

E-Verify

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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E-Verify

Reference Number: MTAS-1938

On June 11, 2008, then President George W. Bush amended Executive Order 12989 to direct all federal departments and agencies to require contractors to use an electronic employment eligibility verification system to verify the employment authorization of employees performing work under a federal contract. The DHS designated E-Verify as the electronic employment eligibility verification system that all federal contractors must use.

Formerly referred to as the Basic Pilot Program, E-Verify is an Internet-based system operated by the U.S. Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA). E-Verify is voluntary and free to employers and provides an automatic link to federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers. E-Verify works by electronically comparing the information on an employee's Form I-9 with SSA and DHS records to verify the identity and employment eligibility of newly hired employees.

On September 17th, 2018, E-Verify expanded to access Department of Motor Vehicles records. Now, if an employee presents a driver's license or state ID card as a list B document and if the document is issued by one of the states and territories under E-Verify's expanded access, E-Verify will prompt the user to enter the document information. E-Verify is using this process to prepare for an expansion of driver's license and state ID verification capabilities.

E-Verify for Federal Contractors

Reference Number: MTAS-2117

On November 14, 2008, the Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) published the Federal Acquisition Regulation (FAR) final rules (FAR case 2007-013, Employment Eligibility Verification) that implemented the amended Executive Order 12989. The FAR, effective September 8, 2009, is a set of rules and regulations used to manage the way the federal government acquires supplies and services with appropriated funds.

Also known as the "E-Verify Federal Contractor Rules," the FAR rules direct federal agencies to require many federal contractors to use E-Verify. It requires federal contractors, through language inserted into their federal contracts, to agree to use E-Verify to confirm the employment eligibility of all persons hired during a contract term, as well as their current employees who perform work under a federal contract. Title 48, Subpart 22.1802(a).

Is your city required to use E-Verify? It depends. The E-Verify federal contractor rules only affect federal contractors who were awarded a new contract on or after September 8, 2009, that includes the FAR E-Verify clause (48 C.F.R., Subpart 22.18). E-Verify contracts must also have a period of performance of 120 days or more, a value exceeding the simplified acquisition threshold of \$150,000 and at least some portion of the work under the contract must be performed in the United States. Title 48, Subpart 22.1803(b).

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to a prime contractor or another subcontractor. Title 48, Subpart 22.1802(2). Subcontractors also may be subject to the FAR E-Verify clause if: (1) the prime contractor includes the FAR clause; (2) the subcontract is for commercial or non-commercial services or construction; (3) the subcontract has a value of more than \$3,000; and (4) the subcontract includes work performed in the United States. Subcontractors who are suppliers, however, are not subject to the E-Verify federal contractor rules. Title 48, Subpart 52.222.54(e).

If your federal contract contains the FAR E-Verify clause, subject to certain exceptions, you must use E-Verify to confirm the employment authorization of:

- All persons hired during the contract terms and
- Current employees who perform work under the federal contract within the United States.

To verify these individuals, according to Title 48, Subpart 52.222.54(b), the employer must:

- Enroll in E-Verify within 30 days of the contract award date and
- Use E-Verify to verify that all your new hires and existing employees working directly on federal contracts are authorized to work in the United States.

8 C.F.R. Part 274a(2) provides that after hiring a new employee and completing the Form I-9 required for all new hires (regardless of E-Verify participation), the employer must submit a query into the E-Verify system that includes information from sections 1 and 2 of the form I-9, including:

