



Inquirehire Advisory: E-Verify Federal and Sub-Contractor Rules

Effective January 15, 2009, Federal contractors and subcontractors will be required to begin using the U.S. Citizenship and Immigration Services' E-Verify system to verify their employees' eligibility to legally work in the United States. The new rule implements Executive Order 12989, amending the Federal Acquisition Regulation (FAR), directing federal agencies to require that federal contractors agree to electronically verify the employment eligibility of their employees to reinforce the policy that the federal government does business with companies that have a legal workforce.

The new rule requires contractors to agree, through language inserted into their federal contracts, to use E-Verify to confirm the employment eligibility of all persons hired during a contract term and to confirm the employment eligibility of federal contractors' current employees who perform contract services for the federal government within the United States.

Federal contracts awarded and solicitations issued after Jan. 15, 2009 will include a clause committing government contractors to use E-Verify. The same clause will also be required in sub-contracts over \$3,000 for services or construction. Contracts exempt from this rule include those that are for less than \$100,000 and contracts that are for commercially available off-the-shelf items, bulk cargo and grants to universities. Companies awarded a contract with the federal government will be required to enroll in E-Verify within 30 days of the contract award date. They will also need to begin using the E-Verify system to confirm that all of their new hires and their employees directly working on federal contracts are authorized to legally work in the United States. Contractors within institutions of higher education, state and local government, federally recognized Indian tribes and sureties are subject to differing requirements.

E-Verify is completed in addition to Form I-9. Based on the information provided by the employee on his or her Form I-9, E-Verify checks this information electronically against records contained in Department of Homeland Security (DHS) and Social Security Administration (SSA) databases. Contractors and Sub-contractors who are required to comply with this rule must enroll in E-Verify; use E-verify to confirm all new hires in addition to completing Form I-9; use E-verify to confirm all existing employees directly working on the federal contract; and contractors must ensure that sub-contractors are appropriately using E-Verify. Exception: Institutions of higher education and state and local governments need only verify new hires directly working on the contract.

Existing Employees assigned to a contract are defined as those individuals hired after November 6, 1986 who perform work in the US under a covered contract.

Note: Employees who normally perform support work such as indirect or overhead functions and who do not perform any substantial duties applicable to the contract are excludable. For example, a mailroom clerk that delivers the mail could be exempt from the requirement.

Timeframe requirements:

Once a federal contract is signed, the employer has 30 days to register for E-Verify. The employer is required to have each user read educational tutorials and pass knowledge entrance requirements with Homeland Security to register for E-Verify. Employers should anticipate 6-20 hours staff time to complete this process.

Each contract requires an E-Verify memorandum of understanding letter (MOU) that provides the terms of agreement between the company and DHS.

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Once an employer successfully enrolls in E-Verify, they have 90 days from the enrollment date to initiate verification queries to process applicable workers within the E-Verify system. After the 90 day phase-in period, employers are required to initiate verification of each newly hired employee within 3 business days after their start date.

Example: Federal contract awarded Feb 1, 2009; enroll in E-Verify by March 3 (30 days); June 2, 2009 (90 days) – must have begun verification for all existing employees and new hires within 3 days of start date.

Employers who have already enrolled in E-Verify:

- Must update their profile in E-Verify and take the new tutorial
- If you have been enrolled 90 days, you must continue to initiate verification on newly hired employees within 3 days of start date.
- 90 days from contract award date, you must begin using E-Verify to process existing employees assigned to the contract.

Special Note: Unless you are a federal contractor who has been awarded a contract on or after January 15, 2009, enrolling in E-Verify for verification of employees is limited to new hires only.

Priority Checklist:

- Determine if you have a “qualifying” federal contract now or will in the future
- Identify who will be responsible for overseeing compliance with this provision and all others who will have a role
- Notify Sub-contractors and include the E-Verify requirement clause in their sub-contract
- Develop a tracking system to manage data that records federal contracts subject to the rule as well as tracks your companies multiple contract(s) beginning and expiration dates; record existing employees who are assigned to work on the various contracts (as applicable); record employees who have been processed through E-Verify; note any grandfathered existing employees assigned to the contract (i.e. employees hired before 11-7-86); verify exempt employees i.e. individuals who have an active federal agency HSPD-12 credential or employees categorized as actively certified with U.S. government security clearance levels: confidential, secret, top secret designations; track ongoing tentative confirmation status.

Please note that pre-screening of job applicants is not allowed; the system may be used for new hires only after the employee has been offered the job and has accepted. Please also remember that you must continue to use E-Verify for the life of the contract for all your new hires, whether or not they are employees assigned to the contract, unless certain exceptions apply. As an employer participating in E-Verify, you are required to post the notice provided by DHS indicating your company’s participation in the E-Verify program as well as the anti-discrimination notice issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices at the Department of Justice. The posting must be placed in a prominent place that is clearly visible to prospective employees and all employees who are to be verified through the system.

For more information about this provision and a price quote for Inquirehire’s newest HR software solution, I-9/E-Verify, contact Inquirehire PH: 563/323-5922 or e-mail us at: inbox@inquirehire.com

Reference: E-Verify is an electronic system to confirm employment authorization administered by the U.S. Citizenship and Immigration Service. For further guidance go to: www.dhs.gov/everify

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