

Mandatory E-Verify: Not Too High a Price for Necessary Immigration Reform

Article By:

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In February 7th's [Wall Street Journal](#), Laura Murphy and Fred Smith of the ACLU and Competitive Enterprise Institute, respectively, warned against the **dangers of a mandatory E-Verify system**. They argued that the E-Verify system invades the privacy of the employees whose data is run through the system and that the E-Verify verification process effectively lumps everyone into the category of “illegal” until proven otherwise (“guilty” until proven “innocent”). They also are fearful that E-Verify could soon be used for a variety of other non-work related purposes.

I disagree with their conclusions. And I think it is unrealistic to secure comprehensive immigration reform without some type of mandatory employment verification system.

When E-Verify and its predecessor Basic Pilot were first rolled out the programs left much to be desired. The databases against which the data was compared were flawed and incomplete, resulting in a substantial number of incorrect results (non-confirmations) that employers and their employees had to remedy. But over the years the databases have been improved and resulting errors are minimal. The E-Verify system works.

According to statistics released recently by DHS, in fiscal year 2011 98.3% of all E-Verify queries resulted in immediate confirmations of work authorization. 1.7% of the queries resulted in initial mismatches, of which 28% were subsequently confirmed. These results are in line with what may reasonably be expected, especially since we know that not every worker in this country has legal authorization to work.

Many of our clients use E-Verify, either because they choose voluntarily to do so, or because they are mandated to do so because they are federal contractors. An employer that voluntarily uses E-Verify may stop using it at any time. But we do not see our clients withdraw from E-Verify because the program is too burdensome. On the contrary, E-Verify is gradually becoming a part of the landscape of the on-boarding process for new employees. Our clients report that they have received a small percentage of tentative non-confirmations which have been successfully overcome.

The E-Verify regulations include safeguards not only for employers but also for employees. Contrary to what Murphy and Smith assert, employees are in fact considered to be work-authorized until proven otherwise, so the “guilty” until proven “innocent” analogy is inapposite. Employers that

receive a tentative non-confirmation may not immediately take any adverse action against the employee, must continue their employment and must provide them an opportunity to set the record straight with DHS or the Social Security Administration. Only if the employee does not contest the tentative non-confirmation or after receiving a final non-confirmation may an employer terminate the employee's employment as a result of an E-Verify finding. And even following a final non-confirmation, if an employer has reason to believe the E-Verify result is incorrect, it can choose to continue the employee's employment.

It would be unrealistic to think that we will be able to secure comprehensive immigration reform legislation allowing for a path to legalization for the millions of undocumented workers in this country without a mandatory employment verification system. Furthermore, if legalization passes, the eligible undocumented workers who apply for legalization will likely be provided with a work authorization document which will result in confirmed work authorization through the E-Verify system. That will be a win-win for both employers and employees.

E-Verify is not perfect, but the system is much better than it used to be and it is constantly improving. Requiring mandatory E-Verify in exchange for vast and much needed immigration reform is not unreasonable.

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