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

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

(ii) that the employer has posted the notice from the department of homeland security indicating that the employer is enrolled in the E-Verify program and the anti-discrimination notice issued by the Employee and Immigration Rights Section, 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 department, as well as all required training certificates of completion, including computer-based tutorials certificates, and make them available for inspection or copying by the department at any reasonable time.

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

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

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

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

(iv) to use the employment eligibility verification system to verify the employment eligibility of job applicants prior to signing an employment contract or to otherwise use the employment eligibility verification system to screen individuals prior to signing a contract of employment and prior to the completion of a Form I-9;

(v) 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;

(vi) 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 or to fail to provide such tentative nonconfirmation notice in accordance with subdivision two of this section; and

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

not disseminated to any person other than employees who need such information and who have been authorized to perform verification responsibilities in accordance with this section.

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

3. (a) 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 E-Verify program, may be brought under two hundred ninety-six of the executive law.

(b) 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.

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

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

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

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

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

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

§ 5. This act shall take effect immediately.