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THE IMMIGRATION REFORM AND CONTROL ACT (I-9), E-VERIFY AND TENNESSEE EMPLOYERS

By Richard L. Stokes, PHR, IPMA-CP
Municipal Human Resource Consultant

February 2013

THE UNIVERSITY of TENNESSEE 
MUNICIPAL TECHNICAL ADVISORY SERVICE

In cooperation with the Tennessee Municipal League



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The Municipal Technical Advisory Service (MTAS) was created in 1949 by the state legislature to enhance the quality of government in Tennessee municipalities. An agency of the University of Tennessee Institute for Public Service, MTAS works in cooperation with the Tennessee Municipal League and affiliated organizations to assist municipal officials.

By sharing information, responding to client requests, and anticipating the ever-changing municipal government environment, MTAS promotes better local government and helps cities develop and sustain effective management and leadership.

MTAS offers assistance in areas such as accounting and finance, administration and personnel, fire, public works,

law, ordinance codification, and water and wastewater management. MTAS houses a comprehensive library and publishes scores of documents annually.

MTAS provides one copy of our publications free of charge to each Tennessee municipality, county and department of state and federal government. There is a \$10 charge for additional copies of "The Immigration Reform and Control Act (I-9), E-Verify and Tennessee Employers."

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THE IMMIGRATION REFORM AND CONTROL ACT (I-9), E-VERIFY AND TENNESSEE EMPLOYERS

The Immigration Reform and Control Act (Pub. L 99-603) was originally passed on November 6, 1986, in order to control and deter illegal immigration to the United States. Further modifications by the Immigration and Naturalization Act of 1990 (Pub. L 101-649) and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Pub. L 104-208) resulted in the requirement for employers to verify the identity and employment eligibility of any person employed by the organization. The U.S. Citizenship and Immigration Service (USCIS), formerly Immigration and Naturalization Services (INS), is responsible for the documentation of alien employment authorization, for Form I-9 itself, and for the E-Verify employment eligibility verification program. Since 2002, it has been a part of the U.S. Department of Homeland Security (H.R. 5005).

I-9 VERIFICATION

The U.S. Citizenship and Immigration Service publishes handbooks and manuals to help employers comply with the verification rules. The most important is the M-274, Handbook for Employers (<http://www.uscis.gov/files/form/m-274.pdf>). This section summarizes the employer I-9 verification responsibilities as outlined in the handbook.

Current law (8 U.S.C. § 1324a(b)) requires all employers in the U.S. to complete an Employer Eligibility Verification form (Form I-9) for each newly hired employee to verify each employee's identity and eligibility to work. According to the manual, "to comply with the Immigration Reform and Control Act's I-9 requirements, the verification should be done by an in-person inspection of the original document that shows an employee's identity and his/her eligibility to work in the United States.

A record of the employer's verification is made and retained on the Form I-9 for each person hired by the organization."

Employers must complete the employee verifications, on the Form I-9 with a revision date of August 31, 2012, despite the passing of the form's expiration date. An updated form will be posted as soon as it is available.

The form must be completed for all employees hired on or after November 7, 2007, as well as for any existing employee who requires re-verification. You do not need to complete a Form I-9 for persons who are:

1. Hired before November 7, 1986, who are continuing in their employment and have a reasonable expectation of employment at all times;
2. Employed for casual domestic work in a private home on a sporadic, irregular, or intermittent basis;
3. Independent contractors; or
4. Providing labor to you and are employed by a contractor providing services (i.e. employee leasing or temporary agencies).
5. Not physically working on U.S. soil.

Section 1 of the Form I-9 must be completed on or before the employee's first day of work. The employee should complete the section by filling in the correct information and signing and dating the form. You should ensure that the employee prints the information clearly. The instruction handbook provides that if the employee cannot complete Section 1 without assistance or if he/she needs Form I-9 translated, someone may assist him or her. The preparer or translator must then complete the Preparer/Translator Certification block on Form I-9.



Providing a Social Security number on form I-9 is voluntary for all employees unless you are an employer participating in the USCIS E-Verify Program, which requires an employee's Social Security number for employment eligibility verification. You may not ask an employee to provide a specific document with his or her Social Security number on it.

