

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Right to Privacy in the Workplace Act is
5 amended by changing Sections 12 and 15 as follows:

6 (820 ILCS 55/12)

7 Sec. 12. Use ~~Restrictions on use~~ of Employment Eligibility
8 Verification Systems.

9 (a) Prior to choosing to voluntarily enroll in any
10 Electronic Employment Verification System, including the
11 E-Verify program and the Basic Pilot program, as authorized by
12 8 U.S.C. 1324a, Notes, Pilot Programs for Employment
13 Eligibility Confirmation (enacted by P.L. 104-208, div. C,
14 title IV, subtitle A), employers are urged to carefully
15 consider: (1) that the E-Verify databases contain inaccurate
16 information that prevents E-Verify from verifying the work
17 authorization status of many individuals who are in fact
18 eligible to work in the United States, including many United
19 States citizens; (2) that employers who use E-Verify are
20 legally obligated to expend time and resources to resolve
21 situations where, due to errors in the E-Verify databases,
22 E-Verify cannot verify the work authorization of employees who
23 are in fact authorized to work in the United States; and (3)

1 that employers who use E-Verify have specific legal
2 responsibilities set forth by federal and state law that relate
3 to the use of E-Verify and the treatment of employees,
4 including the legal requirements set forth in this Act.
5 ~~Employers are prohibited from enrolling in any Employment~~
6 ~~Eligibility Verification System, including the Basic Pilot~~
7 ~~program, as authorized by 8 U.S.C. 1324a, Notes, Pilot Programs~~
8 ~~for Employment Eligibility Confirmation (enacted by PL~~
9 ~~104 208, div. C, title IV, subtitle A), until the Social~~
10 ~~Security Administration (SSA) and Department of Homeland~~
11 ~~Security (DHS) databases are able to make a determination on~~
12 ~~99% of the tentative nonconfirmation notices issued to~~
13 ~~employers within 3 days, unless otherwise required by federal~~
14 ~~law.~~

15 (a-1) The Illinois Department of Labor (IDOL) shall post on
16 its website information or links to information from the United
17 States Government Accountability Office or a similar reliable
18 source independent of the Department of Homeland Security
19 regarding: (1) the accuracy of the E-Verify databases; (2) the
20 approximate financial burden and expenditure of time that use
21 of E-Verify requires from employers; and (3) an overview of an
22 employer's responsibilities under federal and state law
23 relating to the use of E-Verify.

24 (b) Upon initial enrollment in an Employment Eligibility
25 Verification System or within 30 days after the effective date
26 of this amendatory Act of the 96th General Assembly, an

1 employer enrolled in E-Verify or any other Employment
2 Eligibility Verification System must attest, ~~Subject to~~
3 ~~subsection (a) of this Section, an employer who enrolls in the~~
4 ~~Basic Pilot program is prohibited from the Employment~~
5 ~~Eligibility Verification Systems, to confirm the employment~~
6 ~~authorization of new hires unless the employer attests,~~ under
7 penalty of perjury, on a form prescribed by the IDOL available
8 on the IDOL website ~~Department of Labor:~~

9 (1) that the employer has received the Basic Pilot or
10 E-Verify training materials from the Department of
11 Homeland Security (DHS) ~~DHS~~, and that all employees
12 ~~personnel~~ who will administer the program have completed
13 the Basic Pilot or E-Verify Computer Based Tutorial (CBT);
14 and

15 (2) that the employer has posted the notice from DHS
16 indicating that the employer is enrolled in the Basic Pilot
17 or E-Verify program and ~~7~~ the anti-discrimination notice
18 issued by the Office of Special Counsel for
19 Immigration-Related Unfair Employment Practices (OSC),
20 Civil Rights Division, U.S. Department of Justice in a
21 prominent place that is clearly visible to both prospective
22 and current employees, ~~and the anti-discrimination notice~~
23 ~~issued by the Illinois Department of Human Rights (IDHR).~~

