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THE FRONT BURNER

Should all employers use E-Verify?

Yes: Database for workers' authorization operates well

BY MELISSA A. SILVER | Guest columnist

Enrollment in E-Verify is at an all-time high, with the U.S. Citizenship and Immigration Services reporting earlier this year that E-Verify hit a milestone of over a half-million companies using the program. More important, according to the USCIS, when employers use E-Verify to confirm their employees' work authorization, they receive results within seconds. In fact, 98.8 percent of work-authorized employees are confirmed instantly or within 24 hours.

So why have there been so many heated debates on the mandatory use of this program?

There is no cost to enroll in the program. Using E-Verify creates a presumption (although it can be refuted) that the employer has not knowingly hired an unauthorized foreign national. On the flip side, private employers that are not required to use E-Verify or do not voluntarily do so are at risk of hiring unauthorized workers.

Florida already requires agencies under the direction of the governor and their contractors to verify the work eligibility of new hires through E-Verify. So why not extend it to private employers? Florida's neighbors, Georgia and Alabama, have already gone further and passed laws requiring private employers to use E-Verify. Even the U.S. Supreme Court has weighed in and held in its Chamber of Commerce v. Whiting decision that the state of Arizona was within its rights to require all employers doing business there to use the E-Verify system. And guess what? Life has gone on. The sky did not fall.

To date, nine states have various mandatory E-Verify requirements for most employers, with several others requiring its use for public employers and/or contractors. Mandating E-Verify for all employers in the nation would eliminate this patchwork of requirements and would streamline the process for any employer operating in more than one state.

Critics have various concerns, such as erroneous results preventing otherwise authorized individuals from working. However, erroneous results have declined in recent years. In fact, the USCIS reported that for fiscal year 2013, 1.19 percent of employees received initial system mismatches. That's markedly less than reported four years ago. Notably, of those 1.19 percent, 0.22 percent were confirmed as work authorized after contesting and resolving the mismatch. Of the .98 percent found not work authorized, most — .78 percent — didn't contest the mismatch, either because they chose not to or were unaware they could contest.

Opponents also argue that the system promotes identity theft and fraud. In particular, undocumented immigrants stealing Social Security Numbers, thereby wrongfully gaining employment. However, as of last year, E-Verify can now detect and prevent individuals from using fraudulent SSNs to establish their employment-eligibility verification.

Further, in order to prevent potential misuses by employers, the USCIS not only conducts presentations and provides written materials for employers, but also supplies employees with various tools and resources educating them on their rights and responsibilities when working for an E-Verify employer. For instance, it regularly conducts webinars, including a webinar dedicated to employee rights, which is presented in both English and Spanish. The USCIS also houses an employee-rights tool kit on its website. It encourages employees to report employer violations and provides the appropriate hotline numbers.

The fact of the matter is employers are required by federal law to hire only legally authorized individuals and sanctions for employing an unauthorized work force exist under federal law whether or not an employer uses E-Verify. With all of these improvements, E-Verify is like insurance for employers to confirm they have hired an authorized work force and eliminates the guesswork on whether an individual is authorized to work in the U.S.

Melissa A. Silver is a legal editor of XpertHR, a resource that helps human-resource professionals abide by global, federal, state and municipal employment law.

Today's moderator



DARRYL E. OWENS
Editorial Writer

President Obama last week set in motion the most sweeping shift in immigration policy since the Reagan era.

His executive order temporarily suspends the threat of deportation for some 4.4 million unauthorized U.S. immigrants whose kids are U.S. citizens and legal permanent residents.

While they can't vote or qualify for Obamacare, under the order the reprieved can step out of the shadows into formal American society and legally apply for work.

Still, Obama's bold stroke does nothing to decide the future of E-Verify, the hiring database created to flag unauthorized immigrants. Currently, five states compel employers to use E-Verify, while 13 other states mandate that their government agencies consult the database when hiring employees.

All told, many of the more than a half-million employers nationally that use E-Verify do so voluntarily. Yet champions of the verification system want the system made a requirement for all employers.

