

AN ACT concerning employment.

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

Section 5. The Right to Privacy in the Workplace Act is amended by changing Sections 12 and 15 as follows:

(820 ILCS 55/12)

Sec. 12. Use ~~Restrictions on use~~ of Employment Eligibility Verification Systems.

(a) Prior to choosing to voluntarily enroll in any Electronic Employment Verification System, including the E-Verify program and the Basic Pilot program, as authorized by 8 U.S.C. 1324a, Notes, Pilot Programs for Employment Eligibility Confirmation (enacted by P.L. 104-208, div. C, title IV, subtitle A), employers are urged to consult the Illinois Department of Labor's website for current information on the accuracy of E-Verify and to review and understand an employer's legal responsibilities relating to the use of the voluntary E-Verify program. Employers are prohibited from enrolling in any Employment Eligibility Verification System, including the Basic Pilot program, as authorized by 8 U.S.C. 1324a, Notes, Pilot Programs for Employment Eligibility Confirmation (enacted by PL 104-208, div. C, title IV, subtitle A), until the Social Security Administration (SSA) and

~~Department of Homeland Security (DHS) databases are able to make a determination on 99% of the tentative nonconfirmation notices issued to employers within 3 days, unless otherwise required by federal law.~~

(a-1) The Illinois Department of Labor (IDOL) shall post on its website information or links to information from the United States Government Accountability Office, Westat, or a similar reliable source independent of the Department of Homeland Security regarding: (1) the accuracy of the E-Verify databases; (2) the approximate financial burden and expenditure of time that use of E-Verify requires from employers; and (3) an overview of an employer's responsibilities under federal and state law relating to the use of E-Verify.

(b) Upon initial enrollment in an Employment Eligibility Verification System or within 30 days after the effective date of this amendatory Act of the 96th General Assembly, an employer enrolled in E-Verify or any other Employment Eligibility Verification System must attest, Subject to subsection (a) of this Section, an employer who enrolls in the Basic Pilot program is prohibited from the Employment Eligibility Verification Systems, to confirm the employment authorization of new hires unless the employer attests, under penalty of perjury, on a form prescribed by the IDOL available on the IDOL website ~~Department of Labor:~~

(1) that the employer has received the Basic Pilot or E-Verify training materials from the Department of

Homeland Security (DHS) ~~DHS~~, and that all employees ~~personnel~~ who will administer the program have completed the Basic Pilot or E-Verify Computer Based Tutorial (CBT); and

(2) that the employer has posted the notice from DHS indicating that the employer is enrolled in the Basic Pilot or E-Verify program and ~~and~~ the anti-discrimination notice issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), Civil Rights Division, U.S. Department of Justice in a prominent place that is clearly visible to both prospective and current employees. The employer must maintain the signed original of the attestation form prescribed by the IDOL, as well as all CBT certificates of completion and make them available for inspection or copying by the IDOL at any reasonable time, ~~and the anti-discrimination notice issued by the Illinois Department of Human Rights (IDHR).~~

(c) It is a violation of this Act for an employer enrolled in an Employment Eligibility Verification System, including the E-Verify program and the Basic Pilot program: ~~Responsibilities of employer using Employment Eligibility Verification Systems.~~

(1) to fail to ~~The employer shall~~ display the notices supplied by DHS and ~~and~~ OSC, ~~and IDHR~~ in a prominent place that is clearly visible to both prospective and current employees; ~~and~~

(2) to allow any employee to use an Employment Eligibility Verification System prior to having completed CBT; ~~The employer shall require that all employer representatives performing employment verification queries complete the CBT. The employer shall attest, under penalty of perjury, on a form prescribed by the Department of Labor, that the employer representatives completed the CBT.~~

(3) to fail to take reasonable steps to prevent an employee from circumventing the requirement to complete the CBT by assuming another employee's E-Verify or Basic Pilot user identification or password; ~~The employer shall become familiar with and comply with the Basic Pilot Manual.~~

(4) to use the Employment Eligibility Verification System to verify the employment eligibility of job applicants prior to hiring or to otherwise use the Employment Eligibility Verification System to screen individuals prior to hiring and prior to the completion of a Form I-9; ~~The employer shall notify all prospective employees at the time of application that such employment verification system may be used for immigration enforcement purposes.~~

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

~~Administration or the Department of Homeland Security; The employer shall provide all employees who receive a tentative nonconfirmation with a referral letter and contact information for what agency the employee must contact to resolve the discrepancy.~~

