



U.S. DEPARTMENT OF JUSTICE
IMMIGRANT & EMPLOYEE RIGHTS SECTION
CIVIL RIGHTS DIVISION

INFORMATION FOR EMPLOYERS ON HOW TO AVOID DISCRIMINATION IN E-VERIFY

E-Verify is an electronic program that assists enrolled businesses in determining if their employees are eligible to work in the United States. U.S. Citizenship and Immigration Services (USCIS) administers the E-Verify program. The Immigrant and Employee Rights Section (IER) enforces a law that prohibits employers from using the E-Verify program in a discriminatory manner based on citizenship status or national origin. This law is found at [8 U.S.C. § 1324b](#) and the regulations for this law are at [28 C.F.R. Part 44](#). IER provides employers with information on how to avoid discrimination when using the E-Verify program. You can get more information on the law governing E-Verify and E-Verify rules at www.e-verify.gov, 8 U.S.C. § 1324a note (the E-Verify law), your [Memorandum of Understanding](#) with USCIS (E-Verify MOU) and the [E-Verify User Manual](#).

Non-discriminatory use

Use E-Verify consistently and without regard to an employee's citizenship, immigration status, or national origin to avoid violating the law that IER enforces and E-Verify rules.

For example, do not use E-Verify selectively based on a suspicion that an employee may not be authorized to work in the U.S., or use it to pre-screen certain applicants based on their citizenship status or national origin (real or perceived). In addition to the law that IER enforces, such selective use also may violate Section 403(a)(3)(A) of the E-Verify law, and Article II.A, paragraph 11 of the E-Verify MOU.

Self-Check

E-Verify Self Check is a voluntary online service that allows individuals to confirm their own employment eligibility themselves. Under the E-Verify and Self Check rules, employers must not ask current or prospective employees to use Self Check to prove employment eligibility. Find more information on the permissible uses for Self Check in the E-Verify User Manual, Sect. 1.1 and at www.e-verify.gov/mye-verify/self-check. Requesting a worker to use Self Check based on the worker's citizenship status or national origin might violate the law that IER enforces at 8 U.S.C. § 1324b(a)(1) or (a)(6).

Following E-Verify rules for creating cases

The E-Verify law and rules explain when and how employers can create an E-Verify case for a worker. Employers only use E-Verify for new employees and only after they have completed the Form I-9. You can get more information at Section 403(a)(3)(A) of the E-Verify law and Article II.A, paragraph 11 of the E-Verify [MOU](#), along with Section 2 of the [E-Verify User Manual](#). Employers do not create an E-Verify case for existing employees, unless permitted as a federal contractor. The rules for when a federal contractor is required or allowed to create an E-Verify case for an existing employee are in Article II.B of the E-Verify MOU and in the E-Verify User Manual.

Tentative Nonconfirmation (TNC)

If you get a TNC for a case, Article II.A, paragraph 12 of the E-Verify MOU directs you to provide promptly and review privately the Further Action Notice with any employee who receives a TNC. Section 3 of the [E-Verify User Manual](#) discusses the TNC process in more detail. The employee, and not the employer, chooses whether to take action to resolve the TNC. Influencing or coercing an employee's decision whether to take action to resolve a TNC based on the employee's citizenship status or national origin may violate the law that IER enforces at 8 U.S.C. § 1324b and could violate Article II.A, paragraphs 12-13 of the E-Verify [MOU](#).

If the employee chooses to take action to resolve the TNC, you next provide the Referral Date Confirmation. Do not ask an employee to present additional documentation or to obtain a printout or other written verification from SSA or DHS after referring that employee to either agency. Requesting more documents than are necessary to satisfy the Form I-9 or E-Verify based solely on citizenship status or national origin may violate the law that IER enforces at 8 U.S.C. § 1324b(a)(6). Instead, continue to check E-Verify for updates.

The E-Verify law and rules direct employers not to terminate, delay the start date or take other adverse action against an employee based on a TNC result. You can get more information at Section 403(a)(4)(B)(iii) of the E-Verify law.

More examples of adverse actions based on a TNC result that the E-Verify program prohibits are denying or reducing scheduled hours, requiring the employee to work in poorer conditions, or subjecting the employee to any assumption that the employee is unauthorized to work during this period, unless and until there is a Final Nonconfirmation (FNC).

Checking E-Verify daily for updates in connection with the TNC will ensure that you do not miss any case status changes.

Final Nonconfirmation (FNC)

E-Verify instructs employers and employees to contact E-Verify if FNC issues that the employer or the employee believes is in error.

Acceptable documents

Under the Form I-9 instructions, employees can present any documentation from the Lists of Acceptable Documents. All employees can choose to present either an unexpired List A document, or an unexpired List B document together with an unexpired List C document. Under Section 403(a)(2)(A)(ii) of the E-Verify Law, if an employee chooses to provide a List B document to an employer that uses E-Verify, the List B document must have a photo.

Social Security Numbers

The E-Verify program instructs you to [delay creating an E-Verify case](#) for a worker who has not yet received a Social Security number until the worker has received a Social Security number. Once a worker has completed the Form I-9, he or she can work, even if he or she is still waiting for a Social Security number. [E-Verify rules](#) specifically allow for this delay in creating the E-Verify case and provide instructions for creating the case. More information is available at www.e-verify.gov.

Display the E-Verify participation poster (available from E-Verify) and the anti-discrimination IER poster (available from IER), as Article II.A, paragraph 1 of the E-Verify MOU requires.

Immigrant and Employee Rights Section (IER)

1-800-255-7688

www.justice.gov/ier

Calls can be anonymous and language services are available.

TTY-1-800-237-2515

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