

One Minute Memo®



Final Reminder: Employers Using E-Verify: Get Ready to Download Your “Historic Records Report” by Year-End

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U.S. employers enrolled in [E-Verify](#) -- the electronic system of employment eligibility verification -- should prepare to download and preserve all E-Verify data submitted to U.S. Citizenship and Immigration Services (USCIS) before January 1, 2016.

On an annual basis, [USCIS](#) must dispose of [E-Verify](#) records that are 10 years old every January 1st in order to comply with the National Archives and Records Administration’s disposal requirements. To allow E-Verify users to preserve their 10-year-old records, USCIS has therefore created a new “[Historic Records Report](#).”

E-Verify participation, however, does not allow an employer to dispense with [Form I-9](#) (Employment Eligibility Verification) requirements. All employers must properly complete a Form I-9 for every employee hired on or after November 6, 1986. Employers are also required to [retain a completed Form I-9](#) for either three years after the employee’s date of hire or one year after the employee’s date of termination, whichever date is later.

While the creation and retention of Form I-9 records by employers is mandatory for all businesses, participation in E-Verify is voluntary in most situations -- unless the company is located in a state requiring enrollment in E-Verify or the employer is a party to a federal contract containing a mandatory E-Verify enrollment provision.

E-Verify access is available to business entities which sign a [Memorandum of Understanding](#) with U.S. Department of Homeland Security (DHS). The E-Verify system compares information from an employee’s Form I-9 against data held by DHS and the Social Security Administration in order to confirm the individual’s identity and employment eligibility.

Two federal agencies are authorized to investigate and enforce compliance with U.S. immigration laws governing the worksite -- The Justice Department’s Office of Special Counsel for Unfair Immigration-Related Employment Practices (OSC) investigates employers suspected of violating provisions of the Immigration Reform and Control Act which prohibit a variety of unlawful forms of discrimination, while the DHS component, U.S. Immigration & Customs Enforcement (ICE), investigates employer-compliance practices in the completion and retention of Form I-9. While conducting their investigations, both the OSC and ICE routinely demand to review the employer’s E-Verify records.

To comply with orders or subpoenas issued by ICE or the OSC, and to preserve important employee data in the ordinary course of business, employers enrolled in E-Verify with records created on or before December 31, 2005 should download the new "Historic Records Report" and do so no later than the last day of 2015. The report will include all transaction records for cases more than 10 years old. The report will also contain information about all E-Verify queries which will otherwise be automatically purged from the database on January 1, 2016.

When logging into E-Verify, employers will find [instructions](#) on how to download the report, export it to Excel, and save it externally. Only cases associated with the particular Employer or E-Verify Employer Agent ID of the user account will be displayed in the report. Note that employers using the service of a vendor of I-9 "electronic signature and storage" software may instead be able to access the same historic data from their vendor.

The lawyers in Seyfarth's Business Immigration Group strongly recommend that, for record-keeping purposes and in the event of a potential ICE or OSC investigation, employers enrolled in E-Verify should download and preserve their E-Verify records no later than December 31, 2015.

Please contact your Seyfarth Shaw LLP attorney with questions related to I-9 compliance, E-Verify, or the new "Historic Records Report."

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