Advocates, such as one of today's columnists, say that E-Verify is a cost-free, speedy, accurate tool for helping to stem the flow of unauthorized immigrants.

E-Verify critics, however, like today's other columnist, dispute that the database is accurate. They argue that the system still has a propensity for errors — such as flagging authorized candidates — and a slipshod record of ignoring actual violators. And that makes E-Verify too unreliable a means for making a greater share of potentially life-changing decisions, critics contend.

By the numbers

- **23,937,505:** total number of E-Verify checks in Fiscal Year 2013.
- **1,400:** average number of new employers adopting E-Verify each week.
- **98.81:** percentage of employees who are automatically confirmed as authorized to work either instantly or within 24 hours.

No: Flawed validation tool causes workplace havoc

NICHOLAS WOODFIELD | Guest columnist

Should E-Verify, the federal government's electronic employment-verification system, be mandatory for all employers? No, because E-Verify causes havoc in the workplace.

The most recent study of its errors, released in 2012, found that the database mistakenly returned a "tentative nonconfirmation" or TNC — which can be enough to force a new hire to resign — for 0.3 percent of all queries. More than 6 percent of its final nonconfirmations, a firm ground for firing, went to workers who actually were eligible to work.

To put this in concrete terms: In one year, before any national requirement, E-Verify unfairly gave employers a reason to fire almost 12,000 perfectly legitimate new hires.

And that's just the collateral damage. E-Verify is much worse at its core task of flagging applicants who truly aren't eligible to work. The last authoritative study showed that E-Verify flubbed this mission at least half the time, failing to identify anywhere from 37 percent to 64 percent of unauthorized workers.

If E-Verify were a commercial product, in short, no rational employer would pay to use it. It fails to identify illegal workers, and it turns away thousands of legal workers each year.

Even more insidious: the discrimination that lurks below E-Verify's top-level statistics. The federal verification database works badly for everyone, but it works worst for "green card" holders and other noncitizens who are eligible to work in the U.S.

For U.S. citizens, E-Verify mistakenly returned a TNC for 0.2 percent of queries, according to the latest study. That's an improvement from past performances. But for green-card holders, this "false negative" rate was 0.7 percent, and for other authorized noncitizens, the rate was a shocking 4.2 percent. And those rates are not falling.

Concrete terms once more: For every 500 U.S. citizens who are hired, one may lose a job unfairly because of an E-Verify mistake. That's bad enough, but compare it to noncitizens who hold work visas — and are just as entitled to work. If 500 such workers are hired, 21 of them may lose their jobs unjustly or be forced into a draining legal challenge.

Among the biggest reasons for these E-Verify mistakes, which devastate the lives of real people:

- A lag in recording changes in citizenship or visa status.
- Failure to record name changes, especially after marriage.
- Bad data entry by the employer.

Then there's abuse of the E-Verify system by employers due to ignorance, discrimination or both.

In a recent survey, almost 5 percent of businesses that use E-Verify admitted that they cherry-pick the new hires whose eligibility they'll check before work starts, a violation that's likely to work against foreign-born workers. About 9 percent said they use E-Verify to screen job applicants before even offering them a job, a practice that is not allowed but that has more than doubled since 2008.

About 14 percent of businesses said they have used E-Verify to check the work authorization of previously hired workers, another violation that's likely to be used for discriminatory purposes.

Almost 15 percent of businesses said they restrict the work assignments of new hires who receive a TNC — a forbidden practice that clearly discriminates against noncitizens, who are much more likely to get a mistaken TNC in the first place. (A TNC is not a final ruling, and employers aren't supposed to act on it.) About 3 percent of employers even said they discourage workers from contesting TNCs, another forbidden practice.

Finally, we have the implications of turning employers into the nation's immigration policemen, and of giving the federal government an effective veto on every hiring decision in the U.S. economy. Neither is advisable.

Nicholas Woodfield is principal and general counsel at The Employment Law Group, P.C. in Washington, D.C.



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The Needle

Defense Secretary Chuck Hagel resigned after sources say the White House became frustrated with his often embarrassing and contradictory remarks — at which point Biden started packing his things."

