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Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Williams and Swearingen

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SUMMARY

- Requires employers of employees who provide child care in specified institutions, employees in a school, college, or university, employees of the state or a political subdivision, and residential and other construction employees to verify each new employee's work eligibility through the federal E-Verify program (which is a program that helps an employer to determine the eligibility of its employees to work in the U.S.).
- Requires such an employer to terminate an employee's employment after receiving a notice of final nonconfirmation for that individual from the E-Verify program.
- Subject these employers to the same recordkeeping requirements and investigations and penalties as entities currently required to use E-Verify to verify their employees work eligibility, including a potential fine and debarment from state contracts.

DETAILED ANALYSIS

Requirement to use E-Verify

Ohio's E-Verify Workforce Integrity Act¹ (EWIA) requires certain entities, unless an exception applies, to verify each new employee's work eligibility through the federal E-Verify program, a federal program that helps an employer to determine the eligibility of its employees to work in the U.S. As discussed under "**EWIA Requirements**," below, these entities must terminate the employment of an employee after receiving a notice of final nonconfirmation for that individual from the E-Verify program. The entity must maintain a record of the verification for a specific period of time. An entity that fails to comply with the EWIA's requirements is subject

¹ R.C. Chapter 4151.

to an investigation by the Attorney General and possibly a fine and debarment from state contracts for two years.

The bill expands the EWIA to “covered employers” who employ any of the following:

- An individual who is primarily responsible for the care and supervision of children in a child care center, type A family child care home, licensed type B family child care home, or child day camp;
- An individual employed in any school, college, or university;
- An individual employed by the state or any political subdivision; and
- An individual who performs compensated services under the direction and control of a construction contractor, subcontractor, or labor broker on any residential building, manufactured home, mobile home, industrialized unit, agricultural building, or related construction project.²

For purposes of the EWIA’s expansion to individuals employed by a school, “school” includes all the following:

- Any institution or center that provides early childhood instructional or educational services to children between the ages of three and six who are not enrolled in or are not eligible to be enrolled in kindergarten (a “preschool”);
- A school operated by a city, local, or exempted village school district, a joint vocational school district, a community school, a STEM school, or a college-preparatory boarding school; and
- A chartered nonpublic school.³

Currently, the EWIA only applies to a nonresidential construction contractor or subcontractor who performs work on a nonresidential construction project and to a labor broker who hires an individual and supplies the individual’s labor to a nonresidential construction contractor or subcontractor. Under current law, a nonresidential construction project is any project involving construction or renovation of any building, highway, bridge, utility, or related infrastructure, but not including any of the following:

- An industrialized unit, manufactured home, or a residential building as defined in the Ohio Building Code Law;
- A building or structure that is incidental to the use of the land on which the building or structure is located for agricultural purposes;

² R.C. 4151.01(C), (G), and (J), with conforming changes throughout the bill.

³ R.C. 4151.01(K), by reference to R.C. 2950.034 and 3310.01, not in the bill; R.C. Chapters 3314, 3326, and 3328.

- A mobile home as defined in continuing law.⁴

EWIA requirements

Use of E-Verify for hired employees

Under the bill, the expanded EWIA requires a covered employer to do both of the following:

- Except as described below, use the E-Verify program to verify the employment eligibility of each covered employee. (The E-Verify program is a program that helps an employer to determine the eligibility of its employees to work in the U.S.) see “**Background – employee work eligibility and E-Verify,**” below);
- Keep a record of the verification for three years after the date of hire or one year after the date the employee’s employment is terminated, whichever is later.⁵

With respect to an individual who performs work on a construction project, the EWIA makes the individual or entity that employs the employee responsible for verifying the employee’s identity and employment eligibility through E-Verify and keeping a record of the verification. Thus, under the bill, a residential construction contractor, like a nonresidential construction contractor under current law, must confirm the contractor’s employee’s work eligibility. A subcontractor must confirm the subcontractor’s employee’s eligibility. A labor broker must confirm the eligibility of an individual hired by the labor broker.⁶

Exemption for certain employees

The bill, similar to current law, exempts a covered employer from the E-Verify requirements when both of the following apply:

- The employer previously used E-Verify to verify the employee’s work eligibility;
- The employer is not required to verify or reverify the employee’s eligibility to work under the federal Immigration Reform and Control Act of 1986 (IRCA).⁷

Retention of unverified employees

The expanded EWIA also requires a covered employer, like a nonresidential construction contractor, subcontractor, or labor broker under current law, to terminate an employee’s employment after receiving a notice of final nonconfirmation for that employee from the E-Verify program. A final nonconfirmation occurs when the employer receives an E-Verify case result indicating that an employee’s employment eligibility could not be confirmed and instructions to

⁴ R.C. 4151.01(E), (F), (G), and (H), by reference to R.C. 3781.06 and 4501.01, not in the bill.

