

Preface to the 2026 Edition

The 2026 Edition of the *State Immigration Employment Compliance Handbook* reports on the latest developments on state regulation designed to deter the employment of unauthorized workers as well as other state laws impacting the employment of foreign workers.

Trump Administration’s Worksite Enforcement Strategy and Impact on State Regulation

Enforcement of the state penalties for unlawful employment will be facilitated by the federal government’s renewed emphasis on worksite enforcement under the second Trump Administration. The administration has indicated that it wants to deport millions of foreign nationals who are in the country illegally, and one way it will seek to achieve that goal is by implementing an aggressive worksite enforcement strategy. The first year of the second Trump Administration has seen the return of high-profile, massive show-of-force worksite raids that were common in his first administration and which often result in the arrest of unauthorized workers identified during the operation. In fact, given the ambitious goals on removals and the massive increase in U.S. Immigration and Customs Enforcement (ICE) appropriations included in the reconciliation bill enacted in July 2025, H.R. 1, 119th Cong., Pub. L. No. 119-21, a substantial increase in worksite enforcement actions is anticipated.

ICE’s Homeland Security Investigations (HSI) has indicated that it is restoring an aggressive worksite enforcement strategy which includes worksite raids, the administrative arrests of unauthorized workers identified during the operation, and the detention of these workers pending removal proceedings. It may also criminally prosecute workers for identity theft or illegal entry/reentry after prior removals when applicable. The agency states that the new worksite enforcement campaign is in line with the President’s Exec. Order No. 14159, Protecting the American People Against Invasion, 90 Fed. Reg. 8443 (Jan. 29, 2025), which calls for the enforcement of INA provisions and other federal law related to illegal entry and unlawful presence in the United States. HSI indicated that it will also continue to target, for investigation and potential prosecution, employers engaged in egregious worksite violations. It will prosecute company owners and managers if, during a worksite enforcement action, it uncovers serious violations, such as human trafficking, harboring unauthorized workers, “alien” smuggling, document fraud, money laundering, fraud, worker exploitation and/or substandard wage and working conditions. HSI will also utilize I-9 inspections to elicit compliance, fine employers for hiring and paperwork violations, and assess whether further investigations of the employer’s conduct is necessary if possible criminal violations are involved.

As for targets, ICE has indicated that HSI will prioritize violators who abuse and exploit their workers, aid in the smuggling or trafficking of their undocumented workforce into the United States, create false identity documents or facilitate document fraud, or use an unauthorized workforce as part of their business model. HSI will also closely monitor companies or industries that are deemed national security or critical infrastructure interests. It is anticipated that most investigations and enforcement actions will continue to focus on businesses sectors and industries with histories of employing undocumented workers and egregious worker exploitation or human trafficking. These industries include construction, food processing,

restaurant, hospitality, agricultural production, manufacturing, clothing production, health and beauty services, childcare, and cleaning services. In addition, companies conducting business in industries or sectors that implicate national security or critical infrastructure interests will continue to be closely monitored, such as customs freight stations, bonded warehouses, chemical, commercial facilities, communications, critical manufacturing, dams, emergency services, government facilities, information technology, nuclear reactors materials and waste, and transportation systems.

This strategy has led to an increase in HSI criminal worksite enforcement investigations and I-9 administrative audits. For targeted companies, these actions may result in criminal sentences (for owners and managers), significant civil and criminal fines, forfeiture of assets, and other penalties under federal law. This strategy has also led to the return of high-profile, massive worksite raids not seen since the first Trump Administration. For targeted businesses, these raids will likely cause substantial disruption of business operations and possible loss of key employees and even government contracts. The more aggressive and expansive worksite enforcement strategy may expose business owners, corporate officers, and managers to potential criminal liability. The administration's aggressive worksite enforcement campaign may be viewed as one of many strategies implemented to identify, detain, and remove noncitizens unlawfully present in the United States in the record numbers that the President has promised under his mass deportation policy. While there has already been an increase in worksite enforcement in the past year, these numbers may ramp up significantly in the near future with the passage of the so-called One Big Beautiful Bill in July 2025, which significantly increased funding for the President's immigration agenda. More HSI agents and detention capacity will most likely translate into more worksite enforcement operations and more administrative arrests of unauthorized workers.

ICE's aggressive enforcement policies facilitate enforcement of the state penalties for unlawful employment. States can rely primarily on findings of unlawful employment made in conjunction with ICE administrative and criminal enforcement actions to impose penalties under their statutes. The ICE enforcement actions are well-publicized events, typically receiving much attention through local media outlets. In addition, state and local authorities often cooperate and may even take part in these enforcement actions. It is unlikely then that these actions will escape the attention of local authorities responsible for enforcing the penalty provisions under the state laws, which may ultimately lead to cancellation of existing state contracts and/or debarment from future state contracting or even suspension or revocation of business licenses. Employers must take this trend seriously in light of the civil and criminal penalties under federal and state law and the potential for substantial disruption of business operations. In such an environment, it is clear that it is key for employers to ensure compliance with the law and minimize exposure in the event of an ICE investigation. Maintaining an I-9 program that complies with ICE standards and establishing a plan for regular I-9 audits are the best defenses to charges of knowingly employing or harboring undocumented workers.

