Employer Fact Sheet

How to Avoid Discrimination in E-Verify

This fact sheet discusses how you, as an employer, can avoid discrimination when the E-Verify program.

E-Verify is an electronic program that assists enrolled businesses in determining if their employees have permission to work in the United States. U.S. Citizenship and Immigration Services (USCIS) administers the E-Verify program.

The Civil Rights Division's Immigrant and Employee Rights Section (IER) enforces a law that prohibits employers from using the E-Verify program in a discriminatory manner based on employees' citizenship status or national origin. This law is found at 8 U.S.C. § 1324b.

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For questions about this fact sheet, call the Civil Rights Division's **Immigrant and Employee Rights Section** at

1-800-255-8155

Non-discriminatory use

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

For example, don't use E-Verify selectively based on a suspicion that an employee may not be authorized to work in the U.S. Don't use E-Verify to pre-screen certain applicants based on their citizenship status or national origin.

Self Check

E-Verify Self Check is a voluntary online service that allows individuals to confirm their own employment eligibility.

<mark>Don't ask current or prospective employees to use Self Check to prove their permission to work</mark>. Asking a worker to use Self Check based on the worker's citizenship status or national origin might violate the law.

Following E-Verify rules for creating cases

The E-Verify law and rules explain when and how you can create an employee's E-Verify case.

Only use E-Verify for new employees and only after your employees have completed the Form I-9.

Don't create an E-Verify case for existing employees unless permitted as a federal contractor.

Tentative Nonconfirmation (TNC or mismatch)

If you get a **mismatch** for a case, provide the corresponding **Further Action Notice** to the affected employee promptly and review it with them privately.

Your employee chooses whether to take action to resolve the mismatch. Influencing or coercing an employee's decision about whether to take action to resolve a mismatch based on the employee's citizenship status or national origin might violate the law.

If your employee chooses to take action to resolve the mismatch, you next provide the **Referral Date Confirmation**.

Don't ask your employee to present additional

documentation or to get a printout or other written verification from the Social Security Administration or the Department of Homeland Security after referring that employee to either agency. Requesting more documents than are necessary to satisfy the Form I-9 or E-Verify based on citizenship status or national origin might violate the law. 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 who has decided to take action on a mismatch, based on the pending mismatch.

More examples of adverse actions that E-Verify prohibits in response to a pending mismatch are denying or reducing the employee's scheduled hours, requiring the employee to work in poorer conditions, or subjecting the employee to any assumption that they are unauthorized to work during this period.

Final Nonconfirmation

If you receive a **Final Nonconfirmation** and you or your employee believe the Final Nonconfirmation was issued in error, you or your employee can call E-Verify for help.

Acceptable documents

Employees may present any documentation from the Lists of Acceptable Documents for the Form I-9.

All employees may present either acceptable List A documentation or a combination of acceptable List B and List C documentation.

If an employee chooses to provide a List B document and you use E-Verify, the List B document must have a photo.

Social Security numbers

Wait to create an E-Verify case for an employee who is still waiting for their Social Security number until they've received their Social Security number.

Once your employee has completed the Form I-9, they may work, even if they are 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.

Display the E-Verify participation poster (available from E-Verify) and the anti-discrimination IER poster (available from IER).

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Contact

Civil Rights Division, Immigrant and Employee Rights Section (IER)

- **Call the Employer Hotline** at 1-800-255-8155
- **For people with hearing disabilities 1-800-237-2515**
- Calls can be anonymous.
- Free language services are available.
- To learn more, visit justice.gov/ier

U.S. Citizenship and Immigration Services (USCIS)

- **For questions** on properly creating an E-Verify case, call 1-888-464-4218
- **For people with hearing disabilities 1-877-875-6028**
- To learn more, visit uscis.gov/i-9central or e-verify.gov