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FLORIDA'S NEW MANDATORY E-VERIFY LAW WILL REQUIRE CHANGES TO HIRING PRACTICES IN THE NEW YEAR

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Beginning on January 1, 2021, Florida's new "Verification of Employment Eligibility" statute will require many employers to use the federal E-Verify system before hiring any new employees. This new law could force significant changes to your hiring practices. What do Florida employers need to know about this significant development?

LEGISLATIVE BACKGROUND AND CAMPAIGN PROMISES

E-Verify was introduced by the U.S. Department of Homeland Security in partnership with the Social Security Administration as a voluntary program. However, many employers in Florida will soon be faced with mandatory implementation of the web-based system to confirm employment eligibility for new hires.

Under [preexisting federal law](#), all employers are required to complete an I-9 Employment Eligibility Verification form for each new employee to verify the identity and eligibility of that employee to work in the United States. Since its inception in 1996, most states have also encouraged *voluntary* participation in the federal government's [E-Verify](#) program, which compares information supplied by an employer from its Form I-9 to information available to the federal

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government from various databases. Only nine states require E-Verify for all employers.

Since 2011, E-Verify has been required on all state projects in Florida. However, following a nationwide trend of growing support for the federal employment verification system, Governor Ron DeSantis signed [Florida Senate Bill 664](#) on June 30, requiring all public employers – as well certain private employers – to use E-Verify beginning January 1, 2021.

As a gubernatorial candidate in 2018, DeSantis vowed to mandate the use of E-Verify among all employers in the state. This was controversial and opposed not only by some immigrant advocacy groups, but also by business groups — especially those in agriculture, construction, and hospitality. Following Governor DeSantis' signing of the bill, a spokesperson 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 as Florida continue to reopen in a safe and smart manner." While the measure expands the use of E-Verify, Florida does not join the states that require use of the system in hiring practices for *all* employers.

WHAT DOES THE NEW LAW REQUIRE?

There are varying obligations for employers depending on whether they are public or private, and whether they contract with the state or receive certain state incentives.

PUBLIC EMPLOYERS AND PRIVATE EMPLOYERS WHO CONTRACT WITH THE STATE OR RECEIVE STATE INCENTIVES

Once in effect, every Florida public employer, along with their private contractors and subcontractors, must enroll in and use the E-Verify system to confirm the eligibility of all employees hired after January 1, 2021. No public contract can be entered into without an E-Verify certificate.

Any contractor who hires a sub must require an affidavit stating that they don't employ, contract with, or subcontract with any unauthorized immigrants. Importantly, this affidavit provides for *all* newly hired employees, not just those working on government contracts. This affidavit must be kept by the general contractor for the duration of the contract and all contractors will need to go through this process for each public project.

If a public employer has a good faith belief that these requirements have been knowingly violated, it can terminate the contract, without liability for breach of contract, or demand that its contractor terminate any noncompliant subcontractors. Terminations for purported violations of these requirements may be challenged in court within 20 days of the date of termination. However, if the contractor is in fact found guilty, the contractor will be barred from public contracting for at least a year after termination and may be held liable for any additional costs associated with the termination.

In addition to private employers who contract with public entities, these new E-Verify employment eligibility requirements will also apply to employers who receive taxpayer-funded incentives through the state Department of Economic Opportunity. Beginning on January 1, 2021, the DEO will not approve an economic development incentive application unless the application includes proof that the applicant business is registered with and uses the E-Verify system in the eligibility verification process for all newly hired employees. Should the DEO make a final determination that an awardee has failed to be compliant, the employer will be forced to repay all moneys received by the DEO as an economic incentive.

E-VERIFY FOR ALL OTHER PRIVATE EMPLOYERS

For private employers who do not contract with the state or receive state incentives, Florida law will now require these private employers to use E-Verify, or

alternatively use the Form I-9 and maintain copies of the documents used to complete the Form for three years (which is optional under federal law). If the E-Verify certificate or Form I-9 documentation is requested by certain parties (such as the State Attorney, Attorney General, Department of Law Enforcement, etc.), the employer must provide them with proof of the employee's eligibility.

Private employers accused of non-compliance will be provided notice from the DEO and the employer must terminate any unauthorized employees, begin complying with the legal procedures, and respond with an affidavit of compliance within 30 days. Failure to do so risks potential suspension of existing licenses until the employer provides such an affidavit. If an employer fails to properly respond to a DEO notice three times in any 36-month period, it could permanently lose its business licenses and may be liable for additional civil or criminal liabilities.

The E-Verify requirements will also go into effect for the private sector on January 1, 2021. This new law will not apply to any employees that were hired before then. However, any existing employment contracts that need to be renewed or extended after that date will be required to go through the verification process without going through the E-Verify process.

ENSURING COMPLIANCE READINESS IS THE NEXT STEP FOR EMPLOYERS

Public employers in Florida and those who bid on contracts with the state 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 Form 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 can seriously impact your ability to do business within the state.

Notably, government scrutiny of employment verification records at both the state and federal level has the potential to increase when the COVID-19 pandemic subsides. You can prepare for government reviews by periodically auditing your employment verification records to ensure you have been completed fully and properly.

Fisher Phillips will continue to monitor further developments and provide updates in the coming months, so make sure you are subscribed to [Fisher Phillips' alert system](#) to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney, and attorney [in our Florida offices](#), or any attorney in our [Immigration Practice Group](#).

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