



July 2009 Newsletter

Federal Contractors Required to Use E-Verify System

Effective June 30, 2009

The executive order signed by President Bush in June 2008 that was delayed for implementation on two occasions finally became effective on June 30, 2009.

Companies that have been or will be awarded contracts with state or federal governments with a value above \$100,000 and for a duration longer than 120 days must use the E-Verify web-based system for all new hires and in some situations, for anyone currently working on a federal contract, to verify information provided on the Form I-9. Subcontractors with contracts valued at \$3,000 or more must also use the E-Verify system.

Highlights of the program include:

Companies that have been awarded a federal contract or subcontract with the FAR E-Verify clause must register to use the E-Verify system and must agree to the required Memorandum of Understanding (MOU). The MOU outlines the employers' responsibilities as well as SSA and DHS. Registration can be completed on-line at <https://www.vis-dhs.com/employerregistration>.

Employers have 30 days from the date of contract award to enroll and 90 days from the date you register to initiate verifications for all new hires and employees already on your staff who will be working on the federal contract. After the initial 90-day phase-in period, you will only have 3 business days to initiate verification for each new hire

- ✚ "Employee assigned to federal contract" is defined as any employee hired after November 6, 1986 who is directly performing work in the United States under a contract that includes the FAR clause requiring the contractor to use E-Verify. If the employee performs support work, such as indirect or overhead functions, and does not perform any substantial duties under the contract, that employee does not have to be run through the E-Verify system

In accordance with FAR 1.108(d), if a company is awarded an indefinite-delivery/indefinite-quantity federal contract modified to include the FAR E-Verify clause and the contract has a remaining period of at least six months after the effective date, the company must use E-Verify.

Subcontractors of "prime" contractors must use E-Verify if the subcontract has a value over \$3,000.

Employers using E-Verify must post a notice (provided by Department of Homeland Security) in a location visible to prospective employees (applicants) and all employees.

Exceptions to using E-Verify:

- ❖ Contracts that include only commercially available off-the-shelf (COTS) items and related services
- ❖ Contracts of less than \$100,000
- ❖ Contracts with less than 120 days in duration
- ❖ Contracts where all work is performed outside the United States
- ❖ For employees that have been granted and currently holds a federal agency HSPD-12 credential or a U.S. government security clearance for access to confidential, secret or top secret information
- ❖ Federal contractors who are state and local governments, governments of federally recognized Native American tribes and sureties performing under a takeover agreement entered into with a federal agency pursuant to a performance bond - these employers only need to use E-Verify for employees assigned to a covered federal contract.

Employers do have the option of using E-Verify for the above situations; they just are not required to use E-Verify.

Medicare Mandatory Reporting Requirements

July 1, 2009 Deadline

Section 111 of the Medicare, Medicaid and SCHIP Extension Act requires group health



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plans and third party administrators (TPAs) to submit insurance enrollment information to Centers for Medicare & Medicaid Services (CMS) related to enrollees 55 years of age and older; enrollees who have had a kidney transplant or are undergoing kidney dialysis. CMS is the federal agency that administers the Medicare Program. This data must be submitted to CMS beginning July 1, 2009.

If you are an employer that offers Group Health insurance to your employees, your Group Health Plan Insurer (i.e., Kaiser Permanente, Blue Cross, Blue Shield, etc.) or TPA is required to submit this information about your employees. Fully insured and self-funded group health plans are responsible for providing this information.

If you have fewer than 20 employees and are not part of a multiemployer group health plan, you do not need to submit data at this time.

The new reporting requirement is to assist CMS to correctly pay medical service providers for Medicare beneficiaries who also receive employer sponsored health benefits. In accordance with Medicare law, there are situations in which the primary insurance company or self-funded group health plans must pay first (primary payer) before Medicare pays as the "secondary" payer for services rendered to plan beneficiaries.

In 2011, the reporting age drops to age 45 and older. Some Health Plan Providers are providing information now for this group in an effort to reduce the need for further data gathering efforts.

Federal Contractors' Posting Requirements

Davis-Bacon Act and VEVRAA requirements

Federal government contractors and subcontractors with federal contracts of \$2,000 or more for the construction, alteration or repair to public buildings or buildings financed by federal funds, federal guarantee or federal pledge must post a notice explaining required minimum wage,

overtime and apprentice rates of pay in accordance with the **Davis-Bacon Act**.

In addition, the **Vietnam Era Veterans Readjustment Assistance Act (VEVRAA)** requires government contractors with contracts of \$50,000 or more which were entered into before December 1, 2003 and contracts of \$100,000 or more which were entered into after December 1, 2003 to post job openings. Exceptions are allowed for executive and top management positions, positions planned to be filled internally or any job lasting less than 3 days in duration.

Minimum Wage Increases

Federal and State Wage Increases

Effective July 24, 2009 the federal minimum will increase to \$7.25 per hour. Many states will increase their minimum wage requirements to match the Federal minimum wage. The State of Maine will increase its minimum wage October 1, 2009 to \$7.50 per hour.

In cases where an employee is subject to both state and federal minimum wage laws, the employee is entitled to the higher minimum wage.

States changing their minimum wage to \$7.25 per hour effective July 24, 2009 include:

Idaho

Indiana - Applies to employers with 2 or more employees

Maryland

Montana

Nebraska - Applies to employers with 4 or more employees

New York

North Carolina

North Dakota

Oklahoma - Applies to employers with ten or more full time employees at any one location and employers with annual gross sales over \$100,000 irrespective of number of full time employees

Pennsylvania

South Dakota

Texas



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Utah

Virginia - Applies to employers with 4 or more employees

Expired Form I-9 Continues to be Valid

USCIS News Release

U.S. Citizenship and Immigration Services (USCIS) announced that the Employment Eligibility Verification form I-9 (Rev. 02/02/09) currently on the USCIS Web site will continue to be valid for use beyond June 30, 2009.

USCIS has requested that the Office of Management and Budget (OMB) approve the continued use of the current version of Form I-9. While this request is pending, the Form I-9 (Rev. 02/02/09) will not expire. USCIS will update Form I-9 when the extension is approved. Employers will be able to use either the Form I-9 with the new

revision date or the Form I-9 with the 02/02/09 revision date at the bottom of the form. For more information on USCIS and its programs, visit www.uscis.gov.

OHR will provide the new form to our client's when it is approved and finalized by the OMB and USCIS.

Coming in July...

Educational Seminar

Helena Younossi of Younossi law will present "Strategizing Your International Workforce" on July 30, 2009 at the LPIB offices in Campbell, CA. Helena will discuss the H1B Cap, the E-Verify System, no match rules and what's ahead in 2009 for immigration regulations.

To RSVP for this seminar contact Linda Railton at lindar@myohr.com.

These articles should not be construed as legal advice or as pertaining to specific situations. Consult with your legal counsel for further information.

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