

GOVERNMENT CONTRACTS/LABOR AND EMPLOYMENT ALERT

FEDERAL CONTRACTORS REQUIRED TO USE E-VERIFY EFFECTIVE SEPTEMBER 8

Effective September 8, all federal contractors will be required to use the E-Verify system to verify their employees' eligibility to work in the United States if their contract includes the Federal Acquisition Regulation (FAR) E-Verify Clause (73 FR 67704). In July, the Department of Homeland Security (DHS) [announced](#) the administration's support for the E-Verify program, stating that it will only award federal contracts to employers who use E-Verify to check employee work eligibility.

E-Verify is a free Internet-based system administered by U.S. Citizenship and Immigration Services (USCIS), in partnership with the Social Security Administration (SSA), that compares information from an employee's I-9 Form against federal government databases to verify employment eligibility. Under the [final rule](#), all federal contractors holding a contract with a performance period over 120 days and a value over \$100,000, as well as subcontractors providing services or construction with a value above \$3,000, must verify the employment eligibility of new hires and re-verify the employment eligibility of employees hired after November 6, 1985. Agencies must also amend, on a bilateral basis, any existing indefinite delivery/indefinite quantity contracts to include the clause for future orders if the remaining period of performance extends beyond March 8, 2010.

All affected federal contracts and subcontracts awarded, or solicitations issued, after September 8 will include a clause committing government contractors to use E-Verify. Companies awarded contracts with an E-Verify clause will be required to enroll in the program within 30 days from the award date. Contractors will then have 90 days after enrollment to initiate employee verification. E-Verify must be used to verify that **all** new hires—whether or not they work on federal contracts—and existing employees who do work directly on these federal contracts are legally authorized to work in the United States.

All employers, including nonfederal contractors, may enroll in E-Verify at any time without waiting for the applicability date. Employers can register for E-Verify online at: <https://e-verify.uscis.gov/enroll/StartPage.aspx?JS=YES>. USCIS provides further guidance on its Web site. Directions on how to use E-Verify are available in the [USCIS E-Verify Quick Reference Guide](#).

The final rule, arising out of Executive Order 12989, was originally scheduled to take effect on January 15, 2009. The rule was initially postponed in January in response to a lawsuit filed by the U.S. Chamber of Commerce and other plaintiff organizations (*Chamber of Commerce of the United States of America v. Chertoff*) in the U.S. District Court for the District of Maryland, challenging the legality of the rule. The federal government announced a further delay in implementing the E-Verify rule on June 2, 2009, postponing the expected rollout date to September 8, 2009. On August 25, 2009, the Maryland District Court upheld the final rule requiring federal contractors to use E-Verify. The U.S. Chamber of Commerce filed a notice of appeal on August 31. On September 1, the group filed a motion for emergency injunction to block implementation of the final rule on September 8, pending the appeal. The District Court denied plaintiffs' motion for emergency injunction on September 4. Upon the District Court's denial of plaintiffs' motion, the U.S. Chamber of Commerce, et al. filed an emergency motion on September 4 with the U.S. Court of Appeals for the 4th Circuit seeking to enjoin the implementation of E-Verify pending their appeal of the District Court's August 25 ruling. The 4th Circuit denied plaintiffs' motion for an injunction on September 9.

* * * * *

Akin Gump Strauss Hauer & Feld LLP produces the "Washington Labor and Employment Wire," a blog that explores the busy intersection occupied by public policy, regulation and politics in the area of federal labor and employment law. Additional updates on the E-Verify program will be posted there as they develop. For more information, or to subscribe to the blog, please [click here](#).

CONTACT INFORMATION

For more on the E-Verify requirements or other developments in federal government contracting, please contact—

Labor and Employment

Joshua B. Waxman 202.887.4209 jwaxman@akingump.com Washington, D.C.

Government Contracts

Robert K. Huffman 202.887.4530 rhuffman@akingump.com Washington, D.C.

Peter B. Hutt II 202.887.4294 phutt@akingump.com Washington, D.C.

Scott M. Heimberg 202.887.4085 sheimberg@akingump.com Washington, D.C.