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E-verify is supposed to stop undocumented employment. It could also harm legal workers.

By: Timothy B. Lee – June 3, 2013

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Almost everyone expects mandatory electronic employment verification to be part of any immigration reform law that reaches President Obama's desk. The idea is simple: Citizens and legal immigrants should be able to work, undocumented immigrants shouldn't. The difficulty is separating one from the other. And the answer Congress has come up with is a system called E-Verify.

But critics say the system could create headaches for hundreds of thousands of Americans who *do* have authorization to work in the United States. Under the current rules, if E-Verify says you're not authorized to work, you have eight days to visit the appropriate government agency and begin an appeal. If you're not able to go in time, or you can't convince the agency that a mistake was made, your employer is supposed to fire you.

E-Verify has been operating as a pilot project for more than a decade, giving policymakers a preview of how a national system might function. But figuring out how many workers have been wrongly rejected by the system is tricky. A study using 2009 data found that 0.3 percent of applicants suffered initial rejections that were subsequently corrected, allowing the employee to work. But another 2.3 percent of workers got rejections that were never reversed.

Undoubtedly, some of those were people who aren't legally permitted to work. But others were likely eligible workers who lacked the documents, legal sophistication or time to demonstrate their eligibility. And some may have never been informed by their employers of their right to appeal. And while 0.3 percent and 2.3 percent may sound like small numbers, in a nation of 300 million people, that translates to hundreds of thousands of people.

While the employee has just eight days to begin his appeal, the full appeal process can take many weeks. Alex Nowrasteh, who studies immigration policy at the Cato Institute, says that fixing E-Verify errors sometimes requires "filing a Privacy Act request to figure out which portion of your information is correct in the government database," a process that can take more than 100 days. "During that time, the employer is supposed to keep the person employed, but what we see frequently is that that just is not followed," he says. Employers may be reluctant to spend weeks training an employee, only to be forced to fire him if his appeal is rejected.

"Oftentimes, firms that have problems with this have to hire a lawyer to sort out the math themselves," Nowrasteh says — a process that can cost employers thousands of dollars.

That gives employers a powerful temptation to avoid hiring employees with E-Verify problems in the first place. To prevent that from happening, the rules prohibit employers from conducting an E-Verify check on an employee before extending a job offer. And if an employee is rejected by the E-Verify system, the employer is supposed to inform him, in writing, about his right to appeal.

But those rules are hard to enforce. An employee has no way of knowing if she wasn't offered a job because an illegal pre-hiring check of the E-Verify system revealed potential problems.

Chris Calabrese of the American Civil Liberties Union says E-Verify problems are likely to be particularly hard for people on the lower rungs of the economic ladder.

"Professional, white-collar employees are used to having paid time off to deal with things, whether it's getting a driver's license or a sick kid," he says. "If you're blue collar with an hourly job, you're not getting paid" while spending time at the Social Security Administration trying to get paperwork problems straightened out. Indeed, he said, "your employer may not be willing to give you time off."

Well-educated workers are used to navigating complex bureaucracies and know how to research their legal rights and the remedies available to them. They are more likely to own a car, which in some parts of the country will be necessary to get to the relevant government office. Workers with lower levels of education and literacy will struggle to understand what they need to do to appeal a tentative rejection and may not have the time and transportation necessary to file the right paperwork with the right government agency within the prescribed eight-day period.

Legal immigrants are likely to have the biggest problems. Immigrants' paperwork is more complex than those for native-born Americans, making mistakes more likely. Many E-Verify problems occur because the employer enters an employee's name into the system in a different format than it's stored in the government's databases. Hispanic workers with multiple surnames and workers whose names are written in non-Latin alphabets are particularly likely to fall prey to this kind of problem. And, of course, immigrants tend to have lower levels of English literacy and less sophistication about navigating American bureaucracies.

"The Department of Homeland Security has admitted at least in briefings to Hill staff that the error rate will go up when the number of people added to the system goes up," Calabrese says. Calabrese says the error rate is expected to rise for two reasons. One, the early participants in E-Verify were either employers who volunteered to participate or federal contractors who are likely to be sophisticated about interacting with the government. Nationwide E-Verify will force employers who are less knowledgeable and less enthusiastic about the program to participate.

There's also a risk that Congress won't provide sufficient resources for the Social Security Administration and the Department of Homeland Security, the agencies that manage the E-Verify Database, to deal with the dramatically higher volume of appeals a nationwide E-Verify system would produce. That could produce long lines and slow responses, increasing the pain of being wrongly rejected.

Christopher Bentley, press secretary of U.S. Citizenship and Immigration Services, said in an e-mail that he "does not anticipate a significant increase in the rate" of initial rejections if the system is expanded. "The rate of eligible workers that are not automatically determined to be work authorized by E-Verify, but are ultimately found to be work authorized after they update their information with the government, continues to decline from .7% in 2005 to .26% in 2012," he said. "As the E-Verify program continues to expand, USCIS is committed to continuing this downward trend."

Paul Rosenzweig, a scholar at the Heritage Foundation who spent time at the Department of Homeland Security during the Bush administration, supports nationwide E-Verify, but he acknowledges that some mistakes are inevitable.

"If you think that the desire to identify people who work is an important societal value, you have to understand that that's going to have some incidental adverse cost," he said. "The last GAO study had less than 1 percent error rate," he says. "If I told you that you were going to get a 99 on your test, you'd think that you were doing pretty darn well. I defy you to find any government program that meets that standard with regularity."

In contrast, Calabrese believes that even a relatively low error rate imposes an intolerable burden on those Americans who will be wrongfully denied an opportunity to earn a living. "This is a sea change in how employment operates," he says. "For the first time, you will need affirmative permission from the government in order to work. That's completely new."