AAU Federal Relations Meeting

Mike Aitken SHRM
Employment Verification

**Immigration Reform Control Act 1986 (IRCA)**

- IRCA introduced civil and criminal penalties against employers who knowingly hire undocumented workers.

- IRCA requires employees to demonstrate eligibility by producing up to 26 different documents that can demonstrate identity and work authorization.

- Employers must attest that they have reviewed these documents and record that attestation on the Form I-9.

- I-9 may be electronically created and stored since May 1995.
Employment Verification

Illegal Immigration Reform and Immigrant Responsibility Act 1996 (IIRIRA)

- IIRIRA authorized several electronic employment verification systems. Presently, only one system is in use, the “E-Verify.”

- The U.S. Citizenship and Immigration Services (USCIS) administers the program, which verifies employment eligibility by cross-checking information first with the Department of Homeland Security and then with the Social Security Administration’s (SSA) database.

- Usage is voluntary and availability expanded from six states to fifty in 2003. Currently 52,000 employers in US are participating in the system.
Illegal Immigration Reform and Immigrant Responsibility Act 1996 (IIRIRA)

- E-Verify requires employers to first complete the Form I-9 on each employee within 3 days of starting work and then submit the information through E-Verify.

- Concerns with E-verify:
  - E-Verify is not reliable. It uses the Social Security System database, which has a 4.1 percent data error rate.
  - E-Verify is unable to detect document fraud and identity theft. This is because E-Verify does not verify the authenticity of the identity being presented for employment purposes, but rather only that the identity presented matches information in DHS and SSA databases.
Employment Verification

Illegal Immigration Reform and Immigrant Responsibility Act 1996 (IIRIRA)

- Concerns continued:

  - E-Verify is a paper-based system, not an entirely electronic system as its portrayed. Employers are still required to complete the paper Form I-9 after analyzing some potential 25 documents that an employee can use for identity and work authorization purposes.

  - E-Verify was established by Congress as a voluntary pilot program and it is set to expire in November 2008.
SAVE Act of 2007 (H.R. 4088)

- Introduced by Representative Heath Shuler, the bill is aimed at curtailing illegal immigration and enhancing border security.

- Makes permanent the electronic verification system for employment, E-Verify.

- Requires employers within three working days of hire to check each new employee’s work eligibility using the system.
Employment Verification

- Requires federal agencies, federal contractors, critical infrastructure employers and employers with 250 or more employees to use E-Verify within one year after enactment.

- Phases in participation of other employers as follows:
  - employers with 100 or more employees, two years after enactment;
  - employers with 30 or more employees, three years after enactment; and
  - all remaining employers, four years after enactment.
Employment Verification

- Employers would be required to attest on Form I-9 that he/she had examined the new hire’s employment and identification documents to ensure authenticity.

- Employers would be required to re-verify the employment eligibility of all previously hired employees using E-verify four years after the bill’s enactment.

- Directs Social Security to notify employers of “no-match” information on employees and requires the information to be corrected within 10 days or the employees are to be terminated.

- Imposes additional civil and criminal fines for violations of the employer sanctions provisions including fines for employers who report wages for employees who are on the “no-match” list.
New Employee Verification Act of 2008 (H.R. 5515)

- Introduced by Representative Sam Johnson (R-TX) and supported by SHRM, the legislation would create a new electronic verification system for employment within three years of enactment.

- Employers would be required to participate in either the Electronic Employment Verification System (EEVS) or a voluntary biometric secure system called the Secure Electronic Employment Verification System (SEEVS).

- Employers would enroll in the system through their state new hire reporting process as opposed to the Department of Homeland Security.
NEVA would not require employers to re-verify all employees, but would require employers to re-verify employees whose work authorization documents had expired.

The legislation would allow federal immigration law to preempt any state law in regard to: 1) employer fines or sanctions for immigration-related issues or 2) requiring employers to verify work status or identity for work authorization purposes.

Employers would be required beginning on the date of hire and ending at the end of the third business day after the employee has reported to work to use either the EEVS or SEEVS systems.
Employment Verification

The two systems are as follows:

- **EEVS** – This system will build on the current “E-verify” system. Employers would be required to review and attest each new employee’s work eligibility and identity using a toll-free telephone line or electronic medium. An employee would be required to prove identity and work eligibility by:
  
  - Providing the individual’s name, date of birth and Social Security number or work-authorization number and;
  
  - Presenting a passport, state driver’s license or identity card or employment authorization documents for work-authorized foreign nationals.
SEEVS - Similar to current private credit bureaus, the bill requires the SEEVS enrollment and identity process through certified private entities that contract with employers for the process. The process would:

- Direct an employee to enroll in the SEEVS program using the private vendor.

