



What Comprehensive Immigration Reform May Mean to Your Business

Comprehensive Immigration Reform is a hot topic in Congress and in the news media. While the debate continues to rage over issues pertaining to legal status for undocumented immigrants currently in the U.S., don't lose sight of provisions that any reform proposal is likely to include, which will impact your Human Resource compliance strategies. This is the first of a series of updates that address aspects of Comprehensive Immigration Reform likely to affect you. Below is a synopsis of I-9 and E-Verify provisions as contained in the Senate bill passed in June and mirrored in several pending House proposals.

New Form I-9 and employee contact information

You've probably noticed that the new version of Form I-9, which became mandatory on May 7 of this year, allows your employees to supply telephone and e-mail information. [You must enter this information into E-Verify when setting up your employee's E-Verify case.](#) Supplying this information opts your employees into an automated government system, through which the Department of Homeland Security will send automated telephone and/or e-mail messages to your employee when an E-Verify case is opened, processed, and when a Tentative or Final Non-confirmation is received.

This automated system not only keeps your employees in the loop for the E-Verify process currently – it appears to lay the foundation for new violations and fines for I-9 and E-Verify compliance. The Senate bill contains a new type of I-9/E-Verify compliance violation for "unfair employment practices," such as using E-Verify to pre-screen potential hires, terminations that occur while a Tentative Non-confirmation is pending, and requesting different or additional documents from employees to complete I-9 and E-Verify cases. Fines for this type of violation can reach as high as \$25,000.

Automated messages to your employees encourage them to report any unfair practices to the government and provide contact information for doing so. Employees should never, under any circumstances, be discouraged from providing their contact information on Form I-9 and using these resources. Employers should be aware that enforcement of I-9/E-Verify compliance now has a new front through this process. Just know that this process provides additional means for the government to monitor employer compliance with I-9/E-Verify regulations.

Mandatory E-Verify Enrollment

E-Verify enrollment is likely to become a federal requirement through a series of rolling deadlines based on the nature and size of employers. Under the Senate bill, federal government agencies and contractors will be required to enroll in E-Verify immediately once Comprehensive Immigration Reform becomes law.

The Senate bill also requires employers in “critical infrastructure” to enroll in E-Verify within one year of the bill’s passage into law. Historically, employers providing nuclear and conventional energy services; water, sewer, and dam services; emergency services; information technology; chemical processing; and transportation services and facilities, among others, are considered critical infrastructure by the Department of Homeland Security.

The remainder of the private sector would enroll in E-Verify according to the timetable below. These deadlines are not determined by the passage of this bill into law, but by the approval of regulations the Department of Homeland Security must draft and implement to administer the law.

1. Employers of 5,000 employees or more: within 2 years of the publication of regulations
2. Employers of 500 employees or more: within 3 years of the publication of regulations
3. All other employers: within 4 years of the publication of regulations

Once these deadlines roll, failure to enroll in and use E-Verify on all new hires will be treated as a violation of federal law, with fines reaching as high as \$25,000. Such a failure will be presumed a punishable violation by the government, though employers will have an opportunity to rebut this presumption with evidence of excusable neglect or hardship circumstances.

What do we do now?

Though the House has vowed to continue its own debates on Comprehensive Immigration Reform immediately upon returning from the August recess, debates and negotiations on a final proposal are likely to continue through the end of the year. This means the changes listed above are likely to be years in the making.

However, since the federal government already seems to be taking the initiative to detect and investigate unfair employment practices within I-9 and E-Verify compliance procedures, there is no time like the present to check your employment applications, employee handbooks, and HR procedures to ensure they address employee rights and fair practices for I-9 and E-Verify.

Look for future articles in this newsletter addressing additional I-9 and E-Verify topics, visa and green card reform issues, and initiatives to grant work authorization to skilled and unskilled workers.

For more information about immigration reform proposals and the possible implications for your business, or any other questions and concerns, contact:

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