Section 2 of the Form I-9 must be completed within three (3) days of the employee's actual start date. The employee must present to you an original document or documents that establish identity and employment authorization. Some documents establish both identity and employment authorization (List A documents). Other documents establish identity only (List B documents) or employment authorization (List C documents) only. The employee can choose which documents he or she wants to present.

The handbook says that the employers must examine the original document or documents the employee presents and then complete Section 2 of the Form I-9. One document from List A must be examined, or one from List B and List C. The employer should record the necessary information and expiration date (if any); fill in the date of hire and correct information in the certification block; and sign and date the form. Any document(s) from the list of acceptable documents presented by the individual that reasonably appear on their face to be genuine and to relate to the person presenting them must be accepted.

The following documents establish both identity and employment authorization from List A of the list of acceptable documents:

- U.S. Passport or Passport Card
- Permanent Resident Card or Alien Registration Receipt Card (Form I-551)

- Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa (MRIV)
- Employment Authorization Document (Card) that contains a photograph (Form I-766)
- In the case of a non-immigrant alien authorized to work for a specific employer incident to status, a foreign passport with Form I-94 or Form I-94A bearing the same name as the passport and containing an endorsement of the alien's non-immigrant status, as long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form.
- Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating non-immigrant admission under the Compact of Free Association Between the United States and the FSM or RMI.

List B documents that establish identity for individuals 18 years of age or older and must not be expired include:

- Driver's license or ID card issued by a state or outlying possession of the United States, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address.
- ID card issued by federal, state, or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address.
- School ID card with a photograph
- Voter's registration card
- U.S. military card or draft record
- Military dependent's ID card
- U.S. Coast Guard Merchant Mariner Card
- Native American tribal document
- Driver's license issued by a Canadian government authority



For persons under age 18 who are unable to present a document listed above:

- School record or report card
- Clinic, doctor or hospital record
- Daycare or nursery school record

Documents from List C: Documents that establish employment authorization include:

- U.S. Social Security account number card other than one that specifies on the face that the issuance of the card does not authorize employment in the United States [**Note:** A copy (such as a metal or plastic reproduction) is not acceptable.]
- Certification of Birth Abroad issued by the U.S. Department of State (Form FS-545)
- Certification of Report of Birth issued by the U.S. Department of State (Form DS-1350)
- Original or certified copy of a birth certificate issued by a state, county, municipal authority, or outlying possession of the United States bearing an official seal
- Native American tribal document
- U.S. Citizen Identification Card (Form I-197)
- Identification Card for Use of Resident Citizen in the United States (Form I-179)
- Employment authorization document issued by Department of Homeland Security (other than those listed under List A)

If you participate in the E-Verify Program, you may only accept List B documents that bear a photograph.

If a minor (a person under the age of 18) is unable to present a List A document or an identity document from List B, the employer should have the Form I-9 completed as follows:

1. A parent or legal guardian must complete Section 1 and write “Individual under age 18” in the space for the employee’s signature.

2. The parent or legal guardian must complete the “Preparer/Translator Certification” block;
3. Write “Individual under age 18” in Section 2, under List B; and
4. The minor must present a List C document showing his/her employment authorization. Record the required information in the appropriate space in Section 2.

An individual with a disability, who is placed in a job by a non-profit organization, association, or as part of a rehabilitation program, who cannot present a List A document or an identity document from List B, should complete Form I-9 as follows:

1. A representative of the non-profit organization, a parent or a legal guardian must complete Section 1 and write “Special Placement” in the space for the employee’s signature;
2. The representative, parent or legal guardian must complete the “Preparer/Translator Certification” block;
3. Write “Special Placement” in Section 2, under List B; and
4. The employee with a disability must present a List C document showing his/her employment authorization; and record the required information in the appropriate space in Section 2.

