

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Right to Privacy in the Workplace Act is
5 amended by changing Section 12 and adding Section 13 as
6 follows:

7 (820 ILCS 55/12)

8 Sec. 12. Use of Employment Eligibility Verification
9 Systems.

10 (a) Prior to enrolling ~~choosing to voluntarily enroll~~ in
11 any Electronic Employment Verification System, including the
12 E-Verify program and the Basic Pilot program, as authorized by
13 8 U.S.C. 1324a, Notes, Pilot Programs for Employment
14 Eligibility Confirmation (enacted by P.L. 104-208, div. C,
15 title IV, subtitle A), employers are urged to consult the
16 Illinois Department of Labor's website for current information
17 on the accuracy of E-Verify and to review and understand an
18 employer's legal responsibilities relating to the use of the
19 ~~voluntary~~ E-Verify program.

20 (a-1) The Illinois Department of Labor (IDOL) shall post
21 on its website information or links to information from the
22 United States Government Accountability Office, Westat, or a
23 similar reliable source independent of the Department of

1 Homeland Security regarding: (1) the accuracy of the E-Verify
2 databases; (2) the approximate financial burden and
3 expenditure of time that use of E-Verify requires from
4 employers; and (3) an overview of an employer's
5 responsibilities under federal and state law relating to the
6 use of E-Verify.

7 (b) Upon initial enrollment in an Employment Eligibility
8 Verification System or within 30 days after the effective date
9 of this amendatory Act of the 96th General Assembly, an
10 employer enrolled in E-Verify or any other Employment
11 Eligibility Verification System must attest, under penalty of
12 perjury, on a form prescribed by the IDOL available on the IDOL
13 website:

14 (1) that the employer has received the Basic Pilot or
15 E-Verify training materials from the Department of
16 Homeland Security (DHS), and that all employees who will
17 administer the program have completed the Basic Pilot or
18 E-Verify Computer Based Tutorial (CBT); and

19 (2) that the employer has posted the notice from DHS
20 indicating that the employer is enrolled in the Basic
21 Pilot or E-Verify program and the anti-discrimination
22 notice issued by the Office of Special Counsel for
23 Immigration-Related Unfair Employment Practices (OSC),
24 Civil Rights Division, U.S. Department of Justice in a
25 prominent place that is clearly visible to both
26 prospective and current employees. The employer must

1 maintain the signed original of the attestation form
2 prescribed by the IDOL, as well as all CBT certificates of
3 completion and make them available for inspection or
4 copying by the IDOL at any reasonable time.

5 (c) It is a violation of this Act for an employer enrolled
6 in an Employment Eligibility Verification System, including
7 the E-Verify program and the Basic Pilot program:

8 (1) to fail to display the notices supplied by DHS and
9 OSC in a prominent place that is clearly visible to both
10 prospective and current employees;

11 (2) to allow any employee to use an Employment
12 Eligibility Verification System prior to having completed
13 CBT;

14 (3) to fail to take reasonable steps to prevent an
15 employee from circumventing the requirement to complete
16 the CBT by assuming another employee's E-Verify or Basic
17 Pilot user identification or password;

18 (4) to use the Employment Eligibility Verification
19 System to verify the employment eligibility of job
20 applicants prior to hiring or to otherwise use the
21 Employment Eligibility Verification System to screen
22 individuals prior to hiring and prior to the completion of
23 a Form I-9;

24 (5) to terminate an employee or take any other adverse
25 employment action against an individual prior to receiving
26 a final nonconfirmation notice from the Social Security

1 Administration or the Department of Homeland Security;

2 (6) to fail to notify an individual, in writing, of
3 the employer's receipt of a tentative nonconfirmation
4 notice, of the individual's right to contest the tentative
5 nonconfirmation notice, and of the contact information for
6 the relevant government agency or agencies that the
7 individual must contact to resolve the tentative
8 nonconfirmation notice;

9 (7) to fail to safeguard the information contained in
10 the Employment Eligibility Verification System, and the
11 means of access to the system (such as passwords and other
12 privacy protections). An employer shall ensure that the
13 System is not used for any purpose other than employment
14 verification of newly hired employees and shall ensure
15 that the information contained in the System and the means
16 of access to the System are not disseminated to any person
17 other than employees who need such information and access
18 to perform the employer's employment verification
19 responsibilities.

