

HUMAN RESOURCES INITIATIVE FOR A LEGAL WORKFORCE 2007 PRINCIPLES

The members of the Human Resources Initiative for a Legal Workforce recognize that the illegal immigration crisis facing the United States is largely due to the ready availability of good paying jobs in this country. Central to the immigration discussion, therefore, is the need to establish a reliable, efficient and accurate employment eligibility verification process that would serve our national interest.

The current employment eligibility verification system, which requires employers to exercise discretion in examining multiple documents, does not deter unauthorized employment, as employers cannot know whether documents are real or fake. Meanwhile the current electronic verification program, known as the “Basic Pilot,” can be an effective safeguard against document fraud, but it does little to prevent the growing problem of identity theft.

House and Senate immigration reform proposals have included the eventual mandatory participation by all U.S. employers in the Basic Pilot (including re-verification of current employees).

The HR Initiative supports Congress and the Department of Homeland Security (DHS) in the effort to restore integrity to our immigration system. Indeed, the vast majority of U.S. employers would endorse a process to bring certainty to employment verification. However, we believe required participation in Basic Pilot, in its present form will fail to provide the security needed.

To address these concerns, the HR Initiative for a Legal Workforce assembled an expert working group of human resource professionals to develop a set of principles to guide the creation of a new worksite enforcement system. We believe that for a mandated electronic employment verification system to become effective, it must meet the following Principles:

- 1. Shared responsibility among government, employers and employees*
- 2. Fair enforcement*
- 3. Accuracy and reliability*
- 4. Ease of use*
- 5. Deployment of latest technologies*

Principle 1: Shared Responsibility – U.S. employers, employees and the government share responsibility for a reliable, efficient, accurate system to verify employment eligibility. This system should:

- Establish clear federal statutory language preempting states from imposing employment eligibility verification provisions. The current profusion of state mandates is confusing and costly for employers and undermines the goal of an effective national system.

- Require the Secretary of Homeland Security to enforce the federal preemption of state and local employment verification laws.
- Create a federal advisory board consisting of employers, employees and technology experts to provide guidance in the creation and implementation of any new employment eligibility verification system.
- Direct the federal government to provide funding to implement, administer, and maintain the electronic employment eligibility verification system to meet the standards set by the National Institute of Standards and Technology (NIST).
- Require employers to verify through the system their new employees' authorization to work in the United States. Employers who intentionally fail to conduct employment eligibility verification should be penalized.
- Require employees and applicants to maintain accurate and up-to-date documents verifying their eligibility to work. Employees and applicants who intentionally present false or fraudulent documents should be penalized. Individuals should also have the option of verifying their own eligibility before seeking employment.
- Require the federal government to ensure a high level of accuracy in its databases and to include mechanisms that guarantee timely responses to queries.

Principle 2: Fair Enforcement and Protection – U.S. employers should be liable for their own hiring decisions, not those made outside their control. Enforcement needs to be vigorous and fair, and should focus on employers that blatantly ignore the law as opposed to employers who commit paperwork or technical violations in their attempt to comply. A fair and correct enforcement effort must:

- Require verification only of individuals hired after the enactment of a new electronic verification system. Enforcement of existing statutes should be used to identify ineligible individuals who are currently employed by organizations.
- Reconcile any new federal laws with existing employment, labor, health and civil rights laws. Employers should not be subject to conflicting statutes and enforcement procedures in complying with federal immigration law.
- Protect against discrimination for employers, employees and applicants.
- Create mechanisms within the system to ensure that personal information is kept private and only used for purposes of employment verification.
- Require employers to be responsible for their own hiring practices, not for third-party employers, including contractors or subcontractors, absent actual knowledge.
- Ensure that enforcement and sanctions are consistent with the violation. Punishment should be severe for intentional violations, but not for administrative errors that easily could be corrected. A substantial grace period should be provided to allow employers to correct technical errors.

- Create a comprehensive “Good Faith” reliance standard for employment decisions made on the basis of using the electronic employment eligibility verification system.