Special rules apply when verifying the employment authorizations for other special categories also exist. Among the categories are:

1. Lawful Permanent Residents
2. Refugees and Asylees (Form I-94 or I-94A)
3. Temporary Protected Status (Form I-766)
4. Exchange Visitors and Students (Form DS-2019)
5. F-1 Non-Immigrant Students (Foreign students pursuing academic and language training programs)
6. M-1 Non-Immigrant Students (Foreign students pursuing non-academic or vocational studies (Form I-20))



7. H-1B Special Occupations
8. H-2A Temporary Agricultural Worker Program

When an employer rehires an employee, the employer must ensure that the individual is still authorized to work. This is done by completing a new Form I-9 or the employer may re-verify or update the original form by completing Section 3. If an employee, who has previously completed a Form I-9, is rehired, the employer may re-verify on the employee's original Form I-9 if:

1. The employer rehires the employee within three years of the initial date of hire; and
2. The employee's previous grant of employment authorization has expired, but he/she is now eligible to work under a new grant of employment authorization; or
3. The employee is still eligible to work on the same basis as when Form I-9 was completed.

To re-verify, the employer must:

1. Record the date of rehire;
2. Record the document title, number and expiration date (if any) of the document(s) the employee presented;
3. Sign and date Section 3; and
4. If re-verifying on a new Form I-9, write the employee's name in Section 1 and complete Section 3.

To update, the employer must:

1. Record the date of rehire and the employee's new name, if applicable;
2. Sign and date Section 3; and
3. If updating on a new Form I-9, write the employee's name in Section 1.

NOTE: You must complete a new Form I-9 if the version of the form you used for the previous verification is no longer valid.

The forms must be maintained until three years after the date of hire or one year after the date of termination, whichever is later. The handbook provides that the forms can be retained in paper, microfilm, microfiche, or electronically.

Form I-9 can be signed and stored in paper format. A simple photocopy or printed I-9 form can help ensure that the employee received the instruction for completing the form. The employer may retain completed paper forms on-site, or at an off-site storage facility, for the required retention period, as long as the employer is able to present the Form within three days of an inspection request from DHS, OSC, or the U.S. Department of Labor.

8 C.F.R. Part 274(a) provides that Form I-9 may also be stored on microfilm or microfiche. To do so:

1. Select film stock that will preserve the image and allow its access and use for the entire retention period, which could be 20 years or more.
2. Use well-maintained equipment to create and view microfilms and microfiche that provides clear viewing and can reproduce legible paper copies. DHS must have immediate access to clear, readable documents should they need to inspect the employer's forms.
3. Place indexes either in the first frame of the first roll of film, or in the last frames of the last roll of film of a series.

USCIS provides a "Portable Document Format" printable form I-9 from its website, <http://www.uscis.gov/files/form/i-9.pdf>. Employers may electronically generate and retain Form I-9 as long as:

1. The resulting form is legible;
2. No change is made to the name, content, or sequence of the date elements and instructions;
3. No additional data elements or language are inserted;



4. The employee receives Form I-9 instructions; and
5. The standards specified under 8 C.F.R. § 274a.2(e) are met.

To store records electronically, the employer may complete or retain the forms in an electronic generation or storage system that includes:

1. Reasonable controls to ensure the integrity, accuracy, and reliability of the electronic storage system.
2. Reasonable controls designed to prevent and detect the unauthorized or accidental creation of, addition to, alteration of, deletion of, or deterioration of an electronically completed or stored record, including the electronic signature, if used.
3. An inspection and quality assurance program that regularly evaluates the electronic generation or storage system, and includes periodic checks of electronically stored Form I-9, including the electronic signature, if used.
4. A retrieval system that includes an indexing system that permits searches by any data element.
5. The ability to reproduce legible paper copies.

The section of the handbook on photocopying and retaining Form I-9 now includes information about electronically signing and retaining I-9 forms. If you complete Form I-9 electronically using an electronic signature, your system for capturing electronic signatures must allow signatories to acknowledge that they read the attestation and attach the electronic signature to an electronically completed Form I-9. In addition the system must:

1. Affix the electronic signature at the time of the transaction;
2. Create and preserve a record verifying the identity of the person producing the signature; and
3. Provide a printed confirmation of the transaction, at the time of the transaction, to the person providing the signature.

NOTE: If you choose to use an electronic signature to complete Form I-9, but do not comply with these standards, DHS will determine that you have not properly completed Form I-9, in violation of section 274(a)(1)(B) of the INA. 8 C.F.R. Part 274a.2(f)(2).

