

FLORIDA'S NEW IMMIGRATION LAW AND HOW IT COULD IMPACT PRIVATE EMPLOYERS

Advisory

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Private employers in Florida with 25 or more employees will soon be required to use the E-Verify online system to verify a new employee's employment eligibility and immigration status. This is part of Florida's new immigration law (SB 1718) that becomes effective July 1, 2023. It does not apply to employees hired before July 1st and does not apply to independent contractors at all.

Under the new law, an employer must use E-Verify to verify a new employee's employment eligibility within three (3) business days after the first day the new employee begins working for pay. Each employer required to use the E-Verify system must also certify participation on its first report each calendar year to the state's tax service provider, stating that it is in compliance with the new E-Verify rules when making contributions to or reimbursing the state's unemployment compensation or reemployment assistance system.

Employee leasing companies must verify new hires of client companies unless there is an agreement transferring the responsibility to the client company.

Notably, the E-Verify system is typically more complicated than the current I-9 Form process and will likely result in more employees being deemed ineligible. Specifically, in using E-Verify, if the information provided by the employee does not match records available to the Department of Homeland Security (DHS) and/or the Social Security Administration (SSA), the case will receive a Tentative Nonconfirmation (Mismatch) result, and the employer must give the employee an opportunity to take action to resolve the mismatch. The E-Verify website has more information about Mismatches, How to Process and Resolve a Mismatch, and Tips to Prevent a Mismatch.

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An employer may not continue to employ an unauthorized immigrant after learning that person is unauthorized.

Enforcement

A wide range of state agencies have the authority to audit employers suspected of violating this new law. Further, the penalties for noncompliance can be severe and could negatively impact your business, although there is some allotment for notice and cure for certain deficiencies.

- Should the Florida Department of Economic Opportunity (DEO) determine that an employer has failed to use the E-Verify system, the Department will notify the employer, and the employer will have 30 days to cure the violation.
- If the DEO determines that an employer failed to use the E-Verify system three (3) times in any 24-month period, it may impose a fine of \$1,000 per day until the employer provides satisfactory evidence that it has rectified the noncompliance. The DEO may also place the employer on probation for 1-year, requiring the employer to report quarterly to the Department to show compliance.
- Any violation that takes place within 24 months after a previous violation constitutes grounds for the suspension or revocation of all licenses issued by a licensing agency. The suspension or revocation penalties increase if unauthorized employees are found to be working at the business and continue to rise based on the numbers of unauthorized employees.