Proskauer

Florida Poised to Mandate Use of E-Verify for Private Employers

Law and the Workplace on **May 5, 2023**

The Florida Legislature has passed a bill that, if enacted, will require private employers with 25 or more employees to use the federal E-Verify system to verify the employment eligibility of newly hired employees beginning July 1, 2023. The bill, SB 1718, is expected to be signed into law by Governor Ron DeSantis.

E-Verify is an Internet-based system operated by the United States Department of Homeland Security. It allows participating employers to electronically verify the employment eligibility of new hires. Under the pending bill, the mandatory E-Verify requirement would apply to employees hired on or after July 1, 2023. It will not apply to employees hired prior to that date, nor will it cover independent contractors. Employee leasing companies would be responsible for the E-Verify compliance unless they enter into a written agreement with their client companies transferring that responsibility to them.

If an employer is unable to verify a newly hired employee because the E-Verify system is unavailable for more than three business days after the new hire begins work, the employer would be required to (i) use Employment Eligibility Verification form (Form I-9) to verify employment eligibility, and (ii) retain a screenshot or other proof of the system's unavailability for each day the employer was unable to access the system.

Employers required to use the E-Verify system would also be required to certify their compliance with the E-Verify requirement on their first return each calendar year to the state's tax service provider. Employers would have to keep a copy of the new employee's E-Verify documentation for at least three years.

Businesses that fail to comply with the E-Verify requirements could face suspension of their state licenses and may be fined $1,000 per day until the noncompliance is cured. Enforcement would begin on July 1, 2024.

View original.

- **Evandro C. Gigante**
  Partner
- **Jurate Schwartz**
  Senior Counsel
- **Laura M. Fant**
  Special Employment Law Counsel