

## Employment Alert

Sep-9-2009

### E-Verify Rules Go Into Effect Today

Earlier today the U. S. Court of Appeals for the Fourth Circuit denied an emergency request by the U. S. Chamber of Commerce and other business groups seeking to block implementation of the Department of Homeland Security and Federal Acquisition Regulation rule requiring many federal government contractors to use DHS' E-Verify System when hiring new employees, and to verify existing employees working on government contracts. The ruling comes in *U. S. Chamber of Commerce, et al. v. Janet Napolitano*, Case Number 09-2006. The underlying litigation was finally resolved last week when Judge Williams of the District of Maryland Court denied a similar emergency request to enjoin the new e-verify rules pending an appeal. Previously, Judge Williams had ruled, on August 26th, that the verification rules were within the authority of the Government, rejecting challenges to the new rules on a variety of grounds. The verification rules, which had been delayed by the lawsuit on several previous occasions, were scheduled to go into effect September 8. With the Court of Appeals ruling today, there are no further roadblocks to immediate implementation of the e-verify requirements, and we expect the DHS to begin enforcement tomorrow, if they have not already.

The new regulations require most federal contractors with at least one \$100,000 prime contract to sign a Memorandum of Understanding agreeing to implement the regulations by using e-verify for all new hires and for existing employees performing work under the contract. There is also an option to verify all employees hired after 1986 working for the contractor, but this is purely voluntary. It is expected that contracting officers will begin inserting appropriate language into all new covered contracts from this point forward. Existing contracts are supposed to be modified through mutual consultation and agreement to include the relevant language.

Subcontractors are not exempt from the requirement, which is triggered by subcontracts of only \$3,000 or more. Employers supplying COTS, Commercially available Off The Shelf items are exempt, as are certain other suppliers, and special rules govern institutions of higher learning.

Our attorneys have recently presented for webinars on e-verify with DHS employees from the Verification Section. If there is sufficient interest, we will be happy to present a webinar for MBT clients in the near future. In the meantime if you have questions about the new rules, contact either Brian Bulger or Rachel Urquhart at 312-474-7900.

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