
AGRICULTURAL LABOR – E-VERIFY

Issue:

E-Verify is a computer system operated by the federal government to determine a job applicant's work authorization. Requiring agricultural employers to use E-Verify without assuring that a workable guest worker program is in place could have a significant, negative impact on U.S. farm production, threatening the livelihoods of many farmers and ranchers in labor-intensive agriculture.

Background:

The Immigration Reform and Control Act of 1986 (IRCA) made it unlawful for employers to hire or employ individuals not authorized to work in the United States. Since that time, employers have been required to use the Immigration and Naturalization Service (INS) Form I-9, which is completed by job applicants who submit the form to employers with specified documents that testify to their identity and work authorization. IRCA, however, prohibits employers from questioning the documents offered by applicants, and any employer who questions the documents offered by job applicants or refuses to hire based on reasonable-appearing documents can be sued, not only by the job applicant, but also by the Department of Justice (see the website of the Department of Justice at <https://www.justice.gov/crt/types-discrimination>). The Department of Agriculture website explicitly advises farmers that “Employers must accept any of the documents or combination of documents listed on the back of the INS Form I-9 to establish identity and employment eligibility.”

As a result of these policies instituted nearly 30 years ago, use of fraudulent documents by workers has become prevalent, in agriculture and elsewhere, and farmers are caught in a lose-lose situation: few if any American workers apply for jobs and at the same time, farmers are legally required to accept documents which often are false. There have been bills introduced in the past that would mandate that employers use E-Verify and phase in the requirement over several years. For many agricultural producers, the requirement would begin in three years; for others, the requirement could start sooner. Most importantly, the legislation contains no worker program for agriculture—either in remedying problems with the H-2A program or in instituting any additional program to assist agricultural employers. If the mandatory E-Verify program goes forward by itself, without providing producers a source of legal workers, it would present a potentially insurmountable challenge for many agricultural employers. Agricultural production would decline significantly if Congress passes enforcement only reform (including border security, interior enforcement and E-Verify). Farm Bureau economists estimate fruit production would fall 30 to 61 percent, vegetable production would decline by 15 to 31 percent and livestock production would fall 13 to 27 percent. These reductions in agricultural production would lead to an increase in food prices by 5 to 6 percent.

Legislative Status:

In October, 2017 the House Judiciary Committee adopted legislation to mandate the use of E-Verify by all employers, including agricultural producers. The Committee also adopted legislation (the AG Act) to provide a new guest worker program for agriculture. While the AG Act contained many positive elements, it needs to be strengthened to assure that during the transition to the new program, agriculture is not threatened by the loss of our existing workforce.

AFBF Policy:

Farm Bureau could support a mandatory E-Verify if: 1) the employment eligibility verification system is simple, conclusive, and timely; 2) it provides an affirmative defense for employers acting in good faith; 3) it allows for status adjustment of workers not authorized prior to implementation; and 4) it is preceded by full implementation of a usable agriculture worker program. Any federal mandatory E-Verify legislation must be coupled with legislation that includes these elements. Farm Bureau opposes any mandate on employers to use E-Verify until there is an acceptable agriculture worker program that allows work authorization for workers not currently authorized.

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February 2018