

Florida's New Mandatory E-Verify Law

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Florida has enacted a [new law](#) that makes the use of E-Verify mandatory for all government employers and certain private employers. This will require changes in employers' hiring to some extent beginning January 1, 2021.

While E-Verify is a voluntary program to many, for more and more employers, it is becoming the not-so-voluntary system of choice.

On June 30, 2020, Florida joined the growing number of states to pass a version of a mandatory E-Verify statute. Governor Ron DeSantis signed legislation that will require all public employers, including local school districts, public universities, and colleges, and state and local agencies, as well as their private contractors, to use E-Verify, a federal electronic database intended to aid employers in confirming against federal databases that the documentation provided by new hires to establish lawful employment eligibility are in fact valid.

Campaign Promise; COVID-19

As a candidate in 2018, [Governor DeSantis promised](#) to mandate the use of E-Verify. This was controversial and opposed not only by some immigrant advocacy groups, but also by business groups — especially those in agriculture, construction, and hospitality.

A spokesperson for the Governor [explained](#), “Given the high unemployment rate due to COVID-19, it is more important than ever to ensure that the state’s legal residents benefit from jobs that become available”

Key Provisions

Beginning January 1, 2021, every public employer, contractor, and subcontractor in Florida must enroll in and use the E-Verify system to confirm the eligibility of all new employees.

Additionally, no public contract can be entered into without an E-Verify certificate. Any subcontractor working on a public contract must provide the contractor with an affidavit (which must be retained by the contractor during the duration of the contract) stating that the subcontractor does not employ, contract with, or subcontract with unauthorized aliens. Contractors will need to go through this process for all public projects.

Private employers are not required to use the E-Verify system unless they have a contract with a public employer, or they apply for taxpayer-funded incentives through the state Department of Economic Opportunity.

All employers must still complete and maintain “I-9 Employment Eligibility Verification” forms for the duration of employment, and for at least one year from the date the employee is terminated or three years from hire, whichever is later under the federal Immigration Reform and Control Act of 1986.

In addition, under the new Florida law, any private employer who does not use E-Verify must also maintain copies of the documents used to complete the Form I-9 for three years (which is optional under federal law).

Next Steps for Employers

Florida public employers and those who bid on public contracts should be ready to comply with the new law by updating their onboarding and new hire practices.

Private employers who choose not to use E-Verify should continue to complete and maintain I-9 verification records, including copies of the documents that were reviewed. The enforcement procedures under the new E-Verify mandate are significant, and failure to comply with the law could result in suspension or termination of business licenses.

Moreover, additional government scrutiny at both state and federal levels of employment verification records is possible when the COVID-19 pandemic subsides. Employers should be prepared by periodically auditing their employment verification records to ensure they have been completed fully and properly. Jackson Lewis attorneys are available to answer your questions about state E-Verify requirements and to assist employers in setting up employment verification policies and conducting internal compliance audits.

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