

IMMIGRATION 

S.C. Illegal Immigration & Reform Act of 2011

“Illegal Aliens and Private Employment”

June 2011

IMMIGRATION 

Los Angeles Times

Supreme Court upholds Arizona immigration law targeting employers

The high court ruling allows the state, and others, to penalize businesses that hire illegal immigrants.

June 2011

IMMIGRATION 

May 31, 2011

- Ended scheduled employer audits
- Laid off 23 auditors and supervisors

June 2011

IMMIGRATION 



Illegal immigration bill pushed through to Haley
By STEVEN HODGKINS
Associated Press
Wednesday, June 22, 2011

COLUMBIA — A bill that requires police in South Carolina to check suspects' immigration status and mandates that all businesses check their hires through a federal online system received final legislative approval Tuesday.

June 2011

IMMIGRATION 

**REQUIRED BY LAW
EFFECTIVE
01-01-2012**





June 2011

IMMIGRATION 

41-8-20 All private employers must:

- register and participate in E-Verify
- verify the work authorization of every new employee within three business days



June 2011

E-Verify

What is E-Verify?

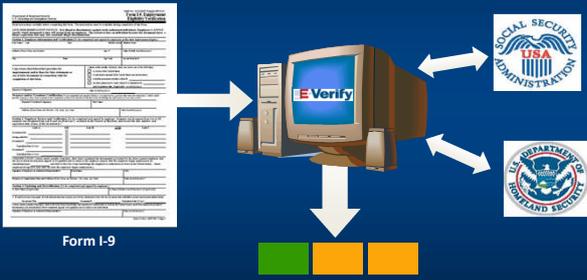
- No-cost Internet based system
- Fast & easy to use
- **Electronically** verifies the employment eligibility of newly hired employees
- Helps maintain a legal workforce
- Protects jobs for authorized workers
- Partnership between the **U.S. Department of Homeland Security** and the **Social Security Administration**



June 2011

E-Verify

How does it work?



Form I-9

June 2011

IMMIGRATION

LLR

“Licenses”

2008 state immigration law granted every employer an **“imputed”** license.

June 2011

IMMIGRATION 

“Licenses”

Under the new law, a “license” means

- an agency permit,
- certificate,
- approval,
- registration,
- charter,
- or similar form of authorization that is required by law and that is issued by any agency political subdivision of the state for the purpose of operating a business in the state.

June 2011

IMMIGRATION 

“Licenses”

- Professional licenses are excluded, but “license” includes employment licenses, articles of organization, articles of incorporation, a certificate of partnership, a partnership registration, a certificate to transact business, or similar forms of authorization issued by the South Carolina Secretary of State, and any transaction privilege tax license.

June 2011

IMMIGRATION 

41-8-30 “Illegal Aliens & Private Employment”

A private employer shall not knowingly or intentionally employ an unauthorized worker.

June 2011

IMMIGRATION 

41-8-20 Failure to E-Verify

1st. occurrence January 1-June 30, 2012:

- WARNING!
- Swear compliance with federal law covering employment of unauthorized aliens since January 1, 2012; and
- Comply with the state law on verification of new hires within three business days.

June 2011

IMMIGRATION 

41-8-20 Violations On or After July 1, 2012

First time violation

- Citation (with 3 year look back)
- Probation for one year
- During one year probation, employer must submit quarterly reports to LLR demonstrating compliance with 41-8-20.

June 2011

IMMIGRATION 

41-8-20 Subsequent Violations

- Suspension of the private employer's licenses for 10-30 days.
- Prior offenders of 41-8-30 must be suspended – no grace provision

June 2011

IMMIGRATION 

41-8-20 Violations & LLR's Duty

- Verify work authorization of non-verified workers through federal data-base;
- Notify ICE of suspected unauthorized workers

June 2011

IMMIGRATION 

41-8-30 Knowing or Intentional Employment 1st Occurrence

- Suspension of the private employer's licenses for 10-30 days.
- During suspension, the employer may not engage in business, open to the public, employ an employee, or otherwise operate.

June 2011

IMMIGRATION 

Knowing or Intentional Employment 4th Occurrence

Licenses are **revoked for 5 years.**

June 2011

IMMIGRATION 

Penalty

- If an employer engages in business or employs a new employee during suspension, the private employer's licenses **must be revoked for five years**.

June 2011

IMMIGRATION 

Other key changes in law

- All employers who are disciplined under the law are published on the LLR website.
- LLR must notify applicable licensing agency if it determines a private employer's license must be suspended or revoked.

June 2011

IMMIGRATION 

What triggers an inspection?

