

## Employees — You Should Know Your Rights and Responsibilities Under E-Verify

Federal law requires that all employers verify the identity and employment eligibility of all new employees (including U.S. citizens) within three days of hire. Employers are required to complete a Form I-9, and employees must provide employers with documentation establishing both identity and eligibility to work in the United States.

The Department of Homeland Security (DHS) and the Social Security Administration (SSA) have established an electronic system called E-Verify to assist employers further in verifying the employment eligibility of all newly-hired employees. In short, through E-Verify, employers send information about you to SSA and DHS (only for non-citizens) to ensure that you are authorized to work in the United States and that your name, Social Security number, and date of birth match government records. If your employer uses E-Verify, you as an employee have certain rights and responsibilities.

### **Your Rights and Responsibilities When Your Employer Checks Your Information in E-Verify**

After you have been hired and within three days after starting your new job and completing Section 1 of the Form I-9, you must show your employer valid documentation (as listed on the Form I-9) that establishes your identity and employment eligibility. It is your right to choose which documents to produce regardless of the fact that your employer participates in E-Verify, with one exception. If you present a List B document to an employer that participates in E-Verify, that document must include a photograph.

Your employer must post a notice to employees that it is participating in E-Verify.

Your employer may only check E-Verify after you have been offered and have accepted a job, and you have completed the Form I-9. Your employer may not use E-Verify on applicants (i.e., pre-screening you through E-Verify before hiring you), and your employer may not use E-Verify selectively to verify some employees and not others.

Your employer may only check your employment eligibility in E-Verify if you are hired for a new job and not if you are currently working for him/her.

Your employer must use E-Verify for all new employees at participating hiring sites, regardless of national origin or citizenship status.

Your employer may not use E-Verify to discriminate against you based upon your national origin or citizenship status or for other unlawful reasons, including retaliation for filing EEO complaints, membership in a union, etc.

### **Your Rights and Responsibilities When Your Information Does Not Match with SSA's or DHS' Data in E-Verify**

If your employer runs your information through E-Verify and receives a mismatch, which is known as a tentative nonconfirmation, your employer must promptly give you written notification of the tentative nonconfirmation and ask you whether you want to contest the tentative nonconfirmation. If you choose to challenge the tentative nonconfirmation, you must indicate that on the notice of tentative nonconfirmation and return that notice to your employer. You and your employer must both sign the notice of tentative nonconfirmation. After you return the notice to your employer, your employer must then give you a

referral letter providing you with details on how to contact SSA or DHS to resolve your case. You and your employer must both sign the referral letter.

Once you have received the referral letter, you must contact the appropriate federal agency within eight federal government work days to begin resolving your case. If your tentative nonconfirmation relates to SSA, it is important that you inform SSA that you are contesting a tentative nonconfirmation issued by E-Verify. Moreover, you should attempt to resolve the issue with SSA as soon as possible because the resolution of the tentative nonconfirmation could take some time. If possible, you should also bring documentation with you to SSA evidencing your name (and, if applicable, other legal names you have had), Social Security number, citizenship status, and date of naturalization (if applicable). If you contact DHS to contest a tentative nonconfirmation, it will assist your case if you can provide information about your immigration status, including dates that your status may have changed. Once you resolve your case, you should tell your employer about any changes that have been made to your SSA records (if any), and your employer should then attempt to verify your employment eligibility again through E-Verify.

With respect to your efforts to resolve a SSA tentative nonconfirmation, your employer may not ask you to obtain a printout from the SSA database or other written verification of your Social Security number from SSA.

### **Your Right to Work if You Timely Contest a Tentative Nonconfirmation**

Your employer may not take any adverse action against you based upon the tentative nonconfirmation because you are working to resolve the tentative nonconfirmation with the appropriate federal agency. For example, your employer may

not fire you, suspend you, delay your first day on the job, withhold your pay or training, or limit your employment.

Your employer may fire you based upon E-Verify only if your employer receives a final nonconfirmation result from E-Verify or if you do not contest a tentative nonconfirmation.

### **Your Right to Legal Remedies If You Have Been Discriminated Against by Your Employer**

Federal law prohibits employers from discriminating against applicants and employees based upon their national origin and citizenship (or immigration) status when verifying employment eligibility through completion of the Form I-9 and the use of E-Verify. For example, employers may not on the basis of national origin or citizenship status: terminate or suspend you based upon a tentative nonconfirmation issued by E-Verify; refuse to hire work-authorized non-citizens (unless required by law or government contract); treat applicants differently in the Form I-9 or E-Verify process; or limit the choice of documentation you present to establish employment eligibility when completing the Form I-9 (other than the requirement that a List B identity document contain a photograph). If you feel that you have been discriminated against by your employer, please call the Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration-Related Unfair Employment Practices.

### **Assistance Available to You if Your Employer Misuses E-Verify**

Employers are required to follow certain procedures when using E-Verify that were designed to protect workers from unfair employment actions. For example, employers must notify workers that they use E-Verify, may not use E-Verify on applicants or existing employees, may not terminate workers or take other adverse action based upon a tentative nonconfirmation,

must safeguard workers' personal information, and may not ask workers to obtain a printout from the Social Security Number

database or other written verification of their Social Security Number from SSA. Employers who do not follow the rules may be barred from using E-Verify and may violate the law in the process.

## Know Your Rights – Quick List

- Employers must post a notice informing employees of their use of E-Verify.
- E-Verify must be used for new hires only. It cannot be used to verify the employment eligibility of current employees.
- E-Verify must be used for all new hires regardless of national origin or citizenship status. It may not be used selectively.
- E-Verify must be used only after hire and after completion of the Form I-9. Employers may not pre-screen applicants through E-Verify.
- If an employee receives a tentative nonconfirmation, the employer must promptly provide the employee with information about how to challenge the tentative nonconfirmation, including a written notice generated by E-Verify.
- If an employee decides to challenge a tentative nonconfirmation, the employer must provide the person with a referral letter issued by E-Verify that contains specific instructions and contact information.
- Employers may not take any adverse action against an employee because he/she contests a tentative nonconfirmation. This includes firing, suspending, withholding pay or training, or otherwise limiting his/her employment.
- The employee must be given eight federal government work days to contact the appropriate federal agency to contest the tentative nonconfirmation.
- Employers may not take any adverse action against any employee based upon the tentative nonconfirmation for the duration of the tentative nonconfirmation (even if it extends beyond ten federal government work days) as long as the employee contacted the appropriate federal agency within eight federal government work days.
- Employers may terminate workers based upon E-Verify only upon receipt of a final nonconfirmation or upon notice that an employee has chosen not to contest a tentative nonconfirmation.
- Employers may not use E-Verify to re-verify the employment eligibility of an existing employee. Re-verification must be conducted through the Form I-9.