includes self-employed individuals; does not include occupants of households who perform casual domestic labor ¹)
Arizona ² HB 2779 (1/1/08) HB 2745 (5/1/08) ³	X	X	X (12/31/07) (includes self-employed individuals; excludes independent contractors from definition of "employee," but includes independent contractors in definition of "employer")
Colorado HB 1343 (8/7/06) HB 1073/SB 193 (5/13/08) ⁴		X	

¹ Does not apply to relationship between party and employees of independent contractor performing work for the party.

² The U.S. Supreme Court affirmed the lower court's dismissal of a facial challenge to the Arizona requirement in a 5-3 decision. *Chamber of Commerce v. Whiting*, 131 S.Ct.1968, 2011 WL 2039365 (2011).

³ Amendment to HB 2779.

⁴ Amends HB 1343.

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STATE & EFFECTIVE DATE	PUBLIC AGENCIES	PUBLIC CONTRACTORS	ALL EMPLOYERS
Florida Executive Order 11-116 (5/27/11) ⁵ Executive Order 11-02 (1/4/2011)	X (applies to current and prospective employees)	X (includes subcontractors; applies to all employees of the contractor employed to work in Florida during the contract term, not just those assigned to the government contract)	
Georgia HB 87 (7/1/11) HB2 (1/1/10) ⁶ SB 529 (7/1/07) ⁷	X (7/1/11) (includes counties and municipalities)	X (7/1/11) (includes contractors and sub-subcontractors; applies to contracts for the “physical performance of services;” ⁸ drivers’ license exception ⁹ for contractors and subcontractors with independent contractors and no employees)	X (500+ employees by 1/1/12; 100-499 employees by 7/1/12; 11-99 employees by 7/1/13; excludes employees working less than 35 hours/week and employers with fewer than 10 employees)
Idaho EO 2009-10 (7/1/09) ¹⁰ EO 2006-40 (12/13/06)	X (excludes Dept. of Education, legislative and judicial branches)	X (applies only to recipients of state or federal stimulus funds)	
Indiana SEA 590 (7/1/11) ¹¹	X (6/30/11)	X (includes subcontractors and self-employed individuals with employees; applies to contracts entered into/renewed after 6/30/11)	

⁵ Supersedes Executive Order 11-02.

⁶ Signed by Governor Purdue on 5/11/2009; all requirements effective 1/1/10 instead of rolling implementation. See www.legis.ga.gov/legis/2009_10/pdf/hb2.pdf.

⁷ Provided for phase-in by size of employer beginning on July 1, 2007 through July 1, 2009.

⁸ “Physical performance of services” is defined as “the building, altering, repairing, improving, or demolishing of any public structure or building or other public improvements of any kind to public real property within this state, including the construction, reconstruction, or maintenance of all or part of a public road; or any other performance of labor for a public employer within this state under a contract or other bidding process.”

⁹ Drivers’ license or state-issued identification card is only acceptable in lieu of an affidavit for independent contractors if issued by a state that verifies lawful immigration status before issuing a driver’s license or identification card.

¹⁰ Repeals and replaces Exec. Ord. 2006-40.

STATE & EFFECTIVE DATE	PUBLIC AGENCIES	PUBLIC CONTRACTORS	ALL EMPLOYERS
Louisiana Act No. 376 (HB 342) (1/1/12)		X (includes subcontractors; applies to contracts entered into/bids offered on or after 1/1/12 for the “physical performance of services” ¹²)	
Act No. 402 (HB 646) (8/15/11) ¹³			X (encouraged, but not mandatory; see footnote 13)
Minnesota EO 08-01 (1/29/08) ¹⁴			
Emmer Amendment to Stimulus Bill (2/17/10)		X (applies to recipients of funding from MN stimulus bill)	
State Government Finance Omnibus Bill 11-3590 (7/19/11)		X (applies to contracts of more than \$50,000)	
Mississippi SB 2988 (7/1/08)	X (7/1/08) ¹⁵	X (includes subcontractors; 250+ employees by 7/1/08; 100-249 employees by 7/1/09; 30-99 employees by 7/1/10; ALL Employers by 7/1/11)	X (250+ employees by 7/1/08; 100-249 employees by 7/1/09; 30-99 employees by 7/1/10; ALL Employers by 7/1/11) ¹⁶

¹¹ The language of the Act states that the E-Verify provision is effective July 1, 2011. However, the relevant subsections regarding public agencies and public contractors state that it applies to employees hired after June 30, 2011 and contracts entered into or renewed after June 30, 2011.

¹² “Physical performance of services” is not defined.

¹³ HB 646 does not mandate participation in E-verify by private employers. Employers must either participate in E-Verify, or request and maintain a copy of identification and work authorization documents. However, it encourages private employers to use E-Verify by providing a presumption of good faith for those who use it, but not for those who comply with other employment verification requirements.

¹⁴ The Minnesota Executive Order that mandated E-Verify for public contracts over \$50,000 expired on April 4, 2011 due to a change in Governor. See www.verificationsinc.com/eng/whatwevelearned/complianceprofile.cfm?szID=84.

¹⁵ Employers hiring employees through a state or federal work program that requires verification of the employee’s social security number and provides for verification of the employee’s lawful presence and employment authorization are exempt from using E-Verify. Any candidate for employment referred by the state Dept. of Employment Security is exempt from using E-Verify if the Dept. of Employment Security has verified the social security number and provides for verification of the employee’s lawful presence and employment authorization.

