

## ***NEW E-VERIFY LAW IN EFFECT IN FLORIDA***

*By Elizabeth Ricci, Tallahassee*

As of January 1, 2021, a new Florida law requires E-Verify enrollment by all government employers such as county school districts, public institutions of higher learning, government agencies, and all their W-9 independent contractors.

E-Verify is the internet-based companion to Form I-9 Employment Eligibility Verification, and it allows an employer, in three to five seconds, to determine a worker's employment authorization status by comparing information listed on Form I-9 with some 455 million Social Security records and 80 million Homeland Security visa, citizenship, and U.S. passport records.<sup>1</sup>

According to Tallahassee-based employment law attorney Robert J. Sniffen, "The Florida Legislature and Governor DeSantis have made it clear that whether to use E-Verify is no longer a preference, but a requirement for all covered entities in the public and private sectors." Even employers recognize the benefits of using E-Verify. The general manager of the Governors Club, a private social club in Tallahassee, observes that, "whether required or optional, using E-Verify shows clients and customers that you have a lawful workforce. Besides, employers who voluntarily use the system now will be better positioned in the future should enrollment ever become mandatory."

The Department of Homeland Security strongly encourages, but does not currently require, states to mandate employers' enrollment in E-Verify. Under the new Florida law, however, any private employer who does not use E-Verify must maintain copies of the documents used to complete the Form I-9 for three years (which is currently optional under federal law).

"The I-9 is a deceptively simple form for which the

consequences of non-compliance can mean civil and criminal penalties. If the E-Verify system continues to be free, if legal workers are not harmed by its use and if Florida businesses can benefit by increasing competitiveness, Florida employers should consider voluntary enrollment," said Sniffen.

In an Executive Order issued in 2008, President George W. Bush hailed E-Verify as "the best means available to confirm the work authorization of the workforce."<sup>2</sup> Likewise, other advocates of enrollment claim that "statistics show E-Verify works . . . . Even for employees who receive initial mismatches and are later confirmed as work authorized, E-Verify informs them of possible errors with their government records. By clearing up mismatches sooner rather than later, E-Verify can save these employees significant time and frustration."<sup>3</sup>

The system, however, crashes regularly. During outages, enrollees cannot access accounts, create new profiles, or run any reports. Users are advised to document outages to show good faith in the instance of an audit.

Because the system cannot recognize counterfeit or stolen documents, it is not entirely effective. For example, an employee could present documents that appear valid but do not actually pertain to the worker. Moreover, due to federal database errors, the system often wrongly flags U.S. citizens and documented workers as "nonconfirmations," and such "nonconfirmed" citizens and workers could be denied employment and paychecks.<sup>4</sup>

Failure to complete and maintain I-9s can result in a Notice of Suspect Documents by U.S. Immigration and Customs Enforcement (ICE) which, if not handled timely or correctly, can result in significant fines, and

for repeat offenders, even imprisonment. Failure to comply with Florida's E-Verify law could result in temporary or permanent termination of a business license. To avoid such penalties, it is strongly suggested that all employers, regardless of employees' citizenship, require employees to file and maintain their I-9s.



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### Endnotes

- 1 *What is E-Verify?* U.S. DEPT. OF HOMELAND SEC., <https://www.e-verify.gov/about-e-verify/what-is-e-verify#:~:text=E%2DVerify%20is%20an%20Internet,Administration%20to%20confirm%20employment%20eligibility> (accessed Jan. 8, 2021).
- 2 William Gibson, *Bush Begins E-Verify Immigration Crackdown* (June 9, 2008), <https://www.sun-sentinel.com/sfl-mtblog-2008-06-bush-begins-everify-immigratio-1-story.html>.
- 3 "What is E-Verify?" <https://studylib.net/doc/18142450/what-is-e-verify%3F> (last visited Jan. 26, 2021).
- 4 AILA InfoNet Doc. No. 09070868 (July 8, 2009).

## THERE'S A NEW SHERIFF IN TOWN (AND HE'S AN L&E MEMBER)

In what may be a first for the Section, a member has been elected sheriff of a Florida county. Kurt Hoffman was recently sworn in as Sheriff of Sarasota County, having previously served as chief deputy and the agency's general counsel. A graduate of Nova Southeastern University Shepard College of Law, Sheriff Hoffman began his legal career as an assistant state attorney for the Twelfth Judicial Circuit. In addition to being a member of The Florida Bar's Labor and Employment Law Section, Sheriff Hoffman is also a member of the City, County & Local Government Law Section, and the Government Lawyer Section.

*Biographical information and photo courtesy of the Sarasota County Sheriff's Office.*



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NLRB Update Part II

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