



Office of Special Counsel for Immigration-Related Unfair Employment Practices

U.S. Department of Justice Civil Rights Division

How Advocates Can Identify Possible E-Verify-Related Employment Discrimination

E-Verify is an Internet-based program run by the U.S. Government. Some employers use E-Verify to check if employees can legally work.

What E-Verify Is and When It Can Be Used

- E-Verify verifies the employment authorization of new hires based on information provided on the Form I-9. E-Verify may not be used to prescreen applicants.
- Employers enrolled in E-Verify must use E-Verify for all new hires (both U.S. citizens and non-citizens) and cannot use it to verify current employees unless the employer is required to use E-Verify for current employees based on a federal contract containing a Federal Acquisition Regulation (FAR) clause.
- E-Verify cannot be used to reverify an employee's expired employment authorization.

What Happens When Information Does not Match Government Records

- Once an employer submits a case to E-Verify, E-Verify determines if the information entered matches the information in government records. After the information is submitted, E-Verify provides an initial case result, which is either "Employment Authorized" or "Tentative Nonconfirmation" (TNC).
- If an employee receives a TNC, the employer must promptly provide the employee with a written notice about the TNC (a Further Action Notice), which explains the reason for the TNC and provides instructions for resolving the TNC. An employee must then elect to contest or not contest a TNC.
- If an employee decides to contest a TNC, the employer must give the employee a Referral Date Confirmation, which provides the date by which the employee must contact either the Department of Homeland Security (DHS) or the Social Security Administration (SSA), depending on the source of the mismatch. Both notices are available in 18 languages.
- If an employee includes an email address on his/her I-9 Form, E-Verify will also contact the employee directly about the TNC. However, the employer still has to provide the written notices.

Worker Rights During Resolution of TNC

- Employers cannot take any adverse action based on an E-Verify TNC against an employee who contests the TNC. Adverse actions include firing, suspending, withholding pay or training, asking for more work authorization documentation, or otherwise infringing upon the employee's employment.
- If an employee elects to contest a TNC, the employer should indicate so in the E-Verify system and the employee then has eight federal government work days to contact the appropriate federal agency to begin the resolution process. The deadline for contacting the agency is on the Referral Date Confirmation.
- Employers must allow employees to work while they are contesting their TNCs, even if it takes longer to resolve the TNC than the initial eight-day period that the employee has to contact the appropriate federal agency. Employers must not take adverse action against an employee unless and until the employee receives a Final Nonconfirmation (FNC). If an employee receives an FNC that he or she believes to be in error, the employee should contact the E-Verify worker hotline listed below.

For more information, call the OSC Employee Hotline 1-800-255-7688
TDD for hearing impaired: 1-800-237-2515 or visit the OSC website at: www.justice.gov/crt/osc



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E-Verify Discrimination and Misuse

Following E-Verify's procedures should ensure equal treatment of work-authorized employees regardless of national origin and citizenship or immigration status. However, some employers may not follow E-Verify rules for handling a TNC and may take adverse action against an employee who chooses to contest a TNC. Problems may also arise if the employer never informs the employee that it uses E-Verify or that the employee received a TNC.

Employees may not always know that their employer uses E-Verify. You can identify possible E-Verify issues if a worker states:

- **My employer told me that my information didn't go through the system.**
- **My employer told me my papers are not valid.**
- **My employer told me my Social Security number is not valid.**
- **My employer told me I am not work authorized.**

You may also uncover possible E-Verify issues by asking the following questions:

- 1. Did your employer give you any notices saying your papers are not valid? If so, do you have any copies?**
- 2. Did your employer tell you to go to SSA to fix a problem with your Social Security card?**
- 3. Did your employer tell you to contact DHS to fix a problem with your immigration status?**
- 4. Were you fired within the first few days after starting work because of an issue with your papers?**
- 5. Did your employer enter your information into a computer system, and then tell you your papers were not valid?**
- 6. Did your job offer depend on the information from your papers going through a computer system?**
- 7. Did your employer tell you to sign a paper stating that you did not want to contest your E-Verify results?**

If a work-authorized individual suffered an adverse action and calls OSC's hotline (800-255-7688), our office may be able to immediately contact the employer to resolve the issue and safeguard the individual's employment. If OSC learns that an employer may be unlawfully discriminating in the E-Verify process, OSC may also open a formal investigation and seek to identify other employees affected by the employer's practices.

U.S. Citizenship and Immigration Services (USCIS) also has an E-Verify hotline (888-897-7781) that can provide assistance if you or an employee:

- Has general E-Verify questions.
- Needs help resolving a TNC.
- Believes an employer does not know how to use the E-Verify system.
- Wishes to report privacy concerns related to an employer's use of E-Verify.

The longer an employee waits to address a potential E-Verify problem, the more difficult it is to resolve. Advocates and/or workers should call the OSC hotline to address potential discrimination, or call the E-Verify hotline for other E-Verify issues.

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