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## the e-verify "self check" system takes effect march 18, 2011

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February 22, 2011

USCIS recently published a notice in the Federal Register confirming that it intends to have the new E-Verify "Self Check" feature in effect on March 18, 2011. As the name indicates, the E-Verify Self Check system is designed to enable individuals to verify their own employment authorization status before seeking employment in the United States. The government intends for this feature to provide individuals the ability to correct any errors that appear in the federal databases that support E-Verify, before seeking employment.

Since its inception, E-Verify has been criticized for the frequency with which it issues tentative non-confirmations (TNC) on individuals who are fully authorized to accept employment in the United States. Unfortunately, E-Verify is only as accurate as the federal databases that supply it with information. When these federal databases contain errors with regard to an employee's work authorization, resulting in a TNC, employers have a limited time and ability to identify the source of the error or the means to correct it. USCIS is presenting Self Check as one possible solution to that problem, with the intention of reducing the frequency of TNCs.

**MSK Remarks:** Whether the E-Verify Self Check system will be a success remains to be seen as it will not go live until March 18, 2011. However, employers are firmly reminded that they cannot require an applicant to use the self check system as part of an application process. Any use of E-Verify for pre-screening of an applicant violates the anti-discrimination policies of E-Verify. Instead, E-Verify can only be used after the applicant has been hired for the position and after a Form I-9 has been completed for that employee. MSK Immigration Attorneys regularly counsel employers on I-9 compliance, the proper use of the E-Verify system, and appropriate procedures for developing a corporate compliance policy.

### practice areas

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