⁵ R.C. 4151.02(A) and (B).

⁶ R.C. 4151.02(A)(1) to (3).

⁷ R.C. 4151.02(C), by reference to 8 United States Code (U.S.C.) 1324a(b).

close the E-Verify case associated with the employee (see “**Background – employee work eligibility and E-Verify,**” below).⁸

Investigation and enforcement

Under continuing law, the Attorney General must prescribe a complaint form an individual may use to allege a violation of the requirements described above. The Attorney General cannot require an individual filing a complaint to list the individual’s Social Security number or have the form notarized. The Attorney General must investigate any violation alleged in a prescribed form when the Attorney General determines the complaint contains sufficient facts to reasonably conclude a violation may have occurred. An individual may file a complaint using a different form, but the Attorney General is not obligated to investigate a complaint filed using a nonprescribed form.⁹

The Attorney General cannot investigate a complaint based solely on race, color, or national origin. A local law enforcement officer may assist the Attorney General’s investigation.¹⁰

If the Attorney General investigates a complaint and finds reasonable evidence exists of a violation, the Attorney General must issue a notice of violation that does all the following (similar to a nonresidential construction contractor, subcontractor, or labor broker under current law):

- Directs the covered employer to provide satisfactory proof to the Attorney General not later than ten days after the notice is issued that individuals employed by the covered employer are authorized to be employed under the federal IRCA;
- Specifies a monetary penalty assessed based on the Attorney General’s determination;
- If the Attorney General determined it is likely the covered employer committed two or more willful violations, informs the employer that the employer is disqualified from bidding on or participating in any future state contract for up to a two-year period;
- Notifies the covered employer of the right to request a hearing.¹¹

The Attorney General cannot issue an order, or sue as described below, if a violation was the result of an isolated technical error or a malfunction in the E-Verify program.¹²

As under current law, the penalty assessed by the Attorney General varies depending on the number of violations discovered and whether the covered employer has been ordered to pay a penalty in the preceding three years. When a covered employer has not been ordered to pay a

⁸ R.C. 4151.03.

⁹ R.C. 4151.04(A).

¹⁰ R.C. 4151.04(B) and (C).

¹¹ R.C. 4151.04(D).

¹² R.C. 4151.04(I).

fine within the preceding three years, the fine for failing to use E-Verify is \$250 per failure. The fine for failing to fire an employee after a notice of final nonconfirmation is \$5,000 per failure.

If the covered employer has been ordered to pay a fine for violations during the preceding three years, the fine for failing to use E-Verify is \$1,000 per failure. The fine for failing to fire an employee after a notice of final nonconfirmation is \$10,000 per failure.

Where a covered employer has been ordered to pay the enhanced fine described above during the preceding three years, the fine for failing to use E-Verify is \$1,500 per failure. The fine for failing to fire an employee after a notice of final nonconfirmation is \$25,000 per failure.¹³

Like a nonresidential construction contractor, subcontractor, or labor broker under current law, a covered employer served a notice of violation may request an adjudicatory hearing no more than ten days after being served, excluding Saturdays, Sundays, and legal holidays. The covered employer must send a request for a hearing to the Attorney General, who must forward the request to the Director of Commerce. The Director, or the Director's designee, must conduct the hearing in accordance with the Administrative Procedure Act (APA). A determination made by the Director may be appealed to a court of common pleas in accordance with the appeal provisions of the APA.¹⁴

If a covered employer fails to request a hearing in the allotted time, a notice of violation becomes an enforceable order against the employer. When this occurs, the Attorney General must provide a copy to the Director of Administrative Services. The DAS Director must add the employer to a list of disqualified entities maintained by the Director under the EWIA. After the period of disqualification in the order ends, a covered employer may be eligible to bid for and participate in state contracts if both of the following apply (similar to a nonresidential construction contractor, subcontractor, or labor broker under current law):

- The employer files a sworn affidavit with the DAS Director stating the period of disqualification has ended and that the employer has not violated the act during the period of disqualification.
- The covered employer has paid any outstanding fine assessed under the act.¹⁵

If a covered employer, similar to a nonresidential construction contractor, subcontractor, or labor broker under current law, fails to comply with an order within 30 days after it is enforceable, the Attorney General must sue in the court of common pleas of the county where the employer is located or does business or where the violation occurred.¹⁶

On determining a covered employer has violated the EWIA, a court must do both of the following:

¹³ R.C. 4151.04(E).

¹⁴ R.C. 4151.01(B) and 4151.04(F), by reference to R.C. Chapter 119.

¹⁵ R.C. 4151.04(F) and (G).

¹⁶ R.C. 4151.04(H) and 4151.05(A).

