

Five Facts About State Mandatory E-Verify Laws

1. E-Verify is costly, on the front end and on the back end.

Up-front technological and training costs put a strain on companies at a particularly difficult economic moment. This is especially true for small businesses. On the back end, the penalties for businesses that are found to have improperly used (and abused) the system can be severe. State E-verify laws often include an automatic revocation of the offending company's business license. These laws also impose hefty, escalating fines. Moreover, state E-Verify bills may not clarify or may explicitly ignore existing federally-imposed limitations on the appropriate use of E-Verify, leaving businesses in that state exposed to a significant risk of federal discrimination and other civil rights law suits.ⁱ

2. E-Verify has significant error rates that will cause Americans to lose their jobs.

Errors generated by the E-Verify program result in citizens and others who are legally authorized to work in this country being wrongfully denied jobs.ⁱⁱ Many of the errors are due to problems of data entry that occur more often for individuals with ethnic surnames – particularly for those of Hispanic and Arab origin, the Government Accountability Office has reported – and for individuals who have married and/or divorced. “According to USCIS, of 22,512 TNCs [Temporary Non-Confirmation of employment eligibility] resulting from name mismatches in fiscal year 2009, approximately 76 percent, or 17,098, were for citizens.”ⁱⁱⁱ This number will get much bigger if E-Verify is made mandatory.

Here are some examples, raised with Congress in April 2011 by the National Immigration Law Center:

“A U.S. citizen born in Florida was hired for a good-paying telecommunications position in October 2010. After hire, she was run through E-Verify and received a TNC. Her employer did not ... explain any of her rights. The worker went to her local SSA office twice to try and resolve the situation, but despite SSA telling her that her information had been updated, the employer told her that she was still not confirmed. She ultimately received an FNC [Final Non-Confirmation] and was fired. After her termination, she has gone to great lengths to try and correct this error, but has been unable to do so....”^{iv}

“A U.S. citizen applied for a position with a temporary agency in California, only to be turned away because E-Verify was unable to confirm her work authorization. The employer did not advise her of her right to contest the finding and violated the law by asking her to show additional documents. She was unemployed for over four months without health insurance and was diagnosed with a serious illness during that time.”^v

The other troubling error rate is that 54% of the time, E-Verify failed to catch unauthorized workers entered into the system, according to a report from the U.S. Citizenship and Immigration Service (USCIS).^{vi} Thus, E-Verify is not an effective tool to curb unauthorized work.

3. Mandating E-Verify in the absence of comprehensive immigration reform will exacerbate income insecurity and health insecurity for millions of families.

All workers are protected by federal and state labor and employment laws – such as wage and hour, health and safety, and antidiscrimination laws – *regardless of their immigration status*.^{vii} Mandating employer use of E-Verify would push more workers into the underground, off-the-books, cash-based economy. This would give the state far less tax revenue and would give unscrupulous employers more tools to coerce workers.^{viii} Furthermore, their wages would be lower, making their children and families less economically secure.^{ix} The



unauthorized workers targeted by these measures are taxpayers, consumers, and job-creators. Decreasing their economic well-being will have depressive effects that ripple through the state's entire economy.

4. Mandatory E-Verify proposals often protect employers at the expense of unsuspecting immigrant employees.

Some bills provide significant safe harbors for employer conduct but heap penalties – even criminal ones – onto unauthorized workers for merely asking for work. Other bills unfairly give employers whose fraud goes undetected a free pass while simultaneously providing no protection for a wronged employee. The specific combination of penalties and safe harbors in each bill must be analyzed closely.

5. The federal government currently does a poor job of monitoring employer fraud.

There are many ways in which an unscrupulous employer might illegally use E-Verify. For example, he might prescreen job applicants based on racially and culturally discriminatory criteria. He might selectively re-verify the employment eligibility of existing employees. He might refuse to notify employees of their TNCs or fail to provide the necessary referral letters to enable them to contest the decision. He might even use threats of deportation as a weapon to coerce work of as leverage in labor negotiations.^x USCIS, which administers the E-Verify program, admits that its ability to root out employer fraud is limited. “Right now, frankly, it’s a little clumsy,” USCIS Associate Director Theresa Bertucci recently conceded regarding her office’s ability to monitor compliance by employers who are currently registered with the E-Verify program.^{xi}

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ⁱ National Immigration Law Center, “Facts About E-Verify,” January 2011, <http://www.nilc.org/everifyinfo.html>.

ⁱⁱ Written Statement of Tyler Moran, Policy Director, National Immigration Law Center, House Committee on Ways and Means, Subcommittee on Social Security Hearing on “The Social Security Administration’s Role in Verifying Employment Eligibility,” April 14, 2011, pp.1-2 [Moran, April Hearing Testimony] <http://www.nilc.org/testimony-eevs.html>.

ⁱⁱⁱ United States Government Accountability Office, “Employment Verification: Federal Agencies Have Taken Steps to Improve E-Verify, but Significant Challenges Remain,” December 2010, p. 19.

^{iv} Moran, April Hearing Testimony, p. 2 <http://www.nilc.org/testimony-eevs.html> (citing Jessica St. Fleur, *Written Statement for the House Committee on the Judiciary, Subcommittee on Immigration Policy and Enforcement: Hearing on E-Verify – Preserving Jobs for American Workers*, Feb. 10, 2011).

^v *Ibid.* (citing summary of charge filed with the Dept. of Justice Office of Special Counsel for Immigration-Related Unfair Employment Practices in 2008).

^{vi} Center for American Progress, “10 Numbers You Need to Know About E-Verify,” September 2011, http://www.americanprogress.org/issues/2011/09/everify_numbers.html.

^{vii} National Immigration Law Center, “Overview of Key Issues Facing Low-Wage Immigrant Workers,” November 2009, 2 <http://www.sikhcoalition.org/documents/OverviewofKeyIssuesFacingLowWageImmigrantWorkers.pdf>.

^{viii} Statement of Tyler Moran, Policy Director, National Immigration Law Center, House Committee on the Judiciary, Subcommittee on Immigration Policy and Enforcement, Hearing on the Legal Workforce Act, June 15, 2011, p. 1 <http://www.nilc.org/testimony-eevs.html>.

^{ix} Statement of Tyler Moran, Policy Director, National Immigration Law Center, House Committee on the Judiciary, Subcommittee on Immigration Policy and Enforcement, Hearing on: “E-Verify- Preserving Jobs for American Workers,” February 10, 2011, pp. 3-4 <http://www.nilc.org/testimony-eevs.html>.

^x *Ibid.*; see also National Immigration Law Center, “Facts About E-Verify,” January 2011. <http://www.nilc.org/everifyinfo.html>. Federal law mandates that employers only use E-Verify *after* hiring an individual, that employers may only use it for *new* hires, and that employers must use it for *all* new hires so as to avoid discrimination. *Ibid.*

^{xi} Oral Testimony of Theresa Bertucci, Associate Director, USCIS, at Judiciary Subcommittee on Immigration Policy and Enforcement, Hearing on: “E-Verify- Preserving Jobs for American Workers,” February 10, 2011 http://judiciary.house.gov/hearings/hear_02102011.html.