

## MAC Grantees Must Use E-Verify

If your arts organization receives more than \$5,000 in annual grant support from the Missouri Arts Council (MAC), the new law that requires employers to check their new employees' immigration status applies to you.

On July 7, 2008, Missouri Governor Matt Blunt signed legislation that requires all public employers to enroll and participate in E-Verify, the federal government's online authorization program.

The law, effective January 1, 2009, also requires any business with a state contract or grant in excess of \$5,000 or any business receiving state-administered or subsidized tax credit, tax abatement or loan from the state to participate in E-Verify.

The new law makes clear that all employers are prohibited from knowingly employing, hiring or continuing to employ illegal immigrants to perform work in Missouri.

This issue of *Arts Law Memo* walks you through the E-Verify registration process, which complements but does not replace the Form I-9, Employment Eligibility Verification. So, we also offer recommendations for revisiting your Form I-9 completion and retention procedures.

Finally, for our Illinois readers, this issue describes your state's 2007 legislation, which effectively prohibited employers from enrolling in the E-Verify program.

### HOUSE BILL 1549

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House Bill 1549, sponsored by Rep. Bob Onder (R-13), who represents St. Charles and Warren counties, enacted into

law a long list of policies designed to crack down on illegal immigration, including prohibiting unauthorized aliens from obtaining drivers licenses.

The bill also prohibits the creation of sanctuary cities in the state, requires verification of legal employment status of every public employee, allows for cancellation of state contracts for contractors if they hire illegal immigrants, requires public agencies to verify the legal status of applicants before providing welfare benefits, criminalizes the transportation of illegal immigrants for exploitative purposes and enacts provisions to punish bad acting employers who hire illegal immigrants.

In addition, the statute contains a broad array of employment-related provisions that have nothing to do with immigration. For example, employers with five or more individuals performing public works (construction projects, such as highways or bridges, financed by public funds) will be prohibited from "knowingly" misclassifying an employee as an independent contractor.

### HOW TO REGISTER

By using E-Verify participating employers can check the work status of new hires online by comparing information from an employee's I-9 form against Social Security Administration (SSA) and Department of Homeland Security (DHS) databases. Employers that use E-Verify will have an affirmative defense to any claim that they knowingly hired an unauthorized alien.

The service is free, and a DHS official recently described using E-Verify as "a bit less burdensome than ordering books for the first time from Amazon.com."

You can register for E-Verify at [www.vis-dhs.com/EmployerRegistration/StartPage.aspx?JS=YES](http://www.vis-dhs.com/EmployerRegistration/StartPage.aspx?JS=YES), where you'll find easy-to-understand instructions. At the end of the registration process, you'll be required to accept the electronic Memorandum of Understanding that

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- Supplying model contracts and other arts law and business materials;
- Conducting and disseminating research;
- Contributing articles to publications;
- Collaborating on arts advocacy initiatives; and
- Providing access to the national volunteer lawyers for the arts network.

This issue was written by VLAA Executive Director Sue Greenberg.

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# Illinois Prohibits Use

details the responsibilities of SSA, DHS and the employer. In addition, all system users must complete a free, online tutorial.

## THE VERIFICATION PROCESS

According to the Department of Homeland Security, “employment is often the magnet that attracts individuals to reside in the United States illegally.” To remove this magnet federal law requires employers to hire only people who may legally work in the United States — citizens and nationals, lawful permanent residents and aliens authorized to work.

All employers (regardless of participation in the E-Verify system) must use the U.S. Citizenship and Immigration Services Form I-9 to verify employment eligibility of all new hires. The newest version of the Form I-9 (OMB Form 1615-0047; expires June 15, 2009) can be downloaded from [www.uscis.gov/files/form/I-9.pdf](http://www.uscis.gov/files/form/I-9.pdf).

Within three business days after the new hire’s start date, employers must examine evidence of the worker’s identity and employment status. Though not required, it is advisable to keep copies of the documentation for each employee establishing I-9 compliance, i.e. passport or driver’s license and social security card.

Keep the forms in a file that is separate from other employee records. Retain I-9 forms, either the original paper forms or the scanned versions, for three years after the date the person begins work or one year after the person’s employment is terminated, whichever is later.

For more information, consult the Department of Homeland Security’s *Handbook for Employers* ([www.uscis.gov/files/natedocuments/m-274.pdf](http://www.uscis.gov/files/natedocuments/m-274.pdf)).

After completing the Form I-9 for a new employee, E-Verify employers should submit an electronic query that includes information from Sections 1 and 2 of the Form I-9. You will receive

In 2006, Fernando Tinoco, an Illinois resident who became a U.S. citizen in 1989 was fired on his first day at work at a Tyson Foods factory in Chicago after the company ran his information through the E-Verify system and was unable to verify his work eligibility.

That incident, and others involving the accuracy of the database and excessive delays in getting records corrected, prompted the Illinois legislature to pass a law that forbids employers from participating in the system until federal officials can demonstrate that it is more efficient.

Implementation of the 2007 law has been delayed by pending litigation.

an automated response.

In some cases, E-Verify will indicate a tentative nonconfirmation of the employee’s employment eligibility.

Note that this does not mean that the employee is necessarily unauthorized to work in the United States. Rather, it means that the system is unable to instantaneously confirm that employee’s eligibility to work.

In the case of a tentative nonconfirmation, the employer and employee must both take steps, which are specified by E-Verify, to resolve the status of the query.

## EMPLOYEE RIGHTS

Employers also are required to follow certain procedures when using E-Verify that are designed to protect employees:

- Employers may not verify selectively and must verify all new hires, both U.S. citizens and non-citizens.
- Employers may not prescreen applicants for employment or check employees hired before the company became a participant in E-Verify.
- Finally, employers may not terminate or take other adverse action against employees based on a tentative nonconfirmation.

## COMMUNICATE

If your organization has an employee handbook, we encourage you to include a statement that upon

hire, in order to establish identity and employment eligibility, information provided from each employee will be entered into the E-Verify system.

Some employers also include a short policy statement communicating their commitment to hiring only those that are authorized to work in the U.S. and that anyone found to not be authorized to work in the U.S. will be denied employment.

Employers using the E-Verify system must post or provide copies of two notices: “You Should Know Your Rights and Responsibilities” the “Employee Rights Poster.” To download copies of these posters, visit [www.uscis.gov](http://www.uscis.gov).

## ENFORCEMENT

As a matter of enforcement for companies now required to use E-verify, the state attorney general will be able to ask employees to provide documentation about their new employees within 15 business days or risk losing their licenses or permits.

More importantly, MAC grantees should expect to see new compliance language on their grant award contracts. So, organizations that knowingly employ an unauthorized immigrant could be deemed in breach of contract and jeopardize their funding.



## W H I T A K E R F O U N D A T I O N

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