



Sen. Iris Y. Martinez

Filed: 3/25/2009

09600SB1133sam001

LRB096 07212 RLC 24283 a

1 AMENDMENT TO SENATE BILL 1133

2 AMENDMENT NO. _____. Amend Senate Bill 1133 by replacing
3 everything after the enacting clause with the following:

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

1 authorization status of many individuals who are in fact
2 eligible to work in the United States, including many United
3 States citizens; (2) that employers who use E-Verify are
4 legally obligated to expend time and resources to resolve
5 situations where, due to errors in the E-Verify databases,
6 E-Verify cannot verify the work authorization of employees who
7 are in fact authorized to work in the United States; and (3)
8 that employers who use E-Verify have specific legal
9 responsibilities set forth by federal and state law that relate
10 to the use of E-Verify and the treatment of employees,
11 including the legal requirements set forth in this Act.
12 ~~Employers are prohibited from enrolling in any Employment~~
13 ~~Eligibility Verification System, including the Basic Pilot~~
14 ~~program, as authorized by 8 U.S.C. 1324a, Notes, Pilot Programs~~
15 ~~for Employment Eligibility Confirmation (enacted by PL~~
16 ~~104-208, div. C, title IV, subtitle A), until the Social~~
17 ~~Security Administration (SSA) and Department of Homeland~~
18 ~~Security (DHS) databases are able to make a determination on~~
19 ~~99% of the tentative nonconfirmation notices issued to~~
20 ~~employers within 3 days, unless otherwise required by federal~~
21 ~~law.~~

22 (a-1) The Illinois Department of Labor (IDOL) shall post on
23 its website information or links to information from the United
24 States Government Accountability Office or a similar reliable
25 source independent of the Department of Homeland Security
26 regarding: (1) the accuracy of the E-Verify databases; (2) the

1 approximate financial burden and expenditure of time that use
2 of E-Verify requires from employers; and (3) an overview of an
3 employer's responsibilities under federal and state law
4 relating to the use of E-Verify.

5 (b) Upon initial enrollment in an Employment Eligibility
6 Verification System or within 30 days after the effective date
7 of this amendatory Act of the 96th General Assembly, an
8 employer enrolled in E-Verify or any other Employment
9 Eligibility Verification System must attest, ~~Subject to~~
10 ~~subsection (a) of this Section, an employer who enrolls in the~~
11 ~~Basic Pilot program is prohibited from the Employment~~
12 ~~Eligibility Verification Systems, to confirm the employment~~
13 ~~authorization of new hires unless the employer attests, under~~
14 penalty of perjury, on a form prescribed by the IDOL available
15 on the IDOL website ~~Department of Labor:~~

16 (1) that the employer has received the Basic Pilot or
17 E-Verify training materials from the Department of
18 Homeland Security (DHS) ~~DHS,~~ and that all employees
19 ~~personnel~~ who will administer the program have completed
20 the Basic Pilot or E-Verify Computer Based Tutorial (CBT);
21 and

22 (2) that the employer has posted the notice from DHS
23 indicating that the employer is enrolled in the Basic Pilot
24 or E-Verify program and ~~7~~ the anti-discrimination notice
25 issued by the Office of Special Counsel for
26 Immigration-Related Unfair Employment Practices (OSC),

1 Civil Rights Division, U.S. Department of Justice in a
2 prominent place that is clearly visible to both prospective
3 and current employees, and the anti-discrimination notice
4 ~~issued by the Illinois Department of Human Rights (IDHR).~~

5 (c) It is a violation of this Act for an employer enrolled
6 in an Employment Eligibility Verification System, including
7 the E-Verify program and the Basic Pilot program:
8 ~~Responsibilities of employer using Employment Eligibility~~
9 ~~Verification Systems.~~

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

14 (2) to allow any employee to use an Employment
15 Eligibility Verification System prior to having completed
16 CBT; ~~The employer shall require that all employer~~
17 ~~representatives performing employment verification queries~~
18 ~~complete the CBT. The employer shall attest, under penalty~~
19 ~~of perjury, on a form prescribed by the Department of~~
20 ~~Labor, that the employer representatives completed the~~
21 ~~CBT.~~

22 (3) to fail to take reasonable steps to prevent an
23 employee from circumventing the requirement to complete
24 the CBT by assuming another employee's E-Verify or Basic
25 Pilot user identification or password; ~~The employer shall~~
26 ~~become familiar with and comply with the Basic Pilot~~

1 ~~Manual.~~

2 (4) to use the Employment Eligibility Verification
3 System to verify the employment eligibility of job
4 applicants prior to hiring or to otherwise use the
5 Employment Eligibility Verification System to screen
6 individuals prior to hiring and prior to the completion of
7 a Form I-9; The employer shall notify all prospective
8 employees at the time of application that such employment
9 verification system may be used for immigration
10 enforcement purposes.

11 (5) to terminate an employee or take any other adverse
12 employment action against a job applicant or employee prior
13 to receiving a final nonconfirmation notice from the Social
14 Security Administration or the Department of Homeland
15 Security; The employer shall provide all employees who
16 receive a tentative nonconfirmation with a referral letter
17 and contact information for what agency the employee must
18 contact to resolve the discrepancy.