The employer sanctions and anti-discrimination provision of the INA were added by the Immigration Reform and Control Act and prohibits four types of unlawful conduct:

1. Citizenship or immigration status discrimination;
2. National origin discrimination;
3. Unfair documentary practices during Form I-9 process (document abuse); and
4. Retaliation

Discriminatory documentary practices related to verifying the employment authorization and identity of employees during Form I-9 process is called document abuse according to the handbook. Document abuse occurs when employers treat individuals differently on the basis of national origin or citizenship status in Form I-9 process. Document abuse can be categorized into four types of conduct:

1. Improperly requesting that employees produce more documents than are required;
2. Improperly requesting that employees present a particular document;
3. Improperly rejecting documents that reasonably appear to be genuine and belong to the employee presenting them; and
4. Improperly treating groups of applicants differently when completing Form I-9, such as requiring certain groups of employees who look or sound foreign to produce particular documents the employer does not require other employees to produce.



Immigration status or citizenship discrimination occurs when employees are treated differently based on their citizenship or immigration status in regard to hiring, firing, or recruitment or referral for a fee. Employer must treat all groups the same.

When an employer treats employees differently in the employment process based on their national origin, it constitutes national origin discrimination. An employee's national origin relates to the employee's place of birth, country of origin, ancestry, native language and accent.

The handbook specifically states that "retaliation occurs when an employer or other covered entity intimidates, threatens, coerces, or otherwise retaliates against an individual because the individual has filed an immigration-related employment discrimination charge or complaint; has testified or participated in any immigration-related employment discrimination investigation, proceedings, or hearing; or otherwise asserts his/her rights under the INA's anti-discrimination provisions."

The Office of Special Council for Immigration-Related Unfair Employment Practices, Civil Rights Division, Department of Justice (OSC), enforces the anti-discrimination provisions of the INA. Title VII of the Civil Rights Act of 1964 (Title VII), as amended, also prohibits national origin discrimination, among other types of conduct. OSC and EEOC share jurisdiction over national origin discrimination charges. Generally, the EEOC has jurisdiction over larger employers with 15 or more employees, whereas OSC has jurisdiction over smaller employers with between four and 14 employees.

The DHS may also impose penalties if it is revealed that an employer knowingly hired or knowingly continued to employ an unauthorized worker, or failed to comply with the employment

eligibility verification requirements with respect to employees hired after November 6, 1986.

"If DHS determines that you knowingly hired unauthorized aliens, continued to employ aliens knowing that they were not authorized or have become unauthorized to work in the United States, or practiced unlawful discrimination, you may be ordered to cease and desist from such activities and pay a civil penalty up to \$16,000 for each unauthorized alien and possible imprisonment. Failure to properly complete, retain, and/or make available for inspection Forms I-9 could result in a civil penalty in an amount not less than \$110 and not more than \$1,100 for each violation."

E-VERIFY

On June 11, 2008, then President George W. Bush amended Executive Order 12989 to direct all federal departments and agencies to require contractors to use an electronic employment eligibility verification system to verify the employment authorization of employees performing work under a federal contract. The DHS designated E-Verify as the electronic employment eligibility verification system that all federal contractors must use.

Formerly referred to as the Basic Pilot Program, E-Verify is an Internet-based system operated by U.S. Citizenship and Immigration Services (USCIS) in partnership with the Social Security Administration. E-Verify is free to employers and provides an automatic link to federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers. E-Verify works by electronically comparing the information on an employee's Form I-9 with SSA and DHS records to verify the identity and employment eligibility of newly hired employees.

On November 14, 2008, the Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) published the Federal Acquisition Regulation (FAR) final rules



that implemented the amended Executive Order 12989. The FAR, effective September 8, 2009, is a set of rules and regulations used to manage the way the federal government acquires supplies and services with appropriated funds.

Also known as the “E-Verify Federal Contractor Rules,” the FAR rules direct federal agencies to require many federal contractors to use E-Verify. It requires federal contractors, through language inserted into their federal contracts, to agree to use E-Verify to confirm the employment eligibility of all persons hired during a contract term, as well as their current employees who perform work under a federal contract. Title 48, Subpart 22.1802(a).

