

[Alerts and Updates]

Implementation of E-Verify Requirement for Federal Contractors Delayed for the Third Time

April 20, 2009

On April 20, 2009, implementation of the regulation that would require all federal contractors to participate in E-Verify was postponed for the third time – until June 30, 2009. This further delay, along with U.S. Department of Homeland Security Secretary Napolitano's announcement in late March that a series of workplace investigations and several proposed immigration raids would be placed on hold, may signal significant change in worksite enforcement policy.

In our [January 30, 2009 Alert](#), we reported that implementation of the federal contractor E-Verify requirement had been delayed until May 21, 2009, owing to an agreement between the parties to an ongoing federal court lawsuit that has challenged the rule. The latest delay is the result of a supplementary agreement among the parties in *Chamber of Commerce of the United States of America v. Chertoff* to further extend the implementation date until June 30, 2009, to give the Obama administration additional time to review the rule.

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council – collectively known as the Federal Acquisitions Regulatory Councils – published an amendment in the April 17 *Federal Register* postponing the applicability of the final rule until June 30. Under the final rule, E-Verify will be required for all federal contractors regardless of size holding a contract with a period of performance longer than 120 days and a value above \$100,000. Subcontractors will be required to participate in E-Verify if they provide services or construction with a value of more than \$3,000.

At present, federal contractors should be aware that they are obligated to comply with the E-Verify requirements only when they become parties to a federal contract that includes the E-Verify provision. This will not occur before June 30, 2009, and implementation of the final rule is now very much in question. The ultimate implementation of the regulation seems increasingly uncertain as the Obama administration has begun in recent weeks to roll out an ambitious agenda for immigration reform. **Until the final rule takes effect, no obligation exists to implement an E-Verify program.**

We will continue to follow developments in this area closely and will issue updated Alerts as events warrant.

For Further Information

If you have any questions about E-Verify, the federal contractor E-Verify requirement or the ongoing federal court litigation, please contact any of the [attorneys](#) in our [Employment & Immigration Practice Group](#) or the attorney in the firm with whom you are regularly in contact.