- Scheduled random audits
- Receipt of a complaint that is signed and in writing
- Investigation initiated by the Director of LLR for good cause

June 2011

IMMIGRATION 

For the latest information, go to:

www.llr.state.sc.us/immigration

June 2011

IMMIGRATION 

TO ENROLL IN E-VERIFY

GO TO:

www.dhs.gov/e-verify

June 2011

- Electronically sign a **Memorandum of Understanding (MOU)** with DHS and SSA
- User Name, Password, and E-Verify Web Address will be **e-mailed** to you within 48 hours
- Download and read the *E-Verify User Manual*
- Complete an **online tutorial** before creating cases

June 2011



- Verify **all** new hires
- Do **not** verify existing employees
- Verify new hires within **3 business days**

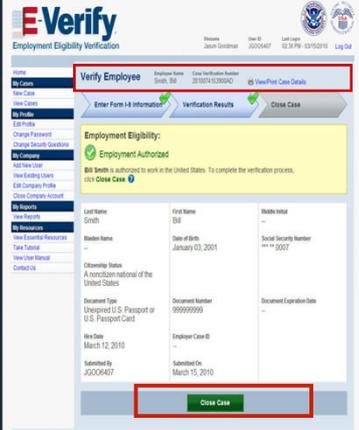
June 2011



Access methods

Employer	Employer Designated Agent	Corporate Administrator
Most common Allows E-Verify users in your company to electronically verify the employment eligibility of newly hired employees	Least common Employer designates 3 rd party to perform verifications	Allows you to create, manage, and administer new & existing E-Verify accounts as well as create and view reports Does NOT allow you to create cases

June 2011



The screenshot shows the E-Verify web interface. At the top, it says "Verify Employee" and "Employment Eligibility Verification". Below this, there are navigation tabs: "Enter Form I-9 Information", "Verification Results", and "Close Case". The main content area displays "Employment Eligibility: Employment Authorized" with a green checkmark. Below this, there is a form with fields for Last Name (SMITH), First Name (DIE), Middle Initial, Social Security Number (***-**-2007), Date of Birth (January 03, 2001), Document Type (Unexpired U.S. Passport or U.S. Passport Card), Document Number (999999999), Document Expiration Date, Hire Date (March 12, 2010), and Submitted On (March 15, 2010). A "Close Case" button is highlighted with a red box at the bottom of the form.

An E-Verify case

Initial verification results will be

Employment Authorized	SSA Tentative Nonconfirmation	DHS Verification in Process
The employee is authorized to work	There is an information mismatch	DHS will usually respond within 24 hours with either: <b style="color: #008000;">Employment Authorized or <b style="color: #FFA500;">DHS Tentative Nonconfirmation

June 2011 June 2011

The screenshot shows the E-Verify 'Verify Employee' page. The 'Verification Results' section is highlighted in yellow and displays 'SSA Tentative Nonconfirmation (TNC)'. Below this, there is explanatory text: 'The Social Security number entered in E-Verify is not valid according to SSA records. This does NOT mean that the employee is not authorized to work in the United States; however, additional actions are required.' It includes instructions to click 'Continue' to begin the TNC process or 'Close Case' if the case was created in error. The 'Continue' button is highlighted with a red box.

- **Inform** the employee of the TNC
- **Print** the TNC Notice and **review** it with the employee

CONTEST	NOT CONTEST
Refer employee to appropriate agency	You may terminate the employee and close the case in E-Verify

June 2011



Handling a TNC

- The employee has **eight Federal Government workdays** from the referral date to visit or call the appropriate agency and resolve the discrepancy
- The **employee continues to work in full status** during the TNC resolution process
- **DO NOT** take any adverse action based on the TNC against the employee during the resolution process

June 2011



Handling a TNC

Once the employee resolves the record discrepancy, he/she should inform you

Check E-Verify periodically for one of the following responses

Employment Authorized
Review & Update Employee Data
Case in Continuance
DHS Verification in Process
DHS No Show
Final Nonconfirmation

June 2011



Photo Matching

Allows you to match the photo on an employee's

- Form I-766 (Employment Authorization Document)
- Form I-551 (Permanent Resident Card or "green card") to the photo that USCIS has on file for that employee
- U.S. Passport or passport card (new)

Helps detect instances of document fraud



June 2011



Wrapping it up
Employer responsibilities

- Once you begin using E-Verify, you must verify new employees **no later than the 3rd business day** after the employee begins working for pay
- You must apply E-Verify procedures to **ALL new hires**, regardless of citizenship status

June 2011



Wrapping it up
Posters



This Employer Participates in E-Verify



**IF YOU HAVE THE RIGHT TO WORK,
Don't let anyone take it away.**

June 2011



Wrapping it up
Employee rights

- The employee has the right to contest a tentative nonconfirmation (TNC) from SSA or DHS
- Employees who believe they have been subjected to discrimination should call
 Department of Justice
 Civil Rights Division
 Office of Special Counsel for
 Immigration Related Unfair Employment Practices
1-800-255-7688 (TDD: 1-800-237-2515)

June 2011

✓ Top E-Verify Dos

- Promptly provide & review with the employee the notice of tentative nonconfirmation (TNC)
- Promptly provide the referral notice from SSA or DHS to the employee who chooses to contest a TNC
- Allow an employee who is contesting a TNC to continue to work during that period
- Contact E-Verify if you believe a final nonconfirmation (FNC) has been issued in error
- Accept any Form I-9 List B document with a photo from an employee who chooses to provide a list B document

June 2011

⊘ Top E-Verify Don'ts

- Do not use E-Verify to pre-screen employment applicants
- Do not influence or coerce an employee's decision whether to contest a TNC
- Do not terminate or take adverse action against an employee who is contesting a TNC
- Do not ask an employee to provide additional documentation of his/her employment eligibility after obtaining a TNC for that employee
- Do not request specific documents in order to activate E-Verify photo matching

June 2011

E-Verify E-Mail: E-Verify@dhs.gov
E-Verify Website: www.dhs.gov/E-Verify

LLR E-Mail: immigrantinfo@llr.sc.gov
LLR Website: www.llr.state.sc.us/immigration

June 2011
