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E-Verify: The Government is Watching. Are You Doing it Right?

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Thursday, Oct. 27
11:15 a.m.–12:30 p.m.



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Are You Doing it Right?

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ASA Staffing World

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Agenda

- Brief background on E-Verify
- Review obligations you are agreeing to by enrolling
- Data Mining
- Most common examples of “non-compliance” discovered by Data Mining
- How to cure/prevent



E-Verify

Web-based system to “verify” employee’s eligibility to work based on the information provided on Form I-9. Does it match?

- SSA Database; and
- DHS Database, if applicable.



E-Verify

Still need to follow law regarding completion of Form I-9 with a few exceptions:

- All list B identity documents must include a photo;
- Must make and retain a photocopy of the following documents, if presented:
 - Permanent Resident Card
 - Employment Authorization Card
 - U.S. Passport
 - U.S. Passport Card
- Write case verification # on I-9; OR attach screenshot



E-Verify

- Run a query for each new hire within three days of hire.
- Can NOT run any queries on existing employees unless a federal contractor or subcontractor. Must elect whether to query:
 - Only existing employees and new hires working on federal contacts/subcontracts; or
 - All existing employees and new hires.



E-Verify Enrollment

- Voluntary; or
- Mandatory
 - For certain federal contractors or subcontractors; and
 - For employees working in:
 - Alabama
 - Arizona
 - Georgia
 - Louisiana
 - Mississippi
 - North Carolina
 - South Carolina
 - Tennessee
 - Utah



Memorandum of Understanding (MOU)

To enroll, must sign an MOU with DHS and SSA.
What are you agreeing to do?

- Display posters
 - E-Verify Participation
 - Right to Work
- Take tutorial before submitting queries



MOU Terms

- Only run a query after an offer has been made and accepted AND Form I-9 completed.
 - Corollary: Prohibited from running a query before offer of employment has been made as a method of pre-screening



MOU Terms

- Only use the information received from E-Verify to confirm employment eligibility.
 - Safeguard information and means of access (e.g. PINS and passwords)
 - Prohibited from disseminating to any person other than specific employees who are authorized to have access.



MOU Terms

- Notify DHS if there is a breach of personal information:
 - Loss of control; or
 - Unauthorized access.



MOU Terms

- Agree to comply with E-Verify Manual (M-775)
- Agree to comply with prohibition against national origin discrimination or citizenship status.



MOU Terms

- Agree to cooperate with DHS, SSA, and their contractors regarding “compliance monitoring”:
 - Access to I-9s;
 - Access to employment records;
 - Interview employees regarding use of E-Verify; and
 - Respond to requests for information.



Compliance Monitoring = Data Mining

Review data entered into E-Verify by employer to discover patterns or relationships:

- Is one event connected to another?
- Does one event lead to another?

Focus is on finding patterns of non-compliance.



Desk Audit

If, based on DHS’ review of data, it believes the employer may not be completing the process correctly, it emails the registered contact to request specific information of concern.

- Critical that contact information is accurate and updated following termination or change of responsibility.



Desk Audit

Most common issues:

- Queries that remain open and unresolved;
- Multiple queries run for the same employee;
- Persistent late completion of queries beyond 3 days from hire; and
- Not terminating E-Verify access passwords for terminated employees or changed responsibilities.



Desk Audit

Tentative Non-Confirmation (TNC) issues:

- Further Action Notice not printed;
- Referral Notice not printed;
- Query closed by terminating employee before TNC resolved (retaliatory?);
- Continue to employ when employee chose not to contest or received Final Non-Confirmation (FNC).



Desk Audit

Another very significant part of Data Mining is looking to see how often List A documents are presented (as opposed to Lists B/C):

- If it happens a lot, they will presume that you are requesting List A documents, rather than allowing employee to present whatever document he/she chooses.
- That is “document abuse.”



Desk Audit

As authorized by MOU, they will follow up on these concerns by requesting documents or even talking to employees.

- Usually given 7 days to respond
- Then they issue a written Report with “Observations” regarding problems and “Recommendations” on how to improve compliance.



Desk Audit

Take it seriously! Review report and come up with a plan how to comply promptly with each recommendation:

- They will continue to monitor your account;
- If no change, they will refer to enforcing agencies. Much more expensive.



Referrals to Other Agencies

DHS has MOUs in place authorizing a referral to initiate investigations:

- ICE – I-9 Audit; and
- DOJ – Citizenship Status Discrimination and/or Document Abuse.



ICE Referrals

I-9 Investigations just became much more expensive.
Effective August 1, 2016:

- Paperwork Violations: \$216 - \$2156
 - From \$110 - \$1100
- Continuing to Employ Violations: \$539 - \$4313
 - From \$325 - \$3200



OSC Referrals

Document Abuse – asking for more or specific documents than required by law:

- “What should I bring?”
- Confusing the need to make a copy of certain List A document(s) (if presented) with requiring an employee to present one of those photo match documents.
- Requesting that LPR or EAD be presented to “verify” the A# required for Section 1.
- If employee receives a TNC, asking for different documents and rerunning the query, hoping for a different result.



OSC Referrals

Citizenship Status Discrimination:

- Cannot treat individuals differently based on citizenship or immigration status.

National Origin Discrimination:

- Cannot treat individuals differently because of their place of birth, country of origin, ancestry, native language, accent, or because they are perceived as looking or sounding “foreign.”



Citizenship Status Discrimination

Examples:

- Refusing to hire unless US citizens.
- Refusing to hire unless US citizens or permanent residents.
- Refusing to hire asylees or refugees.

All determined by looking at List A documents in E-Verify.



National Origin Discrimination

Temporary Protected Status (TPS):

- Get EADs that are renewed right before expiration.
- “Automatic” expiration for 180 days allowing them to apply for new EAD

If you require these folks to have new EAD, rather than relying on automatic extension, have committed both document abuse and citizenship status discrimination. DOUBLE the FINES!!



OSC Referrals

Most of these cases are settled; however, six-figure settlements are common and rising.

- ICE: <https://www.ice.gov/news-release-topics/worksite-enforcement>
- OSC: <https://www.justice.gov/crt/osc-press-releases>



Lessons

E-Verify has many benefits, and will likely become mandatory in the future. But it comes with great exposure, regardless of whether you “volunteered” to enroll or not.



Lessons

Absolutely critical to assign at least one person to be responsible for doing your own data mining:

- Run Reports regularly, by user and by location. Look for:
 - Compare to payroll – E-Verify run for all new hires?
 - Open queries;
 - Multiple queries for same employee;
 - Termination immediately after TNC;
 - Further Action Notices and Referral Notice not printed;
 - % of List A documents presented;
 - Continuing to employ after TNC.



Questions?

Thank You for Attending



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