



california law confirms e-verify is voluntary for private employers

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In the last several years many states throughout the United States have enacted laws making E-Verify mandatory for private employers; however, California stands by the position that the E-Verify program is a voluntary program. On October 9, 2011, Governor Brown signed Assembly Bill No. 1236, also known as the Employment Acceleration Act of 2011. This law confirms that, in the State of California, neither the state nor any city, county, city and county, or special district may require private employers to use E-Verify as a condition to receiving a government contract or applying for a business license or as a penalty for violating licensing or similar laws.

The law does not free federal contractors in the State of California from federal law requiring participation in E-Verify as a condition to receiving federal funds, but it does reinforce the intent of the federal law with regard to other private employers "by ensuring that private employers retain the ability to choose whether to participate in the electronic verification program." The law also aims to reduce barriers and disruptions to employment in California, a state with an unemployment rate that currently exceeds 11 percent.

In ensuring that E-Verify remains voluntary, Assembly Bill No. 1236 states:

(c) Mandatory use of an electronic employment verification program would increase the costs of doing business in a difficult economic climate. . . .

(d) California businesses would face considerable odds in implementing such a program. Employers using the program report that staff must receive additional training that disrupts normal business operations. If E-Verify had been made mandatory for all employers in 2010, it would have cost businesses \$2.7 billion, \$2.6 billion of which would have been borne by the small businesses, which drove the economy.



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What Does This Mean for California Private Employers?

As a result of this law, the patchwork of previously enacted city and county ordinances in the State of California mandating the use of E-Verify for certain private employers will be defunct. However, the law has no effect on existing federal laws that require the use of E-Verify as a condition to participating in federal contracts or receiving federal funds. Furthermore, the debate over the use of E-Verify in Congress is far from over, and future federal laws may change the landscape of electronic employment verification.

It is important for California private employers to note that the use of E-Verify is still voluntary, and employers are free to choose to participate in the program. Additionally, the law has no effect on an employer's responsibility to prepare and maintain I-9 records. MSK Immigration Attorneys are well versed in E-Verify and I-9 compliance issues and regularly work with employers to evaluate the costs and benefits of the use of E-Verify, as well as the development and maintenance of I-9 compliance programs.

If you have any questions regarding this alert, please contact the author, or any other member of our Immigration Department.