

# **The New Employee Verification Act**

## **Summary of Provisions**

### **Title I – Electronic Employment Verification**

#### **Section 101. Amendments to Immigration Laws to Improve Employment Authorization Verification**

- Amends the Immigration and Nationality Act, which makes employment in the U.S. unlawful without verifying employment eligibility, by adding the newly created Electronic Employment Verification System (EEVS) or the Secure Electronic Employment Verification System (SEEVs) as a means of verification.
- Allows the Secretary of Homeland Security to allow employers, not already required to participate, to voluntarily participate in the EEVS or SEEVs system. The Secretary may also require expedited participation of certain employers who have access to locations or information directly related to national security or who have engaged in material violations of the law. Directs the Secretary to notify those required to participate on an expedited basis.
- Establishes penalties for employers who do not participate in EEVS or SEEVs.
- Protects employers from liability for employment related actions taken with respect to employees in response to information provided by either the EEVS or SEEVs.
- Creates a rebuttable presumption that employers – who participate in EEVS, and who continue to employ, recruit, or refer unauthorized individuals – have violated the INA. Creates a presumption that employers – who participate and follow the procedures of the SEEVs – have not violated the INA and the presumption shall only be overcome by clear and convincing evidence of willful noncompliance resulting in the hiring of unauthorized employees.
- Requires employers to obtain from prospective employees their name, date of birth, Social Security number (SSN) or their alien ID number (if applicable).
- Requires employees who are a citizen or national to provide as identity documentation either a driver's license, passport or state ID which contains the individual's photo, name, date of birth, gender, address and security features.
- Requires employees who are lawful alien residents, lawful alien workers (or those otherwise unable to provide such documentation) to provide the documentation issued by the Secretary of Homeland Security which contains the individuals' name, date of birth, address, photo, and security features.
- Allows employers to attest electronically or telephonically that they have obtained and examined the required identity documentation.

- Specifies that an initial disapproval will become final if employees do not contest within 10 days and employment must be terminated within 3 days. Also specifies that employment must be terminated within 3 days when a disapproval notice is issued after an initial disapproval is contested. Allows employers to dismiss employees who fail to obtain approval 20 days after being notified of an initial disapproval.
- Creates a preemption of federal law over any state law to protect both employers and employees from unwarranted state activity and also ensures that nothing in the law shall be construed to require a national ID card.
- Authorizes appropriations to the Secretary of Homeland Security to enforce these provisions.

## **Section 102. Amendments to Social Security Law to Improve Employment Authorization Verification**

### Electronic Employment Verification System (EEVS)

- Amends the Social Security Act to establish a new EEVS, transmitted through the National Directory of New Hires, to determine whether employees' information (name, date of birth, SSN or their alien ID number (if applicable)) is consistent with information maintained by the Social Security Administration for U.S. citizens and the Department of Homeland Security for lawful aliens, and whether they are lawfully authorized to work.
- Directs employers to submit an inquiry requesting employment authorization of all new hires no sooner than the date of hire and no later than the third business day after new employees have reported for duty, or no later than the first day following recruitment for employment or any time employees request self-verification.
- Requires that the system shall respond to each inquiry as soon as possible but no later than within 3 days of receiving the inquiry. Employers are to notify employees of the response within 3 days of receiving the system response. Employees may contest any initial disapproval within 10 days of its receipt.
- Provides employees with 30 days to file an administrative review of a work disapproval under procedures developed by the Commissioner and the Secretary of Homeland Security. Further provides employees an opportunity to seek a judicial review within 30 days of receiving the final determination of the administrative review.
- Ensures that employees are provided lost wages when a determination is reached that their disapproval was caused by a negligent, reckless, willful, or malicious act of the Government and not by an act or omission of new employees.
- Sets forth a timetable of implementation of the EEVS which prioritizes the need to deter illegal immigration and unauthorized employment in the U.S. Those who participate in the Basic Pilot (currently known as E-Verify) shall be registered as soon as feasible, and all other employers shall be registered within 3 years of enactment.

