

# The impact of Ariz. immigration law ruling on state and local E-Verify

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The Supreme Court ruled against three of the four provisions of the controversial Arizona immigration law on Monday. In a 5-3 vote, the majority of the justices concluded that the Arizona law unconstitutionally invaded the federal government's exclusive prerogative to set immigration policy. Many states looking to get a better handle on the presence of unauthorized immigrants in their state were watching closely, especially Alabama, Georgia, Indiana, South Carolina, and Utah, which all currently have pending Arizona-style legislation. With this Supreme Court decision, states and localities may begin looking at the E-Verify program more seriously.

For those not familiar, E-Verify was created in 1997 as a free and voluntary Web-based program targeting federal agencies and contractors. The program evaluates an employee's Employment Eligibility Verification Form, known as the I-9 Form, against U.S. government records to determine if they are legally eligible to work in the U.S.

If a disparity is found, the employer is alerted and the employee is given eight federal government work days to resolve the issue while retaining employment. The program, operated by the U.S. Department of Homeland Security (DHS) and the Social Security Administration (SSA), was mandated for all federal agencies and contractors in 2007. Soon after, a handful of state governments began requiring their state agencies to participate in the E-Verify program as well.

There are currently 17 states that require public and/or private employers to participate in the E-Verify program: Alabama, Arizona, Colorado, Florida, Georgia, Idaho, Indiana, Louisiana, Mississippi, Missouri, Nebraska, North Carolina, Oklahoma, South Carolina, Tennessee, Utah and Virginia. While E-Verify mandates vary from state to state, all of the previously mentioned states require government contractors and subcontractors providing direct services to the state to enroll in the E-Verify program.

The E-Verify program is not without its flaws. In 2010, DHS released an outside study on the accuracy of E-Verify's ability to identify unauthorized workers. The study found that 54% of unauthorized workers were able to slip past the system and gain authorization to work. The study attributed this high number to identity fraud. An unauthorized worker could cheat the system, by submitting documents from a person who was authorized to work. Since that time, DHS has worked diligently to increase E-Verify's reliability and accuracy.

In most cases government contractors who knowingly employ unauthorized workers risk having their contract terminated. Penalties range in severity from one government entity to the next. For example government contractors that are found to be some of the most egregious E-Verify violators can face heavy fines, upwards of \$2,500 per worker (Louisiana) or even five years in jail (Mississippi). However, in most instances, employers using E-Verify are presumed by the government entity to be in good faith and not subject to penalties should an unauthorized worker mistakenly or fraudulently be given authorization. So, it is in the best interest of the contractor to enroll.

So, how might the Supreme Court decision affect government contractors? Likely, state and local government mandates for E-Verify will pick-up steam. For most large government contractors who do federal and multistate government business, E-Verify is something of an old issue. Smaller and more regional government contractors may have recently ran into E-Verify hurdles, especially as the program becomes more popular among states and localities.

The main obstacles government contractors are experiencing are mostly logistical. Navigating though E-Verify's enrollment and compliance process can be daunting and confusing to smaller firms with limited resources. Also, arranging to have all new and most existing employees verified within 30 days of a contract award can be a nightmare to medium-sized firms with decentralized staff. If a government contractor does not know where to start and wants to avoid potential fines, they can seek out third-party assistance from E-Verify employer agents who use E-Verify to confirm the employment eligibility of another company's employees. The agents audit all I-9 forms and identify errors to be corrected before submitting them to the government entity.

In light of the Supreme Court decision, and as illegal immigration becomes a bigger issue on the agenda for states, E-Verify will no doubt be a hot topic. Government contractors who are not currently enrolled in E-Verify and do most of their business with states and local government should start investigating the enrollment process now. In the future, E-Verify will become a standard tool and more prominent fixture in the state and local government contracting market.

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