

Immigration Alert: USCIS Announces Further Delays in E-Verify Implementation

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The Federal Acquisitions Regulatory Council has announced another delay in the implementation of Executive Order 12989, the regulation mandating the use the E-Verify employment eligibility verification system for most federal contractors, until September 8, 2009. As discussed in previous client alerts [here](#) and [here](#), the new rule will require most federal contractors and subcontractors to use E-Verify for all new hires and all current employees directly performing work under federal contracts, and was scheduled to be implemented on June 30, 2009.

E-Verify is an electronic system administered jointly by the Department of Homeland Security (DHS) and the Social Security Administration for the verification of employment authorization. E-Verify provides access to federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers.

One of the likely reasons behind the several delays in implementing Executive Order 12989 is that forcing all *current* employees who are working under federal contracts to go through electronic verification would in and of itself be a violation of the law that created E-Verify. The Federal Acquisitions Regulatory Council is considering amending the proposed regulation to delete the portion calling for certain current employees to register with E-Verify.

Despite this possible change, we encourage employers to appreciate that E-Verify is here to stay. The U.S. Government will likely perform more I-9, H-1B, and H-2B audits in the near future. Recent statements from DHS indicate that the agency will soon begin to “mine” the data that it has been collecting from current users of E-Verify to see if employers are complying and to see if employees are in fact authorized.

Thus, employers should now be:

1. developing policies and protocols relating to worksite enforcement; and
2. conducting self-audits in order to ensure compliance with pertinent immigration and labor regulations.

Mintz Levin’s Immigration Section is actively involved in assisting clients with the drafting of such policies and protocols, as well as setting up I-9 audits.

The American Immigration Lawyers Association (AILA) is presently working to have the U.S. Government combine the E-Verify and I-9 compliance processes into one broad program as part of comprehensive immigration reform. AILA hopes that as part of this program, E-Verify will be

able to affirmatively let an employer know if an employee's name or social security number is being utilized by another person in the United States.

For more information on E-Verify, please click [here](#) to watch a video podcast of Mintz Levin's May 21, 2008 webinar on E-Verify.

For assistance in this area, please contact one of the attorneys listed below or any member of your Mintz Levin client service team.

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