- Requires the Commissioner and Secretary of Homeland Security to establish procedures to maintain the accuracy and integrity of the system. Also, a public education campaign and registrant training are to be developed in consultation with the Department of Health and Human Services and the States – both within 6 months before the first date of registration.
- Establishes minimum system requirements to ensure efficiency, accuracy, and privacy. Several of the measures include: fully integrated across agencies; accessible to all registered employers via internet and telephone; real-time data entry; a mechanism for employers to attest to their compliance; timely entry and access of all data; a method to correct relevant data held within the system; secure procedures for individuals to examine their records, request expedited corrections of errors, and appeal disapprovals; procedures limiting agency and contractor personnel to enter data; and 24-hour Internet and telephone help desk.
- Employers are to provide employees with a notice, in written form developed by the Commissioner, which states the reason for the initial disapproval, the right to contest the initial disapproval, and contact information for contesting an initial disapproval.
- Requires the Commissioner to establish a secure, reliable method for determining through EEVS whether the following information is consistent with the information maintained by the Commissioner: name, date of birth, SSN, citizenship status, whether the name and SSN belongs to someone who is deceased, under the age of seven, has a fraud indicator on their record or who have blocked access to their SSN.
- Mandates that an annual report be submitted to Congress by the Commissioner, no later than 24 months following enactment, which provides a certified determination of the percentage of inquiries that result in an initial or final disapproval within the applicable timeframe and that were not overturned on appeal. If the percentage is less than 99 percent the Commissioner must detail the steps being taken to bring the percentage to 99 percent, with specified timeframes. Further, the Commissioner must provide an assessment of the privacy and security of the EEVS and the SEEVS.
- Provides that only the minimum amount of data necessary to accomplish employment verification and detect and prevent employment related identity theft shall be stored in the system. Any office, employee, or contractor shall be punished for willfully and knowingly using information in a manner other than prescribed in the law.
- Requires the Commissioner to establish procedures whereby individuals may block and remove a block on the use of their SSN under the EEVS.

#### Secure Employment Eligibility Verification System (SEEVS)

- Establishes in the Social Security Act a new SEEVS whereby employers would refer newly hired employees to government certified private sector companies, to authenticate employees' identity, safeguard employees' identity through biometric technology, and

confirm new employees' work authorization. The SEEVS shall be established no later than 18 months after the date of enactment.

- Provides the ability of employers to cancel their participation in the SEEVS one year after electing to participate.
- Establishes the use of private sector, government-certified enrollment providers to provide identity authentication of new employees through background screening verification techniques using publicly available information, protect employees' authenticated identity through biometric technology and verify employees' work authorization.
- Provides that databases maintained by the Commissioner and Secretary of Homeland Security shall timely capture new entries and new status information and to interact with the private enrollment databases to keep employment authorization and identifying information current on a daily basis.
- Requires that any data that is stored keeps identifying information separate from any biometric information and shall be used only for the purpose of employment verification except in response to a judicial warrant or to employees' written consent to the information's use for other purposes.
- Requires the Commissioner to conduct an ongoing, comprehensive public education campaign relating to SEEVS.
- Sets forth the following responsibilities for employers: limiting the use of SEEVS for new employees only; limiting the use of SEEVS to no sooner than the date of hire and no later than the third business day after new employees have reported for duty (or no later than the first day following recruitment for employment); registering with the private sector enrollment providers; and providing payment of any costs associated with the enrollment of new employees.
- Prohibits the use of the SEEVS to selectively verify a class, level, or category of new employees and allows employers with multiple locations to verify employees at selected locations without verifying at all locations.
- Provides employees the same rights and privileges as allowed under the EEVS, including the right to verify and correct their information, cancel their enrollment in SEEVS at any time and to have all of their information and biometrics removed from the system.
- Punishes all officers, employers, or contractors who willfully and knowingly use information in a manner other than prescribed in the law.
- Issues restitution to victims of a violation of the SEEVS, including those who have suffered a financial loss due to an improper disclosure of information. Restitution issued to the Commissioner shall be deposited in the Social Security trust funds.

