
Employers Need to Know™

Employment Law Alerts from Ober|Kaler's Employment & Labor Group

Employment
& Labor Group

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Jerald J. Oppel, Chair
Sharon A. Snyder
Harold G. Belkowitz
Neil E. Duke
Carla N. Murphy
Stacy Bekman Radz
Ian I. Friedman

Federal Contractors and the New E-Verify FAR Rules

E-Verify is an online system operated by the Department of Homeland Security (DHS) and US Citizenship and Immigration Services (USCIS) that allows employers to verify the employment eligibility of employees by checking the information provided in an employee's Form I-9 against DHS and Social Security Administration databases. The program is voluntary for some employers. However following changes to the Federal Acquisition Regulation, employers awarded a federal contract after September 8th, 2009 must use E-Verify to confirm the employment status of current employees who will work on the new contract and all subsequent hires. Participation in the E-Verify program allows employers to avoid sanctions and immigration raids by the government.

Though E-Verify is applicable beginning September 8th, federal contractors and subcontractors are not required to register with E-Verify until they are awarded a new federal contract, which contains an E-Verify clause. Contractors and subcontractors must enroll with E-Verify within thirty calendar days of being awarded a federal contract. Ninety days from the award date, contractors and subcontractors must register all current employees. All subsequently hired employees must be registered with E-Verify within three days of his or her start date. This requirement continues for the length of the federal contract, whether or not new employees will work on the federal contract. Register your company with E-Verify at [E-Verify Enrollment](#).

Employers may choose to enroll in E-Verify before a new federal contract is awarded, and if so need only verify newly hired employees. However, if a new federal contract is subsequently awarded, the employer must update its E-Verify company profile to reflect its federal contractor status, verify current employees who will work on the contract, and continue to verify all newly hired employees.

Certain exceptions apply. Only contracts extending more than 120 days with a value of at least \$100,000 are subject to E-Verify participation. Further, only those employees working in the U.S. must be verified. Subcontracts, to a qualifying federal contract, valued at less than \$3000 are exempted from the E-Verify program. Likewise, contracts for commercially available off-the-shelf items (items that are available in the common marketplace and/or are offered to the government with only minor changes) are not subject to verification. Indefinite delivery or indefinite quantity contracts must be modified after September 8th to include an E-Verify clause if six months of substantial performance remains on the contract. USCIS answers frequently asked questions of employers on its website, [USCIS E-Verify Frequently Asked Questions](#).

For additional compliance assistance and guidance regarding the E-Verify program please contact [Jerald J. Oppel](#) in our [Employment & Labor Group](#) or your Ober|Kaler attorney.

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