

PUBLICATION

More Employers Required to Enroll in E-Verify after Changes to Tennessee's Mandatory E-Verify Law

Authors: Meredith C. Doll

June 03, 2022

In early May, the Tennessee state legislature approved proposed amendments to the state's mandatory E-Verify law, expanding coverage to all employers with 35 or more full-time equivalent (FTE) employees. The changes will go into effect on January 1, 2023.

With enforcement at an all-time high, employers should take this opportunity to verify whether they are subject to Tennessee's E-Verify mandate—public data shows that the Tennessee Department of Labor & Workforce Development assessed nearly \$170,000 in fines between December 2021 and January 2022, the last month for which data is available.

What is E-Verify?

E-Verify is a federal program that provides additional security to employers verifying the eligibility of employees to work in the United States. It does not replace the Form I-9, which is required to be completed whenever a new employee is hired by an employer. E-Verify is a web-based system that compares the information and documents provided by employees on the Form I-9 against Social Security Administration (SSA) and Department of Homeland Security (DHS) records. Employers that enroll in and use E-Verify properly receive certain protections from liability if a worker is later discovered to be unauthorized to work in the U.S.

What changed in Tennessee?

Right now, any employer in Tennessee with 50 or more FTE employees must be enrolled in E-Verify or risk significant fines. Beginning January 1, 2023, the threshold drops from 50 employees to 35, drastically increasing the law's coverage.

Will this affect my business?

Small employers should pause before breathing a sigh of relief—they could still be required to enroll in E-Verify even if the number of workers they employ in Tennessee is well below the threshold. The law calculates the number of employees by FEIN, not based on where the employees physically work. This means that an employer with a single employee in Tennessee may still need to enroll in E-Verify if it employs sufficient workers elsewhere under the same FEIN.

What if I don't employ any workers in Tennessee?

Nearly half of all states in the U.S. have implemented some form of employment eligibility verification mandate affecting private employers, including Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and West Virginia. The applicability and requirements of these laws vary substantially among jurisdictions, so multistate employers should carefully consider the requirements of each state in which they have employees. E-Verify allows employers to enroll all, or only some, of its locations when signing up. This gives employers some flexibility in the structure of their employment eligibility verification program.

This alert outlines the general impact of recent changes to Tennessee's mandatory E-Verify law, but there are many collateral issues that can impact a company's decision to enroll in E-Verify. If your company needs assistance deciding whether and how to enroll in E-Verify or developing a comprehensive employment

eligibility verification policy, please contact [Meredith Doll](#) or one of [Baker Donelson's Labor & Employment attorneys](#).