Is your city required to use E-Verify? It depends. The E-Verify federal contractor rules only affect federal contractors who were awarded a new contract on or after September 8, 2009, that includes the FAR E-Verify clause (73 FR 67704). E-Verify contracts must also have a period of performance of 120 days or more, a value exceeding the simplified acquisition threshold of \$100,000 and at least some portion of the work under the contract must be performed in the United States. Title 48, Subpart 22.1803(b).

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to a prime contractor or another subcontractor. Title 48, Subpart 22.1802(2). Subcontractors also may be subject to the FAR E-Verify clause if: (1) the prime contractor includes the FAR clause; (2) the subcontract is for commercial or non-commercial services or construction; (3) the subcontract has a value of more than \$3,000; and (4) the subcontract includes work performed in the United States. Subcontractors who are suppliers, however, are not subject to the E-Verify federal contractor rules. Title 48, Subpart 52.222.54(e).

If your federal contract contains the FAR E-Verify clause, subject to certain exceptions, you must use E-Verify to confirm the employment authorization of:

- All persons hired during the contract terms and
- Current employees who perform work under the federal contract within the United States.

To verify these individuals, according to Title 48, Subpart 52.222.54(b), the employer must:

- Enroll in E-Verify within 30 days of the contract award date and
- Use E-Verify to verify that all your new hires and existing employees working directly on federal contracts are authorized to work in the United States.

8 C.F.R. Part 274a(2) provides that after hiring a new employee and completing the Form I-9 required for all new hires (regardless of E-Verify participation), the employer must submit a query into the E-Verify system that includes information from sections 1 and 2 of the form I-9, including:

- Employee’s name and date of birth;
- Social Security Number (SSN);
- Citizenship status he or she attest to;
- A number or I-94 number (if applicable);
- Type of document provided on the Form I-9 to establish work authorization status; and
- Proof of identity and its expiration date, if applicable.

If your federal contract does not contain the FAR E-Verify clause, employers are not required to enroll in and use E-Verify as a federal contractor but may participate voluntarily.

Only federal contractors with the FAR E-Verify clause and covered subcontractors are permitted to run E-Verify queries for existing employees.



If your city has federal contracts issued after the September 8, 2009 date that contains the FAR E-Verify clause and your city is not yet enrolled, you must (Title 48, Subpart 52.222.54(b)(1)):

- Enroll in E-Verify as a federal contractor with FAR E-Verify clause within 30 days of the award date of a contract. You can register online for E-Verify at <https://e-verify.uscis.gov/enroll/>.
- Initiate verification of all newly-hired employees within 90 calendar days of your enrollment date unless you are an organization that qualifies for an exception.
- Initiate verification of all existing employees assigned to the qualifying contract within 90 calendar days of enrolling in E-Verify or 30 calendar days of the employee's assignment to the contract, whichever date is later.

When E-Verify asks which employees you will verify, the selection you make will affect the 180-day time period for verifying all existing employees.

If your city is already enrolled in E-Verify but not designated as a federal contractor with FAR E-Verify clause, you must do the following:

- Do not re-enroll in E-Verify. Update your "Maintain Company" page to "Federal Contractor" with FAR E-Verify clause within 30 calendar days of the award date of a new federal contract that contains the FAR E-Verify clause.
- After updating your "Maintain Company" page, if your city has been selectively using E-Verify at certain hiring sites but not others, you must begin using E-Verify at all of your city's hiring sites and where you will be verifying any existing employees.
- As an existing user of E-Verify, you are required to verify new hires within three days of hire. If you are already verifying new hires under a Memorandum of Understanding, you must continue to do so.

- Initiate verification of all existing employees assigned to a qualifying contract within 90 calendar days of designating your city as a federal contractor with FAR E-Verify clause in E-Verify or 30 calendar days of the employee's assignment to the contract, whichever date is later.
- When E-Verify asks you which employees you will verify, the selection you make will affect the 180-day time period to verify all existing employees.

Some employees are exempt from the E-Verify requirements, and employers are not permitted to verify these employees in E-Verify. Other employees are not required to be verified, but employers may choose to verify them. Employees exempt from E-Verify are (1) those individuals hired on or before November 6, 1986, and continuing in employment with the same employer; and (2) employees previously confirmed as authorized to work in E-Verify.