24 (c) It is a violation of this Act for an employer enrolled
25 in an Employment Eligibility Verification System, including
26 the E-Verify program and the Basic Pilot program:

1 ~~Responsibilities of employer using Employment Eligibility~~
2 ~~Verification Systems.~~

3 (1) to fail to ~~The employer shall~~ display the notices
4 supplied by DHS and ~~OSC,~~ and IDHR in a prominent place
5 that is clearly visible to both prospective and current
6 employees; ~~;~~

7 (2) to allow any employee to use an Employment
8 Eligibility Verification System prior to having completed
9 CBT; ~~The employer shall require that all employer~~
10 ~~representatives performing employment verification queries~~
11 ~~complete the CBT. The employer shall attest, under penalty~~
12 ~~of perjury, on a form prescribed by the Department of~~
13 ~~Labor, that the employer representatives completed the~~
14 ~~CBT.~~

15 (3) to fail to take reasonable steps to prevent an
16 employee from circumventing the requirement to complete
17 the CBT by assuming another employee's E-Verify or Basic
18 Pilot user identification or password; ~~The employer shall~~
19 ~~become familiar with and comply with the Basic Pilot~~
20 ~~Manual.~~

21 (4) to use the Employment Eligibility Verification
22 System to verify the employment eligibility of job
23 applicants prior to hiring or to otherwise use the
24 Employment Eligibility Verification System to screen
25 individuals prior to hiring and prior to the completion of
26 a Form I-9; ~~The employer shall notify all prospective~~

1 ~~employees at the time of application that such employment~~
2 ~~verification system may be used for immigration~~
3 ~~enforcement purposes.~~

4 (5) to terminate an employee or take any other adverse
5 employment action against a job applicant or employee prior
6 to receiving a final nonconfirmation notice from the Social
7 Security Administration or the Department of Homeland
8 Security; ~~The employer shall provide all employees who~~
9 ~~receive a tentative nonconfirmation with a referral letter~~
10 ~~and contact information for what agency the employee must~~
11 ~~contact to resolve the discrepancy.~~

12 (6) to fail to notify an employee or job applicant, in
13 writing, of the employer's receipt of a tentative
14 nonconfirmation notice, of the individual's right to
15 contest the tentative nonconfirmation notice, and of the
16 contact information for the relevant government agency or
17 agencies that the individual must contact to resolve the
18 tentative nonconfirmation notice; ~~The employer shall~~
19 ~~comply with the Illinois Human Rights Act and any~~
20 ~~applicable federal anti-discrimination laws.~~

21 (7) to fail to ~~The employer shall use the information~~
22 ~~it receives from SSA or DHS only to confirm the employment~~
23 ~~eligibility of newly hired employees after completion of~~
24 ~~the Form I-9. The employer shall safeguard the this~~
25 ~~information contained in the Employment Eligibility~~
26 ~~Verification System, and the means of access to the system~~

1 ~~it~~ (such as passwords and other privacy protections). ~~7~~ An
2 employer shall ~~to~~ ensure that the System ~~it~~ is not used for
3 any ~~other~~ purpose other than employment verification of
4 newly hired employees and shall ensure ~~as necessary to~~
5 ~~protect its confidentiality, including ensuring~~ that the
6 information contained in the System and the means of access
7 to the System are ~~it is~~ not disseminated to any person
8 other than employees ~~of the employer~~ who need such
9 information and access ~~it~~ to perform the employer's
10 employment verification responsibilities; ~~7~~

11 (c-1) Any claim that an employer refused to hire,
12 segregated, or acted with respect to recruitment, hiring,
13 promotion, renewal or employment, selection for training or
14 apprenticeship, discharge, discipline, tenure or terms,
15 privileges, or conditions of employment without following the
16 procedures of the Employment Eligibility Verification System,
17 including the Basic Pilot and E-Verify programs, may be brought
18 under paragraph (G) (2) of Section 2-102 of the Illinois Human
19 Rights Act;

20 (c-2) It is a violation of this Section for an individual
21 to falsely pose as an employer in order to enroll in an
22 Employment Eligibility Verification System or for an employer
23 to use an Employment Eligibility Verification System to access
24 information regarding an individual who is not an employee of
25 the employer.