- Creates the Employment Verification Advisory Panel. The panel shall consist of experts and representatives from affected industries, including human resource, employer and employee organizations, and those in the database and biometric technology industries. The Advisory Panel shall advise the Commissioner and the Secretary of Homeland Security on the implementation, deployment, and security of the verification systems.
- Authorizes appropriated funds to the Commissioner that are necessary to carry out these provisions and also mandates that the Commissioner may only carry out his responsibilities under the bill to the extent that funds are appropriated in advance. Also, in no case shall Social Security trust funds be used to carry out these responsibilities.
- Adds to the required information employers must submit to the State Directory of New Hires new employees: date of birth, alien identification number (if applicable), and the date they first reported for duty. Also requires the timing of employers reporting to be no later than the third business day that new employees first report for duty.

### **Section 103. Protecting Against Discrimination**

- Amends the Immigration and Nationality Act to make it an unfair immigration-related employment practice to: terminate or to take any adverse employment related action unless authorized or required to do so; screen applicants prior to an offer of employment; to use the system on current employees; or to require individuals to self-verify.
- Increases the civil monetary penalties for violations of this section.

### **Section 104. Penalties**

- Increases civil monetary penalties for violations of knowingly hiring individuals not authorized for employment or to hire without verifying employment eligibility or continuing to employ unauthorized aliens knowing the aliens are or have become unauthorized to work. Also mitigates certain increased penalties for small employers.
- Allows for an exemption from penalties for employers who prove it was the first of such a violation and that they acted in good faith.
- Provides a safe harbor for employers who hire or continue to employ unauthorized workers through subcontractors, unless the employers knew the subcontractors hired or continued to employ unauthorized workers.
- Any person or entity who engages in a pattern or practice of violations shall be fined not more than \$50,000 for each unauthorized alien and imprisoned for not less than one year or both.

### **Section 105. Annual Study and Report by the Government Accountability Office (GAO)**

- Requires the GAO to conduct an annual study to evaluate the accuracy, efficiency, integrity and impact of the EEVS and SEEVS. The GAO shall also submit a report no later than 15 months following enactment, and annually thereafter, to provide an assessment of whether the Commissioner of Social Security and the Secretary of Homeland Security have the necessary resources to perform their duties set forth in the law; the GAO shall also assess the accuracy, privacy, security and certain effects of the EEVS and SEEVS.

#### **Section 106. Disclosure of Information to DHS for Law Enforcement Purposes**

- Directs the Secretary of Health and Human Services to submit to the Secretary of Homeland Security information obtained through the National Directory of New Hires regarding employers with the greatest number or percentage of mismatched Social Security information. Further establishes guidelines and standards for the disclosure of information. Such disclosures shall sunset once EEVS is fully implemented.

### **Title II – Protecting the Integrity of Social Security**

#### **Section 201. Denying Credit Toward Benefits for Earnings From Unauthorized Work**

- Amends the Social Security Act to provide that no quarters of credit shall be given towards Social Security benefits for any calendar year if, on the last day of such year, such individual is not a citizen or national of the United States, unless the Secretary of Homeland Security determines that the individual was authorized to be employed in the U.S. during any portion of the calendar year. If such individual is authorized to work at any time during the year, quarters of coverage will be credited based on all earnings in such calendar year.

#### **Section 202. Improvements in Provisions Governing Totalization Agreements**

- Requires additional information be provided in the President’s report to Congress, including major risks associated with the agreement, the number of United States versus foreign citizens benefiting from the agreement, the effect on taxes and benefits for U.S. citizens and non-citizens, and the short and long-term effects on Social Security’s finances.
- Allows totalization agreements to go into effect unless a joint resolution of disapproval is enacted within 60 calendar days after the agreement is transmitted to Congress. Agreements estimated to have more than a negligible negative effect on Social Security’s long-term finances would not go into effect unless the Congress enacts a joint resolution of approval within 60 calendar days of the agreement’s transmittal to Congress.

#### **Section 203. Suspending Benefits to Individuals Removed from the United States**

- Amends the Social Security Act to prohibit the payment of auxiliary and survivor’s benefits to individuals who have been removed from the United States under applicable provisions of the Immigration and Naturalization Act.