The following organizations awarded a federal contract that includes the FAR E-Verify clause are only required to use E-Verify for new hires and existing non-exempt employees who are working directly under contract. Title 48, Subpart 22.1802(b)(2):

- State and local governments;
- Institutes of higher education;
- Governments of federally recognized Native American tribes; and
- Sureties performing under a takeover agreement entered into with a federal agency under a performance bond.

Your city must indicate that your organization qualifies for the exception when you enroll in E-Verify or, if your city is already enrolled, when you update your city profile.



Cities whose contracts are exempt from the E-Verify federal contractor rules are not required to enroll in E-Verify. Title 48, Subpart § 22.1803. A contract is considered exempt if any one of the following applies:

- It has a term of fewer than 120 days;
- It is valued at less than \$100,000;
- All work is performed outside the United States; or
- It includes only commercially available off-the-shelf (COTS) items and related services.

The Handbook for Employers: Instructions for Completing Form I-9 provides that all employers using E-Verify are prohibited from:

- Using E-Verify to pre-screen applicants for employment;
- Checking employment eligibility for employees hired before the city signs the E-Verify Memorandum of Understanding;
- Taking an adverse action against an employee based upon a case result unless E-Verify issues a Final Non-confirmation (TNC);
- Specifying or requesting which Form I-9 documentation a newly-hired employee must use;
- Using E-Verify to discriminate against ANY job applicant or new hire on the basis of his/her national origin, citizenship or immigration status;
- Selectively verifying work authorizations for newly hired employees; and
- Sharing any user ID and/or password.

Upon enrollment in E-Verify, your city will be required to clearly display both the English and Spanish “Notice of E-Verify Participation” and the “Right to Work Poster.” Both notices are found in E-Verify after you log in under “View Essential Resources.” Notices/posters that cannot be displayed should be printed and distributed to every job applicant. A copy of the “E-Verify User Manual for Employers (M-775) can be found on the

U.S. Citizenship and Immigration Services website (http://www.uscis.gov/USCIS/Verification/E-Verify/E-Verify_Native_Documents/manual-employer_comp.pdf).

TENNESSEE LAWFUL EMPLOYMENT ACT

The Tennessee Lawful Employment Act (TLE) (T.C.A. §§ 50-1-701- 50-1-715) was signed into law June 7, 2011, and requires all employers in Tennessee to demonstrate that they are hiring and maintaining a legal workforce either by enrolling and verifying the employment eligibility of all newly-hired employees through the federal E-Verify program or request all newly-hired employees to provide identity and employment I-9 authorization documents. Valid documents under the Tennessee Lawful Employment Act per T.C.A. § 50-1-703(a)(1)(A) include:

- A valid Tennessee driver’s license or photo identification,
- A valid driver’s license or photo identification,
- A valid driver’s license or photo identification from another state where the license requirements are at least as strict as those in Tennessee,
- A birth certificate issued by a U.S. state, jurisdiction or territory,
- A U.S. government-issued certified birth certificate,
- A valid, unexpired U.S. passport,
- A U.S. certificate of birth abroad,
- A certificate of citizenship,
- A certificate of naturalization,
- A U.S. citizen identification card,
- A lawful permanent resident card, and
- Other proof of employee’s immigration status and authorization to work in the United States.

Additionally, if your city hires non-employees, such as independent contractors, you are required to request and maintain a copy of either a valid Tennessee driver’s license or photo ID license. The



employment verification provisions apply to all state and local government agencies no later than January 1, 2012.

Under T.C.A. § 50-1-703(b)(1-3), the employment verification provisions will be phased in as follows:

- All state and local government agencies must enroll and participate in E-Verify or request and maintain an identity/employment authorization document from a newly hired employee no later than January 1, 2012.
- All private employers with 500 or more employees must enroll and participate in E-Verify, or request and maintain an identity/employment authorization document from a newly hired employee no later than January 1, 2012.
- All private employers with 200 to 499 employees must enroll and participate in E-Verify, or request and maintain an identity/employment authorization document from a newly hired employee no later than July 1, 2012.
- All private employers with six to 199 employees must register and utilize E-Verify or request and maintain an identity/employment authorization document from a newly hired employee no later than July 1, 2013.

