

§ 8-2-122. Employment verification requirements – audits – fine for fraudulent documents – cash fund created – definitions

(1) As used in this section, unless the context otherwise requires:

(a) “Director” means the director of the division.

(b) “Division” means the division of labor in the department of labor and employment.

(c) “Employer” means a person or entity that:

(I) Transacts business in Colorado;

(II) At any time, employs another person to perform services of any nature; and

(III) Has control of the payment of wages for such services or is the officer, agent, or employee of the person or entity having control of the payment of wages.

(d) “Unauthorized alien” has the same meaning as set forth in 8 U.S.C. sec. 1324a (h)(3).

(2) On and after January 1, 2007, within twenty days after hiring a new employee, each employer in Colorado shall affirm that the employer has examined the legal work status of such newly hired employee and has retained file copies of the documents required by 8 U.S.C. sec. 1324a; that the employer has not altered or falsified the employee's identification documents; and that the employer has not knowingly hired an unauthorized alien. The employer shall keep a written or electronic copy of the affirmation, and of the documents required by 8 U.S.C. sec. 1324a, for the term of employment of each employee.

(3) Upon the request of the director, an employer shall submit documentation to the director that demonstrates that the employer is in compliance with the employment verification requirements specified in 8 U.S.C. sec. 1324a (b) and documentation that the employer has complied with the requirements of subsection (2) of this section. The director or the director's designee may conduct random audits of employers in Colorado to obtain the documentation. When the director has reason to believe that an employer has not complied with the employment verification and examination requirements, the director shall request the employer to submit the documentation.

(4) An employer who, with reckless disregard, fails to submit the documentation required by this section, or who, with reckless disregard, submits false or fraudulent documentation, shall be subject to a fine of not more than five thousand dollars for the first offense and not more than twenty-five thousand dollars for the second and any subsequent offense. The moneys collected pursuant to this subsection (4) shall be deposited in the employment verification cash fund, which is hereby created in the state

treasury. The moneys in the fund shall be appropriated to the department of labor and employment for the purpose of implementing, administering, and enforcing this section. The moneys in the fund shall remain in the fund and not revert to the general fund or any other fund at the end of any fiscal year.

(5) It is the public policy of Colorado that this section shall be enforced without regard to race, religion, gender, ethnicity, national origin, or disability.

Article 17.5. Illegal Aliens – Public Contracts for Services

C.R.S. § 8-17.5-101. Definitions

As used in this article, unless the context otherwise requires:

(1) Deleted by Laws 2008, Ch. 208, § 1, eff. May 13, 2008.

(2) “Contractor” means a person having a public contract for services with a state agency or political subdivision of the state.

(3) “Department” means the department of labor and employment.

(3.3) “Department program” means the employment verification program established pursuant to section 8-17.5-102(5)(c).

(3.7) “E-verify program” means the electronic employment verification program created in Public Law 104-208, as amended, and expanded in Public Law 108-156, as amended, and jointly administered by the United States department of homeland security and the social security administration, or its successor program.

(4) “Executive director” means the executive director of the department of labor and employment.

(4.5) “Newly hired for employment” means hired to work in the United States since the effective date of the public contract for services.

(5) “Political subdivision” means any city, county, city and county, town, special district, school district, local improvement district, or any other kind of municipal, quasi-municipal, or public corporation organized pursuant to law.

(6)(a) “Public contract for services” means any type of agreement, regardless of what the agreement may be called, between a state agency or political subdivision and a contractor for the procurement of services.

(b) “Public contract for services” does not include:

(I) Agreements relating to the offer, issuance, or sale of securities, including but not limited to agreements pertaining to:

(A) Underwriting, marketing, remarketing, paying, transferring, rating, or registering securities; or

(B) The provision of credit enhancement, liquidity support, interest rate exchanges, or trustee or financial consulting services in connection with securities;

(II) Agreements for investment advisory services or fund management services;

(III) Any grant, award, or contract funded by any federal or private entity for any research or sponsored project activity of an institution of higher education or an affiliate of an institution of higher education that is funded from moneys that are restricted by the entity under the grant, award, or contract. For purposes of this subparagraph (III), “sponsored project” means an agreement between an institution of higher education and another party that provides restricted funding and requires oversight responsibilities for research and development or other specified programmatic activities that are sponsored by federal or private agencies and organizations;

(IV) Inter governmental agreements; or

(V) Agreements for information technology services or products and services.

