Employment Verification: Repairing our Broken Immigration System

We can expect comprehensive reform legislation to mandate that all employers use some sort of system that verifies the work authorization of all workers. Since this will affect every single worker in the United States - immigrants and citizens alike - and because an error in the system can cost a worker his job and paycheck, it is important to make the system workable. This report lays out the must-haves for any broad employment verification system and lays out why a system like this can only work if it is within the context of a broader reform package.

Turning off the job magnet for unauthorized workers is a key part of comprehensive immigration reform, and the creation of a system to verify the work authorization of all workers is likely to be an element of any comprehensive immigration reform bill. The current I-9 system, which was created as part of the Immigration Reform and Control Act (IRCA) of 1986, requires all workers to provide their employer with documents that prove identity and work authorization. Already, that system is becoming less paper-based as it evolves into an electronic employment-verification system (EEVS). The U.S. government's current EEVS program, known as "E-Verify," is mostly voluntary and relatively small.

Over the past several years, immigrant advocates, privacy experts, and government agencies have identified potential problems associated with E-Verify that impact foreign-born workers as well as U.S. citizens. Since EEVS affects every single person working in the United States—immigrants and citizens alike—and because an error in the system can cost a worker his job and his paycheck, it is important to make the system workable and effective. Employment verification, when accompanied by comprehensive immigration reform, can be a useful immigration-enforcement tool. Taking care to get employment verification right is essential. Before expanding the EEVS program, policymakers must acknowledge the shortfalls of the current system and ensure a better-designed program that will protect both foreign-born and native-born workers.

Any new or expanded electronic employment-verification system (EEVS) must address the following broad issues:

- **The data in government databases must be accurate and regularly updated.** The current DHS and SSA databases upon which the E-Verify system is based are error-ridden. Database errors can mean that U.S. workers will lose their jobs and their paychecks. Data accuracy is the key to a well-functioning verification system.

- **There must be adequate protections for all workers.** There will always be some level of error in the system because of mistakes that people make when entering data, or because of deliberate misuse of the system. However, we need to ensure that there is a process in place for anyone who is mistakenly told he is not work authorized.

- **The government must have adequate resources to run the system.** Making electronic employment verification mandatory will mean tens of millions of workers and employers will use the system every year. The government agencies responsible for implementing the system must have enough funding and personnel to handle the huge increase in use.

The following are principles for employment verification:

1. **Comprehensive immigration reform:** While there will be pressure on Congress to expand E-Verify outside of comprehensive immigration reform, a mandatory EEVS must not be implemented unless it is part of comprehensive immigration reform that also includes a legalization program for current unauthorized immigrants, creates flexible channels through which future immigrants may enter the United States legally, and reduces the incentives to hire unauthorized workers. Employment verification alone does not address the structural problems with our current immigration system, as outlined in IPC's *Breaking Down the Problems, What's Wrong with Our Immigration System?* [1]

2. **Apply to new hires only:** Currently, approximately 160,000 employers are registered with E-Verify—a tiny percentage of the 7.4 million employers in the United States. Approximately 8.5 million queries were run through E-Verify in Fiscal Year 2009. A mandatory system would mean that roughly 60 million new hires per year would have to be run through the system—a huge increase. Re-verification of the entire workforce would place an even greater burden on workers, businesses, and the government agencies responsible for implementing the system.

3. **Data accuracy:** Every effort must be made to ensure that the data accessed by employers is accurate, continuously updated, and subject to review. The SSA database alone has a 4.1% error rate—amounting to 17.8 million discrepancies, of which 12.7 million pertain to native-born U.S. citizens. The DHS databases also have high error rates. No U.S. citizens or legal immigrant workers should be denied employment because of errors in the database.

4. **Documentation:** The documents that workers are required to present must be documents that all U.S. citizens and legal workers will reasonably be able to obtain. Currently, more than 13 million American adults cannot easily produce documentation proving their citizenship. Some past proposals would have required workers to produce a REAL ID-compliant driver's license. However, no state has fully implemented the REAL ID Act, and many states have refused to implement the law. As a result, no Americans currently have REAL IDs.

5. **Worker protections:** There must be rigorous oversight of the program and significant penalties for employer misuse of the program. Through experience with the I-9 system and E-Verify, we know that some employers discriminate against workers who sound or appear "foreign." Other employers pre-screen workers, and some retaliate and take adverse employment actions (such as restricting assignments or training) before the system provides a final response. Some employers also fail to inform workers of their rights under EEVS.

6. **Complaint and redress procedures:** If a worker is adversely affected by an employer's misuse of the program, or because of a database error, a clear complaint process must be available so the worker can report the incident and receive redress.

7. **Due-process protections:** Individuals must be allowed to view their own records and contact the appropriate agency to correct any errors that exist. Administrative and judicial review must be available so that workers are able to seek compensation from the

government if an error in a   government database results in denial or termination of employment.

Privacy   protections: The amount of data   to be collected and stored must be minimized, and penalties must be   created for collecting or maintaining data not authorized in the statute. Furthermore, there must be   serious penalties for use of EEVS data to commit identity fraud, unlawfully   obtain employment, or for any other unauthorized purpose.

Resources: Sufficient resources will be   necessary to implement and maintain a new or expanded EEVS, including   additional personnel to handle the enormous increase in queries associated   with a mandatory system. Without   resources to upgrade and maintain the databases, and to hire and train   personnel, a well-functioning, mandatory, employment-verification system   will be impossible. The cost of the   program cannot fall disproportionately on immigrants, employers, or U.S.   citizens.

Outreach: Significant community outreach and   education must precede any expansion of EEVS in order to inform both   employers and workers about how the system works, their rights and   responsibilities under the new system, and avenues for redress in cases of   error or unfair employment practices.

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