- Order the employer to pay any portion of the penalty imposed by the Attorney General that the court determines to have been validly imposed based on the evidence presented plus an additional \$1,000 for each violation;
- Bar the employer from bidding on or participating in any state contract for a period of up to two years.¹⁷

A court must provide the DAS Director with a copy of any disqualification order for the DAS Director to include the covered employer on the list maintained by the Director. A covered employer may be eligible to bid on or participate in state contracts under the circumstances described above.¹⁸

Employment of unauthorized alien

In a lawsuit to enforce an order, the Attorney General also may present evidence that a covered employer, similar to a nonresidential construction contractor, subcontractor, or labor broker under current law, knowingly employed an individual who is not a U.S. citizen or national and who is not authorized to be employed under the IRCA (an “unauthorized alien”).¹⁹ If the court determines the employer knowingly employed an unauthorized alien, the court must order the appropriate agencies to permanently revoke all licenses held by the employer specific to the business location where the unauthorized alien worked. If the employer does not hold a license specific to the business location where the unauthorized alien performed work, but a license is necessary to operate the business in general, the court must order the appropriate agencies to permanently revoke all licenses held by the employer at its primary place of business. The appropriate agencies immediately must revoke the licenses after receiving the order.²⁰

When deciding whether an employee was an unauthorized alien at the time of employment, a court may consider only the alien’s status as determined by the federal government pursuant to federal immigration law. The federal government’s determination creates a rebuttable presumption of the alien’s status. The court may take judicial notice of the determination and may request the federal government to provide automated or testimonial verification.²¹

Public contracts

Currently, the EWIA requires a state agency to include provisions requiring compliance with the requirements described under “**Use of E-Verify for hired employees**” and “**Retention of unverified employees**” in any contract it enters for the construction or

¹⁷ R.C. 4151.05(B)(1).

¹⁸ R.C. 4151.05(B)(2) and (3) and (C).

¹⁹ R.C. 4151.01(A) and (I) and 4151.04(H).

²⁰ R.C. 4151.06(A).

²¹ R.C. 4151.06(B).

renovation of a nonresidential construction project. The bill expands this requirement to any contract the state agency enters with a covered employer.²²

The Attorney General must conduct periodic reviews to ensure state agencies include complying provisions in their contracts with covered employers. The Attorney General must notify the state agency and the DAS Director of any contract that does not comply. In the notice, the Attorney General must inform the agency and the Director of the state agency's duty under the EWIA.

For one year after the Attorney General provides a notice of noncompliance to a state agency, the agency must submit any proposed contract with a covered employer to the Director. The Director must promptly review the proposed contract, determine whether it includes the required provisions, and notify the agency of the determination. If the proposed contract does not contain the required provisions, the Director also must instruct the agency to include the provisions in a revised draft.²³

Background – employee work eligibility and E-Verify

The IRCA prohibits hiring or employing an unauthorized alien and establishes criminal and civil penalties for knowingly doing so.²⁴ To comply with the IRCA, an employer and a new employee must complete the "I-9 Employment Eligibility Verification Form," known as the "I-9 form."²⁵ An employer and all new employees must complete this form during the first three days of employment. The form must be completed for all new employees, citizens and noncitizens alike. In addition, as part of the required verification of employment eligibility, the employer must examine specified documents the employee provides.²⁶

As an option in the verification process, the employer may register in the "E-Verify program" and use the E-Verify verification system.²⁷ Participation in E-Verify is voluntary, unless participation is required by state or federal laws or regulations.²⁸

E-Verify is an internet-based program that helps employers verify newly hired employees work eligibility by comparing information from the I-9 form against databases maintained by the U.S. Department of Homeland Security (DHS) and the Social Security Administration (SSA). An employer creates a case in the system for each new employee and provides the required information from the I-9 form.

²² R.C. 4151.07(A).

²³ R.C. 4151.07.

²⁴ 8 U.S.C. 1324a.

²⁵ See [OMB No. 1615-0047 \(PDF\)](#).

²⁶ 8 Code of Federal Regulations (C.F.R.) 274a.2. See also [Handbook for Employers M-274](#), sections [2.0](#), [3.0](#), and [4.0](#).

²⁷ Originally known as the Basic Pilot/Employment Eligibility Verification Program, the program was renamed E-Verify in 2007.

²⁸ See, e.g., 48 C.F.R. 22.1802 and [E-Verify Requirements Status](#).

The E-Verify system responds to each case by either confirming the employee’s employment eligibility or indicating that further action is necessary to complete the verification. If E-Verify cannot confirm an employee’s employment eligibility after receiving the additional information, or no information is provided, the system notifies the employer that the employee could not be verified and instructs the employer to close the case. Federal law allows, but does not require, an employer to fire an employee based on a final notice that the system could not confirm the employee’s work authorization.²⁹

HISTORY

Action	Date
Introduced	05-19-26

ANHB0921IN-136/sb

²⁹ See [About E-Verify](#).