

**E-VERIFY AND OCTOBER 1 NOTICE FROM STATE**

On October 1 the State of Arizona sent a notice to all Arizona employers about the new Arizona employer sanctions law (HB 2779) that becomes effective on January 1, 2008. In the notice, it reminded employers that they may be required to use E-Verify (formerly the Basic Pilot Program) to verify the work authorization of all employees hired on or after January 1, 2008.

**WE RECOMMEND DELAYING SIGNING UP FOR E-VERIFY UNTIL DECEMBER.**

There are several issues you should consider before enrolling in E-Verify. There is a lawsuit challenging HB 2779. If the lawsuit is successful, employer will not be required to use E-Verify. The Court will rule before the January 1, 2008 effective date of the employer sanctions law.

1. If you sign up for E-Verify, you must sign a contract with the Social Security Administration (SSA) and the Department of Homeland Security (DHS). You cannot stop using E-Verify and “cancel” the contract unless you provide **30 days written notice to the government.**
2. If you sign up for E-Verify, the contract you sign with DHS and SSA, called a memorandum of understanding (“MOU”) gives SSA and DHS **the right to inspect your employment records** with no other consent from you and no other legal process. By signing up for the E-Verify program, you are consenting to the Federal Government inspecting your employment records.
3. If you sign up for E-Verify, the MOU gives SSA and DHS the right to interview your employees about their work authorization and experience with E-Verify.
4. If you sign up for E-Verify and do not use it, you are still subject to the terms of the MOU, including inspections by the Department of Homeland Security. You could also be subject to adverse inferences about why you did not use the program after signing up to use it.
5. There will be plenty of time in late **December** to sign up for E-Verify if it is going to be required of Arizona employers.
6. E-Verify will increase the costs for employers because it will require employers to complete more paperwork and devote more resources when hiring new employees after January 1, 2008 and also requires employers to have a computer and internet service. E-Verify also requires employers to maintain the confidentiality of personnel information.
7. Remember that there are only approximately 19,000 employers nationwide signed up for E-Verify and approximately 9,000 actively using the program. Arizona alone has almost 150,000 employers who have to sign up for E-Verify if the lawsuit is not successful.

Please stay tuned with your trade associations and with our legal alerts for more information on the status of HB 2779 and the lawsuit that has been filed challenging HB 2779. Make sure you verify before the end of December 2007 the steps to take to comply with Arizona’s law, if it is still in effect.