To verify individuals using E-Verify under the TLE Act, employers must:

- Enroll in E-Verify within 30 days of the contract award date, and
- Use E-Verify to verify that all new hires and existing employees working directly on federal contracts are authorized to work in the United States.

The TLE Act (T.C.A. § 50-1-103(c)) provides that employers **are not required** to use E-Verify if the employer requested from the employee, received and documented the “lawful resident verification information” consistent with the employers requirements under the Immigration Reform and

Control Act of 1986 (I-9). The Tennessee Lawful Employment Act also provides that if, however, if an employer uses E-Verify, it is a defense to a charge of hiring illegal aliens. Obtaining one of the listed documents, on the other hand is not a defense if that is the only evidence the employer has.

For employers without Internet access, the TLE Act allows such employers to enter into a Memorandum of Understanding with the Tennessee Department of Labor and Workforce Development, and permits this agency to enroll the employer in the E-Verify program and conduct employment verification checks of newly hired employees through E-Verify on behalf of the employer. T.C.A. § 50-1-703(a)(5). An employer who has requested this service from the Tennessee Department of Labor and Workforce Development, but has not received assistance will not be in violation of the act. T.C.A. § 50-1-703(a)(2). Alternatively, the act allows employers to utilize the services of a third party agent to conduct the E-verification process for newly hired employees. T.C.A. § 50-1-703(a)(4).

Under the TLE Act, employers must maintain a record of results generated by E-Verify for three years from the date of hire or one year from the date of termination, whichever is later. Employers who elect to verify the employment eligibility of newly hired employees by requesting an identity and employment authorization document, rather than enroll in E-Verify, must retain this documentation for three years after the documentation is received or for one year after the employee (or non-employee, whichever is the case) stops providing services or labor, whichever is earlier. T.C.A. § 50-1-703(a)(3)(A).



The penalties for violation of the TLE Act are stiff, to say the least. They are outlined below:

- First offense: \$500 for the civil penalty, plus \$500 per worker not verified (T.C.A. § 50-1-703(a)(6)(f)(1)(a));
- Second Offense: \$1,000 for the civil penalty, plus \$1,000 per worker not verified (T.C.A. § 50-1-703(a)(6)(f)(1)(b)); and
- Third or Subsequent Offense: \$2,500 for the civil penalty, plus \$2,500 per worker not verified (T.C.A. § 50-1-703(a)(6)(f)(1)(c)).

SUMMARY

The U.S. Citizenship and Immigration Service provides a wealth of information to help employers comply with the provisions of the law. “How Do I?” customer guides provide helpful information regarding immigration benefits. Form I-9 support is available to answer questions about Form I-9 and employment authorization, Monday through Friday, from 8 a.m. to 5 p.m., except when the federal government is closed.

The Office of Special Counsel for “Immigration-Related Unfair Employment Practices” (OSC) is available to answer questions about unfair immigration-related employment practices and discrimination against workers on the basis of a worker’s citizenship or immigration status, or based on the worker’s national origin, including discrimination in the Form I-9 process. The OSC’s website provides information on how to prevent discrimination, how to file a complaint against an employer and answers to frequently asked questions.

Two videos designed for employers and employees are available from the Department of Homeland Security’s Office of Civil Rights and Civil Liberties and USCIS. They are “Understanding E-Verify: Employer Responsibilities and Worker Rights” and “Know Your Rights: Employee Rights and Responsibilities.” The videos portray re-enactments of real-world hiring scenarios. You can view them at:

- www.dhs.gov/E-Verify or
- www.youtube.com/ushomelandsecurity.

A copy of the revised form can be downloaded from the Web at <http://www.uscis.gov/files/form/i-9.pdf>. Revisions also have been made to the *Handbook for Employers, Instructions for Completing the Form I-9 (M-274)* (Rev. 07/31/09). The handbook also can be obtained online at <http://www.uscis.gov/files/form/m-274.pdf>. To find out more about E-Verify, visit www.dhs.gov/e-verify or contact USCIS at (888) 464-4218 or Richard Stokes, MTAS human resource consultant, at (615) 532-6827; or Bonnie Jones, MTAS human resource consultant, at (865) 974-0083; or your municipal management consultant in the Knoxville, Johnson City, Nashville, Jackson or Martin office.



THE UNIVERSITY of TENNESSEE **UT**
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