(7) “Services” means the furnishing of labor, time, or effort by a contractor or a subcontractor not involving the delivery of a specific end product other than reports that are merely incidental to the required performance.

(8) “State agency” means any department, commission, council, board, bureau, committee, institution of higher education, agency, or other governmental unit of the executive, legislative, or judicial branch of state government.

C.R.S. § 8-17.5-102. Illegal aliens--prohibition--public contracts for services--rules

(1) A state agency or political subdivision shall not enter into or renew a public contract for services with a contractor who knowingly employs or contracts with an illegal alien to perform work under the contract or who knowingly contracts with a subcontractor who knowingly employs or contracts with an illegal alien to perform work under the contract. Prior to executing a public contract for services, each prospective contractor shall certify that, at the time of the certification, it does not knowingly employ or contract with an illegal alien who will perform work under the public contract for services and that the contractor will participate in the e-verify program or department program in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services.

(2)(a) Each public contract for services shall include a provision that the contractor shall not:

(I) Knowingly employ or contract with an illegal alien to perform work under the public contract for services; or

(II) Enter into a contract with a subcontractor that fails to certify to the contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the public contract for services.

(b) Each public contract for services shall also include the following provisions:

(I) A provision stating that the contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the e-verify program or the department program;

(II) A provision that prohibits the contractor from using either the e-verify program or the department program procedures to undertake pre employment screening of job applicants while the public contract for services is being performed;

(III) A provision that, if the contractor obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, the contractor shall be required to:

(A) Notify the subcontractor and the contracting state agency or political subdivision within three days that the contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

(B) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to sub-subparagraph (A) of this subparagraph (III) the subcontractor does not stop employing or contracting with the illegal alien; except that the contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien;

(IV) A provision that requires the contractor to comply with any reasonable request by the department made in the course of an investigation that the department is undertaking pursuant to the authority established in subsection (5) of this section.

(3) If a contractor violates a provision of the public contract for services required pursuant to subsection (2) of this section, the state agency or political subdivision may

terminate the contract for a breach of the contract. If the contract is so terminated, the contractor shall be liable for actual and consequential damages to the state agency or political subdivision.

(4) A state agency or political subdivision shall notify the office of the secretary of state if a contractor violates a provision of a public contract for services required pursuant to subsection (2) of this section and the state agency or political subdivision terminates the contract for such breach. Based on this notification, the secretary of state shall maintain a list that includes the name of the contractor, the state agency or political subdivision that terminated the public contract for services, and the date of the termination. A contractor shall be removed from the list if two years have passed since the date the contract was terminated, or if a court of competent jurisdiction determines that there has not been a violation of the provision of the public contract for services required pursuant to subsection (2) of this section. A state agency or political subdivision shall notify the office of the secretary of state if a court has made such a determination. The list shall be available for public inspection at the office of the secretary of state and shall be published on the internet on the website maintained by the office of the secretary of state.

(5)(a) The department may investigate whether a contractor is complying with the provisions of a public contract for services required pursuant to subsection (2) of this section. The department may conduct on-site inspections where a public contract for services is being performed within the state of Colorado, request and review documentation that proves the citizenship of any person performing work on a public contract for services, or take any other reasonable steps that are necessary to determine whether a contractor is complying with the provisions of a public contract for services required pursuant to subsection (2) of this section. The department shall receive complaints of suspected violations of a provision of a public contract for services required pursuant to subsection (2) of this section and shall have discretion to determine which complaints, if any, are to be investigated. The results of any investigation shall not constitute final agency action. The department is authorized to promulgate rules in accordance with article 4 of title 24, C.R.S., to implement the provisions of this subsection (5).

