

Letter of Understanding with Clients Regarding FL E-Verify

The Florida Legislature has passed SB 1718 and Governor DeSantis has signed this immigration bill into law. The bill affects employers in various ways, including making significant modifications to Section 448.095, Fla. Stat and Section 448.09, Fla. Stat.

Section 448.095 has been amended and now reads in pertinent part:

Beginning on July 1, 2023, a private employer with 25 or more employees shall use the E-Verify system to verify a new employee's employment eligibility...

In addition, companies who have 25 or more employees must certify each calendar year that they are in compliance with their E-Verify obligations.

Also, Section 448.09, effective July 1, 2024 has been amended to read in pertinent part:

(1) It is unlawful for any person to knowingly employ, hire, recruit, or refer, either for herself or himself or on behalf of another, for private or public employment within this state, an alien who is not duly authorized to work by the immigration laws of the United States, the Attorney General of the United States, or the United States Secretary of the Department of Homeland

The penalty provisions of each law are severe.

For example, on July 1, 2024 the penalty for an employer required to use the E-Verify system, who fails to do so will include:

(a) beginning on July 1, 2024, if the Department of Economic Opportunity determines that an employer failed to use the E-Verify system to verify the employment eligibility of employees as required under this section, the department must notify the employer of the department's determination of noncompliance and provide the employer with 30 days to cure the noncompliance.

(b) If the Department of Economic Opportunity determines that an employer failed to use the E-Verify system as required under this section three times in any 24-month period, the department must impose a fine of \$1,000 per day until the employer provides sufficient proof to the department that the noncompliance is cured. Noncompliance constitutes grounds for the suspension of all licenses issue[d] by a licensing agency subject to chapter 120 until the noncompliance is cured.

The penalty provision for violating Section 448.09 which becomes effective July 1, 2024 provides in pertinent part:

... (3) For a violation of this section, the department shall place the employer on probation for a 1-year period and require that the employer report quarterly to the department to demonstrate compliance...

(4) Any violation of this section which takes place within 24 months after a previous violation constitutes grounds for the suspension or revocation of all licenses issued by a licensing agency subject to chapter 120. The department shall take the following actions for a violation involving:

(a) One to 10 unauthorized aliens, suspension of all applicable licenses held by a private employer for up to 30 days by the respective agencies that issued them.

(b) Eleven to 50 unauthorized aliens, suspension of all applicable licenses held by a private employer for up to 60 days by the respective agencies that issued them.

(c) More than 50 unauthorized aliens, revocation of all applicable licenses held by a private employer by the respective agencies that issued them.

While the E-Verify requirements of Section 448.095 may only be mandatory for “a private employer with 25 or more employees,” the penalty provisions of revised Section 448.09, which go into effect on July 1, 2024, are applicable to “any person” who “knowingly employ[s], hire[s], recruit[s], or refer[s]... an alien who is not duly authorized to work...”

RealTime PEO will assist your Company in its understanding of and in its compliance with Section 448.09.

Similarly, RealTime PEO will assist your Company in its understanding of and in its compliance with Section 448.095. However, it is your Company’s sole and exclusive obligation, not that of RealTime PEO, for compliance with this law and it is your Company’s sole and exclusive obligation to verify employment eligibility of any new employee of your Company, as required by this law, whether or not these new employees are to be in a PEO relationship.

Any fines or other penalties resulting from your Company’s failure to follow proper immigration, I-9, or E-Verify procedures and processes will be solely your Company’s responsibility.

We are well aware that these laws are complicated, but with the help of our dedicated group of HR professionals, we hope to simplify your compliance obligations.