



June 29, 2010

Compliance Bulletin

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USCIS clarifies E-Verify hire date question

U.S. Citizenship and Immigration Services (USCIS) recently addressed when the hire date must be for the purpose of E-Verify, which had been a topic of much confusion for employers. In a posting to their Website, the USCIS said, “E-Verify does not allow you to select a future date as the hire date, so if the employee has not yet started work for pay, the E-Verify date is always the date you create the case in E-Verify.”

Many employers had raised questions about what the E-Verify date should be if the employee accepted an offer prior to beginning to work for pay.

“An E-Verify case is not late as long as it is created no later than the third business day after the employee started work for pay—it doesn’t matter how many days have passed between the employee completing Form I-9 and the employer creating the case in E-Verify,” the USCIS said.

The USCIS also clarified what exactly is meant by “third business day.” According to USCIS, if an employee starts work for pay on Monday, the E-Verify case must be created by the end of Thursday of the same week, assuming all days were business days for the employer.

The [USCIS clarification](#) also includes a useful grid that shows the earliest and latest dates you can complete an I-9 or create an E-Verify case.

New York DOL prohibits deductions to recover wage overpayments

Recently, we have received a number of questions regarding the New York Department of Labor (DOL) [opinion letter RO-09-0152](#) (PDF) regarding deductions for wage overpayments.

In the letter, the DOL held that an employer may not deduct wages from an employee's paycheck to recover past overpayments made in error, even if an employee signs a voluntary waiver which would allow the employer to do this. The DOL relied on NY Labor Law Sec. 193, which prohibits any deductions except those required by law.

Employers are left with two avenues of pursuit: 1) ask the employee to return the overpaid amount, and hope for the best, or 2) file a civil suit against the employee to recover the amount.

In addition, we recently asked the New York DOL what an employer should do about any taxes they paid as a result of such an error. The DOL declined to give an opinion.

Vermont joins ranks of states expressly allowing paycards

The lone holdout state disallowing paycards as a legitimate means of wage payment has passed a law expressly allowing this method of payment. The new law, which began as Senate Bill 58, allows for the use of paycards so long as an employee voluntarily consents in writing, receives full written disclosure of all wage payment options and details of the paycard program, and is allowed at least 3 free withdrawals from the card per pay period.

The full text of the bill, as passed, may be viewed [at this link](#) (PDF).

Utah E-Verify law goes into effect July 1 unchanged

Utah's new law requiring all private employers with more than 15 employees to use E-Verify or similar system goes into effect July 1 without any changes.

As we reported in an earlier bulletin, the law as signed by Governor Gary Herbert does not provide for penalties for non-compliance. At the time he signed the bill, Herbert indicated in published press reports that he was considering calling the Utah legislature into special session to amend the bill.

During debate, lawmakers agreed that since the bill provided for no penalties, the result was, in effect, a voluntary program. However, Herbert said he wanted to include language

in the bill to clarify that use of E-Verify would be voluntary. No special session was called, however, and the bill goes into effect without such language.

The Utah law requires employers to use a “status verification system,” defined as E-Verify, any federal equivalent to E-Verify, or the Social Security Administration’s Social Security number verification service. The law also allows employers to use an “independent third party system.” This appears to be a reference to designated agents such as TALX, which provides a system with the option to integrate with E-Verify.

The Utah law exempts employers using E-Verify or another “status verification system” from civil liability under state laws governing the hiring of unauthorized aliens. It also exempts employers from liability in civil actions against them for refusing to hire a person if a status verification system indicates that a person is an unauthorized alien.

For a complete copy of the final bill as passed into law, please send us an email at moreinfo@talx.com with “Utah E-Verify law” in the subject line.

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