(b) The executive director shall notify a state agency or political subdivision if he or she suspects that there has been a breach of a provision in a public contract for services required pursuant to subsection (2) of this section.

(c)(I) There is hereby created the department program. Any contractor who participates in the department program shall notify the department and the contracting state agency or political subdivision of such participation. A participating contractor shall comply with the provisions of subparagraph (II) of this paragraph (c) and shall consent to department audits conducted in accordance with subparagraph (III) of this paragraph (c). Failure to meet either of these obligations shall constitute a violation of the department program. The executive director shall notify a contracting state agency or political subdivision of such violation.

(II) A participating contractor shall, within twenty days after hiring an employee who is newly hired for employment to perform work under the public contract for services, affirm that the contractor has examined the legal work status of such employee, retained file copies of the documents required by 8 U.S.C. sec. 1324a, and not altered or falsified the identification documents for such employees. The contractor shall provide a written, notarized copy of the affirmation to the contracting state agency or political subdivision.

(III) The department may conduct random audits of state agencies or political subdivisions to review the affidavits and of contractors to review copies of the documents required by subparagraph (II) of this paragraph (c). Audits shall not violate federal law.

(6) Nothing in this section shall be construed as requiring a contractor to violate any terms of participation in the e-verify program.

C.R.S. § 24-76.5-103. Verification of lawful presence – exceptions – reporting – rules

(1) Except as otherwise provided in subsection (3) of this section or where exempted by federal law, on and after August 1, 2006, each agency or political subdivision of the state shall verify the lawful presence in the United States of each natural person eighteen years of age or older who applies for state or local public benefits or for federal public benefits for the applicant.

(2) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(3) Verification of lawful presence in the United States shall not be required:

(a) For any purpose for which lawful presence in the United States is not required by law, ordinance, or rule;

(b) For obtaining health care items and services that are necessary for the treatment of an emergency medical condition of the person involved and are not related to an organ transplant procedure;

(c) For short-term, noncash, in-kind emergency disaster relief;

(d) For public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease;

(e) For programs, services, or assistance, such as soup kitchens, crisis counseling and intervention, and short-term shelter specified by federal law or regulation that:

(I) Deliver in-kind services at the community level, including services through public or private nonprofit agencies;

(II) Do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and

(III) Are necessary for the protection of life or safety;

(f) For pregnant women; or

(g) For individuals over the age of eighteen years and under the age of nineteen years who continue to be eligible for medical assistance programs after their eighteenth birthday.

(4) An agency or a political subdivision shall verify the lawful presence in the United States of each applicant eighteen years of age or older for federal public benefits or state or local public benefits by requiring the applicant to:

(a) Produce:

(I) A valid Colorado driver's license or a Colorado identification card, issued pursuant to article 2 of title 42, C.R.S.; or

(II) A United States military card or a military dependent's identification card; or

(III) A United States Coast Guard Merchant Mariner card; or

(IV) A Native American tribal document; and

(b) Execute an affidavit stating:

(I) That he or she is a United States citizen or legal permanent resident; or

(II) That he or she is otherwise lawfully present in the United States pursuant to federal law.

(4.5) Notwithstanding the requirements of subsection (4) of this section, an institution of higher education may accept a tuition classification certification form signed by an authorized United States military education services official as evidence of an applicant's lawful presence in the United States.

(5)(a) Notwithstanding the requirements of paragraph (a) of subsection (4) of this section, the executive director of the department of revenue shall promulgate rules providing for additional forms of identification recognized by the federal government to prove lawful presence and a waiver process to ensure that an individual seeking benefits pursuant to

this section proves lawful presence in the United States. The rules are necessary to ensure that certain individuals lawfully present in the United States receive authorized benefits, including but not limited to homeless state citizens.

(6) A person who knowingly makes a false, fictitious, or fraudulent statement or representation in an affidavit executed pursuant to subsection (4) of this section shall be guilty of a violation of section 18-8-503, C.R.S. It shall constitute a separate violation of section 18-8-503, C.R.S., each time that a person receives a public benefit based upon such a statement or representation.

