



## **Bill Summary:**

### **The Legal Workforce Act, H.R. 2164**

**Introduced by House Judiciary Chairman Lamar Smith (R-TX)**

Sec. 1. Short title

Sec. 2. Employment verification process

- Any person or entity hiring, recruiting, or referring an individual for employment (employer) must:
  - Attest under penalty of perjury (using either a hand-written or electronic signature) that the person or entity has verified that the individual is not unauthorized by:
    - ◆ Obtaining and recording the individual's social security number (SSN) and, if the individual does not attest to US citizenship, a DHS identification or authorization number; and
    - ◆ Examining a document or combination of documents proving identity and work authorization.
- The individual (employee) must attest under penalty of perjury (using either a hand-written or electronic signature) that he/she is a citizen, an LPR, or a work-authorized alien; provide a SSN or DHS identification or authorization number.
  - An employee who knowingly provides a SSN that doesn't belong to him/her may be fined and imprisoned for up to 15 years (sentence may not be probation and may not run concurrent to a prison term for a different violation).
- The employer must retain the attestation (in paper, digital, or electronic form) and make it available to DHS, DOJ, or DOL for the later of 3 years after hire or 1 year after termination (3 years for recruiters/referrals).
- The employer must record the E-Verify verification code (or the nonverification code), and may not terminate employment until a nonverification is final (unless the termination is for a different reason).
- If the employer receives a final nonverification, the employer must terminate the employee or notify DHS of continued employment.
  - If an employer fails to notify DHS, the failure is deemed to constitute the knowing employment of an unauthorized alien.
  - Continued employment after a final nonverification creates a rebuttable presumption of knowingly hiring an unauthorized alien.

- Seasonal agricultural workers returning to work for an employer that previously employed them are not considered new hires, and so are not subject to verification (though the employer must run all new hires through E-Verify, as required below; this is a codification of a broader exemption granted to agricultural workers in current federal regulation).
- **Phase-in of mandate to use E-Verify for new hires and reverification of aliens with limited-duration employment authorization is as follows:**
  - Employers with 10,000 or more employees = 6 months after enactment;
  - Employers with 500-9,999 employees = 12 months after enactment;
  - Employers with 20-499 employees = 18 months after enactment;
  - Employers with 1-19 employees = 24 months after enactment; and
  - Those recruiting or referring = 12 months after enactment.
- Employees performing seasonal agricultural labor are not subject to verification until 36 months after enactment (and aren't counted toward the size of the employer for the above phase-in dates; all other employees of the employer are subject to the E-Verify mandate as described above).
- Employers must continue to perform the current I-9 verification process until subject to the phase in described above. Employers already required to use E-Verify under current federal law (including the Executive Order regarding federal contractors) must continue to use it, regardless of the phase in.
- Verification through E-Verify must be performed:
  - If recruiting or referring, prior to recruiting or referring an individual for employment;
  - If hiring, during the period beginning on the date an offer of employment is made and ending three days after hiring an employee.
    - ◆ A job offer may be made conditional on successful verification of work eligibility.
- DHS must notify employers of employees with limited work authorization of the date on which the authorization expires, and employers must run through E-Verify all such employees within 30 days before the limited work authorization expires.
- **Mandate to use E-Verify for current employees (as opposed to just new hires) who have not already been run through E-Verify is as follows:**
  - Employees of any unit of federal, state and local governments = 6 months after enactment;
  - Employees of critical infrastructure employers who are subject to federal security clearance = 6 months after enactment;
  - Employees assigned to perform work under federal or state contracts = 6 months after enactment;
  - **Illegal aliens currently working on a stolen SSN.**