Principle 3: Accuracy, Reliability and Efficiency – Employers want an accurate, fair and timely electronic employment eligibility verification system, but should not be forced to participate until the federal government provides assurances that the system works. This means that the system must respond instantaneously, and the information contained in the response must be correct. Before requiring all employers to use an electronic system, Congress must:

- Require a qualified entity, such as the National Institute of Standards and Technology (NIST), to certify the capacity of computer hardware, the accuracy of various databases which feed into the electronic verification program, and the ability of the system to receive real-time links with all Social Security Administration (SSA), DHS, and Internal Revenue Service databases to meet the needs of employers, employees and applicants.
- Require DHS and SSA to perform real-time data entry of employment eligibility that is immediately available for verification purposes. All information integrating with these databases needs to be accurate and current.
- Require the electronic employment verification system to respond to an initial query immediately, but in no more than three days, and provide secondary and final confirmation or non-confirmation as soon as possible, but in no more than ten days.
- Allow employers the option of using the electronic employment eligibility verification system electronic screening after a contingent offer of employment is accepted, but before the employee commences work as long as the system is administered on a consistent, non-discriminatory basis.

Principle 4: Ease of Use – The new verification system should be easy to understand and to implement at all worksites. It should:

- Streamline the employment eligibility verification process by allowing the entire attestation and verification system to be conducted electronically to eliminate duplication and paperwork. The verification system also should be interoperable with most human resource management and database systems.
- Allow the electronic verification system to be accessible through the Internet and telephone with round-the-clock help-desk support to answer questions about technology or help resolve questions about employment status. The system must be user-friendly for employers of all sizes, taking into account the limited resources of some employers.
- Provide access to the employment eligibility verification system without charge.
- Allow a period of 12 months between enactment of any new law or publication of any new regulation or policy and actual implementation of the new law or policy. This provides time for public service announcements and other outreach to employers and employees about their new obligations.

Principle 5: Deployment of Latest Technologies – The current verification system is paper-based and requires individuals to produce documents to establish identity and work authorization. A new verification system must make false documents and identity theft

ineffective so that employers can be assured of a legal workforce. One way to achieve effective and efficient worksite enforcement is to include biometric identifiers or other state-of-the-art technology in the identity and work authorization process that is capable of automatically recognizing an individual's identity. A biometric system would automatically recognize an individual based on measurable biological (anatomical and physiological) and behavioral characteristics. The new employment eligibility verification system should:

- Create an employment verification system that transitions to biometric identifiers, consisting of private databases that contain biometrics and is integrated into federal status and identity systems.
- Allow willing individuals to enroll and provide personal data, including biometric data, so that employers would receive instantaneous and accurate response.
- Permit employers to use the biometric approach as soon as feasible and create incentives including “good faith” defenses to enforcement actions for those who use the system.
- Eliminate the current work authorization and identification documents for those participating in the biometric identifiers system.
- Allow employers to voluntarily participate in either an enhanced electronic employment eligibility verification system or to use biometric or other state-of-the-art technology. Provide incentives for employers to participate in the more secure biometric system. This system would operate as follows:
 - I. **Documents-Based Verification Process** – Enhanced electronic verification system. Employers participating in this system would be subject to the full range of enforcement efforts and penalties.
 - II. **Biometric or Other State-of-the-Art Verification Process** – Fully operational electronic verification system, based entirely on biometric identifiers or other state-of-the-art technology. The enrollment of the employee in the biometric system will include verification of that person's identity through additional background check databases. Employers participating in this system would be deemed to be in compliance and relieved of technical penalties and fees for participating in the system.

Employers want certainty in their workforce. For this reason, they support transforming the current paper-based method into a biometrically-based or other state-of-the-art electronic verification system. If adequately funded, fairly administered, vigorously enforced and supported by state-of-the-art technology, this new system would eliminate virtually all unauthorized employment and at the same time eradicate most forms of immigration-related unfair employment practices.

The Human Resource Initiative for a Legal Workforce represents human resource professionals in thousands of small and large U.S. employers across every sector of the American economy.

The HR Initiative and its members are seeking to improve the current process of employment verification by creating a secure, efficient and reliable system that will ensure a legal workforce and help prevent unauthorized employment, a root cause of illegal immigration.