

E-Verify

The United Food and Commercial Workers International Union represents 1.3 million workers in North America, primarily in the grocery, retail, and meatpacking industries.

The errors in the Social Security Administration (SSA) and Department of Homeland Security (DHS) databases resulting in false negatives and the inability of E-Verify to identify identity fraud through false positives are causes for concern, but the primary concern with the system is that the power of employment verification rests with employers.

Employers signed up with E-Verify are required to follow protective guidelines like not pre-screening employment applicants and giving employees an opportunity to appeal a tentative non-confirmation from the E-Verify system, including keeping an employee on the payroll until a final determination is made by DHS or SSA. Employers who run a business have an incentive to maximize profit and efficiency however, and small steps and guidelines designed to protect workers such as those set forth in E-Verify will often be ignored. This incentive often leads employers to put applicants through E-Verify before they are considered for a position so as not to waste the employer's resources on interviewing, hiring, and ultimately training an individual for a position that they may be later required by E-Verify to terminate.

Furthermore, there is no current monitoring or compliance system set up by the United States Citizenship and Immigration Services (USCIS), no remedy or recourse for workers wrongfully terminated because of E-Verify, and no real penalties in place for employers who misuse the system. Conversations with USCIS regarding the lack of monitoring and compliance reveal a long-promised plan to implement monitoring and compliance operations that would still only be based on employers who demonstrated a pattern of too many or not enough submissions into E-Verify, and would still not include any real enforceable penalties against employers.

USCIS should make implementation of an effective monitoring and compliance program a priority of E-Verify before any expansion of the system's mandatory usage. This needs to include real penalties where enforcement entities have teeth to penalize the employer. More importantly, however, there should be exploration of new electronic employment verification systems that first and foremost, use a third party verifier rather than give employers the power to terminate or hire an individual based on the employer's determination of that individual's employment authorization. The system similarly should not unreasonably limit the number of acceptable documents new hires can use to demonstrate their work authorization, and the system should include real penalties for employers who do not follow requirements set forth in employing workers already shown to be work authorized.

That an effective system of employment verification is needed is not in doubt. Such a system must accurately identify both those individuals not lawfully authorized to work in the United States and those that are. However, any employment status verification system must also adequately protect the privacy of applicants and the workplace rights of all employees. Exploration of alternatives to the E-Verify system that accomplish all of these goals should be a priority of the incoming administration.