

Public Contractors Must Verify Work Eligibility Status of All New Employees

This year the Nebraska Legislature passed, and the Governor signed, LB 403. It will be effective October 1, 2009. LB 403 requires that every “public contractor” register with and use a “federal immigration verification system” to determine whether “new employees” physically performing services in Nebraska are legally eligible to work in the U.S. This requirement does not apply to contracts awarded before October 1, 2009.

Who is a “public contractor”? Under LB 403 it is any contractor or his or her subcontractor who is awarded a contract by a “public employer”. A “public employer” is any agency or political subdivision of the State of Nebraska. The “federal immigration verification system” that a public contractor must use is the federal E-Verify program authorized by Congress. LB 403 does not define “new employee,” but the only reasonable interpretation of the term is that a new employee is an employee who is hired on or after October 1, 2009, to physically work for a public contractor on a public project awarded on or after October 1, 2009. “Physically work” also is not defined, and the safest course may be to verify the work eligibility for all new employees whether they work onsite or in the office.

What does all of this mean? This law imposes a new responsibility on public contractors. On and after October 1, 2009, before a public contractor hires a new employee to work on a public project, the contractor must use the E-Verify system to determine the employee’s work eligibility status. The law provides that every public contract awarded on or after October 1, 2009, shall require the public contractor to use the system, so any failure to do so would be a violation of the contract requirements. Thus, though none are specified in LB 403, there will likely be consequences for failure to verify. The Nebraska Department of Labor has the overall compliance responsibility for the law.

How does a public contractor register with and use the E-Verify system? Employers can register for E-Verify online at <https://e-verify.uscis.gov/enroll/StartPage.aspx?JS=YES>. The opening screen requires that you agree to certain terms. The next screen requires that you proceed through a three step process. The second step requires that you respond yes or no to each of the four options for how you will access E-Verify. Most will say yes and choose the first method and no to the others. The next screen summarizes your choices. The screen following requires that you identify your “organization”. Your choices are Federal Contractor (which may apply), Government (which won’t apply), or “None of these categories apply” (which you should choose unless you are a federal contractor).

The next screen is a 10 page Memorandum of Understanding (MOU) which you must indicate you have read and agree to. The next screen asks for the identification of the person who “signed” the MOU.

Next you are asked for Company information. You are then to provide the location of your hiring sites (states where you hire employees).

Following that screen you will identify your E-Verify users. Each user gets a user name and password and each will be allowed to verify an employee's work eligibility.

The final registration screen provides a summary of the previous screens and requires that you certify its accuracy. Following completion each registered user will be emailed user names and passwords.

How are new employees verified? To verify the work eligibility of a new employee, the E-Verify user will log on to <https://e-verify.uscis.gov/emp>. You will do this each time you want to verify a new employee so you'll want to add this site to your favorites. The first time you log in you will be asked to change your password and create password challenge questions. There is also an E-Verify online tutorial. The tutorial is quite long, and there is a Mastery Test that must be taken and on which you must score a 70% or better to gain access to the system. If you don't score a 70% or better, you won't get access to the system, and you won't be able to verify a new employee's work eligibility (and comply with LB 403) until you do. It appears that you can re-take the test immediately and can take it as many times as necessary. You also don't need to wait until October 1st to register and take the test; you can take it immediately. Because registration to use the system and because verifications are employer-specific, even a person who previously passed the test and had access to the system through a previous employer needs to re-register and re-take the test to verify eligibility for a new employer.