



E-VERIFY AND EMPLOYMENT ELIGIBILITY
NEW CHANGES TO FLORIDA LAW THAT COULD IMPACT YOUR BUSINESS

On May 10, 2023, Governor Ron DeSantis signed into law SB 1718. That new law amends various existing Florida Statutes, including Section 448.09, Fla. Stat. and Section 448.095, Fla. Stat. It is important that you know about this new law as it may impact your business.

The information contained in this document is strictly informative and should not be construed as legal advice. Convergence Employee Leasing, Inc. highly recommends you consult your attorney about how this new law affects your business.

The legislation has made significant changes to Florida law regarding the eligibility of employees to work in the state of Florida and the verification of employee eligibility for employment. Most notably, Section 448.095 provides that **“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.”**

As you are aware, the Client Service Agreement that your company entered into with Convergence Employee Leasing allocates all responsibilities for employment verification under the E-Verify program to your company. Specifically, under Section V, Client Responsibilities your contract states that:

Any obligation placed upon an employer by applicable law to verify the eligibility of an individual for employment through the Basic Employment Verification Pilot Program as jointly administered by the United States Department of Homeland Security and the Social Security Administration (“E-Verify”) program or any successor program, to the extent allowed by law, is retained solely and exclusively by Client.

Receipt of this document by Client whether by electronic mail or regular mail at the address of record, or other form of documented delivery, constitutes Client’s understanding, acknowledgement, and agreement that Client retains all obligations for compliance with the laws noted herein to include Florida Statutes 448.09 and 448.095. This document further confirms that Client understands and agrees that Convergence Employee Leasing will not verify employment eligibility of any employee of Client whether leased through Convergence Employee Leasing or not.

1. **When does this legislation go into effect?** This legislation was signed by Governor Ron DeSantis on May 10, 2023, and becomes effective on July 1, 2023.
2. **What has changed?** This new law in Florida will require certain private employers with at least 25 employees to use E-Verify – the digital immigration verification tool – during their onboarding process. This will apply to employees hired on or after July 1, 2023.
3. **What is E-Verify?** E-Verify is a web-based system through which employers electronically confirm the employment eligibility of their employees.

E-Verify electronically compares the information taken from I-9 to records available to the U.S. Department of Homeland Security (DHS) and the Social Security Administration (SSA). The employer usually receives a response within a few seconds either confirming the employee’s employment eligibility or indicating that the employee needs to take further action to complete the case.

E-Verify is free to use and is administered by SSA and U.S. Citizenship and Immigration Services (USCIS). For more information, please visit <https://www.e-verify.gov/>

4. **What is an Employee?** An “Employee” is defined as an individual filling a permanent position under the control of an employer. Independent contractors and casual laborers are not considered employees.
5. **Are there Penalties?** The penalties for non-compliance are severe. Penalties can include fines and any business license a client may possess can be suspended and/or revoked.
6. **Record retention requirements.** For at least three years, the employer must retain a copy of the documentation used to verify employment eligibility, as well as any official verification generated, if applicable.
7. **What do you need to do?** A client company must do the following:
 - a. First, it must determine if it has 25 or more employees.
 - b. Next, it must determine if it is a contractor or subcontractor who has a contract with a public agency.
 - c. If the answer is “no” to a. and b., the client company may not be required to use the E-Verify system.
 - d. If the answer is “yes” to either a. or b., the client company may be required to use the E-Verify system.
 - e. A client company required to use the E-Verify system must enroll in E-Verify. The following link provides information regarding the E-Verify enrollment process:
<https://www.e-verify.gov/employers/enrolling-in-e-verify/the-enrollment-process>
 - f. As of 07/01/2023, a client company required to use the E-Verify system must E-Verify every new employee within 3 days of the first day that the new employee begins working for pay.
 - g. A client company required to use the E-Verify system must maintain E-Verify documentation for at least 3 years after the E-Verification process has been completed for each new employee.

The information provided by Convergence Employee Leasing is for general purposes only and is not intended to be legal, accounting or tax advice. Moreover, the information may not be the most current information on the referenced subject matter(s). Convergence Employee Leasing recommends you seek additional guidance from your CPA, Attorney or other professional regarding your specific situation.

