



Despite mandate, E-Verify checks still spotty

By Joe Henke – 12/14/12

WASHINGTON – Five years after it took effect and more than year after it was upheld by the U.S. Supreme Court, an Arizona law requiring that businesses check the citizenship of every new hire is often disregarded and rarely enforced.

The Legal Arizona Workers Act mandates that every business in the state verify the legal status of new employees against the federal E-Verify database and it lets the state strip licenses of businesses that knowingly hire undocumented workers.

But the Department of Homeland Security reported that Arizona businesses used the database just 982,593 times in 2011, even though the Census Bureau said there were 1.5 million new hires in the state that year, a 66 percent compliance rate.

Fewer than half of Arizona businesses – 43 percent – had enrolled in the system by this month, according to Homeland Security enrollment figures and Census Bureau statistics on the number of Arizona businesses. That rate falls to 19 percent for businesses with four or fewer employees, or less than one business in five.

For businesses that chose to ignore the law there is little repercussion: The Arizona attorney general's office reported only two E-Verify cases since the law took effect in 2008.

“When we first introduced it there were a lot of skeptics,” said state Sen. Rich Crandall, R-Mesa, a co-sponsor of the legislation while a member of the House. “Even myself, I thought it was going to cause all sorts of problems.

“Not even did it not cause any problems, it doesn't do jack-squat. It possibly could stop people from applying for a job, but of course we can't measure that,” Crandall said.

But those less-than-impressive numbers are largely due to the way the law was designed. Unlike South Carolina, which has audited thousands of businesses this year for compliance with its version of E-Verify, Arizona designed its law to

encourage business participation and avoid what Crandall called the “bureaucratic nightmare” of checking up on every business in the state.

If an Arizona business is found to be employing undocumented workers, the state will not check to see if the employer used E-Verify – but the employer can use E-Verify as a defense.

“The thought was if you use it, then you can use it as a defense when Sheriff Joe (Arpaio) raids your business,” Crandall said. “But I don’t know of anybody that has been raided by Sheriff Joe and then said, ‘Hey, I use E-Verify,’ and they were in the system.”

That creates “a little bit of a conundrum to how the state might enforce” the law, said Julie Pace, an attorney who represented several business groups in a challenge of the act that reached the U.S. Supreme Court in 2010.

“Arizona hasn’t chosen to go down that path and hasn’t spent any resources verifying whether people are actually using E-Verify or not,” Pace said.

“South Carolina has adopted a program where they actually ask companies to demonstrate that they’re registered for E-Verify,” she said. “They look at the document to verify, so South Carolina has been a lot stronger on verifying companies than Arizona.”

Verifying E-Verify

Unlike Arizona, South Carolina put one state agency in charge of enforcing the mandatory use of E-Verify, which was phased in and finally applied to every state business on Jan. 1, 2012.

And state lawmakers appropriated funds for enforcement, said Jim Knight, administrator for the Office of Immigrant Worker Compliance in South Carolina’s Department of Labor, Licensing and Regulation.

In Arizona, county attorneys and sheriffs’ offices investigate businesses only on a formal complaint that a business is employing undocumented workers. Complaints submitted in the proper format must be investigated; those that are submitted without the proper paperwork may be investigated at the prosecutor’s discretion, according to the attorney general’s office.

Arizona originally appropriated funds to educate businesses on E-Verify and to enforce the law, but that money has dried up.

“Nobody was willing to put any money into it,” Crandall said.

In South Carolina, by contrast, Knight said his office has completed 4,500 random audits of businesses so far this year, finding a 94 percent compliance rate among businesses.

The Office of Immigrant Worker Compliance there cited 41 businesses for failing to check new hires against E-Verify, put them on probation and had them enroll with E-Verify, according to data on the office's website.

But just because a business is enrolled in E-Verify does not mean they are using it, Pace said.

"A lot of time they sign-up, but with the economy the way it is, they don't use it," she said.

Small businesses, in particular, claim E-Verify is an unfair financial and legal burden, causing many to simply ignore the mandate, experts say.

"Small businesses don't have lawyers on staff or HR (human resources) departments to handle this," said Alex Nowrasteh, a Cato Institute immigration policy analyst. "Big businesses have that and it won't cost them a lot more to verify."

Nowrasteh's report, "The Economic Case Against Arizona's Immigration Laws," put the cost of a single E-Verify query at \$147, for labor, paperwork and additional steps an employer might take in order to fully comply with the law.

With many small businesses operating on slimmer profit margins, Nowrasteh said he was surprised that 19 percent of Arizona firms with four or fewer employees were enrolled in E-Verify.