- ◆ Any employee about whom an employer receives notification from SSA that SSN submitted by the employee does not belong to that employee = within 10 business days of receipt of the notification.
  - ◇ SSA is required annually to notify employees with more than one employer reporting income to their SSN and for which there is a pattern of unusual multiple use (e.g., the SSN is being used by employees in different states or with widely divergent occupations).
  - ◇ The letter must identify the employers and which states they are in and inform the employees to contact the SSA Fraud Hotline if they believe their identity has been stolen.
  - ◇ If the legitimate owner of the SSN is identified and indicates to SSA that the SSN was used fraudulently, SSA and DHS must lock the SSN so that it may not be used by anyone else for employment eligibility purposes.
  - ◇ SSA must then notify the employers for whom the legitimate SSN owner is NOT working and require them to run the employees who submitted the stolen SSN through E-Verify (since the SSN will have been locked, E-Verify will produce a nonverification).
- **Illegal aliens currently working on a fake or mismatched SSN.**
  - ◆ Any employee about whom an employer receives a no-match letter from SSA (once the employer is required to use or is voluntarily using E-Verify) = within 30 days of receipt of the letter;
    - ◇ SSA is required to send a no-match letter to any employer that submits one or more mismatched wage and tax statements (i.e., the name or other identifying information does not match the SSN provided).
    - ◇ The letter must describe the mismatched information and provide the employer with clear instructions that the listed employee(s) must be run through E-Verify (which will produce a nonverification).
- **Beginning 30 days after enactment, any employer who is using E-Verify may choose voluntarily to run all current employees through E-Verify.**
- Employers may voluntarily choose to enroll in E-Verify at any time prior to the phase-in mandates.
- Employers that make a good faith attempt to comply with the verification system are to be deemed compliant, regardless of any technical or procedural failure to satisfy a particular requirement, unless:
  - The employer has failed to correct a failure that is not de minimis after notice by DHS of the failure and at least 30 days in which to correct it; or
  - The employer has engaged in a pattern or practice of knowingly hiring unauthorized aliens or failing to comply with the verification system.

Sec. 3. DHS must establish a toll-free telephonic verification system, in addition to the electronic system. Both systems must:

- Maintain records of inquiries made, verifications provided or not provided, and the codes provided to employers as evidence of their compliance;
- Provide verification or tentative nonverification within 3 working days of the initial inquiry, along with an appropriate code indicating such verification or nonverification;
- Provide a secondary verification process in cases of tentative nonverification that provides a final verification or nonverification within 10 working days after the tentative nonverification, along with an appropriate code indicating the final verification or nonverification;
- Be designed and operated to:
  - Maximize reliability and ease of use by employers while protecting the privacy and security of the data provided;
  - Respond to inquiries at all times and register whenever inquiries are not received;
  - Include appropriate safeguards to prevent unauthorized disclosure of personal information;
  - Include safeguards against the system's resulting in unlawful discrimination based on national origin or citizenship status, including:
    - ◆ Selective or unauthorized use of the system; or
    - ◆ Exclusion of certain individuals from consideration for employment due to a perceived likelihood that additional verification will be required beyond what is required for most applicants.
  - Limit the subjects of verification to:
    - ◆ Individuals hired, referred, or recruited;
    - ◆ Individuals with limited-duration work authorization before the date that such work authorization expires and current employees whose employers are required or voluntarily choose to verify as outlined in Section 2; and
    - ◆ Individuals seeking to confirm their own employment eligibility on a voluntary basis.
- SSA is required to ensure that E-Verify can identify when an employee attempts to use a SSN that is not valid for employment purposes.
- An employer that knowingly inputs a false or stolen SSN into the system when making an inquiry is subject to fines and imprisonment for up to 15 years (sentence may not be probation and may not run concurrent to a prison term for a different violation).
- SSA and DHS must update their information in a manner that promotes maximum accuracy and must provide a process for the prompt correction of

erroneous information, including when such errors are brought to their attention during the secondary verification process.

- The verification system may not be used by the government for any purpose other than employment eligibility verification as required in this Act, and may not be construed to authorize the issuance or use of a national ID card.
- The only remedy available to an individual who alleges that he/she would not have been terminated from a job but for an error of the verification system is the Federal Tort Claims Act and injunctive relief to correct such error. No class action may be brought under this paragraph.

Sec. 4. The provision in current law that limits application of employment verification requirements only to those who recruit or refer “for a fee” others for employment is broadened to include all recruiters and referral services, whether or not a fee is charged. **This means that the E-Verify requirement applies to union hiring halls and day labor sites.** However, this provision does not take effect until 1 year after enactment.

Sec. 5. Safe harbor for employers who use the system in good faith.

