

TO E-VERIFY OR NOT TO E-VERIFY: WEIGHING THE PROS AND CONS

Insights
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Employers often have questions about whether they should use E-Verify to help determine whether their new hires are authorized to work in the United States. The program – which matches I-9 data with the information in various government databases – is voluntary for most employers but mandatory for federal contractors and some employers in certain states. Ultimately, its goal is to help employers stay compliant with federal employment and immigration regulations. But is E-Verify right for you? Consider these five pros and five cons when deciding whether to incorporate it into your hiring process. *[To learn more about I-9 compliance, join our [advanced training webinar](#) on December 6.]*

Top 5 Reasons Why Employers Should Consider Using E-Verify

- 1. Electronic Verification:** When hiring a new employee, you must complete a Form I-9 and physically examine the employee's identity and work authorization documents. Notably, however, [a new benefit just became available for employers that are enrolled in E-Verify](#) allowing them to conduct document verification electronically rather than in person.
- 2. Speed:** Employers that use E-Verify receive an initial determination almost immediately regarding a new employee's authorization to work.
- 3. Good Faith Defense:** When an employer confirms the identity and employment eligibility of newly hired employee using E-Verify procedures, you may rely on the

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system's confirmation of that employee's work authorized status, creating a presumption of good faith in the hiring process. This serves as an extra layer of protection and confidence when it comes to compliance.

4. **Easy integration:** E-Verify can be integrated into an employer's existing onboarding and HR processes and can also be accessed online.
5. **Government Benefits:** Depending on the state, employers may receive state contracts, grants, or incentives for using E-Verify. Additionally, enrollment in E-Verify is a requirement for being awarded certain federal government contracts.

Honorable Mention – Extra Options for Hiring Foreign Nationals: *Employers that are enrolled in E-Verify can hire foreign students on F-1 visas for an additional period of two years for Science, Technology, Engineering, and Mathematics (STEM) positions.*

Top 5 Reasons Why Employers May Not Want to Use E-Verify

1. **Drain on Resources:** Employers will need to learn how to use E-Verify, stay up to date with ever-changing regulations, and ensure their IT systems can manage the process and keep up with changes.
2. **False Positives and Negatives:** E-Verify is not foolproof, and errors can occur. The system may sometimes flag individuals who are authorized to work (false positives) or fail to identify unauthorized workers (false negatives).
3. **Privacy Concerns:** E-Verify involves the collection and storage of sensitive personal information, such as Social Security numbers. This has raised concerns about privacy and the potential for identity theft or misuse of this information.
4. **Extra Management:** Employers that use E-Verify must consistently use the system for all employees and subject themselves to ICE audits to verify both I-9 and E-Verify compliance. Using E-Verify does not decrease the chance of an I-9 audit.
5. **Government Shutdown:** Employers should consider recent and future threats of government shutdowns, as E-Verify is not available while the federal government is not

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operating. Although E-Verify will be available after a shutdown ends, there is a period where employers may not submit data.

Honorable Mention – Reliance on Technology: *As a web-based service, E-Verify requires access to reliable internet, certain software, and a printer.*

Conclusion

Fisher Phillips will continue to monitor E-Verify and I-9 Form developments and will provide additional guidance as it becomes available. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information and invitations to our webinars. If you have further questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney on our [Immigration Practice Group](#).

Don't forget to join our [advanced training webinar](#) on December 6 to learn more about I-9 compliance, including how to conduct an internal audit.