

Newsletter 7 (10), October 2008, Agricultural Labor Issues in Michigan

Dr. Vera Bitsch, Associate Professor and Extension Specialist, Department of Agricultural, Food, and Resource Economics, Michigan State University

Contact Vera at bitsch@msu.edu or visit her website at <http://www.msu.edu/user/bitsch>.

E-Verify

The E-Verify program was scheduled to sunset November 29, 2008. However, on July 31, 2008 the House of Representatives voted to reauthorize the voluntary E-Verify program for an additional five years. The Senate was not able to agree on a similar bill, but voted on September 27, 2008 to approve a continuing resolution extending the E-Verify program to March 6, 2009. President Bush signed this bill September 30, 2008. The extension opens up the possibility of a broader immigration debate or an increase in available visas, shortly after the election.

What is E-Verify

E-Verify is an Internet-based program allowing employers to verify new hires' employment eligibility by accessing information in the Social Security Administration's (SSA) database, as well as, the U.S. Citizenship and Immigration Services' (USCIS) database. Basically participating employers can compare information taken from a new hire's I-9 form against the SSA and Department of Homeland Security (DHS) immigration databases. To participate an employer must accept a Memorandum of Understanding (9 pages) and should consider the user manual describing the details of the E-Verify program (79 pages).

An employer who participates in E-Verify is required to verify the employment eligibility of all new employees, independent of their citizenship status. However, participation in E-Verify does not provide a safe harbor from worksite enforcement. A notice of participation and an antidiscrimination notice must be posted clearly visible to prospective employees. According to Scharfen, Acting Director of USCIS, over 69,000 employers representing 269,000 worksites were signed up to use E-Verify by June 2008. According to DHS, more than 10% of all new hires were checked through the E-Verify program earlier this year. Several states do require or encourage the use of E-Verify under certain circumstances and one state is trying to limit its use.

Official E-Verify Statistics

The USCIS website reports for the period of October 2006 through March 2007, 94.2% of employees were confirmed as work authorized within 24 hours. On the other hand, 5.8% received initial mismatches, also called "tentative non-confirmation." Of these tentative non-confirmations, 5.1% were from SSA and 0.7% from USCIS. Of the initial mismatches, 0.5% were later confirmed as work authorized, 0.4% from SSA and 0.1% from USCIS. The other 5.3% employees received a "final non-confirmation" response for different reasons. Possible reasons for non-confirmation include prospective employees not being authorized to work in the United States, not being aware that they had the

opportunity to challenge a tentative non-confirmation, or not following through with the procedures to prove work authorization within the required timeframe after receiving an initial mismatch.

Proponents and Opponents

Proponents of E-Verify tout that it fixes the “problem of determining legal employment eligibility in a manner employers can support” (Kephart, Center for Immigration Studies, 2008). Opponents, such as the National Immigration Law Center and the American Civil Liberties Union lament the cost of the program to taxpayers and businesses, as well as, the persistent inaccuracies and time lag of the databases.

Also, an evaluation of the web basic pilot available at the USCIS website (Westat, 2007), estimates that 17.8 million of SSA’s records contain discrepancies with respect to basic data, such as name, date of birth, or citizenship status. 12.7 million of these discrepancies pertain to U.S. citizens. Foreign born employees, including citizens, are 30 times more likely than native-born U.S. citizens to be incorrectly identified as not employment-authorized. Discriminatory practices, such as failure to inform about employees’ rights and non-rule-compliant use of E-Verify, e.g., pre-employment screening, adverse employment actions based on tentative non-confirmation, and checking current employees (as opposed to checking new employees) were frequent.

Is E-Verify Fixing the Problem

Scharfen testified before the House Committee on the Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law that the E-Verify program infrastructure would be able to handle up to 60 million queries per year, which is the projected load should E-Verify become mandatory for all U.S. employers. Even with error rates not increasing, that would amount to 3.48 million prospective employees, including a large number of citizens, receiving a tentative non-confirmation notice each year and potentially being discriminated against.

The National Immigration Law Center doubts the technical capacity of the program even with respect to mandating E-Verify for Federal contractors. In addition, they point to significant security vulnerabilities of the system, including “cyber break-ins” and potential intruders trying to manipulate the immigration system. Anyone posing as an employer can access E-Verify and all its data, because DHS lacks an employer screening process. Further, the broad access to massive databases could tempt some individuals to get into the identity theft “business.” Finally, expanding the E-Verify program without comprehensive immigration reform and a path to legal status for unauthorized workers already in the country is likely to jeopardize the economy, albeit some sectors more than others, and drive unauthorized workers, many of whom are currently paying taxes, further into a illegality.

Additional Information

The Citizenship and Immigration Services unit of the Department of Homeland Security provides detailed information on the E-Verify program and how to sign up for it at <http://www.uscis.gov> (scroll down to the icon on left hand side of the screen).

The National Immigration Law Center provides detailed analysis of the E-Verify program and current updates, as well as links to many relevant sources at <http://www.nilc.org/immsemplymnt/ircaempverif/index.htm>. The National Immigration Law Center is dedicated to protecting and promoting the rights of low income immigrants and their family members.

The Center for Immigration Studies provides a background paper supporting the E-Verify program at <http://www.cis.org/Costs>. The Center for Immigration Studies takes a mostly negative stance with respect to immigration, in general, and focuses analyses on costs, not benefits of immigration.

This newsletter is based on public websites maintained by government agencies, immigrant and civil rights groups, and research centers. Please remember that the newsletter serves educational purposes only; it does not constitute legal advice.