



Illinois Department of Labor
Right to Privacy in the Workplace Act Amendment
Employment Eligibility Verification System (E-Verify)
P.A. 96-623

Summary:

The E-Verify Program is an internet-based program operated by the Department of Homeland Security (DHS) in collaboration with the Social Security Administration (SSA) that allows participating employers to electronically verify employment eligibility of newly hired employees. The E-Verify Program is available to employers at no cost and is a **voluntary** program.

In Illinois, the Right to Privacy in the Workplace Act stipulates that prior to choosing to voluntarily enroll in the E-Verify Program, employers are urged to consult the Illinois Department of Labor's website for current information regarding the accuracy of the program. Additionally, employers are encouraged to review and understand their legal responsibilities relating to the use of the E-Verify Program. Furthermore, the Act prohibits the misuse of the Program and places certain training and recordkeeping requirements on the employer as outlined below.

Applicability:

This law applies to employers conducting business in the state of Illinois. This law covers any employee or applicant for employment alleging that their rights and protections under this Act have been denied.

Prohibitions:

An employer is prohibited from using the E-Verify Program to check the immigration status of current employees or to pre-screen prospective employees that have not been offered a position with the company. Additionally, employers or any of their representatives cannot discharge or otherwise retaliate against an employee or prospective employee for filing a complaint with the Department or for remedies sought in favor of the employee or prospective employee.

Requirements for Employers:

The Act requires an employer using the E-Verify Program to attest on a form prescribed by the Department that the:

- Employer and all employees using the E-Verify Program have received the Basic Pilot or E-Verify Program training materials and completed the online computer-based training (CBT) provided by DHS.
- Employer has posted in a place that is clearly visible the required notice from DHS indicating that the company is enrolled in the E-Verify Program.

- Employer maintains the original signed attestation form, as well as all CBT certificates of completion and makes them available for copying and inspection at the request of the Department.
- Employer has posted in a place that is clearly visible the required anti-discrimination notice issued by the Office of Special Counsel for Immigrant-Related Unfair Employment Practices (OSC).

Filing of a Complaint:

Any employee or prospective employee can file a complaint with the Department. If the complaint contains sufficient information for an investigation to proceed, the Department will attempt to resolve the complaint with the employer and employee via conference, conciliation or by analyzing employer records to ascertain the allegation(s) posed.

Enforcement:

The Department has the authority to conduct investigations and visit and inspect the premises, as well as obtain any documentation that is pertinent to the investigation. The Department also has authority to request the issuance of a search warrant or to subpoena all records that are pertinent to an investigation.

Violations:

Violations of this Act include the following:

- To fail to display the notices supplied by DHS and OSC in a place clearly visible to both prospective and current employees.
- To allow an employee to use the E-Verify system prior to having completed the CBT training.
- To allow employees that have not taken the CBT training to use the E-Verify program under an employee's user identification or password that has taken the training.
- To use the E-Verify program as a pre-screening mechanism for prospective employees.
- To terminate an employee prior to that employee receiving a final non-confirmation notice from the Social Security Administration or the Department of Homeland Security.
- To fail to notify the employee, in writing, of the employer's receipt of a tentative non-confirmation notice and of the employee's right to contest that tentative non-confirmation letter.
- To fail to safeguard the information contained in the E-Verify program database.

Penalties:

If it is determined that the employer violated the Act, the Department, employee or applicant for employment can file an action in circuit court to enforce the provisions of this Act. If a willful and knowing violation is upheld by the court, the court shall award the employee or applicant for

employment \$500 per affected employee plus costs, reasonable attorneys' fees, and actual damages. Failure to comply with the order may be punished as contempt; as well as the employer or his/her representative being guilty of a petty offense. A petty offense carries a maximum penalty of \$1000.

Referral:

If an employee or applicant for employment claims that the employer refused to hire, promote, renew employment, discharged or disciplined the employee without following the procedures of the Employment Verification System, the employee or applicant will be referred to the Illinois Department of Human Rights for review and possible investigation under the Illinois Human Rights Act.