

E-Verify Extends Timeframe for Resolving Social Security Administration TNCs due to COVID-19

by Ieva Aubin

More than 750,000 U.S. employers – many of them federal contractors and subcontractors – utilize E-Verify, a program that assesses the work authorization of new hires. The program electronically compares information provided on Form I-9 to Department of Homeland Security (DHS) and Social Security Administration (SSA) databases. If inconsistencies are found, the new employee is notified of a Tentative Nonconfirmation (TNC) and given the opportunity to work with the relevant government agency to rectify the error.

Under normal operating procedures, new hires who chose to contest the TNC must initially contact the relevant government agency within eight (8) business days for further processing. Inconsistencies pertaining to DHS databases can be contested via phone; inconsistencies pertaining to SSA databases must be addressed in person at an SSA office.

This latter requirement was complicated last week when the Social Security Administration closed all of its offices until further notice, due to the ongoing COVID-19 pandemic.

In response, on March 23, 2020 DHS issued new guidance, extending the normal eight (8) day timeframe for new employees to initially contact the SSA. Under this guidance, new employees who wish to contest an E-Verify TNC with the SSA have an indefinite timeframe in which to do so.

Because TNCs relating to DHS databases can be resolved via phone, no similar extension is permitted for DHS-related TNCs.

Employers should note:

- The Form I-9 must be completed before an E-Verify case is opened. Recent guidance from Immigration and Customs Enforcement permitted employers to **remotely inspect** I-9 identification documents, but did not waive the 3 day timeframe

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associated with completing the form.

- If there are delays in opening an E-Verify case, employers should still enter the new employee's actual start date when creating the case, select "other" from the drop-down list of reasons for the delay, and enter "COVID-19" as the specific reason.
- If the E-Verify system returns a TNC for the new hire, the employer is still required to notify the new hire as soon as possible, and follow the normal process for this situation.
- Employers may not terminate, suspend, or otherwise take any adverse action against an employee merely because they received a TNC through E-Verify. Such actions are not permitted until the TNC becomes a Final Nonconfirmation in the E-Verify system. Employers should remember that the timeline for receiving a Final Nonconfirmation notification may be significantly longer than normal, due to the new guidance.
- However, if the employee chooses not to take action on the TNC, employers are – as usual – permitted to immediately terminate employment with no civil or criminal liability.

If you or your company have any questions about this new guidance or other labor and employment matters, please reach out to a Dorsey Labor & Employment attorney. Our attorneys have extensive experience in all aspects of E-Verify and I-9 compliance, including I-9 investigations and audit defense, and would be happy to assist you with your needs.