E-Verify Updates and State E-Verify Mandates

A number of states now require all employers or some employers (such as state contractors) to utilize the E-Verify program to verify the status of all new hires. Businesses that are subject to one of these state provisions must register for E-Verify and utilize the program to verify the work status of new hires. The program has become an integral part of the federal government's worksite enforcement policy, and many state and local governments have also come to rely on the program as

part of their enforcement policies. The latest Department of Homeland Security (DHS) statistics indicate that more than 1,348,744 employers were enrolled in E-Verify as of June 30, 2025. In addition, employers were using E-Verify at over 3.5 million hiring sites, and U.S. Citizenship and Immigration Services (USCIS) was handling about 32 million E-Verify queries per year.

Employers required to utilize the program under federal or state law should be aware of a number of significant changes to DHS’ E-Verify Program.

New E-Verify “Status Change Report.” Under the second Trump Administration, DHS has exercised its authority to revoke employment authorization documents for certain foreign nationals whose parole has been terminated. In light of this, E-Verify has developed a new report, the Status Change Report, to help E-Verify user organizations identify E-Verify cases with an EAD that has been revoked. E-Verify employers should now regularly generate the Status Change Report to identify E-Verify cases that may have been created with an EAD that is now revoked. The report will list the document revocation date, case number, A-number, and EAD document number for each affected case. E-Verify employers should review the report to identify current workers whose EADs have been revoked and must take steps within a reasonable period to reverify the work authorization of these workers. The agency advises E-Verify employers to run this report on a regular basis as the report will be updated on an ongoing basis. E-Verify Employer Agents can create this report on behalf of their clients using the E-Verify browser.

If a Status Change Report indicates that an EAD was revoked for a particular employee, employers are instructed to reverify the work eligibility of that worker. To confirm whether reverification is required for a current employee who appears on the Status Change Report, the employer should compare the employee’s EAD card number presented for Form I-9 purposes to the revoked document number in the report. If the numbers match, the employer is required to reverify the worker’s employment authorization even if the EAD appears to be valid on its face. Employers must complete any required reverifications within a reasonable amount of time. If the numbers do not match, the employer does not need to reverify until the EAD’s expiration date is reached. If a report indicates that an EAD for a former employee has expired (i.e., the employee no longer works for the employer), there is no requirement to reverify or otherwise update the former employee’s Form I-9.

To reverify, employers should not create a new E-Verify case. Instead, employers must use Form I-9, Supplement B to begin reverifying each current employee whose EAD the Status Change Report indicated was revoked and complete the reverification within a reasonable amount of time. During reverification, the employee must provide unexpired documentation from List A or List C of the Lists of Acceptable Documents. Employers should not reverify identity documents (List B). Employees must be allowed to choose which acceptable documentation to present for reverification, but the employer may not accept the now-revoked EAD based on the Status Change Report even if that EAD appears unexpired.

E-Verify+ Update. In May 2023, USCIS announced it was launching a new product—E-Verify+ (formerly E-Verify NextGen)—that modernizes and streamlines the Form I-9 and verification process for employees and employers participating in the E-Verify Program. E-Verify+ is far more employee-centric. Rather than placing employers at the center of the E-Verify process, employees have their own portal through which to enter their own information and document uploads. After an employer completes Section 2, then E-Verify attempts verification. Mismatch information is sent directly to the employee for resolution. Employers are informed of the mismatch, but they are not responsible for informing the employee of the mismatch.

USCIS launched a barebones pilot version of E-Verify+ on April 25, 2024, with five randomly selected employers. A scaled-up version of E-Verify+ was launched in late 2024. By November 2024, USCIS reported that about 2,500 employers were using E-Verify+.

The service requires the employee's cooperation since employees must have their own myUSCIS account to enter information in Section 1 of the I-9 form and upload identity and work authorization documents. In fact, employees may opt out of the E-Verify+ service when an employer initiates a case through the service. Requiring employees to use the service could expose the employer to discrimination charges particularly if the employer requires its use based on citizenship, immigration status or national origin.

Employers will have access to E-Verify+ in their already established E-Verify account. Only Employer Access (web browser user) accounts with an active program administrator can use E-Verify+. Employers must accept the E-Verify+ terms of service. Employees will have access when their employer creates an E-Verify+ case for them. E-Verify+ will email employees directly with guidance to set up their own secure E-Verify+ account to complete and submit Form I-9 and documentation. Once the employee submits the information, E-Verify will confirm the employee's identity and employment eligibility and notify the employer. The employer must finish the verification by examining the documents and retaining the Form I-9. The employer must attest to the information and electronically sign and date the Form I-9, Section 2. The employer should print all pages or download the complete Form I-9 and any copies of document(s) that the employee presented. The employer should retain the printed or downloaded Form I-9 and copies as required.

