

Immigration Alert: Implementation of Federal Contractor E-Verify Regulations Delayed

1/13/2009

The Bush Administration has announced a delay in the implementation of Federal Contractor E-Verify Regulations until February 20, 2009. This delay will be officially reflected in an amendment to the Federal Acquisition Regulation to be published in tomorrow's Federal Register.

As this office discussed in an alert dated November 14, 2008 (and previously on June 16, 2008), Executive Order 12989 announced significant changes to E-Verify requirements for federal contractors that were expected to be implemented on January 15, 2009. The new rule will require most federal contractors and subcontractors to use E-Verify for all new hires and all employees directly performing work under federal contracts. Prior to this recent development, it had been anticipated that, beginning January 15, 2009, new federal contracts would contain an E-Verify clause and that existing contracts would be amended to include the E-Verify requirement.

The mandated use of the E-Verify program for federal contractors and subcontractors will now be delayed until February 20, as each side will now have an opportunity to file expedited briefs for and against the implementation of this rule with the Maryland District Court. The delay in the implementation of these federal contractor regulations is the result of a lawsuit filed on December 23, 2008 by a group of plaintiffs led by the U.S. Chamber of Commerce challenging the validity of the final rule (*see Chamber of Commerce of the United States of America v. Michael Chertoff*, Civil Action No. AW-08-3444 (D. Md.)). There is some uncertainty as to the final outcome of this pending lawsuit, as the incoming Obama Administration has not yet indicated its position on the matter. We will be monitoring the progress of this lawsuit and will provide further updates as soon as they become available.

E-Verify is an electronic system administered jointly by the Department of Homeland Security and the Social Security Administration for the verification of employment authorization. E-Verify provides access to federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers.

For more information on E-Verify, watch a video podcast of Mintz Levin's May 21, 2008 webinar on this topic.

If you would like more information on any immigration matter, please contact your immigration attorney at Mintz Levin or visit www.mintz.com.

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