

FLORIDA JOINS SEVERAL OTHER STATES IN REQUIRING E-VERIFY FOR NEW EMPLOYEES – NEW FLORIDA LAW IS EFFECTIVE JULY 1

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Florida Joins Several Other States in Requiring E-Verify for New Employees – New Florida Law is Effective July 1

By Kaylyn Varnum, CPA

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On May 10, 2023, Florida Governor Ron DeSantis signed into law a new requirement that all private employers in Florida with at least 25 employees use E-Verify, an online tool operated by the U.S. Department of Homeland Security,¹ to verify employment eligibility for their new hires. The new requirement is effective beginning on July 1, 2023.

Background and Context

Under federal law, employers are required to complete Form I-9 for every employee within three days of a new hire's start date to verify the new hire's identity and ensure employment authorization. The E-Verify tool allows employers that have completed Form I-9 to confirm the eligibility of their employees to work in the United States. For federal reporting purposes, use of the online E-Verify tool is generally optional for private employers.

Florida has joined a number of states that have passed laws requiring all or most employers to use E-Verify to verify the eligibility of their employees to work in the United States. Other states with an E-Verify requirement include Alabama, Arizona, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, and Utah.

Use of the E-Verify tool does not eliminate the federal requirement to complete Form I-9.

New Law Requirements

The new law requires employers to verify each new employee's employment eligibility within three business days after the first day that the new

employee begins working for pay. This requirement applies to private employers with 25 or more employees and is effective for employees hired on or after July 1, 2023. Each employer required to use the E-Verify system must certify on its first Florida reemployment tax return for each calendar year that it is in compliance with this requirement. **At this time, it is unclear whether or how employers exempt from Florida reemployment tax (e.g., churches and church-controlled organizations, etc.) must certify compliance with this new requirement.**

The employer must retain a copy of the documentation provided from the E-Verify system and any official verification generated, if applicable, for at least three years.

An employer may not continue to employ an unauthorized worker after obtaining knowledge that a person is or has become an unauthorized worker.

Special rules apply to organizations whose employees are employed by employee leasing companies.

If the E-Verify system is unavailable for three business days after the first day the new employee begins working for pay and an employer cannot access the system to verify a new employee's employment eligibility, the employer should use the Employment Eligibility Verification form (Form I-9) to verify employment eligibility (as is required by federal law). An employer must document the unavailability of the E-Verify system by retaining a screenshot from each day which shows the employer's lack of access to the system, a public announcement that the E-Verify system is not available, or any other communication or notice recorded by the employer regarding the unavailability of the system.

Under the new law, various state enforcement agencies may request copies of any documentation relied upon by the employer for the verification of a new employee's employment eligibility. An

¹ Source: <https://www.e-verify.gov/>

employer that used the E-Verify system or, if the system was unavailable, the Employment Eligibility Verification form (Form I-9) has established a rebuttable presumption that the employer has not violated the employee verification requirements.

How E-Verify Works

After completing the Form I-9, employers create a case in E-Verify using the information on the Form I-9. E-Verify checks information against records available to the Department of Homeland Security and Social Security Administration. If the employee presented a Form I-551 Permanent Resident Card (also known as a Green Card), Form I-766 Employment Authorization Document, U.S. passport, or passport card, the employer will be prompted to compare the photo on the employee's document with a photo displayed during the creation of the E-Verify case. After the employer enters the employee's information into E-Verify, a case result is displayed.

A case result of "Employment Authorized" indicates that the employee's information matched records available to DHS and/or SSA. A case result of "Tentative Nonconfirmation (mismatch)" indicates that the information provided did not match records available to DHS and/or SSA, and additional action is required. The employer must notify the employee so that the employee can decide whether or not to take action to resolve the mismatch. A case result of "Final Nonconfirmation" indicates that E-Verify cannot confirm the employee's employment eligibility. If a case result of Final Nonconfirmation is received, an employee or employer can request further review by calling 1-888-464-4218.

For more information about the E-Verify verification process, visit the E-Verify website.²

Implications of Noncompliance

Beginning on July 1, 2024, if the Florida Department of Economic Opportunity ("the Department") determines that an employer failed to use the E-Verify system, the Department will notify the employer of the Department's determination of noncompliance and provide the employer with 30 days to cure the noncompliance. If the Department determines that an employer failed to use the E-Verify system three times within any 24-month period, the Department must impose a fine of \$1,000 per day until the employer provides sufficient proof to the Department that the noncompliance is cured. Furthermore, an organization that is noncompliant may be subject to business license suspension.

Practical Next Steps

Florida employers with more than 25 employees that have not already enrolled in E-Verify should do so immediately and begin using the system for any employee who is hired on or after July 1, 2023. Employers may enroll in E-Verify via the E-Verify website. Learn more about enrollment in E-Verify on the "Enrolling in E-Verify" page.³

² Source: <https://www.e-verify.gov/employers/verification-process>

³ Source: <https://www.e-verify.gov/employers/enrolling-in-e-verify/the-enrollment-process>