

JULY 16, 2020 | PUBLICATION

Client Alert: Florida Governor Signs New E-Verify Law for Employers

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Maria del Carmen Ramos

MEDIA CONTACT

Wendy M. Byrne
wbyrne@shumaker.com

On June 30, 2020, Florida Governor Ron DeSantis signed into law a long-awaited state mandate requiring public employers and some private employers to use E-Verify to confirm employee work eligibility.

Under pre-existing federal law, all employers are required to complete a Form I-9 for each newly hired employee, in order to verify the identity and eligibility of that employee to work in the United States. The Form I-9 contains a list of acceptable documents for establishing an employee's identity and authorization to work. Those documents include a U.S. Passport, Permanent Resident Card, driver's license, social security card, and birth certificate, among others. More importantly, federal law requires employers to physically examine each document – with the employee physically present – to determine if the document reasonably appears to be genuine and relates to the employee presenting it.

Florida employers were also free to voluntarily participate in the federal government's E-Verify program, an internet-based system that compares information supplied by an employer from its Form I-9 to information available to the federal government from a series of databases. According to the federal government, E-Verify is intended to assist employers with their obligation to verify an employee's eligibility to work in the U.S. E-Verify is not yet federally mandated, but Florida has now joined the ranks of states adopting a hybrid model.

What Does the New Law Require?

The requirements of this new law vary depending on whether the employer is a public or private employer. A general summary is below.

Public Employers, Contractors, and Subcontractors. Beginning January 1, 2021, every Florida public employer, along with their private contractors and subcontractors, must register with and use E-Verify to confirm the work eligibility of their new hires. Additionally, no public contract can be entered into unless each party to the contract registers with and uses E-Verify. Subcontractors working on any public contract must provide the contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with unauthorized aliens. Contractors will need to go through this process for all public projects.

Private Employers. Private employers are not required to use E-Verify under the new law unless they have a contract with a public employer (as discussed above) or they apply for taxpayer-funded incentives through the Florida Department of Economic Opportunity. But, in an interesting twist, Florida law will now require any private employer who does not use E-Verify to maintain copies of the documentation that the employee presented to complete the Form I-9 for three years from the employee's start date. This additional requirement is optional under federal law. The new requirement applies to employees hired on or after January 1, 2021.

Does E-Verify Replace the Form I-9?

No, E-Verify does not replace the legal requirement to complete and retain Form I-9. E-Verify verifies the employment authorization of new hires based on the information they provide on Form I-9. Employers still must retain and store Form I-9 in either paper, electronic, or microfilm/microfiche format for as long as the employee works for an employer, and then for the required retention period by law.

What now?

To prepare for this new law, all public employers, and private employers who bid on public contracts, should update their onboarding and new hire practices by (i) timely registering for E-Verify, and (ii) having their HR staff participate in E-Verify training prior to its use.

At the same time, private employers who choose not to participate in E-Verify should remain vigilant and not get lulled into a false sense of security. The new law now requires private employers to maintain copies of the documentation required to complete the Form I-9, which previously was optional under federal law. If employers fail to comply, they could be subject to stiff penalties, including suspension and revocation of their business licenses. For these reasons, it is imperative that employers revisit their I-9 compliance policies and practices. The current administration (at both the federal and state level) has made enforcement of our immigration laws a top priority. With increased audits and fines, employers would be wise to consider regularly auditing their procedures and records to ensure compliance. As always, Shumaker's Employment Law team is available to answer any questions you may have. Continue to check back with us for updates.

If you have any questions, please contact Maria del Carmen Ramos at mramos@shumaker.com or 813.227.2252, or Chris Cavaliere at ccavaliere@shumaker.com or 813.676.7208.

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