

E-Verify and Your Rights

What is E-Verify?

E-Verify is an Internet-based program ran by the federal government that employers use to check the work eligibility of their employees.

How does the E-Verify System work?

After you are hired, you have to fill out a federal government form called the Form I-9. This form has questions about your work status and asks for proof of permission to work in the United States. The employer types your Form I-9 information into E-Verify program. Under federal law the employer has to do this within three business days of your start date. Under South Carolina law, the employer has five business days to do so.

The E-Verify System compares the information you provided on the Form I-9 to that in the Social Security Administration (SSA) and/or Department of Homeland Security (DHS) databases.

If the E-Verify System says that you have permission to work, then you do not have to provide anything else to the employer. If the E-Verify System cannot figure out your work eligibility or says you do not have permission to work in the United States, then your employer will receive a "Tentative Non-Confirmation Notice" (TNCN).

What are my rights if my employer receives a TNCN?

Your employer must promptly give you a copy of the TNCN. The TNCN will tell you what did not match. For example, it may say that the Social Security Number you provided does not come back as yours.

You have the right to challenge the TNCN. If you decide to challenge the TNCN finding, your employer must give you a letter (called a referral letter) that explains what to do. You have eight federal workdays to challenge the TNCN. (A federal workday is a typical workweek, Monday through Friday, excluding holidays.)

U.S. citizens contact the SSA to correct the error(s), while non-citizens get in touch with the DHS. Once you reach the SSA or DHS and explain the situation, the agency has ten federal working days to look into the matter. If the agency needs more than ten days, they will send your boss a "Case in Continuance" letter.

During this time, your employer may not fire or suspend you, withhold pay or training, or otherwise treat you badly.

If you decide not to fight the TNCN or do not file a challenge in time, you give up your E-Verify rights. If this happens, the TNCN becomes final and the employer must fire you.

Do I have any rights if E-Verify correctly reports that I am not authorized to work?

No, you have no rights to challenge the finding if you do not have permission to work in the United States.

What can I do to help protect myself from problems with E-Verify?

Make sure all your papers from immigration are correct and have not expired. Check the spelling of your name on all papers. Make sure that all papers with special numbers, like the Alien Identification Number, match. If there are mistakes, contact immigration and get the errors fixed.

What can I do if my employer violated my E-Verify rights?

If your boss does not give you the TNCN, or let you clear up the problems as required by law then you can call the Office of Special Counsel for Immigration Related Unfair Employment Practices at 1-800-255-7688. You should also call them if you feel your rights have violated because your employer cut your pay, etc.

What are some other rights I need to know about when it comes to E-Verify?

1. Your employer must post signs letting you know they use E-Verify.
2. Only newly hired employees can be run through E-Verify. Your employer can not go back and check your employment eligibility if you are already on the job. If your work papers have expired, your employer can make you fill out a new Form I-9 and then do E-Verify.
3. Employers must use the E-Verify program on all new hires, including U.S. citizens.
4. Employers may not pre-screen applicants through E-Verify. Pre-screening is when the employer checks your work status before hiring you. This is illegal, because you never get a chance for the job if E-Verify incorrectly says you do not have permission to work in the U.S.

This is not all of the information that you need to know about E-verify. Speak to an attorney.

If you do not have a lawyer, the South Carolina Bar Lawyer Referral Service can give you the name of a lawyer who is willing to meet with you and advise you at a lower rate. For the name of a lawyer in your area; call the Lawyer Referral Service (800) 868-2284 statewide or (803) 799-7100 in Columbia.

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