

## **How Advocates Can Identify Possible E-Verify-Related Employment Discrimination**

E-Verify is an Internet-based program run by the U.S. Government. Some employers use E-Verify to check if employees can legally work.

### **What E-Verify Is and When It Can Be Used**

- E-Verify verifies the employment authorization of new hires based on information provided on the Form I-9. Because a Form I-9 may only be completed after an employee has been offered and accepted employment, E-Verify may not be used to prescreen applicants.
- E-Verify must be used for all new hires (both U.S. citizens and non-citizens) and cannot be used to verify current employees unless the employer is required to use E-Verify for current employees based on a federal contract containing a Federal Acquisition Regulation (FAR) clause.
- E-Verify cannot be used to reverify an employee's expired employment authorization.

### **What Happens When Information Does not Match Government Records**

- Once a case is submitted to E-Verify, E-Verify determines if the information entered matches the information in government records. After the information is provided, E-Verify provides an initial case result, which is either "Employment Authorized" or "Tentative Nonconfirmation" (TNC).
- If an employee receives a TNC in E-Verify, the employer must promptly provide the employee with a written notice about the TNC, at which time the employee either elects to contest it or not to contest it.
- If an employee decides to contest the TNC, the employer must promptly provide a referral letter from E-Verify that contains specific instructions, contact information, and a deadline for contacting either the Department of Homeland Security (DHS) or the Social Security Administration (SSA), depending on the source of the mismatch.

### **Worker Rights During Resolution of Nonconfirmation**

- Employers cannot take any adverse action based on an E-Verify TNC against an employee who contests the TNC. Adverse actions include firing, suspending, withholding pay or training, or otherwise infringing upon the employee's employment. Employers cannot ask employees who receive TNCs for more work authorization documentation.
- In the event of a TNC, the employee is provided 8 federal government work days from when the employer refers the case in the E-Verify system to contact the appropriate federal agency to begin the resolution process. The deadline on the referral letter is calculated from the date the letter is printed.
- Employers must allow employees to work while they are contesting their TNCs. It may take longer than 8 work days to resolve a TNC. Employers must not take adverse action against an employee unless and until the employee receives a Final Nonconfirmation (FNC).

**For more information, call the OSC Employee Hotline 1-800-255-7688  
(TTY: 1-800-237-2515) or visit the OSC website at: [www.justice.gov/crt/osc](http://www.justice.gov/crt/osc)**

## E-Verify Discrimination and Misuse

Following E-Verify's procedures should ensure equal treatment of work-authorized employees regardless of their national origin, citizenship, or immigration status. However, some employers may not follow E-Verify rules for handling a TNC and may take adverse action against an employee who chooses to contest a TNC. Problems may also arise if the employer never informs the employee that it uses E-Verify or received a TNC.

Employees may not always know that their employer uses E-Verify. You can identify possible E-Verify issues if the worker states:

- **My employer told me that my information didn't go through the system.**
- **My employer told me my papers are not valid.**
- **My employer told me my Social Security number is not valid.**
- **My employer told me I am not work-authorized.**

You may also uncover possible E-Verify issues by asking the following questions:

1. **Did your employer give you a notice saying your papers are not valid? If so, do you have any copies?**
2. **Did your employer tell you to go to SSA to fix a problem with your Social Security card?**
3. **Did your employer tell you to contact DHS to fix a problem with your immigration status?**
4. **Were you fired within the first few days after starting work because of an issue with your papers?**
5. **Did your employer enter your information into a computer system and then tell you your papers were not valid?**
6. **Did your job offer depend on the information from your papers going through a computer system?**
7. **Did your employer tell you to sign a paper stating that you did not want to contest your E-Verify results?**

If the employee answers "yes" to one or more of the above questions, the employee **may** be a victim of E-Verify-related discrimination. Further, **if a work-authorized individual suffered an adverse action and calls OSC's hotline (800-255-7688), our office may be able to immediately contact the employer to resolve the issue and safeguard the individual's employment.** If OSC learns that an employer may be unlawfully discriminating in the E-Verify process, OSC may also open a formal investigation to identify other employees affected by the employer's practices.

U.S. Citizenship and Immigration Services (USCIS) also has an E-Verify hotline (888-897-7781) that can provide assistance if you or an employee:

- Has general E-Verify questions.
- Needs help with resolving a TNC.
- Believes an employer does not know how to use the E-Verify system.
- Wishes to report privacy concerns related to an employer's use of E-Verify.

The longer an employee waits to address a potential E-Verify problem, the more difficult it is to resolve. Advocates and/or workers should call the OSC hotline to address potential discrimination or call the E-Verify hotline for other E-Verify issues.

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