E-Verify Now Requires Multifactor Authentication Through Login.gov. As of July 1, 2025, E-Verify now requires the new login process using multifactor authentication (MFA) through Login.gov. The agency explains that MFA enhances security for the login process and helps prevent unauthorized access to accounts. Users will be required to provide more than just a password. Users will also be asked to enter a code sent to their email or mobile device in addition to their password. Users must enable MFA by linking their existing E-Verify user account(s) to an account in Login.gov. Users may either create a Login.gov account or use an existing Login.gov account.

Shutdown Update: E-Verify Resumes Operations. In prior government shutdowns, E-Verify was not operational for the duration of the shutdown and only resumed once reauthorized by Congress. However, the Trump Administration has kept the system online even in recent shutdowns. The legal basis for restarting E-Verify operations without congressional authorization is not clear, and there may be further system outages during the government shutdown. However, while the system is operational, it is advisable for E-Verify users to make use of the system and any related government guidance in trying to comply with E-Verify requirements and deadlines. Employers should conduct any required activities, including creating an E-Verify case within three business days from Form I-9 hire date and taking actions on "tentative nonconfirmations" (mismatches) within required timeframes.

Driver's Licenses for Undocumented Immigrants

As noted, the focus of state efforts in recent years has generally shifted from immigration enforcement to expanding some state benefits for immigrants. Some states have extended driver's license eligibility and in-state tuition benefits to undocumented immigrants. States permitting undocumented immigrants to obtain driver's licenses or permits include California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Utah, Vermont, Virginia, and Washington.

The District of Columbia and Puerto Rico also permit issuance of driver's licenses or permits to undocumented immigrants. Generally, applicants must show that they reside within the state or territory and evidence of their identity such as a foreign birth certificate, foreign passport, or consular card.

It is important to note that the driver's licenses and permits issued to undocumented immigrants in the states listed above are not REAL-ID compliant documents as only persons who provide evidence of their lawful status in the United States can be issued REAL ID driver's licenses and identification cards under the 2005 law. Undocumented immigrants cannot obtain these REAL ID documents because they cannot provide such evidence. This means that they cannot use these non-REAL ID licenses and permits to board domestic flights, enter military bases, or access certain federal facilities. However, there is no federal regulation or policy barring the use of such documents to establish a worker's identity for I-9 work verification purposes, although workers presenting such documents for I-9 purposes will still need to show a separate List C document to establish their work eligibility.

Protections for Foreign Workers Against Unlawful Discrimination

Some state laws enacted in recent years add worker protections from discrimination during the work verification process or during worksite enforcement investigations. Such benefits included extending driver's license eligibility to undocumented immigrants. Other state laws create protections for workers that must be provided during ICE worksite enforcement actions, including during I-9 audits. The laws impose several affirmative obligations on employers, mostly with the aim of providing potentially unauthorized employees with notice of any federal enforcement action. Other laws add penalties for certain immigration-related discriminatory conduct.

For example, AB 450, in California creates a number of new requirements for both public and private employers in the state related to worksite enforcement actions by federal immigration agencies. It imposes several affirmative obligations on employers, mostly with the aim of providing potentially unauthorized employees with notice of any federal enforcement action. A similar statute in Oregon provides that, unless prohibited by federal law, when an employer receives a notice of an inspection from a federal agency compelling the employer to provide access to records of forms and any other documentation used by the employer to verify the identity and employment eligibility of its employees, the employer is required to notify employees within three business days.

Another law in California imposes penalties on employers that engage in immigration-related discrimination in their employment practices. Specifically, the law prohibits an employer from discharging or in any manner discriminating, retaliating (including threatening to file or filing a false report or complaint with any state or federal agency), or taking any adverse action against an employee because the employee updates or attempts to update personal information based on a lawful change of name, social security number, or federal employment authorization document.

State and Local Laws Imposing Pay Transparency Obligations for Employment Ads and Postings

Several states and localities have enacted pay-transparency laws that seek to provide wage and salary information to applicants for employment and, in some cases, current employees. Some of these laws mandate that all ads and postings, including ads and postings for the PERM labor certification program, include wage and salary information even though inclusion of the wage is only mandated for the notice of filing under PERM rules. These laws vary widely in geographic scope—

some employers may be subject to pay-transparency obligations if a position can or will be performed in the jurisdiction, the employer has its principal place of business in the jurisdiction, or the employer has a minimum number of employees in the jurisdiction.

With regard to the types of posting or ads covered, some of these laws cover all “postings” concerning the job opportunity, only print and electronic “advertisements,” only postings “intended to recruit job applicants for specific positions,” or only postings containing a job description. As these pay transparency laws involve complex questions of state and local employment law, it is recommended that employers also seek advice from employment counsel as an essential part of their approach to compliance.

The Department of Labor’s position is that employers should stay compliant with state rules, citing 20 C.F.R. § 656.10(c)(7) and the Form ETA-9089, which require the employer to certify that “[t]he job opportunity’s terms, conditions and occupational environment are not contrary to Federal, state or local law.” If state or local pay transparency laws require the employer to include benefits information in PERM ads, the same benefits information must be included in the notice of filing and on the Form ETA-9089. Failure to do so could result in denial.

The Authors

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