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THE IMAGE PROGRAM

Last month, we provided you with information about the E-Verify program. The Department of Homeland Security (DHS) also offers another program: the ICE Mutual Agreement between Government and Employers (IMAGE) program. The stated goal is “to help restore the integrity of the immigration system of the United States by utilizing industry outreach and self-policing.” Let’s just say IMAGE takes E-Verify and “kicks it up a notch.”

Participation in the program is voluntary. The U.S. Immigration and Customs Enforcement (ICE) and the U.S. Citizenship and Immigration Services (USCIS) will provide education and training to participating employers on proper hiring procedures, fraudulent document detection, use of E-Verify, and anti-discrimination for all participating employers. Thus, as you can see, employers who participate in the IMAGE program must be enrolled in E-Verify. Here’s the rest of what the program entails:

- The employer must agree to submit to an I-9 audit by ICE.
- The employer must also verify the social security numbers of current employees through the Social Security Number Verification System (SSNVS) in order to ensure accuracy in wage reporting.
- Implementation of DHS’s best hiring practices, which include the following:
 - Use the E-Verify program for all hiring.
 - Establish an internal training program, with annual updates, on how to manage completion of the Form I-9, how to detect fraudulent documents, and how to use the E-Verify program.
 - Permit the E-Verify program process to be conducted only by individuals who have received training.
 - Include secondary review as part of each employee’s verification to minimize the potential for a single employee to subvert the process.
 - Arrange for annual I-9 audits by an external auditing firm or a trained employee not otherwise involved in the I-9 and electronic verification process.

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- Establish a self-reporting procedure for immediate reporting to ICE of any violations or discovered deficiencies. This includes discovery or allegations of substantive criminal violations.
- Establish a protocol for responding to no-match letters received from the SSA.
- Establish and maintain safeguards against use of the verification process for unlawful discrimination.
- Establish protocol for assessing the adherence to the “best practices” guidelines by the company’s contractors/subcontractors.
- Submit an annual report to ICE to track results and assess the effect of participation in the IMAGE program, including, but not limited to, the number of employees terminated or denied employment due to participation in the program.
- ICE requests, but does not require, that employers establish both a tip line for employees to report activity relating to the employment of unauthorized aliens and procedures for responding to employee tips.
- ICE also requests that companies with 50 or more employees designate a compliance officer to ensure that employment practices are in accordance with IMAGE guidelines.

What are the benefits of participating in the IMAGE program? ICE maintains that the program should lessen the likelihood of inadvertently hiring unauthorized workers and/or that your company will be found in violation of the law. Moreover, IMAGE participation may be considered a mitigating factor in the determination of the amount of a civil penalty should ICE determine a violation has occurred. Before choosing to participate, however, you should confer with your immigration counsel and discuss whether IMAGE is right for you. Whether you want to extend an open door to ICE and subject yourself to more regulation is a very serious question involving numerous considerations.

Interested employers may request an information packet [here](#).

– [Laurie M. Chess](#) and [Mary Ellen Burggraf Jordan](#)

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ARIZONA AND MISSISSIPPI EMPLOYERS ARE REQUIRED TO USE E-VERIFY

Two states, Arizona and Mississippi, require private employers to use the E-Verify program. This article summarizes these state laws.

Arizona

The Legal Arizona Workers Act, which took effect January 1, 2008, requires employers operating pursuant to a business license in that state to use the E-Verify program for all new employees. In addition to federal fines, the Legal Arizona Workers Act provides some pretty harsh penalties. As you know, E-Verify is designed to assist employers in determining the work eligibility for new hires. Employers in Arizona who intentionally or knowingly hire or employ illegal immigrants, who presumably would be caught if E-Verify is used properly, face having their business licenses suspended for a first offense and permanently revoked for a second offense. The law does not impose a penalty for failing to register with E-Verify by January 1, 2008. The state's 15 county attorneys are charged with enforcing the law. Litigation challenging the constitutionality of the Legal Arizona Workers Act is currently pending. For now, however, the law is on the books.

Mississippi

The Mississippi Employment Protection Act was signed into law on March 18, 2008, and requires the use of E-Verify by employers in the state pursuant to the following schedule:

- July 1, 2008 – All state and local government agencies, political subdivisions, public contractors and subcontractors, and private employers with 250 or more employees.
- July 1, 2009 – Employers with between 100 and 249 employees.
- July 1, 2010 – Employers with between 30 and 99 employees.
- July 1, 2011 – All employers.

Violation of the Act subjects the employer to cancellation of state contracts and a bar on contracting with the state for three years as well as revocation of the company's business license for up to three years. Additionally, it is considered a discriminatory employment practice if an employer terminates an employee who is either a United States citizen or permanent resident alien while retaining an employee who the entity knows or should have known is an unauthorized alien in the same job category that requires equal skill, effort, and responsibility. Employers who use E-Verify at the time of the termination in question, however, are exempt from liability under the Act (they may still be sued under other state or federal laws).

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Interestingly, the Mississippi law also makes it a felony for a person (*i.e.*, applicant or employee) to accept or perform employment for compensation knowing or in reckless disregard that he/she is an unauthorized alien. The penalty for the employee-alien is imprisonment for between one and five years, a fine of between \$1,000 to \$10,000, or both.

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Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

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