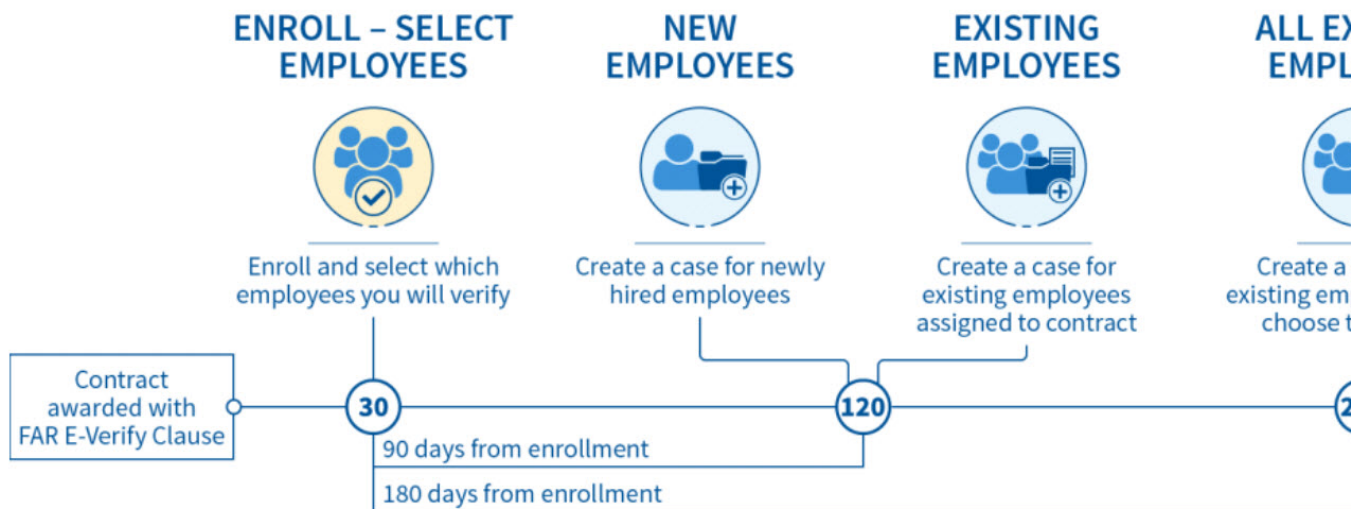
- Employee’s name and date of birth;
- Social Security Number (SSN);
- Citizenship status he or she attest to;
- A number or I-94 number (if applicable);
- Type of document provided on the Form I-9 to establish work authorization status; and
- Proof of identity and its expiration date, if applicable.

If your federal contract does not contain the FAR E-Verify clause, you are **not required** to enroll in and use E-Verify as a federal contractor but may participate voluntarily.

If your city has federal contracts issued after the September 8, 2009, date that contains the FAR E-Verify clause and your city is not yet enrolled, you must (Title 48, Subpart 52.222.54(b)(1)):

- Enroll in E-Verify as a federal contractor with FAR E-Verify clause within 30 days of the award date of a contract. You can register online for E-Verify at <https://e-verify.uscis.gov/enroll/> [1].
- Begin to use E-Verify to verify all newly-hired employees who are working within the United States within 90 calendar days of your enrollment date (unless you are an organization that qualifies for an exception).
- Create a case for each existing employee assigned to the contract within 90 calendar days of enrolling in E-Verify or 30 calendar days of the employee’s assignment to the contract, whichever date is later; or
- If the Federal contractor chooses to verify the entire workforce, create a case for all existing employees within 180 calendar days of enrollment in E-Verify or within 180 days of notifying E-Verify of the decision to exercise this option.

Timeline for New Federal Contractor Enrollment in E-Verify



If your city is already enrolled in E-Verify but not designated as a federal contractor with FAR E-Verify clause, you must do the following:

- **Do not re-enroll in E-Verify. Update your “Maintain Company” page to “Federal Contractor”** with FAR E-Verify clause within 30 calendar days of the award date of a new federal contract that contains the FAR E-Verify clause.
- After updating your “Maintain Company” page, if your city has been selectively using E-Verify at certain hiring sites but not others, you must begin using E-Verify at all of your city’s hiring sites and where you will be verifying any existing employees.
- As an existing user of E-Verify, you are required to verify new hires within three days of hire. If you are already verifying new hires under a Memorandum of Understanding, you must continue to do so.
- Initiate verification of all existing employees assigned to a qualifying contract within 90 calendar days of designating your city as a federal contractor with FAR E-Verify clause in E-Verify or 30 calendar days of the employee’s assignment to the contract, whichever date is later.
- When E-Verify asks you which employees you will verify, the selection you make will affect the 180-day time period to verify all existing employees.

