

# Illinois Establishes Additional Requirements for Employers Using E-Verify

## Labor & Employment Law Update

By Sara Zorich on September 3, 2024

On August 9, 2024, the Illinois State Senate finalized amendments to the Right to Privacy Act. These amendments add additional requirements for employers who use employment eligibility verification programs, including E-Verify.

### Employers Are Not Required to Enroll in E-Verify

The amendment clarifies that SB 508 does not require any employer to enroll in any Electronic Employment Verification System, including E-Verify and the Basic Pilot program, unless obligated by federal law. Employers may voluntarily participate in such programs, however.

### Verification Requirements Must Be No Greater than Federal Requirements

An employer cannot impose work authorization verification or re-verification requirements greater than those required by federal law.

### Employers Cannot Take Adverse Action Based on a Notification of Discrepancy Alone

If an employer receives notification from any federal or state agency regarding work authorization discrepancy (e.g., employee name and social security number do not match), an employer cannot take any adverse action against the employee, including re-verification, based on receipt of the notification alone. Employers must first follow a notice process.

### Employers Must Provide Notice of Inspections

If an employer receives a notice of inspection of work authorization documents from a federal or state agency, the employer must provide notice to employees of the inspection within 72 hours that includes the name of the entity conducting the inspections, the date that the employer received notice of the inspection, the nature of the inspection, and a copy of the notice received by the employer. The Illinois Department of Labor (IDOL) will develop a template posting for employers.

## Employers Must Provide Notice to Employees if Discrepancy or Ineligibility is Found

Employers must provide notice to an employee if a discrepancy regarding an employee's work authorization status is found by the employer or agency or if an inspection finds that an employee's documents do not establish that they are authorized to work in the United States. The timeframe in which employers must provide notice ranges from five to seven business days depending on the nature of the finding. Likewise, the contents of the notice also depend on the nature of the finding, but generally include: (1) a statement describing the finding, (2) the time period to contest the finding, and (3) a statement that the employee may have a representative of the employee's choosing in any discussions with the employer or inspecting entity.

## Penalties

In determining the penalty amount for a violation of these requirements, the IDOL will consider the size of the business and the gravity of the violation. If a violation is willful and knowing, the IDOL may impose a civil penalty ranging from \$2,000-5,000 per affected employee for a first violation and \$5,000-10,000 for each subsequent violation per affected employee in addition to costs, attorney fees, and actual damages.

Due to the interplay between Illinois' Right to Privacy Act and the federal E-verify and immigration laws, there are a potential host of legal challenges that the Legislature will likely have to address in the coming months. Stay tuned for more updates.

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