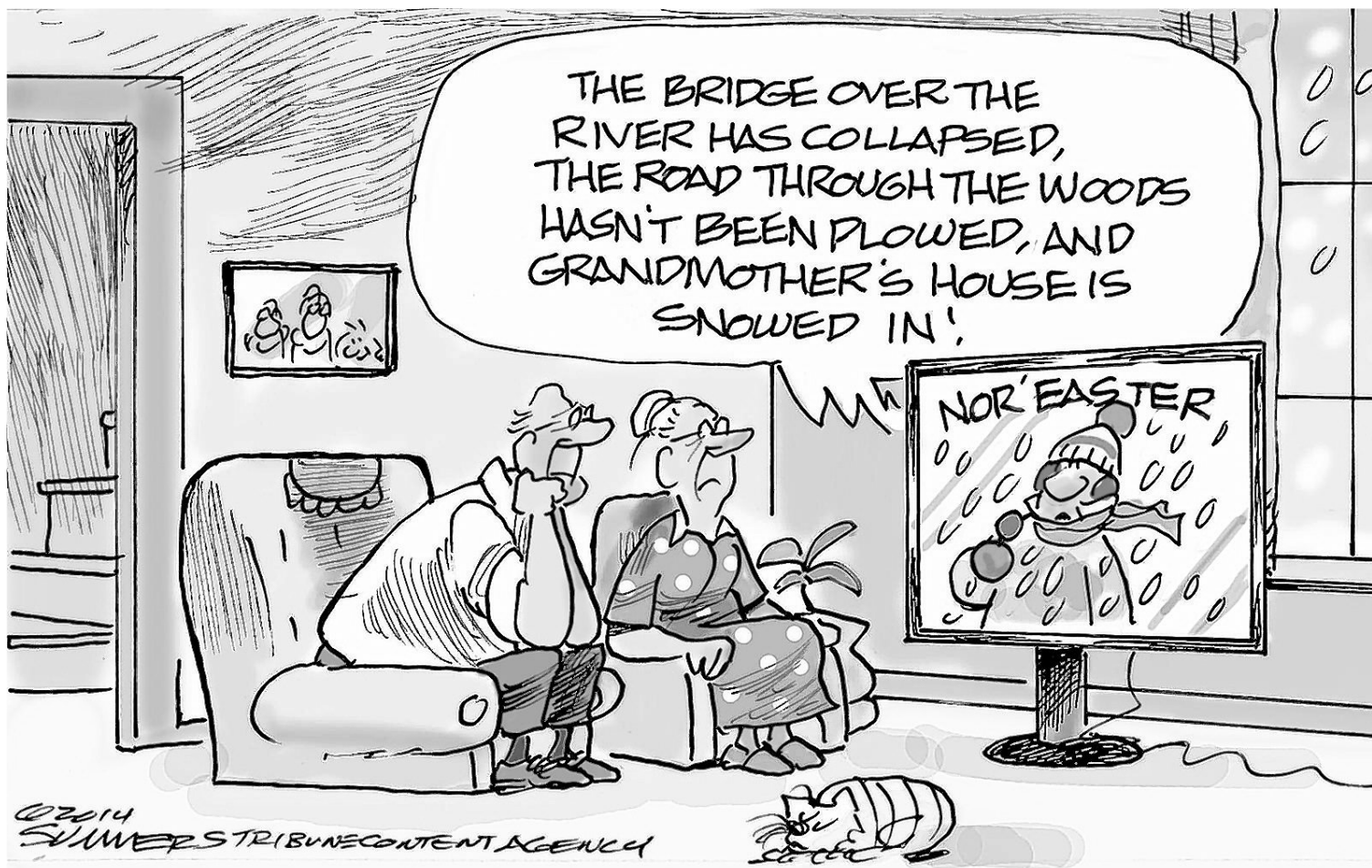
— Jimmy Fallon

Republicans: We're Not Scientists; Scientists: We're not Republicans"

— Ironic Times

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