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COLUMN

Law imposes federal bureaucracy

Alabama employers are about to experience the most intrusive expansion of federal bureaucracy since Reconstruction. Who invited the Feds in? State Rep. Micky Hammon, R-Decatur, and the legislators who voted for his immigration bill.

E-Verify, a program administered by the U.S. Department of Homeland Security and the Social Security Administration, is optional for almost all employers in the nation. In Alabama, thanks to Hammon and his colleagues, it is mandatory.



Eric Fleischauer
Capital considerations

Beginning April 1, "every business entity or employer in this state shall enroll in E-Verify," according to the law signed by Gov. Robert Bentley, a professed enemy of burdensome federal regulations.

"I think when these laws are passed," said Gregory Wald, a San Francisco lawyer who represents corporations dealing with immigration issues, "voters aren't getting the full story."

E-Verify is designed to determine whether employees are U.S. citizens. The program's regulatory burden is in addition to the I-9 system, a program already required of all employers.

12-page contract

The first step every Alabama employer must take to enroll in E-Verify is to sign a 12-page memorandum of understanding that sets forth its legal obligations to the DHS and SSA.

In addition to dozens of other requirements, the document requires the employer to take regular tutorials on the program.

It imposes monetary penalties for noncompliance, and gives the DHS discretion to kick the employer out of the program.

The memorandum authorizes DHS and SSA investigators to review the employer's records and to interview the employer and its employees. The employer must create a system to safeguard the privacy of E-Verify information.

The memorandum requires employers to be familiar with and follow additional provisions in the 82-page E-Verify User Manual.

Jim Harper, director of information policy studies at the libertarian think-tank CATO Institute, said E-Verify is an effort by Washington to make employers "the front-line immigration agents."

"It's a burden," Harper said. "People are supposed to be running their businesses, not doing the government's immigration work."

He said he is mystified as to why Alabama chose to make mandatory a mistake-prone federal program designed to be voluntary.

"Republicans who were supposed to be about limiting the size and scope of government are for some reason pushing this," Harper said. "This is regulation. This is the stuff that keeps business people from being productive."

Liability risk

The regulatory burden for employers is significant, said lawyer Wald, but the greatest problem E-Verify enrollment poses for employers is the risk of liability.

One of the requirements of the memorandum of understanding that all Alabama employers will have to sign is that employers can only use the system after they hire an employee. Pre-screening violates federal law. Employers who submit the information on a new hire typically receive a quick "temporary nonconfirmation" if the new employee is an illegal immigrant, but they are prohibited from terminating the employee at this point. They

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must, rather, wait for a "final nonconfirmation."

"The employer has to keep them on the payroll until it's resolved," Wald said. "In some cases it can take close to four months to resolve a conflict. As you can imagine, it can be very disruptive to a business."

What employers often do to avoid this disruption is either use E-Verify as a pre-screening tool or terminate the employee after receiving the tentative nonconfirmation. In the process, they expose themselves to liability.

"The employee can bring an immigration discrimination claim," Wald said, if he turns out to be a legal immigrant. "As the employer is trying to comply with the immigration laws that are administered by the Department of Homeland Security and now the state of Alabama, it could have the Department of Justice Civil Rights Division coming after them, and could also be subjected to class actions. We've seen that happen."

"If the employers do not follow the rules to the letter, they expose themselves to immigration discrimination claims and other discrimination claims."

These issues, plus major problems with accuracy, have the federal government re-thinking the wisdom of E-Verify.

Absent reauthorization by Congress, the program will expire Sept. 30, 2012, six months after all Alabama employers must go through the onerous process of enrolling in the program.

Hammon and all area legislators imposed this burden on the state's employers because, they felt, it was worth the cost to rid Alabama of illegal immigrants.

As the U.S. Chamber of Commerce points out, however, E-Verify has been singularly ineffective in accomplishing this goal. E-Verify mistakenly confirms the U.S. citizenship of 54 percent of the illegal immigrants it checks.

Welcome to federal bureaucracy, Alabama style.

Contact Eric Fleischauer at eric@decaturdaily.com.

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YEAH! and THANK YOU to our legislatures for this law! It's about time. So sad, Mr. Liberal-Loving Fly-Shower is upset. Sad. So Sad.

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