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E-Verify Program Extended to 2009

President Bush recently signed an appropriations bill that allots \$100 million to continue and enhance E-Verify, the electronic employment eligibility verification system that had been set to expire Nov. 30. The program will continue, without the need for formal congressional extension, through Sept. 30, 2009.

President Bush's action on the appropriations bill comes at a time when employer use of the E-Verify system is increasing. The U.S. Department of Homeland Security released a report this month noting that more than 88,000 employers are using E-Verify. According to the report, the number of employment verification queries has almost doubled since last year—approximately 6.6 million queries were run during fiscal year 2008, compared with 3.27 million in fiscal year 2007.

Several other bills are pending in Congress that would extend E-Verify. In July, the U.S. House of Representatives passed a measure that would reauthorize E-Verify for another five years (see the Aug. 4 issue of *Staffing Week*).

At the local level, two state laws requiring employers to use E-Verify were recently upheld in court. A federal appeals court held that the Legal Arizona Workers Act was not pre-empted by federal immigration law. The law requires that all Arizona employers use E-Verify to verify employee work authorization and provides for penalties for employers that knowingly hire an unauthorized worker. In upholding the law, the appeals court held that it does not deny employers due process because there is a chance for employers to be heard before sanctions are imposed.

Similarly, a Rhode Island state Superior Court judge denied a temporary restraining order that would have stopped the state from implementing Gov. Donald Carcieri's executive order requiring state vendors to use E-Verify. The court also ruled, however, that the state may have violated the rule-making requirements of the Administrative Procedures Act. Thus, the state must establish a regulation that expressly requires employers doing business with the state to use E-Verify. The state cannot penalize an employer for noncompliance until such a rule takes effect.

ASA has created a Web page where you can review the E-Verify laws for the states in which you do business. Visit the ASA Web site, americanstaffing.net.

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