

# **Discrimination Information for Employees of Federal Contractors Enrolled in E-Verify**

## **1. What is E-Verify?**

E-Verify is an Internet-based system operated by the Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) that allows employers to electronically verify the employment eligibility of their employees. E-Verify checks the information provided on an employee's Form I-9 against records contained in DHS and Social Security Administration (SSA) databases.

## **2. I heard that there are new federal regulations requiring federal contractors to use E-Verify. Where can I find a copy of those regulations?**

The regulations can be accessed through the Federal Register, or click [here](#). The regulations' applicability date was delayed until September 8, 2009 click [here](#).

## **3. Does the anti-discrimination provision of the Immigration and Nationality Act (INA) apply to federal contractors required to use E-Verify?**

Yes. The anti-discrimination provision of the INA prohibits hiring discrimination and discrimination by employers in the employment eligibility verification process, on the basis of citizenship status or national origin. For more information on the anti-discrimination provision of the INA, click [here](#).

## **4. How do I know if my employer is a federal contractor required to use E-Verify?**

In general, a federal contractor is a person or entity that has a contract with the federal government. Your employer is only required to use E-Verify as a federal contractor if its contract with the federal government contains an E-Verify clause requiring E-Verify use. Generally, an E-Verify clause will be inserted into a contract having a value of more than \$100,000. Furthermore, an E-Verify clause will not be inserted into contracts lasting less than 120 days, contracts for work being performed outside the United States, or contracts for "Commercially available off-the shelf" (COTS) items. For more information, see USCIS's [Frequently Asked Questions: Federal Contractors and E-Verify](#).

## **5. How do I know if my employer is a subcontractor required to use E-Verify?**

If your employer provides more than \$3,000 worth of services or construction for a federal contract and the prime contract contains the E-Verify clause, your employer is likely required to use E-Verify. For more information, see USCIS's [Frequently Asked Questions: Federal Contractors and E-Verify](#).

## **6. My employer is a federal contractor required to use E-Verify. Will I be run through E-Verify?**

It depends. In general, federal contractors who participate in E-Verify are required to use E-Verify for all new employees and existing employees who are “employees assigned to the contract.” There are important exceptions, however:

- An employee should only be verified using E-Verify once (you should not be verified using E-Verify if you were already verified at the time of hire using E-Verify).
- Employees hired on or before November 6, 1986, may not be verified using E-Verify and may not be required to complete a Form I-9.
- Employees who have an active federal agency HSPD-12 credential or who have an active U.S. Government security clearance for access to confidential, secret, or top secret information do not need to be verified.
- Institutions of higher learning, state and local governments, governments of federally recognized Indian tribes, and sureties performing under a takeover agreement with a federal agency may choose to only use E-Verify on new and existing employees assigned to the covered federal contract.

For more information about which federal contractor employees may be run through E-Verify, see USCIS’s [Frequently Asked Questions: Federal Contractors and E-Verify](#).

**7. I was run through E-Verify at my last job. I’ve been at my new job for a year and was told that my current employer as a federal contractor wants to run me through E-Verify even though it did not run my information through E-Verify when I started this job. Is my current employer allowed to run me through E-Verify?**

Probably. Your employer can run you through E-Verify, assuming your employer has an E-Verify clause in its government contract and 1) is required to run you through E-Verify as an employee assigned to work on that contract, or 2) has elected to run its entire workforce through E-Verify. However, certain exceptions apply. See the previous question.

If your employer is required or permitted to run you through E-Verify, it cannot rely on your previous employer’s E-Verify submission.

**8. I have been working for my employer for awhile. Even though I completed an I-9 form when I started my job, my employer is now asking me to complete a new I-9 form. Is this permitted?**

It depends. Your employer may have a valid reason for asking you to complete a new Form I-9. If your employer has a contract with the federal government and is now required to run those employees working on that contract through E-Verify, your employer may ask you to complete a new Form I-9 if the one you originally completed cannot be relied upon to run your information through E-Verify. You should ask your employer why you are being asked to complete a new I-9 Form and contact OSC if you believe your employer is requiring you to complete a new I-9 Form based on your national origin or your immigration status, or based on your employer’s perception about your eligibility to work.

Your employer may not use the Form I-9 that you originally completed unless all of the following conditions are met:

- The Form I-9 is complete and includes your Social Security Number; **and**
- If you presented a List B document to complete the Form I-9, the List B document contains a photo; **and**
- If you presented a Permanent Resident Card (Form I-551) or Employment Authorization Document (Form I-766) to complete the Form I-9, your employer made a copy of the Permanent Resident Card or Employment Authorization Document; **and**
- Your work authorization has not expired; **and**
- The employer has confirmed with you that your basis for work authorization has not changed (such as a lawful permanent resident having become a U.S. citizen).

If your Form I-9 meets the above criteria and you originally presented a Permanent Resident Card (Form I-551) or U.S. Passport that has since expired to complete your Form I-9, your employer may not request additional documentation from you and may not use E-Verify's "photo screening tool." For more information, see the E-Verify MOU, Article II(D)(1)(e) (link - <http://www.uscis.gov/files/nativedocuments/MOU.pdf>).

### **9. What if my information does not clear through E-Verify right away?**

Most employees are verified through E-Verify instantaneously, but not all. If the information you provide on the I-9 form does NOT match information contained in Social Security Administration (SSA) or Department of Homeland Security (DHS) records, E-Verify will alert your employer to this information mismatch and generate what is called a tentative nonconfirmation (TNC) notice. This notice is available in English and Spanish.

### **10. What if my employer tells me that E-Verify generated a TNC notice for me, but doesn't show me anything generated by E-Verify?**

If E-Verify generates a TNC, your employer must promptly provide you with the written TNC notice generated by E-Verify which explains your choice to challenge the TNC. You must indicate on the form whether you choose to challenge the TNC, sign the form, and return it to your employer. For more information, see the E-Verify MOU. (link - <http://www.uscis.gov/files/nativedocuments/MOU.pdf>).

### **11. How do I go about correcting a TNC?**

If you decide to challenge the TNC, your employer must then promptly provide you with a referral letter issued by E-Verify that contains specific instructions and contact information. This notice is available in English and Spanish.

You must be given eight federal government work days from the date on the referral letter to contact the appropriate federal agency (SSA or DHS) to challenge the TNC.

If you choose to challenge an SSA TNC, the referral notice will direct you to visit an SSA field office to update your record. If the referral letter indicates SSA is unable to confirm your U.S. citizenship, the SSA referral notice will also provide a phone number and the option of calling USCIS directly to resolve the TNC. For more information, see the E-Verify MOU. (link - <http://www.uscis.gov/files/nativedocuments/MOU.pdf>).

**12. What if my employer refuses to permit me to work after E-Verify generates a TNC for me?**

Your employer may not influence your decision to challenge a TNC, nor may it take any adverse action against you while you are challenging the TNC. This includes denying or reducing your scheduled hours, delaying or preventing your training, mistreating you, requiring you to work longer hours, requiring you to work in poorer conditions, refusing to assign you to a Federal contract or other assignment, or subjecting you to any assumption that you are unauthorized to work during this period, unless and until receiving a final nonconfirmation or no show response. For more information, see the E-Verify MOU. (link - <http://www.uscis.gov/files/nativedocuments/MOU.pdf>).

For questions about possible discrimination in the use of E-Verify, call OSC's worker hotline at 1-800-255-7688.