Helpful Links:

For a copy of S.B. 1718, visit: <https://www.flsenate.gov/Session/Bill/2023/1718/BillText/Filed/PDF>

To register for E-Verify, visit: <https://www.e-verify.gov/employers/enrolling-in-e-verify/the-enrollment-process>

Attached: Department of Revenue Tax Information Publication #2373B-01 Issued June 15, 2023



**2023 Legislative Changes:
E-Verify System Requirements and
Florida Department of Economic Opportunity Name Change**

E-Verify System Requirements – Effective July 1, 2023, Florida public agencies and private employers with 25 or more employees are required to use E-Verify. E-Verify is an internet-based application operated by the U.S. Department of Homeland Security that allows employers to electronically verify employment eligibility of newly hired employees. An employer must verify each new employee's employment eligibility within three business days of the new employee working for salary, wages, or other remuneration. If the E-Verify system is unavailable for three business days after the first day the new employee begins working for salary, wages, or other remuneration, an employer must use the Department of Homeland Security, U.S. Citizenship and Immigration Services' Employment Eligibility Verification (USCIS Form I-9) to verify employment eligibility. Information on how to register and access the E-Verify system is located at e-verify.gov/employers.

The following definitions apply to the E-Verify requirement:

- Public agency – Any office, department, agency, division, subdivision, political subdivision, board, bureau, commission, authority, district, public body, body politic, state, county, city, town, village, municipality, or any other separate unit of government created or established pursuant to law, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.
- Private employer – A person or entity that transacts business in this state, has a license issued by an agency, and employs persons to perform labor or services in this state in exchange for salary, wages, or other remuneration.
- Employee – An individual filling a permanent position who performs labor or services under the control or direction of an employer that has the power or right to control and direct the employee in the material details of how the work is to be performed in exchange for salary, wages, or other remuneration. The term "employee" does not include:
 - An individual hired for casual labor that is to be performed entirely within a private residence.
 - An independent contractor, as defined in federal laws or regulations, hired to perform a specified portion of labor or services.

Certification – In addition to using E-Verify, each private employer required to use the system must certify on its first reemployment tax return filed each calendar year that it used the E-Verify system to confirm employment eligibility of each new employee. E-Verify certification is available through the Florida Reemployment Tax file and pay application, Extensible Markup Language (XML) file, or on the following returns:

- *Employer's Quarterly Report* (Form RT-6)
- *Employer's Quarterly Report Continuation Sheet* (Form RT-6A)

- *Employer's Quarterly Report for Employees Contracted to Governmental or Nonprofit Educational Institutions* (Form RT-6EW)
- *Quarterly Report for Out-of-State Wages* (Form RT-6NF)
- *Correction to Employer's Quarterly or Annual Domestic Report* (Form RT-8A)

Employee Leasing Companies – An employee leasing company (ELC) is responsible for certifying employment eligibility of any new employee of a client company that meets the definition of a public agency or private employer with 25 or more employees. Verification and certification of employment eligibility may be transferred from the ELC to the client company only by written agreement or written understanding. If this occurs, the ELC will continue to file reports with the Department, and the client company will be required to certify use of E-Verify.

Client companies required to certify use of E-Verify may complete this step on an *Employer E-Verify Certification* (Form RT-E-Verify) or *Correction to Employer's Quarterly or Annual Domestic Report* (Form RT-8A). The *Employer E-Verify Certification* form will be available in an online application or in paper format. Client companies that wish to use the RT-8A must have an active reemployment tax registration with the Department and are required to file an *Employer's Quarterly Report* (Form RT-6).

Agents and Management Companies – Agents or management companies do not have the statutory authority to certify use of the E-Verify system on behalf of an employer. Qualified agents or management companies will continue to file reports with the Department on behalf of the employer, and the employer will separately certify use of E-Verify. Employers required to certify use of E-Verify may complete this step on an *Employer E-Verify Certification* (Form RT-E-Verify) or *Correction to Employer's Quarterly or Annual Domestic Report* (Form RT-8A). The *E-Verify Certification* form will be available in an online application or in paper format. Employers who wish to use the RT-8A must have an active reemployment tax registration with the Department and are required to file an *Employer's Quarterly Report* (Form RT-6).

Penalties – The Florida Department of Commerce is required to issue a fine of \$1,000 per day if it is determined that the E-Verify system was not used three times in a 24-month period. The fine will continue to accrue until the employer demonstrates compliance with the law.

Name Change – Effective July 1, 2023, the Florida Department of Economic Opportunity is renamed the Florida Department of Commerce. The Florida Department of Commerce will be responsible for the administration of the reemployment assistance program. However, the Florida Department of Revenue will continue to perform registration, filing and payment acceptance, and audit functions pertaining to reemployment tax.

References: Chapters 2023-40 and 2023-173, Laws of Florida, Section 448.095, Florida Statutes

For More Information

This document is intended to alert you to the requirements contained in Florida laws and administrative rules. It does not by its own effect create rights or require compliance.

For forms and other information, visit the Department's website at floridarevenue.com or call Taxpayer Services at 850-488-6800, Monday through Friday (excluding holidays).

For a detailed written response to your questions, write the Florida Department of Revenue, Taxpayer Services MS 3-2000, 5050 West Tennessee Street, Tallahassee, FL 32399-0112.

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