- Verify the identity of the employee accessing “non-wallet” identity information through tailored data mining in publicly available data bases.

- Lock an employees identity using biometrics once an employees identity had been verified.

- Require the employee to return to the employer and present their biometrics to verify against the SEEVS center’s databases.
Employment Verification

- Employers are only responsible for the hiring decisions of their own employees, not those of their subcontractors unless the employer knew the contractor hired unauthorized employees.

- Provide employers that had taken any action in “good-faith reliance” on the information provided through EEVS would not be criminally or civilly liable under any law for that action.

- Creates a presumption for employers that participate in SEEVS that the employer has not violated the employers sanction program that can only be overcome by “clear and convincing evidence of willful noncompliance.”
## Employment Verification

<table>
<thead>
<tr>
<th>Protects U. S. Citizens?</th>
<th>Mandated E-Verify</th>
<th>New Employee Verification Act (NEVA)</th>
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<tbody>
<tr>
<td>NO – citizens’ personal &amp; new job information would be checked by the DHS – a federal law enforcement agency.</td>
<td>YES – Citizens’ personal &amp; new job information would be checked by the SSA only, who already maintains this information.</td>
<td></td>
</tr>
<tr>
<td>Prevents identity Theft?</td>
<td>NO – E-Verify is unable to detect document fraud and identity theft.</td>
<td>YES – Provides employees access to private sector experts – certified by the government – who will verify the identity of employee and secure their identity with biometric technology.</td>
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<tr>
<td>Is Accurate?</td>
<td>NO – E-Verify has over a 4 percent error rate, errors would affect over 6 million workers.</td>
<td>YES – Requires advance resources, accuracy standards, and annual reporting to Congress to ensure the system is efficient and accurate.</td>
</tr>
<tr>
<td>Is Easy to Use?</td>
<td>NO – E-Verify has enrolled less than 1 percent (60,000) of all employers and would need to launch a massive enrollment system in order to cover all 7 million employers.</td>
<td>YES – Builds upon the existing new hire reporting process used by 90 percent of employers.</td>
</tr>
<tr>
<td>Protects Employers?</td>
<td>NO – Employers are vulnerable to sanctions through no fault of their own.</td>
<td>YES – Provides a “safe-harbor” from prosecution for employers who faithfully follow the law.</td>
</tr>
<tr>
<td>ELECTRONIC SYSTEM?</td>
<td>NO – the system still requires an employer to complete a paper-based form, the i-9.</td>
<td>YES – creates an entirely electronic system, building upon technologies and systems currently in use today.</td>
</tr>
<tr>
<td>Supported by Employers?</td>
<td>NO – Human Resource experts and other business groups do not support mandatory use of the E-Verify system due to system inaccuracies and liability laid upon employers.</td>
<td>YES - the H.R. Initiative for a Legal Workforce, representing thousands of H.R. professionals, strongly supports NEVA for its innovation, and for its employer and employee protections.</td>
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Sam Johnson (R-TX), Ranking Member
Social Security Subcommittee
Committee on Ways & Means
Now, I am going to read a list of policies that might stop illegal immigration. Please tell me which ONE is the most important to stopping illegal immigration.

- Securing the borders: 34
- Prevent hire of illegal immigrants: 32
- Cut benefits & access to public services: 23
- All: 6
- None: 3
- Don't Know/Refused: 2
Under current law, employers are required to accept as valid any of more than 20 documents as proof of identity and eligibility to work in the United States. With this information from the employee, they complete and retain a document called the Form I-9. Would you say this system is effective or ineffective?
More Intense Support for Biometrics than E-Verify

- Strongly support
- Somewhat support

E-Verify system

45

Use of Biometrics

58

75

79
Desire a Mandatory System

- **Mandatory**
  - Very important: 54
  - Somewhat important: 30

- **Voluntary**
  - Very important: 65
  - Somewhat important: 85
SHRM Support for an Electronic Verification System

How strongly would you support the use of the electronic employment verification system if it was administratively easy to use, created efficiencies, expedited the employment verification process and created no new employer liabilities?

<table>
<thead>
<tr>
<th>Support</th>
<th>Percentage</th>
</tr>
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<tbody>
<tr>
<td>Strongly support</td>
<td>63%</td>
</tr>
<tr>
<td>Somewhat support</td>
<td>29%</td>
</tr>
<tr>
<td>Probably wouldn't support</td>
<td>6%</td>
</tr>
<tr>
<td>Would not support at all</td>
<td>2%</td>
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(n=484)