E-VERIFY FEDERAL CONTRACTOR RULE POSTPONED UNTIL JUNE 30

By

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The Federal Government agreed to postpone implementing an Executive Order to require federal contractors to use E-Verify until June 30. This is the third delay in implementing the rule, and follows a series of objections and court challenges by business groups led by the US Chamber of Commerce. On June 6, 2008, President Bush issued an executive order requiring federal government contractors to use the federal E-Verify process to verify the work authorization of all new hires and existing personnel assigned to perform work on future federal contracts. Under the final rule, E-Verify would be required for all federal contractors regardless of size who have been awarded a contract with a period of performance lasting more than 120 days and having a value of more than $100,000. Subcontractors would also be required to participate E-Verify if they provided services or construction with a value of more than $3000.

The US Chamber of Commerce filed a lawsuit against the US Department of Homeland Security in December 2008 in the US District Court for the District of Maryland, seeking judicial review of the new regulations. Attorneys for the Chamber filed a Motion for Summary Judgment on January 14, 2009, seeking to invalidate the proposed regulations. That motion is still pending before the court. The new delay is thought by many to give the Obama administration more time to let the courts take charge in determining whether or not to implement the rule. There is a least some chance that the court could invalidate all or part of the rule, and the delay gives the administration a chance to see how the courts will handle the issue before implementing the final regulation.

Meanwhile, many states have passed their own laws requiring the use of E-Verify. If implemented, the new federal contractor E-Verify rule could supersede some or all of these state law provisions. Currently, the following states have their own E-Verify legislation already in place: Arizona, Mississippi, and South Carolina. Additionally, Utah, Missouri, and North Carolina have state laws requiring E-Verify for public employers. Illinois, on the other hand, is trying to make the use of E-Verify illegal, although it has agreed not to enforce the statute until the outcome of a lawsuit filed by the Department of Homeland Security that is seeking to throw out Illinois' law based on the doctrine of federal preemption.

We will continue to keep you advised of current developments in this area.