

E-Verify Could Become Federal Mandate for All Employers

Background

America's current immigration system is broken and does not meet the needs of its citizens or businesses. Immigration reform is especially important to California as there are estimated to be somewhere between 2.35 million and 2.6 million undocumented immigrants who call California home—23% of the nation's total and about 6% of the state's population—half of whom have lived here for more than 10 years. Many of these individuals are holding jobs and doing work upon which employers and the economy depend. These individuals have developed roots in this country, leaving little incentive to return to their country of origin.

Approximately 1.85 million undocumented immigrants are estimated to be working in California—approximately 1 in 10 workers in California is an undocumented immigrant. Immigration, both documented and undocumented, is expected to account for almost all the growth in the labor force. The uncertainty over the legal status of undocumented immigrants could be a drag on the economy and, if resolved, would continue to stimulate consumer spending and investment.

The number of U.S. citizens available and willing to do a wide range of essential jobs is wholly inadequate, yet legal options for employing foreign workers are limited. The current level of immigration is too small compared to demand; wait times for legal immigration are long; and the cost of obtaining visas is high.

California is home to the technology industry, which relies on highly skilled talent to innovate, design, manufacture, create jobs and grow the economy to enable success in the global marketplace. Employers cannot find enough “home-grown” engineers and scientists and urge reforming the inadequate H-1B visa program. If the industry can't find and bring enough skilled workers to California, it will go to where the engineers and scientists live—most likely offshore, which would not be a good outcome for the state.

California's unique and successful agriculture industry needs a temporary worker program that will provide a predictable workforce. Immigration reform should bring certainty to employers, employees and families.

The state's economy depends on a stable, trained workforce, whether documented or undocumented. Immigration reform must be adopted in a comprehensive manner. A piecemeal approach will undermine a stable workforce. Border security would slow illegal immigration, but without reforms to retain workers, the economy will suffer. E-Verify ultimately will lead to a documented workforce, but without an adequate number of H-1B visas issued and a guest worker program, the economy is likely to suffer from a labor shortage.

E-Verify

E-Verify is an internet-based system that compares information from a Form I-9, Employment Eligibility Verification, to U.S. Department of Homeland Security (DHS), Social Security Administration (SSA), and Department of State (DOS) records to confirm that an individual is authorized to work in the United States. Participation generally is not required for most employers; however, many employers participate voluntarily, and federal contractors are required to participate. The system can electronically deliver results within 3 to 5 seconds. The result indicates whether the information entered in E-Verify from the employer matches records regarding the individual available to the U.S. Department of Homeland Security.

E-Verify does not provide the employer with any immigration, citizenship status or document information about the individual. If the information given by the employee does not match the information in the system, the employee is given the opportunity to respond to correct the information, and in turn the employer gives the employee the opportunity to correct the information. If the employee does not, or cannot verify eligibility to work, then the employment is terminated. Theoretically, E-Verify would ensure that all employees are legally authorized to work.

It is critical that any mandatory E-Verify program is part of comprehensive reform so as not to undermine the state's economy. Without a guest worker program to facilitate an adequate workforce, many California industries will be left without the labor to create and deliver their products and services. E-Verify will shrink the workforce, and therefore it is imperative to create a path to legal status for those working and contributing to the state's sustained economic prosperity.

Nationwide, more than 700,000 employers of all sizes use E-Verify at more than 1.9 million hiring sites, joined by about 1,400 new participating companies every week, according to U.S. Citizenship and Immigration Services (USCIS). The USCIS also claims that it has one of the highest federal government customer service satisfaction ratings.

The accuracy rate of the system continues to improve; however, the California Chamber of Commerce supports its use with 100% accuracy. According to a 2009 report (the latest available), the accuracy rate of the system in identifying individuals who are not work-authorized is 94%. The agency has made concerted efforts to increase the accuracy and timeliness of updating information about new immigrants, nonimmigrants and changes in immigration status. Data entry lags result in some individuals being rejected as work-authorized when the

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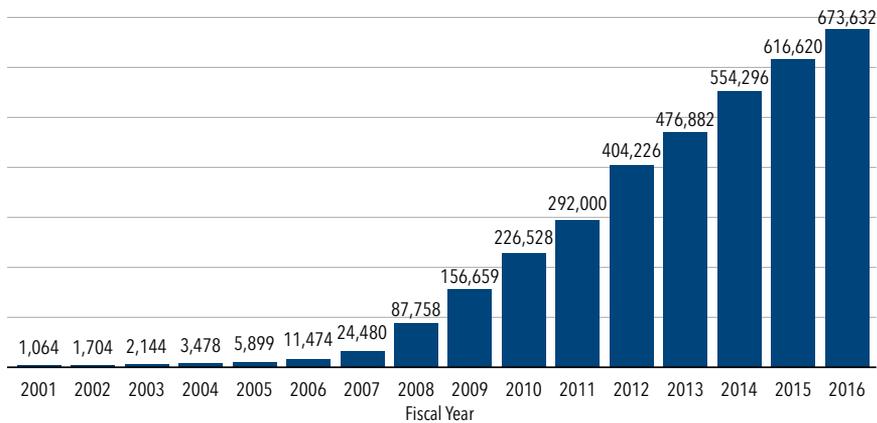
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Number of Employers Enrolled in E-Verify



- More than 16.4 million cases run in 2016 fiscal year.
- Employers in every industry, state and U.S. territory.