¹⁶ Individual homeowners who hire workers on their private property for noncommercial purposes are exempt from using E-Verify, unless required to do so by federal law.

STATE & EFFECTIVE DATE	PUBLIC AGENCIES	PUBLIC CONTRACTORS	ALL EMPLOYERS
Missouri HB 1549 (01/01/09)	X	X (includes subcontractors; applies to contracts of \$5,000 or more and business entities receiving a state-administered or subsidized tax credit, tax abatement, or loan from the state)	
Nebraska LB 403 (10/1/09)	X	X (applies to contracts for physical performance of services ¹⁷ entered into after 10/1/09)	
North Carolina SB 1523 (1/1/07)	X (includes state universities and colleges; 3/1/07 for local education agencies; 1/1/07 for all public other agencies ¹⁸)		
HB 36 (10/1/11)	X (10/1/11) (adds counties and municipalities)		X (500+ employees by 10/1/12; 100 - 499 employees by 1/1/13; 25 - 99 employees 7/1/13; exemption for employers with fewer than 25 employees; exemption for seasonal temporary employee employed for 90 or fewer days during a 12-consecutive-month period; state agencies are excluded from the definition of "employer")
Oklahoma HB 1804 (Partially in effect) ¹⁹ (11/1/07)	X	X (includes subcontractors; applies to contracts entered into after 7/1/08)	

¹⁷ "Physical performance of services" is not defined.

¹⁸ Does not apply to persons under contract or subcontract.

¹⁹ On June 4, 2008, the U.S. District Court for the District of Oklahoma enjoined the law pending the resolution of litigation. *Chamber of Commerce, et al., v. Edmondson, et al. and Kemp, Jr., et al.*, No. 08-6127, 08-6128 (W.D. Okla., June 4, 2008)(order granting preliminary injunction). Public employers would have had to use the program by 1/1/07 and public contractors by 1/1/08. However, the 10th Circuit struck down part of the E-Verify law on February 3, 2010, and the provision that requires public contractors (7(b))

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Rhode Island ²⁰			
South Carolina H 4400 (6/4/2008) S 20 (1/1/2012) ²¹	X	X (includes subcontractors and sub-subcontractors; applies to service contracts for the physical performance of services; ²² with public employer where total value to be performed in a twelve-month period exceeds \$25,000; with political subdivision where total value to be performed in a twelve-month period exceeds \$15,000)	X
Tennessee HB 1378/SB 1669 (1/1/12) ²³	X (1/1/12) (but not mandatory; see footnote 23)	X (but not mandatory; see footnote 23)	X (500+ employees by 1/1/12; 200-499 employees by 7/1/12; 6-199 employees by 7/1/13; exemption for employer with fewer than 6 employees) (but not mandatory; see footnote 23)

and public employers (7(a)) to use E-Verify is currently in effect. The provision mandating E-Verify for all employers was struck down. See *Chamber of Commerce, et al., v. Edmondson*, 594 F.3d 742 (10th Cir. 2010).

²⁰ On Jan. 5, 2011, Rhode Island’s Governor, Gov. Chafee repealed Executive Order 08-01 (enacted on Mar. 27, 2008) that mandated E-Verify for public employers and contractors in the state. There is no mandatory E-Verify law or order currently on the books in Rhode Island.

²¹ S20 changed some of the provisions of HR 4400. Signed on 6/27/11 by Governor Haley, this SB1070 copycat law eliminated the staggered implementation dates of E-Verify for contractors and private employers and the provision that allowed South Carolina driver’s licenses to be used for employment verification purposes in lieu of E-Verify.

²² “Service contract” is defined as one involving the physical performance of manual labor if the total cost of labor exceeds either 30% of the total cost of all labor, or 5% of the total contract price. It does not include a contract primarily for the acquisition of an end product or a contract predominantly for the performance of professional or consultant services.

²³ For newly hired employees, all employers, public agencies, and public contractors must either participate in E-Verify, or request and maintain a copy of identity and work authorization documents. Employers are required to request and maintain a copy of identity and work authorization documents, but not to use E-verify, prior to the provision or labor or services by a “non-employee.”

STATE & EFFECTIVE DATE	PUBLIC AGENCIES	PUBLIC CONTRACTORS	ALL EMPLOYERS
Utah SB 81 (7/1/09)	X	X (includes subcontractors; applies to contracts for the physical performance of services ²⁴ entered into after 7/1/09 ²⁵)	
SB 251 (7/1/10)			X (7/1/10) (exempts employers with fewer than 15 employees and employers of H-2A and H-2B workers)
Virginia HB 737 (4/11/10) Exec. Order (3/21/11) ²⁶	X (6/1/11 for executive branch agencies; 12/1/12 for other state agencies)		
HB 1859/SB 1049 (12/1/13)		X (with an average of more than 50 employees in 12 months prior to entering into a contract for \$50,000 or more)	
TOTAL: 18 states	16 state-wide laws	18 state-wide laws	9 states

²⁴ Does not define “physical performance of services.”

²⁵ Does not apply to a contract involving underwriting, remarketing, broker-dealer activities, securities placement, investment advisory, financial advisory, or other financial or investment banking services.

²⁶ Governor McConnell enacted an Executive Order to make the enroll date for public agencies 6/1/2011 rather than 12/1/2012 as mandated by HB 737. See www.governor.virginia.gov/news/viewRelease.cfm?id=649.