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TIPS AND TRENDS #2021-0001

JANUARY 2021



Inspector General
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Is your Entity Ready for E-Verify?



Beginning January 1, 2021, section 448.095, Florida Statutes (F.S.), requires public employers¹ and their contractors² and subcontractors³ to register and use the E-Verify system to verify the work authorization of all newly hired employees. Additionally, certain private employers⁴ shall verify the employment eligibility of employees hired or whose employment contract will be renewed or extended on or after January 1, 2021, using the E-Verify system or the United States Citizenship and Immigration Services' Employment Eligibility Verification Form (I-9). This new law was approved by the Governor on June 30, 2020 (Ch. 2020-149, Laws of Florida).



Details of §448.095, F.S. (A Public Employer, Contractor, or Subcontractor)

- A public employer, contractor, or subcontractor may not enter into a contract unless each party registers with and uses the E-Verify system.
- A public employer, contractor, or subcontractor must terminate the contract if it believes in good faith that another party to that contract is knowingly employing an unauthorized alien⁵.

¹ "Public employer" means an entity within state, regional, county, local, or municipal government, whether executive, judicial, or legislative, or any public school, community college, or state university that employs persons who perform labor or services for that employer in exchange for salary, wages, or other remuneration or that enters or attempts to enter into a contract with a contractor. §448.095(1)(i), F.S.

² "Contractor" means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration. §448.095(1)(b), F.S.

³ "Subcontractor" means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration. §448.095(1)(j), F.S.

⁴ "Private employer" means a person or entity that transacts business in Florida, has a license authorizing it to transact business in the state, and employs persons to perform labor or services in this state in exchange for salary, wages, or other remuneration. The term does not include:

1. A public employer;
 2. The occupant or owner of a private residence who hires:
 - a. Casual labor to be performed entirely within the private residence; or
 - b. A licensed independent contractor, as defined in federal laws or regulations; or
 3. An employee leasing company with a written contract placing the obligation for compliance on the client.
- §448.095(1)(h), F.S.

⁵ "Unauthorized alien" means a person who is not authorized under federal law to be employed in the United States, as described in 8 U.S.C. s. 1324a(h)(3). §448.095(1)(k), F.S.

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- A public employer that has a good faith belief that a subcontractor knowingly failed to register and use E-verify, but the contractor otherwise complied, shall notify the contractor and order the contractor to immediately terminate the contract with the subcontractor.
- A termination permitted under section 448.095(2)(c), F.S. is not a breach of contract. However, a public employer, contractor, or subcontractor may file an action to challenge the termination no later than 20 calendar days after the date of termination.
- If a public employer terminates a contract under section 448.095(2)(c), the contractor may not be awarded a public contract for at least 1 year after the date of termination. Additionally, the contractor whose contract is terminated is liable for any additional costs incurred by the public employer resulting from the termination.



Details of §448.095, F.S. (Certain Private Employers)

- A private employer that uses E-Verify or I-9 to verify employment eligibility may not be held civilly or criminally liable under state law for hiring, continuing to employ, or refusing to hire an unauthorized alien.
- If a private employer does not verify employment eligibility using E-Verify or I-9, the Department of Economic Opportunity (department) shall require the private employer to provide an affidavit stating that the private employer will comply, has terminated the employment of all unauthorized aliens in this state, and will not intentionally or knowingly employ an unauthorized alien in this state. If the private employer does not provide the required affidavit within 30 days after the department's request, the appropriate licensing agency shall suspend all licenses⁶ held by the private employer specific to the business location where the unauthorized alien performed work.
- For any private employer that fails to comply with the department's request three times within any 36-month period, the appropriate licensing agency shall permanently revoke all licenses held by the private employer for the business location where the unauthorized alien performed work.

Public Employers Should Consider

- Incorporate E-Verify requirements in contracts and solicitations.
- Require an Affidavit of Compliance with E-Verify for contracts to provide labor, supplies, or services.
- During the responsiveness review, confirm Contractor and/or subcontractors E-Verify registration status.⁷
- Inform Contractors of the E-Verify requirements at pre-bid or pre-proposal meetings.



We recommend that local government entities review their policies and take appropriate actions to comply with the new law. Also, consult legal counsel when questions arise.

⁶ "License" means a franchise, a permit, a certificate, an approval, a registration, a charter, or any similar form of authorization required by state law and issued by an agency for the purpose of operating a business in this state. §448.095(1)(g), F.S.

⁷ <https://www.e-verify.gov/about-e-verify/e-verify-data/how-to-find-participating-employers>.