"I'm surprised that it is that high," he said. "It shows how conscientious some small-business owners are, even when it is financially devastating for them."

'Not a burden at all'

For Anna Johnson, who owns Super Embroidery and Screenprinting in Phoenix, participating in E-Verify makes business sense.

She recalled the day in 1996 when the Immigration and Naturalization Service notified Johnson that random audit of her staff had been scheduled: After that, 28 of her roughly 50 employees did not show up to work again.

Their disappearance cost Johnson more than just a large portion of her staff, as she faced the challenge of finding and training new workers.

"That cost me hundreds of thousands of dollars worth of business," Johnson said. "It takes about six months for an operator to know what they're doing. It isn't something that you just do."

Johnson began using E-Verify around 2005, when it was still a voluntary federal system. Now enrolled under the state law, Johnson said she feels more secure when hiring. If she was not using E-Verify and was audited again, she “would be scared to death.”

Johnson downplays issues with E-Verify.

“It is not a burden at all,” she said. “You have to fill out paperwork anyways for the state with every employee that you hire. So how is it any different from already having to do that?”

Johnson said she doesn’t worry about what other businesses do or don’t do about E-Verify.

“There are a lot of businesses that don’t pay their taxes too,” she noted. “I don’t care what they do. I just follow the law.”

In South Carolina, Susan Crocker saw a business opportunity in the law. Crocker, who has worked for 35 years in human resources and had her consulting firm for 15 years, set up E-Verify Experts LLC with partner Wanda Boyd after “getting calls from small employers saying, ‘How do we handle this?’”

E-Verify Experts lets small businesses comply with the law without committing to hours of government training and webinars, and handles verification of employees, Crocker said. It helps mostly smaller businesses with the necessary paperwork and guides them through the system when an employee is initially flagged as not verified.

Crocker said her company assists around 56 companies, ranging from four to 350 employees, most of them in South Carolina. She said she has rarely seen a name flagged as being ineligible.

“We see that very seldom,” Crocker said. “Because the illegal workers, or the ineligible workers, they see those posters for E-Verify at the business and they don’t apply.”

‘A lot of deficiencies’

Pace estimated that about half the undocumented people seeking work can find ways around E-Verify.

“E-Verify is a tool, but it has a lot of deficiencies,” Pace said. “Fifty percent of undocumented people can pass it without a biometric component. It is going to increase identity theft and cause people to borrow more people’s names and numbers to work under so they can pass E-Verify.”

Pace said undocumented workers in Arizona know where they can't work, so the problem of dealing with illegal workers has been pushed on neighboring states, as people head there to look for work.

She undocumented workers can also get around the law by contracting out their work.

"They call themselves an independent contractor, and then get paid in cash instead of a paycheck, because they don't have the legal status to work or they don't have the legal status to cash the check at the bank," Pace said. She said that ultimately hurts the state, because the "whole economy has gone to cash, so tax revenue has gone down."

Crandall recalled Arizona lawmakers hoped the law would have a greater impact on illegal hiring.

"Originally I think people thought it would do a lot more," Crandall said. "If we have E-Verify nobody will ever hire an illegal ever again. They talked about that." But enforcement is rare.

The law requires the attorney general's office to ask the federal government every three months for an updated list of E-Verify enrolled Arizona businesses and to post that list on the office's website. That list is on the attorney general's website, but it has not been updated since Nov. 16, 2011.

The attorney general's office sent an email saying it is "in the process of launching an updated website. The list of registered businesses is updated on our new website." But no launch date or address was provided for that site.

The law says businesses that knowingly hire undocumented workers can be put on probation and have their licenses suspended for up to 10 days, or have their licenses revoked permanently – the law's "death penalty."

But the attorney general's office only lists two cases in its database of court orders for employers that violated the Legal Arizona Workers Act, and the harshest penalty so far was a two-day business license suspension. The attorney general's office said it depends on county clerks to provide the orders and that it will be checking with clerks for any additional cases.

As lawmakers address immigration in the future, Crandall wonders how E-Verify will fit in – especially in light of its shortcomings.

"E-Verify is probably not, in and of itself, sufficient," Crandall said.

“How critical is the E-Verify system if you have a different immigration system? Does it change the whole conversation?” he asked. “E-Verify is part of an enforcement-only package. But what if we had a worker package too?”

Shortcomings aside, Crandall stands by the law for empowering business owners.

“Here we say, you don’t have to do it, but when you don’t and we come in, you have no defense when you’re charged with hiring illegals,” Crandall said.

“That is the approach that we have taken and I would stand and defend that even today. I love our approach because people weigh the risk and benefit of it.”