(6) to fail to notify an individual, in writing, of the employer's receipt of a tentative nonconfirmation notice, of the individual's right to contest the tentative nonconfirmation notice, and of the contact information for the relevant government agency or agencies that the individual must contact to resolve the tentative nonconfirmation notice; ~~The employer shall comply with the Illinois Human Rights Act and any applicable federal anti-discrimination laws.~~

(7) to fail to ~~The employer shall use the information it receives from SSA or DHS only to confirm the employment eligibility of newly hired employees after completion of the Form I 9. The employer shall safeguard the this information contained in the Employment Eligibility Verification System, and the means of access to the system~~ it (such as passwords and other privacy protections). ~~7~~ An employer shall ~~to~~ ensure that the System ~~it~~ is not used for any ~~other~~ purpose other than employment verification of newly hired employees and shall ensure ~~as necessary to protect its confidentiality, including ensuring that the information contained in the System and the means of access~~

to the System are ~~it is~~ not disseminated to any person other than employees ~~of the employer~~ who need such information and access ~~it~~ to perform the employer's employment verification responsibilities; ~~+~~

(c-1) Any claim that an employer refused to hire, segregated, or acted with respect to recruitment, hiring, promotion, renewal or employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges, or conditions of employment without following the procedures of the Employment Eligibility Verification System, including the Basic Pilot and E-Verify programs, may be brought under paragraph (G) (2) of Section 2-102 of the Illinois Human Rights Act;

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

(d) Preemption. Neither the State nor any of its political subdivisions, nor any ~~no~~ unit of local government, including a home rule unit, may require any employer to use an Employment Eligibility Verification System, including under the following circumstances:

- (1) as a condition of receiving a government contract;
- (2) as a condition of receiving a business license; or

(3) as penalty for violating licensing or other similar laws.

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

(Source: P.A. 95-138, eff. 1-1-08.)

(820 ILCS 55/15) (from Ch. 48, par. 2865)

Sec. 15. Administration and enforcement.

(a) The Director of Labor or his authorized representative shall administer and enforce the provisions of this Act. The Director of Labor may issue rules and regulations necessary to administer and enforce the provisions of this Act.

(b) If an employee or applicant for employment alleges that he or she has been denied his or her rights under this Act, he or she may file a complaint with the Department of Labor. The Department shall investigate the complaint and shall have authority to request the issuance of a search warrant or subpoena to inspect the files of the employer or prospective employer, if necessary. The Department shall attempt to resolve the complaint by conference, conciliation, or persuasion. If the complaint is not so resolved and the Department finds the employer or prospective employer has violated the Act, the Department may commence an action in the circuit court to enforce the provisions of this Act including an action to compel compliance. The circuit court for the county in which

the complainant resides or in which the complainant is employed shall have jurisdiction in such actions.

(c) If an employer or prospective employer violates this Act, an employee or applicant for employment may commence an action in the circuit court to enforce the provisions of this Act, including actions to compel compliance, where efforts to resolve the employee's or applicant for employment's complaint concerning the violation by conference, conciliation or persuasion under subsection (b) have failed and the Department has not commenced an action in circuit court to redress the violation. The circuit court for the county in which the complainant resides or in which the complainant is employed shall have jurisdiction in such actions.

(d) Failure to comply with an order of the court may be punished as contempt. In addition, the court shall award an employee or applicant for employment prevailing in an action under this Act the following damages:

(1) Actual damages plus costs.

(2) For a willful and knowing violation of this Act, \$200 plus costs, reasonable attorney's fees, and actual damages.

(3) For a willful and knowing violation of Section 12(c) or Section 12(c-2) of this Act, \$500 per affected employee plus costs, reasonable attorneys' fees, and actual damages.

(e) Any employer or prospective employer or his agent who

violates the provisions of this Act is guilty of a petty offense.

(f) Any employer or prospective employer, or the officer or agent of any employer or prospective employer, who discharges or in any other manner discriminates against any employee or applicant for employment because that employee or applicant for employment has made a complaint to his employer, or to the Director or his authorized representative, or because that employee or applicant for employment has caused to be instituted or is about to cause to be instituted any proceeding under or related to this Act, or because that employee or applicant for employment has testified or is about to testify in an investigation or proceeding under this Act, is guilty of a petty offense.

(Source: P.A. 87-807.)