



E-Verify Compliance

By: Christopher A. Tinari, Esquire
Margolis Edelstein



What Is E-Verify

- Internet Based System
- Government Oversight of Unauthorized Aliens
- Operated by Department Homeland Security (DHS) & Social Security Administration (SSA)
- Allows Employers to Verify Eligibility of their Employees
- Checks I-9 Information Electronically Against Records With DHS and SSA



E-Verify Growing Rapidly

- More than 165,000 Employers are Currently Enrolled
- More than 1000 New Employers Enroll Every Week
- In 2009, More than 8.5 Million Record Searches were performed – An Increase of 28% over 2008
- Voluntary Program For All Employers Unless a Federal Contractor/Sub-Contractor
- E-Verify is a Free Service



“Final Rule” Executive Order

- Effective 9/8/09
- Federal Acquisition Regulation Rule (FAR)
- All Federal Contractors/Sub-Contractors Must Enroll If Contract Requires E-Verify As Term of Contract
- Must Take Federal Contractor Tutorial
- Applies to Employees Performing Direct, Substantial Work & New Hires Company Wide – Regardless of Working on Federal Contract



Federal Contracts

- E-Verify Clause in Contracts
- Rule Requires Insertion of Clause for Prime Federal Contracts with Performance Period of 120 Days
- Value Above the Simplified Acquisition Threshold (\$100,00.00)



Sub-Contracts

- Rule Only Covers Sub-Contractors if a Prime Contract Includes the E-Verify Clause
- Rule Extends for Services or for Construction with a Value Over \$3,000.00



Employees Affected by the Rule

- All New Employees
- All Existing Employees Who are Classified as “Employees Assigned to the Contract”
- Rule Does Not Exempt Intermittent Work Employees
- Rule Only Applies to Employees Working in the United States (50 States, D.C., Guam, Puerto Rico, U.S. Virgin Islands)
- If Hired Employee from Another Company Whom Already was E-Verified, Must Re-Verify
- Once Employee is E-Verified at Company, No Need to Re-Verify By the Same Company
- All Employees are Required to Provide a Social Security Number on Their I-9 Forms for E-Verification



Additional Issues

- All Users, Including Federal Contractors, are Prohibited from Using E-Verify Prior to a Job Offer and Acceptance by an Applicant
- E-Verify Does Not Create a Safe Harbor for Employers for Illegally Hiring an Unauthorized Alien, However, It Does Create a Rebuttable Presumption
- Employers are Required to Notify Employees of Their Participation in the E-Verify Program (Posting, Employee Handbook)