

In This Issue:

January 2009

The effective date of the new regulations requiring the use of E-Verify by certain federal contractors has been postponed an additional three months until May 21, 2009.

Effective Date of Federal Contractor E-Verify Regulation Pushed Back to May 2009

By Jorge R. Lopez, Joshua S. Roffman and Lisa A. Cottle

The effective date of the E-Verify federal contractor regulation has been pushed back yet again – it has now been delayed until May 21, 2009. The E-Verify federal contractor rule requires certain federal contractors to use E-Verify to check the work authorization of employees assigned to federal contracts, as well as new hires. See Littler's ASAP, *E-Verify Rule for Federal Contractors Published*.

This announcement is a result of ongoing efforts related to a lawsuit challenging the federal contractor regulation filed by the U.S. Chamber of Commerce and other plaintiffs against the U.S. Department of Homeland Security and the Civilian Agency Acquisition Council (collectively "the parties"). Previously, the parties agreed to postpone the effective date until February 20, 2009. See Littler's ASAP, *Effective Date of E-Verify Federal Contractor Regulation Postponed Until February 20, 2009*. This decision to further defer the regulation's effective date was announced January 27, 2009. The parties' agreement came on the heels of a January 20, 2009, memorandum issued by Rahm Emanuel, President Barack Obama's Chief of Staff, urging government agencies to "[c]onsider extending for 60 days the effective date of regulations that have been published in the Federal Register but not yet taken effect."

The new May 21, 2009, effective date is expected to be published in the Federal Register on January 30. This postponement means that solicitations that the federal government makes prior to May 21, 2009, will not contain the E-Verify related contract clauses that the federal contractor regulation mandates, and that are the triggering mechanism for compliance.

In addition to postponing the rule's effective date until May 21, 2009, the parties also requested that the federal district court stay the lawsuit until President Obama's Administration has an opportunity to review the federal contractor rule. The labor and employment community anxiously awaits this decision. In the meantime, the parties' agreement provides scrambling employers with additional time to audit their I-9 processes, review their files and ready their E-Verify teams.

Jorge R. Lopez is a Shareholder in Littler Mendelson's Miami office. Joshua S. Roffman is a Shareholder in Littler Mendelson's Washington, D.C. office. Lisa A. Cottle is an Associate in Littler Mendelson's Cleveland office. If you would like further information, please contact your Littler attorney at 1.888.Littler, info@littler.com, Mr. Lopez at jlopez@littler.com, Mr. Roffman at jroffman@littler.com, or Ms. Cottle at lcottle@littler.com.