(7) For an applicant who has executed an affidavit stating that he or she is an alien lawfully present in the United States, verification of lawful presence for federal public benefits or state or local public benefits shall be made through the federal systematic alien verification of entitlement program, referred to in this section as the "SAVE program", operated by the United States department of homeland security or a successor program designated by the United States department of homeland security. Until such verification of lawful presence is made, the affidavit may be presumed to be proof of lawful presence for purposes of this section.

(8) Agencies or political subdivisions of this state may adopt variations of the requirements of paragraph (b) of subsection(4) of this section to improve efficiency or reduce delay in the verification process or to provide for adjudication of unique individual circumstances in which the verification procedures in this section would impose unusual hardship on a legal resident of the state; except that the variations shall be no less stringent than the requirements of this section.

(9) It shall be unlawful for an agency or a political subdivision of this state to provide a federal public benefit or a state or local public benefit in violation of this section. On or before January 15, 2009, and on or before January 15 each year thereafter, each state agency or department that administers a program that provides state or local public benefits shall provide a report with respect to its compliance with this section to the state, veterans, and military affairs committees of the senate and house of representatives, or any successor committees.

(10) Errors and significant delays by the SAVE program shall be reported to the United States department of homeland security and to the secretary of state, both of which monitor the SAVE program and its verification application errors and significant delays and report yearly on such errors and delays, to ensure that the application of the SAVE program is not wrongfully denying benefits to legal residents of the state.

(11) If any provision of this section or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the section that can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

Colorado Secretary of State Notice

The Colorado Secretary of State's notice regarding the E-Verification Program can be found at the following web address:

http://www.sos.state.co.us/pubs/Info_Center/Electronic_Verification.htm

Electronic Verification Program

Section 24-21-112, Colorado Revised Statutes

Federal law prohibits employers from hiring or continuing to employ an unauthorized alien. The work status of new employees can be verified using the Electronic Verification Program (E-Verify), administered by the U.S. Department of Homeland Security in partnership with the Social Security Administration. Conducting an E-Verify query involves matching to government records a social security number and other information reported on Form I-9, Employment Eligibility Verification.

E-Verify can only be used after an individual accepts an offer of employment and after the new hire and employer complete Form I-9, Employment Eligibility Verification. Employers must initiate a search on E-Verify within three business days of the new hire's actual start date. E-Verify cannot be used to verify the work eligibility status of existing employees. If an employer elects to use E-Verify, it must be used to verify the work status of all new hires, regardless of national origin or citizenship, and may not be used selectively.

As with all current employee-verification programs, E-Verify is not completely accurate. An employee has recourse available if he or she is legally documented to work in the U.S. but the employer receives a final notice of nonconfirmation of work eligibility for the employee through E-Verify. Visit the U.S. Citizenship and Immigration Services Web site, www.uscis.gov, and click on "For Employees" for more information.

For information about the employee's identity documents presented for Form I-9, Employment Eligibility Verification, visit www.uscis.gov. Useful information is also available on the Guide to State and Federal Employment Verification Laws. You may also want to consult with the Colorado Department of Labor and Employment at: <http://www.coworkforce.com>.

It is unlawful for an employer to:

Hire, recruit, or refer for a fee, for employment in the United States, an alien, knowing the alien is an unauthorized alien;

Hire, recruit, or refer for a fee, for employment in the United States, an individual without verifying the employment eligibility status of the individual through completion of the Employment Eligibility Verification Form I-9, or its successor form;

Continue to employ an alien in the United States, knowing that the alien is or has become an unauthorized alien; or

While using the E-Verify program, refuse to hire, discharge, promote, or demote a person, harass a person during the course of employment, or discriminate against a person in matters of compensation, on the basis of the person's disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry, pursuant to section 24-34-402, C.R.S.

For more specific information regarding the E-Verify program and its requirements and use, employers should consult 8 U.S.C. Sec. 1324a.