

New Florida Immigration Law and E-Verify Requirements for Employers

June 29, 2023

SB 1718 E-Verify Requirements

On May 10, 2023, Gov. Ron DeSantis signed a new [immigration bill](#) into law, which, among other immigration enforcement measures, requires employers with more than 25 employees to use the federal E-Verify system to verify the employment eligibility of new employees. The requirement takes effect July 1, 2023. Florida law has required public employers, contractors, and subcontractors to participate in E-Verify since 2021. The new law expands the participation requirement to private employers with more than 25 employees.

What Is E-Verify?

E-Verify is an internet-based system operated by the U.S. Department of Homeland Security that electronically verifies employment eligibility information provided by new employees. The E-Verify system supplements, but does not replace, existing I-9 employment authorization requirements. Employer I-9 requirements remain in effect.

The system compares information provided by the employee to federal databases. Generally, E-Verify provides confirmation that the Social Security number provided by the employee matches Social Security Administration records. E-Verify procedures allow employees to correct or challenge initial E-Verify determinations.

Notably, E-Verify can be used only for new hires. Employees hired before July 1, 2023, remain subject to the existing Form I-9 documentation requirements, but their information does not have to be entered into the E-Verify system.

Enforcement and Compliance

The E-Verify provisions may be enforced by state agencies, including the Florida Department of Economic Opportunity, the attorney general, and the Florida Department of Law Enforcement. Employers must provide documentation of employment eligibility to these agencies upon request.

Beginning July 1, 2024, if the Florida Department of Economic Opportunity determines that an employer has failed to comply with the E-Verify requirements, the employer will be given 30 days to correct the noncompliance. A fine of \$1,000 per day may be imposed if three violations occur in any 24-month period. Violations may also result in suspension or revocation of state licenses, permits, registrations, and other forms of authorization required by law.

The new law imposes separate civil and criminal penalties on employers that hire individuals without work authorization, in addition to existing federal civil and criminal penalties. So employers may be penalized by the state of Florida for failure to participate in E-Verify and for employment of unauthorized individuals, and may also be penalized by the federal government for the unauthorized employment.

Challenges to E-Verify Provisions

Florida joins eight other states — Alabama, Arizona, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, and Utah — that currently require private employers to use E-Verify.

State E-Verify participation requirements have withstood challenges arguing that federal immigration law preempts state enforcement measures. In 2011, in *Chamber of Commerce v. Whiting*, the U.S. Supreme Court upheld Arizona's E-Verify requirement for private employers on the ground that state licensing laws are exempt from preemption.

Other provisions of the new law, in particular those relating to the validity of driver's licenses issued by other states, immigration status data collection requirements for hospitals, and criminalization of interstate travel with noncitizens, may be challenged on federal preemption grounds, but the E-Verify provisions are expected to stand.

How to Enroll in E-Verify

Florida employers with more than 25 employees are required to enroll in E-Verify and to use the system for new employees beginning July 1, 2023. Employers can [enroll online](#) and learn more on the [E-Verify](#) website, including [free webinars](#) on E-Verify and I-9 requirements and procedures.

Carlton Fields will continue to monitor developments relating to litigation, implementation, and enforcement of SB 1718. Please feel free to contact us with any questions.

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