- An employer that establishes that it has complied in good faith with the verification requirements may not be held liable to a job applicant, employee, or any level of government for any employment-related action taken with respect to an applicant or employee in good-faith reliance on information provided through the verification system. Such an employer has established compliance with the prohibition on hiring unauthorized aliens and the verification mandate unless DHS can show by clear and convincing evidence that the employer had knowledge that an employee is an unauthorized alien.
- The good faith defense is not available to an employer who has failed to run an employee through the verification system when and as required, except insofar as the failure is due to the verification system being down and the employer initiates the inquiry within one day of the system coming back online.
- If an employer makes a required inquiry, but does not receive verification within the mandated time frame, the good faith defense does not apply with respect to employment after the end of the mandated time frame.

**Sec. 6. Preemption.**

- State and local laws, ordinances, policies, and rules, including any criminal or civil fine or penalty structure, that relates to the hiring, continued employment, or verification of work authorization of illegal aliens are preempted by federal law, except that states, localities, municipalities, and political subdivisions may exercise their authority over business licensing and similar laws as a penalty for failure to use the verification system when and as required by this Act.
  - Current law already preempts states and localities from establishing their own system of criminal or civil employer sanctions, but permits them to use “business licensing and similar laws” to ensure that employers do not hire illegal aliens. The preemption in this bill goes further by prohibiting

states and localities from setting their own timetables by which employers must use E-Verify, but allows them to use “business licensing and similar laws” to ensure that employers comply with the federal timetable established in the bill.

Sec. 7. The “basic pilot program” from the 1996 Illegal Immigration Reform and Immigrant Responsibility Act and is repealed and replaced with the permanent E-Verify system required in this bill.

**Sec. 8. Penalties for violating the prohibition on hiring unauthorized aliens and the mandated use of the verification system are as follows:**

- For hiring an unauthorized alien or failing to use the verification system, the penalty is a cease and desist order and a civil fine, as follows:
  - The civil penalty for the first offense increases from \$250-\$2,000 to \$2,500-\$5,000 for each unauthorized alien with respect to whom a violation occurred;
  - The civil penalty for a second offense increases from \$2,000-\$5,000 to \$5,000-\$10,000 for each unauthorized alien; and
  - The civil penalty for subsequent offenses increases from \$3,000-\$10,000 to \$10,000-\$25,000 for each unauthorized alien.
- For improperly completing the verification process:
  - The civil penalty increases from \$100-\$1,000 to \$1,000-\$25,000 for each individual with respect to whom a violation occurred.
- For a first offense of either of the above, the penalty may be waived if the employer establishes that it acted in good faith.
- Employers determined to be repeat violators of the prohibition on hiring unauthorized aliens or the mandate to use the verification system may be considered for debarment from the receipt of federal contracts, grants, or cooperative agreements.
- An employer found to have engaged in a pattern or practice of violations of the prohibition on hiring unauthorized aliens or the mandate to use the verification system shall be fined up to \$15,000 (increased from \$3,000) per unauthorized alien with respect to whom a violation occurs, imprisoned for not less than one year and not more than 10 years (increased from not more than 6 months), or both.

Sec. 9. Beginning with fiscal year 2013, SSA and DHS must enter into and maintain an agreement that provides funds to SSA for the full costs of SSA’s responsibilities in the verification process. If such an agreement is not reached by the beginning of a fiscal year, the previous year’s agreement, with an OMB adjustment for inflation and any anticipated increase or decrease in volume, will be deemed in effect until a new agreement is reached.

**Sec. 10. SSN Locks**

- DHS and SSA must establish a program that will:

- Lock SSNs identified as being subject to unusual multiple use in the verification system and block those SSNs from use for the system by anyone other than the legitimate owner of the SSN.
- Allow victims of identity theft and others voluntarily to lock their own SSNs; and
- Block the continued use of an SSN issued to an alien:
  - ◆ With a final order of removal from the United States;
  - ◆ Who voluntarily departs the United States;
  - ◆ Who is voluntarily returned to his/her home country; or
  - ◆ Whose nonimmigrant visa or employment authorization has expired and not been extended or renewed.

Sec. 11. Within 18 months after enactment, DHS, in consultation with SSA and NIST, must establish a voluntary Biometric Employment Eligibility Verification pilot to provide identity authentication and work eligibility verification with respect to enrolled new employees and available to employers who elect to participate.