



Employment Law ALERT

JUNE 11, 2008

EXECUTIVE ORDER REQUIRES ALL FEDERAL CONTRACTORS TO USE E-VERIFY

On June 9, 2008, President Bush published an amendment to Executive Order 12989 that requires all employers who contract with the federal government to use an electronic employment eligibility system. That same day, the U.S. Department of Homeland Security (DHS) designated E-Verify as the required verification system. E-Verify is a free, internet-based employment verification system operated by DHS and the Social Security Administration (SSA).

Based on the premise that a legal workforce is a more stable and dependable workforce, Executive Order 12989 now provides that federal departments and agencies may not enter into contracts with employers who do not use E-Verify. The Executive Order also requires that federal contractors agree to use E-Verify to verify the employment eligibility of: 1) all persons hired by the contractor during the contract term to perform employment duties within the U.S.; and 2) all persons assigned by the contractor to perform work within the U.S. on the federal contract.

DHS will publish a proposed rule in the Federal Register to clarify the effective date of this new requirement and whether it will apply only to new federal contracts and newly-hired employees and contractors or also apply to existing federal contracts and current employees and contractors. This clarification is important since DHS currently prohibits employers from using E-Verify to verify the employment eligibility of any person other than newly-hired employees. DHS Secretary Michael Chertoff anticipates that the



new requirement will be applicable only to new federal contracts and new employees assigned to existing federal contracts.

This new requirement was announced less than one week after an Oklahoma federal district court judge issued a temporary injunction prohibiting the enforcement of a provision of Oklahoma's HB 1804 that would have required certain employers contracting with Oklahoma state entities to use E-Verify or the Social Security Number Verification Service (SSNVS) to verify all employees hired on or after July 1, 2008.

We recommend employers determine whether they are a party to any contracts affected by the Executive Order and await publication of the proposed rule by DHS. If you have further questions regarding this Executive Order or other immigration and compliance issues, please do not hesitate to contact any of the attorneys listed on the reverse side.

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