

Frequently Asked Questions on Florida's New E-Verify Law (SB 1718)

Q: What companies need to comply with this law?

A: The law applies to private employers with 25 or more employees. The 25-employee threshold refers to the total number of employees – not just those who work in Florida. Florida public employers and contractors have been required to use E-Verify since 2021.

Q: Do the E-Verify requirements only apply to new hires, or do employers need to run existing employees through E-Verify to ensure they are authorized to work in the United States?

A: The new E-Verify requirements only apply to new employees hired on or after July 1, 2023. Employers do not need to verify the employment eligibility of current employees using the E-Verify system. However, the law makes clear that an employer may not continue to employ someone who is not authorized to work in the United States after obtaining knowledge that a person is or has become unauthorized. Therefore, employers should consider whether they knowingly employ individuals who are not authorized to work in the United States, as doing so could subject them to increased penalties under this law.

Q: Do employers need to comply with this law if they use an employee leasing company or PEO?

A: Yes. The law is clear that private employers with 25 or more employees must comply with this law. The law states that licensed employee leasing companies may enter into a written contract with a client employer that places the responsibility on the client employer to use E-Verify, but the law does not provide any mechanism for placing responsibility on an employee leasing company or PEO. Therefore, employers must ensure that they are using E-Verify themselves and not relying on a third party to do so.

Q: How should employers report compliance with this law?

A: Employers verify compliance by certifying on their first tax return each calendar year that they are in compliance with the law when making contributions to or reimbursing the state's unemployment compensation system. Employers must also keep records showing their use of E-Verify for each new hire for three years.

Q: Are there any provisions for employees who are in the process of obtaining a work visa or permanent status?

A: No, SB 1718 does not provide any provisions for employees in these situations. However, the E-Verify system may indicate that an individual's case is under review. Possible outputs from E-Verify include (1) Employment Authorized, (2) Case in Continuance, (3) Tentative Non-Confirmation, and (4) Final Non-Confirmation. If an employer receives a Case in Continuance or Tentative Non-Confirmation ("TNC") as an initial result, they must continue to employ the individual unless they receive an updated Final Non-Confirmation for that individual. If an employer receives a TNC result, it means the entered information does not match records available to SSA and/or DHS. The employer is required to take additional action to resolve the TNC which can be reviewed here: <https://www.e-verify.gov/e-verify-user-manual-30-case-results/33-tentative-nonconfirmation-mismatch>. An employer cannot penalize or take any adverse action against an employee on the basis of a TNC.

Q: Can employees face criminal charges for transporting undocumented immigrants in company vehicles?

A: Although a prior draft of the bill would have made it a felony to transport undocumented immigrants within the state of Florida, the version that was passed only criminalizes transporting undocumented immigrants across state lines.

Q: How does this law apply to contractors and subcontractors?

A: The law only addresses this in the context of contracts with public agencies. Public agencies must require in any contract that all contractors and subcontractors use E-Verify for all new employees. The law states, "[i]f a contractor enters into a contract with a subcontractor, the subcontractor must provide the contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien." The law does not provide guidance as to private employer liability for contractors and subcontractors.

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