Some employees are exempt from the E-Verify requirements, and employers are not permitted to verify these employees in E-Verify. Other employees are not required to be verified, but employers may choose to verify them. Employees exempt from E-Verify are (1) those individuals hired on or before November 6, 1986, and continuing in employment with the same employer; and (2) employees previously confirmed as authorized to work in E-Verify.

The following organizations awarded a federal contract that includes the FAR E-Verify clause are only required to use E-Verify for new hires and existing non-exempt employees who are working directly under contract. Title 48, Subpart 22.1802(b)(2):

- State and local governments;
- Institutes of higher education;
- Governments of federally recognized Native American tribes; and
- Sureties performing under a takeover agreement entered into with a federal agency under a performance bond.

Your city must indicate that your organization qualifies for the exception when you enroll in E-Verify or, if your city is already enrolled, when you update your city profile.

Tennessee Lawful Employment Act (TLE Act)

Reference Number: MTAS-2070

The Tennessee Lawful Employment Act (TLE) (T.C.A. §§ 50-1-701- 50-1-715) was signed into law June 7, 2011, and requires all employers in Tennessee to demonstrate that they are hiring and maintaining a legal workforce either by enrolling and verifying the employment eligibility of all newly-hired employees through the federal E-Verify program or request all newly-hired employees to provide identity and employment I-9 authorization documents. Valid documents under the Tennessee Lawful Employment Act per T.C.A. § 50-1-703(a)(1)(A) include:

- A valid Tennessee driver’s license or photo identification;
- A valid driver’s license or photo identification from another state where the license requirements are at least as strict as those in Tennessee;
- A birth certificate issued by a U.S. state, jurisdiction or territory;
- A U.S. government-issued certified birth certificate;
- A valid, unexpired U.S. passport;
- A U.S. certificate of birth abroad (DS-1350 or FS-545);
- A report of birth abroad of a U.S. citizen (FS-240);
- A certificate of citizenship (N560 or N561);
- A certificate of naturalization (N550, N570, or N578);

- A U.S. citizen identification card (I-97 or I-179);
- A valid alien registration document; or
- Other proof of employee's immigration status and authorization to work in the United States recognized by the Department of Homeland Security.

Additionally, if your city hires non-employees, such as independent contractors, you are required to request and maintain a copy of either a valid Tennessee driver's license or photo ID license. The employment verification provisions apply to all state and local government agencies no later than January 1, 2012.

Under T.C.A. § 50-1-703(b)(1-3), the employment verification provisions will be phased in as follows:

- All state and local government agencies must be enrolled and participate in E-Verify or request and maintain an identity/employment authorization document from a newly hired employee no later than January 1, 2012.
- All private employers with 500 or more employees must be enroll and participate in E-Verify, or request and maintain an identity/employment authorization document from a newly hired employee no later than January 1, 2012.
- All private employers with 200 to 499 employees must be enroll and participate in E-Verify, or request and maintain an identity/employment authorization document from a newly hired employee no later than July 1, 2012.
- All private employers with six to 199 employees must be register and utilize E-Verify or request and maintain an identity/employment authorization document from a newly hired employee no later than July 1, 2013.
- All private employers with 50 or more employees must be using E-Verify in addition to complying with the federal I-9 requirements by January 1, 2017.
- All private employers with less than 50 employees can still make a choice about using E-Verify for all newly hired employees or requesting and maintaining documents under the TLEA's list of authorized identity and employment eligibility documents.

To verify individuals using E-Verify under the TLE Act, employers must:

- Enroll in E-Verify within 30 days of the contract award date, and
- Use E-Verify to verify that all new hires and existing employees working directly on federal contracts are authorized to work in the United States.

