

# STATE OF NEW YORK

3063

2021-2022 Regular Sessions

## IN SENATE

January 27, 2021

Introduced by Sens. RAMOS, GOUNARDES, MYRIE, SALAZAR -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the labor law, in relation to prohibiting employers from using the federal electronic employment verification system to check the employment authorization status of an existing employee or an applicant who has not been offered employment; to amend the general municipal law, in relation to prohibiting municipalities from requiring employers to use the federal electronic employment verification system; and to amend the executive law, in relation to defining unlawful discriminatory practices with regards to the electronic employment verification system

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "Employee Privacy Act".

§ 2. The labor law is amended by adding a new section 219-b to read as follows:

§ 219-b. Restrictions on use of employment verification system. 1. (a) Except as required by federal law or as a condition of receiving federal funds, it shall be unlawful for an employer, or any other person or entity to use the federal electronic employment verification system known as E-Verify and any other succeeding electronic employment verification system to check the employment authorization status of an existing employee or an applicant who has not been offered employment at a time or in a manner not required under subsection (b) of Section 1324a of Title 8 of the United States Code or not authorized under any federal agency memorandum of understanding governing the use of a federal electronic employment verification system.

(b) Nothing in this section shall prohibit an employer from utilizing the federal E-Verify system, in accordance with federal law, to check the employment authorization status of a person who has been offered employment.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 (c) Upon initial enrollment in an electronic employment eligibility  
2 verification system, an employer enrolled in E-Verify or any other  
3 federal electronic employment eligibility verification system must  
4 attest, under penalty of perjury, on a form prescribed by the department  
5 available on the department's website:

6 (i) that the employer has received the E-Verify training materials  
7 from the department of homeland security, and that all employees who  
8 will administer the program have completed the E-Verify computer-based  
9 tutorials and all other required training materials in accordance with  
10 federal regulations; and

11 (ii) that the employer has posted the notice from the department of  
12 homeland security indicating that the employer is enrolled in the E-Ver-  
13 ify program and the anti-discrimination notice issued by the Employee  
14 and Immigration Rights Section, Civil Rights Division, U.S. Department  
15 of Justice in a prominent place that is clearly visible to both prospec-  
16 tive and current employees. The employer must maintain the signed  
17 original of the attestation form prescribed by the department, as well  
18 as all required training certificates of completion, including compu-  
19 ter-based tutorials certificates, and make them available for inspection  
20 or copying by the department at any reasonable time.

21 (d) It is a violation of this section for an employer enrolled in an  
22 employment eligibility verification system, including the E-Verify  
23 program or a successor federal electronic employment verification  
24 program, to:

25 (i) fail to display the notices supplied by the department of homeland  
26 security and the employee and immigration rights section in a prominent  
27 place that is clearly visible to both prospective and current employees;

28 (ii) to allow any employee to use an electronic employment eligibility  
29 verification system prior to having completed all required computer-  
30 based tutorials;

31 (iii) to fail to take reasonable steps to prevent an employee from  
32 circumventing the requirement to complete the computer-based tutorials  
33 and/or all other training requirements by assuming another employee's  
34 E-Verify user identification or password;

35 (iv) to use the employment eligibility verification system to verify  
36 the employment eligibility of job applicants prior to signing an employ-  
37 ment contract or to otherwise use the employment eligibility verifica-  
38 tion system to screen individuals prior to signing a contract of employ-  
39 ment and prior to the completion of a Form I-9;

40 (v) to terminate an employee or take any other adverse employment  
41 action against an individual prior to receiving a final nonconfirmation  
42 notice from the social security administration or the department of  
43 homeland security;

44 (vi) to fail to notify an individual, in writing, of the employer's  
45 receipt of a tentative nonconfirmation notice, of the individual's right  
46 to contest the tentative nonconfirmation notice, and of the contact  
47 information for the relevant government agency or agencies that the  
48 individual must contact to resolve the tentative nonconfirmation notice  
49 or to fail to provide such tentative nonconfirmation notice in accord-  
50 ance with subdivision two of this section; and

51 (vii) to fail to safeguard the information contained in the employment  
52 eligibility verification system, and the means of access to the system  
53 (such as passwords and other privacy protections). An employer shall  
54 ensure that the system is not used for any purpose other than employment  
55 verification of newly hired employees and shall ensure that the informa-  
56 tion contained in the system and the means of access to the system are

1 not disseminated to any person other than employees who need such infor-  
2 mation and who have been authorized to perform verification responsibil-  
3 ities in accordance with this section.

4 2. Upon using the federal E-Verify system to check the employment  
5 authorization status of a person, if the employer receives a tentative  
6 nonconfirmation issued by the social security administration or the  
7 United States department of homeland security, which indicates the  
8 information entered in E-Verify did not match federal records, the  
9 employer shall comply with the required employee notification procedures  
10 under any memorandum of understanding governing the use of the federal  
11 E-Verify system. The employer shall furnish to the employee any notifi-  
12 cation issued by the social security administration or the United States  
13 department of homeland security containing information specific to the  
14 employee's E-Verify case or any tentative nonconfirmation notice. The  
15 notification shall be furnished as soon as practicable within 10 busi-  
16 ness days.

17 3. (a) Any claim that an employer refused to hire, segregated, or  
18 acted with respect to recruitment, hiring, promotion, renewal or employ-  
19 ment, selection for training or apprenticeship, discharge, discipline,  
20 tenure or terms, privileges, or conditions of employment without follow-  
21 ing the procedures of the employment eligibility verification system,  
22 including the E-Verify program, may be brought under two hundred nine-  
23 ty-six of the executive law.

24 (b) It is a violation of this section for an individual to falsely  
25 pose as an employer in order to enroll in an employment eligibility  
26 verification system or for an employer to use an employment eligibility  
27 verification system to access information regarding an individual who is  
28 not an employee of the employer.

29 4. In addition to other remedies available, an employer who violates  
30 this section shall be liable for a civil penalty of not less than ten  
31 thousand dollars for each violation of this section. Each unlawful use  
32 of the E-Verify system on an employee or applicant shall constitute a  
33 separate violation.

34 5. This section is intended to prevent discrimination in employment  
35 rather than to sanction the potential hiring and employment of persons  
36 who are not authorized for employment under federal law.

37 § 3. The general municipal law is amended by adding a new section 99-x  
38 to read as follows:

39 § 99-x. Use of employment verification system. It shall be unlawful  
40 for the governing board of a city, town or village or any municipal  
41 corporation to adopt a resolution, ordinance or local law requiring  
42 employers to use the federal electronic employment verification system  
43 known as E-Verify; provided, however, that nothing in this section shall  
44 be construed to prohibit an employer from using the federal electronic  
45 employment verification system when required by federal law or as a  
46 condition of receiving federal funds or to check the employment authori-  
47 zation status of a person who has been offered employment.

48 § 4. Subdivision 1 of section 296 of the executive law is amended by  
49 adding a new paragraph (i) to read as follows:

50 (i) For an employer participating in the E-Verify program, as author-  
51 ized by 8 U.S.C. 1324a, to refuse to hire, to segregate, or to act with  
52 respect to recruitment, hiring, promotion, renewal of employment,  
53 selection for training or apprenticeship, discharge, discipline, tenure  
54 or terms, privileges or conditions of employment without following the  
55 procedures under the E-Verify program or a successor program.

56 § 5. This act shall take effect immediately.