19 (6) to fail to notify an employee or job applicant, in
20 writing, of the employer's receipt of a tentative
21 nonconfirmation notice, of the individual's right to
22 contest the tentative nonconfirmation notice, and of the
23 contact information for the relevant government agency or
24 agencies that the individual must contact to resolve the
25 tentative nonconfirmation notice; The employer shall
26 comply with the Illinois Human Rights Act and any

1 ~~applicable federal anti-discrimination laws.~~

2 (7) ~~to fail to~~ ~~The employer shall use the information~~
3 ~~it receives from SSA or DHS only to confirm the employment~~
4 ~~eligibility of newly-hired employees after completion of~~
5 ~~the Form I 9. The employer shall safeguard the ~~this~~~~
6 ~~information contained in the Employment Eligibility~~
7 ~~Verification System, and the means of access to the system~~
8 ~~it (such as passwords and other privacy protections).~~7~~An~~
9 ~~employer shall ~~to~~ ensure that the System ~~it~~ is not used for~~
10 ~~any ~~other~~ purpose other than employment verification of~~
11 ~~newly-hired employees and shall ensure as necessary to~~
12 ~~protect its confidentiality, including ensuring that the~~
13 ~~information contained in the System and the means of access~~
14 ~~to the System are ~~it is~~ not disseminated to any person~~
15 ~~other than employees ~~of the employer~~ who need such~~
16 ~~information and access ~~it~~ to perform the employer's~~
17 ~~employment verification responsibilities; ~~7~~~~

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

1 (c-2) It is a violation of this Section for an individual
2 to falsely pose as an employer in order to enroll in an
3 Employment Eligibility Verification System or for an employer
4 to use an Employment Eligibility Verification System to access
5 information regarding an individual who is not an employee of
6 the employer.

7 (d) Preemption. Neither the State nor any of its political
8 subdivisions, nor any ~~No~~ unit of local government, including a
9 home rule unit, may require any employer to use an Employment
10 Eligibility Verification System, including under the following
11 circumstances:

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

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

14 (3) as penalty for violating licensing or other similar
15 laws.

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

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

20 (820 ILCS 55/15) (from Ch. 48, par. 2865)

21 Sec. 15. Administration and enforcement.

22 (a) The Director of Labor or his authorized representative
23 shall administer and enforce the provisions of this Act. The
24 Director of Labor may issue rules and regulations necessary to
25 administer and enforce the provisions of this Act.

1 (b) If an employee or applicant for employment alleges that
2 he or she has been denied his or her rights under this Act, he
3 or she may file a complaint with the Department of Labor. The
4 Department shall investigate the complaint and shall have
5 authority to request the issuance of a search warrant or
6 subpoena to inspect the files of the employer or prospective
7 employer, if necessary. The Department shall attempt to resolve
8 the complaint by conference, conciliation, or persuasion. If
9 the complaint is not so resolved and the Department finds the
10 employer or prospective employer has violated the Act, the
11 Department may commence an action in the circuit court to
12 enforce the provisions of this Act including an action to
13 compel compliance. The circuit court for the county in which
14 the complainant resides or in which the complainant is employed
15 shall have jurisdiction in such actions.

16 (c) If an employer or prospective employer violates this
17 Act, an employee or applicant for employment may commence an
18 action in the circuit court to enforce the provisions of this
19 Act, including actions to compel compliance, where efforts to
20 resolve the employee's or applicant for employment's complaint
21 concerning the violation by conference, conciliation or
22 persuasion under subsection (b) have failed and the Department
23 has not commenced an action in circuit court to redress the
24 violation. An employee or applicant for employment may directly
25 commence an action in the circuit court to enforce subsection
26 (c) of Section 12 or subsection (c-2) of Section 12 of this Act

1 without first filing a complaint with the Department of Labor.

2 The circuit court for the county in which the complainant
3 resides or in which the complainant is employed shall have
4 jurisdiction in such actions.

5 (d) Failure to comply with an order of the court may be
6 punished as contempt. In addition, the court shall award an
7 employee or applicant for employment prevailing in an action
8 under this Act the following damages:

9 (1) Actual damages plus costs.

10 (2) For a willful and knowing violation of this Act,
11 \$200 plus costs, reasonable attorney's fees, and actual
12 damages.

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

16 (e) Any employer or prospective employer or his agent who
17 violates the provisions of this Act is guilty of a petty
18 offense.

19 (f) Any employer or prospective employer, or the officer or
20 agent of any employer or prospective employer, who discharges
21 or in any other manner discriminates against any employee or
22 applicant for employment because that employee or applicant for
23 employment has made a complaint to his employer, or to the
24 Director or his authorized representative, or because that
25 employee or applicant for employment has caused to be
26 instituted or is about to cause to be instituted any proceeding

1 under or related to this Act, or because that employee or
2 applicant for employment has testified or is about to testify
3 in an investigation or proceeding under this Act, is guilty of
4 a petty offense.

5 (Source: P.A. 87-807.)".