The TLE Act (T.C.A. § 50-1-103(c)) provides that employers **are not required** to use E-Verify if the employer requested from the employee, received and documented the "lawful resident verification information" consistent with the employers requirements under the Immigration Reform and Control Act of 1986 (I-9). The Tennessee Lawful Employment Act also provides that if, however, an employer uses E-Verify, it is a defense to a charge of hiring illegal aliens. Obtaining one of the listed documents, on the other hand is not a defense if that is the only evidence the employer has.

For employers without Internet access, the TLE Act allows such employers to enter into a Memorandum of Understanding with the Tennessee Department of Labor and Workforce Development, and permits this agency to enroll the employer in the E-Verify program and conduct employment verification checks of newly hired employees through E-Verify on behalf of the employer. T.C.A. § 50-1-703(a)(5). An employer who has requested this service from the Tennessee Department of Labor and Workforce Development, but has not received assistance will not be in violation of the act (T.C.A. § 50-1-703(a)(2)). Alternatively, the act allows employers to utilize the services of a third party agent to conduct the E-verification process for newly hired employees. T.C.A. § 50-1-703(a)(4).

Under the TLE Act, employers must maintain a record of results generated by E-Verify for three years from the date of hire or one year from the date of termination, whichever is later. Employers who elect to verify the employment eligibility of newly hired employees by requesting an identity and employment authorization document, rather than enroll in E-Verify, must retain this documentation for three years after the documentation is received or for one year after the employee (or non-employee, whichever is the case) stops providing services or labor, whichever is earlier. T.C.A. § 50-1-703(a)(3)(A).

The penalties for violation of the TLE Act are stiff, to say the least. They are outlined below:

- First offense: \$500 for the civil penalty, plus \$500 per worker not verified (T.C.A. § 50-1-703(a)(6)(f)(1)(a));
- Second Offense: \$1,000 for the civil penalty, plus \$1,000 per worker not verified (T.C.A. § 50-1-703(a)(6)(f)(1)(b)); and
- Third or Subsequent Offense: \$2,500 for the civil penalty, plus \$2,500 per worker not verified (T.C.A. § 50-1-703(a)(6)(f)(1)(c)).

E-Verify in Summary

Reference Number: MTAS-2119

The U.S. Citizenship and Immigration Service provides a wealth of information (<https://www.uscis.gov/e-verify/publications/manuals-and-guides/publications-manuals-and-guides> [2]) to help employers comply with the provisions of the law. A number of manuals and customer guides provide helpful information regarding immigration benefits. Form I-9 support is available to answer questions about Form I-9 and employment authorization, Monday through Friday, from 8 a.m. to 5 p.m., except when the federal government is closed.

The Office of Special Counsel for “Immigration-Related Unfair Employment Practices” (OSC) is available to answer questions about unfair immigration-related employment practices and discrimination against workers on the basis of a worker’s citizenship or immigration status, or based on the worker’s national origin, including discrimination in the Form I-9 process. The OSC’s website provides information on how to prevent discrimination, how to file a complaint against an employer and answers to frequently asked questions.

The U.S. Citizenship and Immigration Services offers a wealth of resources to help employers comply. Free webinars are available at <http://www.uscis.gov/e-verify/e-verify-webinars/take-free-webinar> [3].

A copy of the revised form can be downloaded from the web at <https://www.uscis.gov/i-9> [4]. Revisions also have been made to the *Handbook for Employers, Instructions for Completing the Form I-9 (M-274)* (Rev. 03/08/13) and can be obtained online at <https://www.uscis.gov/sites/default/files/files/form/m-274.pdf> [5].

Links:

[1] <https://e-verify.uscis.gov/enroll/>

[2] <https://www.uscis.gov/e-verify/publications/manuals-and-guides/publications-manuals-and-guides>

[3] <http://www.uscis.gov/e-verify/e-verify-webinars/take-free-webinar>

[4] <http://www.uscis.gov/files/form/i-9.pdf>

[5] <https://www.uscis.gov/sites/default/files/files/form/m-274.pdf>

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