

[Alerts and Updates]

E-Verify Rule for Federal Contractors Will Take Effect September 8, 2009

September 3, 2009

On August 27, 2009, Judge Alexander Williams, Jr., of the U.S. District Court for the District of Maryland upheld the legality of a federal regulation that will require many federal government contractors to use the E-Verify system to verify the employment eligibility of new hires as well as certain existing employees. The ruling in *Chamber of Commerce of the United States of America v. Janet Napolitano*, Civil Action No. AW-08-3444 (D. Md.), allows the regulation, published at 73 Fed. Reg. 67,651 (November 14, 2008), to take effect on September 8, 2009.

The regulation requires a new E-Verify clause to be included in certain federal contracts awarded or solicited on or after September 8, 2009. In a departure from voluntary E-Verify, employers who are a party to a contract (or subcontract) containing this E-Verify clause will be required to use E-Verify to confirm the employment eligibility of all new hires and all employees who perform work directly under the contract. A provision allows employers the option of using E-Verify for all employees as an alternative to identifying and processing those who perform work directly under the contract.

On September 1, 2009, the U.S. Chamber of Commerce and other business organizations filed an appeal with the U.S. Court of Appeals for the Fourth Circuit, seeking to overturn the Maryland District Court decision, and also filed for an emergency motion for an injunction pending appeal.

Legislative efforts in Congress may impact this issue. Senator Jeff Sessions (R-Ala.) has proposed legislation—currently pending—similar to the Federal Contractor regulation that would be more expansive. It is uncertain whether this proposal will be passed by Congress and become law. Any final congressional action is unlikely in the near future—and most likely would have to be followed by the issuance of regulations by the U.S. Department of Homeland Security (DHS).

Employers should also take note that 10 states, including Arizona, Colorado, Georgia, Idaho, Mississippi, Missouri, Oklahoma, Rhode Island, South Carolina, and Utah, now require some use of E-Verify for in-state employers and/or state contractors. Idaho required state agencies, but not private employers, to use E-Verify; and Tennessee has not mandated, but has recommended E-Verify as a method to comply with state laws against hiring undocumented workers. Arizona's E-Verify law—the most comprehensive in the nation—was challenged on July 28, 2009, in the U.S. Supreme Court under the theory that the Arizona law is preempted by federal immigration law. The Supreme Court has not yet taken up the suit. In addition, counties in several states where E-Verify is not mandated at the state level have passed regulations requiring the use of E-Verify by county contractors. On August 25, 2009, the Los Angeles County Board of Supervisors in California voted to conduct a two-week review of E-Verify to determine whether it should be required for county contractors. Los Angeles County is one of the largest counties in the United States, consisting of 88 cities and 10 million residents as of July 2008.

Expiration Date of Employment Eligibility Verification Form I-9 Extended to August 31, 2012

U.S. Citizenship and Immigration Services (USCIS) announced that the Office of Management and Budget has extended its approval of Form I-9 (Employment Eligibility Verification) to August 31, 2012. Accordingly, USCIS has amended the form to reflect a new revision date of August 7, 2009.

Employers may use the Form I-9 with the revision date of either August 7, 2009, or February 2, 2009. The revision dates are located on the bottom-right-hand portion of the form. For more information on USCIS and its programs, or to obtain Form I-9 and the Handbook for Employers, visit www.uscis.gov/i-9.

For Further Information

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