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Employment Verification
Advocates Shrug Off National E-Verify Mandate

By Caryn Freeman

Sept. 10 — Immigration advocates, not too keen on mandatory E-Verify, met on Capitol Hill Sept. 10 to sharply criticize the proposed national mandate, arguing that it's burdensome to employers and doesn't offer a solution that provides access to an authorized labor force.

H.R. 1147, currently pending in the House, would amend the Immigration and Nationality Act to establish an electronic employment eligibility verification system patterned after the E-Verify system. The bill also would eliminate the I-9 employment eligibility verification form, making the electronic verification process a national mandate.

The measure, introduced by Rep. Lamar Smith (R-Texas), cleared the House Judiciary Committee in March (9 WIR 182, 3/16/15) but has yet to see floor action. A similar bill (S. 1032) was introduced by Senate Judiciary Committee Chairman Charles Grassley (R-Iowa) in April.

Jessie Hahn, a labor and employment policy attorney at the National Immigration Law Center, argued that the current error rate for tentative nonconfirmations (TNCs) is too high: 0.3 percent, or 170,000 people, erroneously receive TNCs. If E-Verify were to become a national mandate, that number could be as high as 440,000 erroneous TNCs, she said.

TNCs indicate a mismatch between the employee's information entered into the E-Verify system and that contained in government records. Employees have eight days to contact the appropriate agency to correct the mismatch.

"After the eight days, if a person is not able to fix the erroneous record, the tentative non-confirmation automatically becomes a final non-confirmation. There's not a lot of transparency around the records that the agencies maintain, so if an individual gets a non-confirmation they might have to submit a Privacy Act request to figure out why the error is associated with their name," Hahn said.

Jim Harper, Cato Institute senior fellow, said an extension of E-Verify would make very simple identity fraud more complex because the system will search for multiple uses of the same name and Social Security number. Therefore, he said, those looking to verify work status fraudulently "will have to come up with authentic name and SSN pairs that haven't been used before."

"You will find a situation, not too far in the future, should this policy go forward, where there will be a real contest between the person whose true identity it is and the person who is using that identity. Someone might find that their identify is so thoroughly taken that [they] can't prove better than the other person can prove that [they] are who [they] say you are," Harper said.

Agriculture Industry Still Needs Workers

Kristi Boswell, director of congressional relations, labor and immigration at the American Farm Bureau Federation, said looking at the immigration and agriculture labor issue broadly, "it's all about making sure we can access a legal labor force and a stable labor force." The AFBF is an independent, non-governmental, voluntary organization governed by and representing farm and ranch families.

Boswell said the AFBF doesn't "generally oppose" mandatory E-Verify as long as there is a solution that provides access to a legal labor force.

"Our policies are not on the intricacies of E-Verify, but more on making sure that if we have to use E-Verify as employers we have access to a legal workforce," she said.

Boswell said the AFBF specifically is calling for legal status for current agricultural workers who are undocumented, as well as a new, flexible guestworker program to replace the current H-2A program.

"Before those two things are in place we will oppose any effort to do mandatory E-Verify," she said. "It will be devastating to the industry."

Boswell added that because of the nature of the agriculture business, the industry has a lot of "unique concerns" with E-Verify.

"A lot of our hires are done on the side of the road in rural areas," she said. "There's not access to broadband, there's not access to an HR department where all of this processing and paperwork can be completed. These are things that we've talked to [the Department of Homeland Security and U.S. Citizenship and Immigration Services] about saying 'if we are going to have to do this,' assuming again, that we have access to a legal labor force, 'make sure it works on the ground' and agriculture has some very unique needs that have to be addressed before our employers can use this program."

Boswell went on to say that the AFBF opposes H.R. 1147 because there is no substantive piece of legislation combined with it that provides access to a legal labor force for the agriculture industry.

"We are working with [House Judiciary] Chairman [Bob] Goodlatte [R-Va.] and the Judiciary Committee staff on preparing that piece of legislation," Boswell said. "Until that legislation is ready and moving we will continue to oppose any effort to mandatory E-Verify. We just can't take the risk of having that impact on the industry and hold out hope that true substantive ag labor reform is coming down that pike. It has to happen at the same time and we've made that very well known to the leadership."

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