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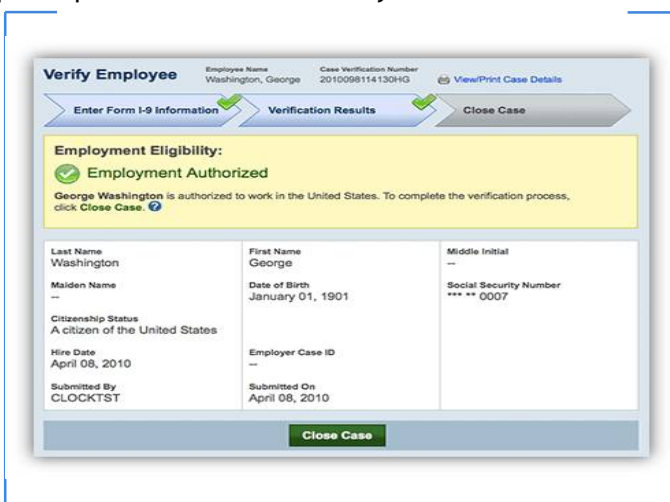
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E-Verify is Free – But is it Affordable?

On January 27, 2011, Bloomberg News released the findings of its report on a proposal to require every U.S. employer to use E-Verify to confirm the legal status of all **new** hires.

According to Bloomberg’s estimates, assuming E-Verify costs remained constant during the time frame (and usage of the system was adjusted for growth), employers spent an estimated \$95 million in fiscal 2010 to participate “for free” in E-Verify.

Businesses with fewer than 500 workers bear the greatest cost burden because the fixed costs are spread over fewer hires. The Bloomberg report concluded that E-Verify cost small businesses in 2008 an average of \$127 to run each new hire query [and to respond in a timely manner to a TNC/final non-confirmation (FNC) situation], compared with \$63 for all firms. Projected outward, Bloomberg calculated that those figures would be \$147 and \$73, respectively.



In summary: “Businesses with fewer than 500 workers bear the greatest burden (of such a proposal), according to the data, spending about \$2.6 billion a year to use the government’s web-based verification system, E-Verify, compared with less than \$100 million for those that used it in 2010.”

That is “billion” with a B. In a recent survey commissioned by the government, Westat reported that employers spent about \$43 million in the fiscal year ending September 30, 2008, to interact with the employment verification program.

The Westat study was commissioned by the government as part of a multi-year evaluation of the E-Verify program, and presents the results of both surveys of participants and also focus groups of nonusers—the recently-published report was the result of their 2009 findings.

What Westat found was that those employers aware of the E-Verify program decided not to use the system because they perceived no benefit from participating when compared with the cost and logistical burden of doing so.

The case study participants generally opposed a mandatory program for all employers, particularly for small business owners. Also, a substantial minority of those small business owners indicated that they lacked sufficient resources to participate, with about one-fourth of the case study participants saying they did not have the staff with sufficient skills available to manage downstream tentative non-confirmation (TNC) resolution. In addition, one-tenth stated they lacked the computers to connect to the E-Verify system.

What are an employer's responsibilities when it comes to TNC resolution and why is it so costly? The first expense is based on the time and funding required to properly train employees on the E-Verify protocols and responsibilities. Other expenses include the additional time required for the employment eligibility verification process, as well as employee downtime. Such downtime includes meeting with the HR department and even time off from work to resolve discrepancies in records. Other costs include lost training and other hard costs when employees who are ultimately deemed unauthorized to work are required to be kept employed after contesting a TNC notice until it is resolved.

The time and money spent on training and review of existing government resources is worthwhile. It is critical that HR managers, or employees dealing with TNC resolution, understand their responsibilities and what receipt of a TNC means. Most importantly, a TNC does not mean that the employee is not authorized to work, but rather that there is a discrepancy in the employee's government records (either with the Social Security Administration or the Department of Homeland Security). Once the TNC has been issued, the employee needs to be called in to a private meeting with HR where the TNC can be discussed and contested. If the employee disputes the TNC, he/she may be required to visit a local Social Security office (within eight working days) to resolve the discrepancy. Some companies provide paid time off of work to deal with such clean up, others offer non-paid leave. Either way, it is a tangible expense to the company.



Interestingly, some businesses artfully noted in the Bloomberg survey that they did not see E-Verify as beneficial for their business because they viewed participation as a government priority rather than a business priority. Of note, one employer stated that:

“[O]ur elected officials begin to make it the government's responsibility (not the employers') to control illegal immigration. Our government has a history of allowing illegal immigration to flourish and then relying on the businesses to bear the cost and exposure of controlling it.”

But, the most telling response from a business owner may be this one:

“Hold me, personally, and my company harmless from any loopholes in the system that become exploited by the undocumented population . . . bottom line . . . I don't want to make the 5 o'clock news by complying with a broken system.”

E-Verify was not designed to identify identity theft issues, but rather to verify employment eligibility. That's a big difference, and it appears some people don't understand the difference. USCIS must be intending to redesign the system in an effort to deal with this serious issue, but right now these loopholes cause serious concerns about the integrity of the program. Savvy business owners are well aware of the current flaws in E-Verify that allow employees with stolen identities to pass undetected through the system. These are the same business owners that don't want to be held responsible for the flaws, and their sentiments are echoed above.

Most HR professionals are aware of the increased burden associated with a mandated E-Verify process. State and local governments, frustrated by a lack of federal action, are considering mandating additional verification compliance requirements, including E-Verify, upon employers as a cost of doing business there. It is critical that executives, management and stakeholders be aware of the significant costs associated with “free” E-Verify participation.

It is critical that decision makers understand the ramifications of decisions relating to E-Verify and, more notably, become community leaders in educating our politicians that E-Verify is not as “free” as advertised. On the other hand, E-Verify is an immigration compliance best practice and should be considered by businesses that can afford it. In truth, what business can afford not to take immigration compliance seriously?

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[Greenberg Traurig’s Business Immigration and Compliance Group](#) has extensive experience in advising multinational corporations on how to minimize exposure and liability regarding a variety of employment-related issues, particularly I-9 employment eligibility verification matters. In addition to assisting in H-1B (Labor Condition Application) audits, GT develops immigration-related compliance strategies and programs and performs internal I-9 compliance inspections. GT has also successfully defended businesses involved in large-scale government worksite enforcement actions, I-9 Audits and Department of Labor Wage and Hour investigations. GT attorneys provide counsel on a variety of compliance-related issues, including penalties for failure to act in accordance with government regulations, IRCA anti-discrimination laws-Office of Special Counsel Investigations, and employers’ responsibilities when faced traditional no-match situations as well as more serious workplace identity theft or other alleged misrepresentations made by employees.

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