Source: U.S. Citizenship and Immigration Services

system does not accurately reflect that data. In a 2013 report, USCIS reports a small increase in accuracy; however, no accuracy data has been released since then.

The top problems leading to a tentative nonconfirmation (the employee information supplied by the employer to the system does not match in the system on its first run, prior to supplying further information) are:

- Inability to confirm citizenship status of a worker attesting to being a U.S. citizen on the Form I-9 (35%).
- Name mismatch: SSA (33%) or USCIS (5%). Some federal forms for immigration and citizenship lack sufficient space and guidance to clearly enter compound or long names.

Use of E-Verify

Federal Contractors

A presidential executive order and subsequent Federal Acquisition Regulation (FAR) rule required federal contractors to use E-Verify to electronically verify the employment eligibility of employees working under covered federal contracts. The order and the rule reinforce federal government policy that the federal government does business only with organizations that have a legal workforce. The penalty for not using E-Verify is ineligibility to receive and/or loss of federal contracts.

Furthermore, all employers using E-Verify (federal contractors and private employers voluntarily using E-Verify) must sign a Memorandum of Understanding (MOU) with the U.S. Department of Homeland Security (DHS), which sets forth the terms and conditions that the employer must follow while participating in E-Verify. Among other requirements, the MOU requires the employer to display notices supplied by DHS regarding participating in E-Verify, specifies documents an employer can accept from an employee for the Form I-9, and requires the employer to permit certain access to federal

authorities to the workplace for the purpose of Form I-9 compliance inspections that may include interviewing employees.

Furthermore, discrimination in hiring, firing, employment eligibility verification, or recruitment against any individual because of his or her national origin or citizenship status is prohibited.

E-Verify in Other States

Seven states in the South (Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee) and two in the West (Arizona and Utah) require private employers to use E-Verify.

In Colorado, Florida, Idaho, Indiana, Massachusetts, Minnesota, Missouri, Nebraska, Oklahoma, Pennsylvania, Texas, and Virginia, some employers are required to use E-Verify, generally public

agencies or their contractors.

E-Verify in California

California employers are not required to use E-Verify. In fact, California prohibits the state, cities and counties, or special districts from requiring employers to use E-Verify (AB 1236; Fong; D-Cupertino; Chapter 691, Statutes of 2011). Additionally, AB 622 (R. Hernández; D-West Covina; Chapter 696; Statutes of 2015) establishes the use of E-Verify in a manner not required by federal law as an “unfair immigration-related practice” punishable by a civil penalty up to \$10,000.

In California, more than 56,000 E-Verify MOUs are in place. These MOUs cover more than 206,000 hiring sites, according to USCIS.

Action in Congress

On September 8, 2017, H.R. 3711 (Smith; R-Texas) was introduced in Congress to amend the Immigration and Nationality Act to make mandatory and permanent requirements relating to the use of E-Verify for all employers.

A federal requirement for all employers to use E-Verify is but one aspect of the immigration reform discussion occurring in Washington as well as in California and other states. Over the years, the discussion around E-Verify has been and will continue to be yet one piece of the reform puzzle that cannot be viewed in isolation.

Many industries support E-Verify as part of a comprehensive solution that includes a guest worker program. Washington insiders have opined that the introduction of an E-Verify mandate may or may not be passed into law; the introduction of the bill will spark more discussion and create momentum toward action on immigration reform. These discussions are still evolving, so it is too early to know specifically what shape immigration reform will take in 2018.

CalChamber Policy

America cannot compete and win in a global economy without attracting and retaining a talented workforce of big dreamers. Immigration reform should bring certainty to employers, employees, and families. We need a comprehensive national program that addresses border security, temporary worker programs, employment verification and enforcement, as well as a path to legal status. CalChamber supports the following comprehensive reform principles:

- Support a bipartisan solution in Congress for borders as a line of defense against those who enter illegally and against those who pose security threats to this country. Border security shouldn't be at the expense of our trade and commerce, which must continue between Mexico and California.
- Temporary worker programs should be reformed to meet the needs of employers for high- and low-skilled jobs that cannot be filled by U.S. workers. The current system leaves many hard-working immigrants in a state of limbo waiting for approvals while employers struggle to keep their most valued asset, a trained workforce.

- An earned pathway to legal status for undocumented workers should be created, but should not permit line jumping in front of the current immigrant visa backlog and the processing of legal immigration needs to occur simultaneously to avoid creating incentives for illegal immigration.

E-Verify

As part of comprehensive immigration reform, CalChamber supports a national mandatory E-Verify program with the following provisions:

- Strict enforcement of employment verification has to be combined with 100% reliable employment eligibility information through E-Verify.
- Employers and individuals that knowingly hire undocumented workers should face severe consequences.
- There should be one national verification system, E-Verify, and it must be timely, efficient and accurate.
- Employers and individuals should have a safe harbor until the system operates efficiently and accurately.
- Current employees need not be re-verified for eligibility.



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