20 (c-1) Any claim that an employer refused to hire,
21 segregated, or acted with respect to recruitment, hiring,
22 promotion, renewal or employment, selection for training or
23 apprenticeship, discharge, discipline, tenure or terms,
24 privileges, or conditions of employment without following the
25 procedures of the Employment Eligibility Verification System,
26 including the Basic Pilot and E-Verify programs, may be

1 brought under paragraph (G)(2) of Section 2-102 of the
2 Illinois Human Rights Act.

3 (c-2) It is a violation of this Section for an individual
4 to falsely pose as an employer in order to enroll in an
5 Employment Eligibility Verification System or for an employer
6 to use an Employment Eligibility Verification System to access
7 information regarding an individual who is not an employee of
8 the employer.

9 (d) Preemption. Neither the State nor any of its political
10 subdivisions, nor any unit of local government, including a
11 home rule unit, may require any employer to use an Employment
12 Eligibility Verification System, including under the following
13 circumstances:

- 14 (1) as a condition of receiving a government contract;
15 (2) as a condition of receiving a business license; or
16 (3) as penalty for violating licensing or other
17 similar laws.

18 This subsection (d) is a denial and limitation of home
19 rule powers and functions under subsection (h) of Section 6 of
20 Article VII of the Illinois Constitution.

21 (Source: P.A. 95-138, eff. 1-1-08; 96-623, eff. 1-1-10;
22 96-1000, eff. 7-2-10.)

23 (820 ILCS 55/13 new)

24 Sec. 13. Restrictions on the use of Employment Eligibility
25 Verification Systems.

1 (a) If an employer receives notification from the Social
2 Security Administration of a discrepancy between an employee's
3 name or social security number and the Social Security
4 Administration's records, and the employer takes any adverse
5 action against the employee, an employer must:

6 (1) provide the employee with:

7 (A) the specific document or documents that are
8 deemed to be deficient and the reason why the document
9 or documents are deemed to be deficient;

10 (B) instructions on how the employee can correct
11 the deficient documents;

12 (C) an explanation of the employee's right to have
13 representation present during the verification or
14 re-verification process; and

15 (D) an explanation of any other rights that the
16 employee may have in connection with the verification
17 or re-verification process; and

18 (2) grant the employee no less than 30 days of unpaid
19 leave to correct any verification discrepancy. If the
20 unpaid leave period has expired and the employee can
21 reasonably demonstrate an ability to remedy the
22 discrepancy, the employer and employee may agree to extend
23 the leave period for an additional 30 days. Only if no
24 agreement is reached or the additional 30 day period has
25 expired, can the employer terminate the employee's
26 employment.

1 (b) When an employer receives notification from any
2 federal or State agency, including, but not limited to, the
3 Social Security Administration or Internal Revenue Service, of
4 a discrepancy, the following rights and protections are
5 granted to the employee:

6 (1) to choose which work authorization documents to
7 present to the employer during the verification or
8 re-verification process; and

9 (2) to choose to be represented by counsel or
10 represent his or herself in any meetings, discussions, or
11 proceedings with the employer.

12 (c) If an employer receives notification from any federal
13 or State agency, including, but not limited to, the Social
14 Security Administration or the Internal Revenue Service, of a
15 discrepancy and the discrepancy has been remedied, the
16 employer must:

17 (1) return the employee to his or her former position,
18 without loss of seniority, compensation rate or salary, or
19 benefits; and

20 (2) not consider the discrepancy in future promotion
21 decisions or continued employment considerations.