26 (d) Preemption. Neither the State nor any of its political

1 subdivisions, nor any ~~No~~ unit of local government, including a
2 home rule unit, may require any employer to use an Employment
3 Eligibility Verification System, including under the following
4 circumstances:

5 (1) as a condition of receiving a government contract;

6 (2) as a condition of receiving a business license; or

7 (3) as penalty for violating licensing or other similar
8 laws.

9 This subsection (d) is a denial and limitation of home rule
10 powers and functions under subsection (h) of Section 6 of
11 Article VII of the Illinois Constitution.

12 (Source: P.A. 95-138, eff. 1-1-08.)

13 (820 ILCS 55/15) (from Ch. 48, par. 2865)

14 Sec. 15. Administration and enforcement.

15 (a) The Director of Labor or his authorized representative
16 shall administer and enforce the provisions of this Act. The
17 Director of Labor may issue rules and regulations necessary to
18 administer and enforce the provisions of this Act.

19 (b) If an employee or applicant for employment alleges that
20 he or she has been denied his or her rights under this Act, he
21 or she may file a complaint with the Department of Labor. The
22 Department shall investigate the complaint and shall have
23 authority to request the issuance of a search warrant or
24 subpoena to inspect the files of the employer or prospective
25 employer, if necessary. The Department shall attempt to resolve

1 the complaint by conference, conciliation, or persuasion. If
2 the complaint is not so resolved and the Department finds the
3 employer or prospective employer has violated the Act, the
4 Department may commence an action in the circuit court to
5 enforce the provisions of this Act including an action to
6 compel compliance. The circuit court for the county in which
7 the complainant resides or in which the complainant is employed
8 shall have jurisdiction in such actions.

9 (c) If an employer or prospective employer violates this
10 Act, an employee or applicant for employment may commence an
11 action in the circuit court to enforce the provisions of this
12 Act, including actions to compel compliance, where efforts to
13 resolve the employee's or applicant for employment's complaint
14 concerning the violation by conference, conciliation or
15 persuasion under subsection (b) have failed and the Department
16 has not commenced an action in circuit court to redress the
17 violation. An employee or applicant for employment may directly
18 commence an action in the circuit court to enforce subsection
19 (c) of Section 12 or subsection (c-2) of Section 12 of this Act
20 without first filing a complaint with the Department of Labor.
21 The circuit court for the county in which the complainant
22 resides or in which the complainant is employed shall have
23 jurisdiction in such actions.

24 (d) Failure to comply with an order of the court may be
25 punished as contempt. In addition, the court shall award an
26 employee or applicant for employment prevailing in an action

1 under this Act the following damages:

2 (1) Actual damages plus costs.

3 (2) For a willful and knowing violation of this Act,
4 \$200 plus costs, reasonable attorney's fees, and actual
5 damages.

6 (3) For a violation of Section 12(c) or Section 12(c-2)
7 of this Act, \$500 per affected employee plus costs,
8 reasonable attorneys' fees, and actual damages.

9 (e) Any employer or prospective employer or his agent who
10 violates the provisions of this Act is guilty of a petty
11 offense.

12 (f) Any employer or prospective employer, or the officer or
13 agent of any employer or prospective employer, who discharges
14 or in any other manner discriminates against any employee or
15 applicant for employment because that employee or applicant for
16 employment has made a complaint to his employer, or to the
17 Director or his authorized representative, or because that
18 employee or applicant for employment has caused to be
19 instituted or is about to cause to be instituted any proceeding
20 under or related to this Act, or because that employee or
21 applicant for employment has testified or is about to testify
22 in an investigation or proceeding under this Act, is guilty of
23 a petty offense.

24 (Source: P.A. 87-807.)