

The Colorado Employment Verification Law (C.R.S. § 8-2-122) requires that Colorado employers affirm the legal work status of a new employee within 20 days of hire and retain copies of the new hire's identification documents. This requirement is separate and apart from Form I-9, whereby the employer verifies the legal work status of a new hire pursuant to federal law. While many employers seem to be unaware of the Employment Verification Law, the state authorities continue to audit Colorado employers to ensure compliance. Compliance is therefore important for employers to avoid being fined by state authorities.

To what situations does the Employment Verification Law apply? It applies to any person or entity that transacts business in Colorado and employs a Colorado resident to perform services.

Upon hiring a new employee, a Colorado employer has 20 days to affirm that it has examined the legal work status of the new hire. To this end, the Colorado Division of Labor has prepared an "Affirmation of Legal Work Status" form that employers should use. In addition to affirming that it has examined documentation showing that the new hire is legally authorized to work in the United States, the employer must also affirm that it has not altered or falsified the employee's identification documents, and that the employer has not knowingly hired an unauthorized (illegal) alien.

In addition to filling out that form, Colorado employers must retain for each new hire copies of the identification documents identified in the federal employment verification statute, 8 U.S.C. § 1324, which are also referenced in Form I-9. Employers should note that the state law requirement is in addition to what federal law requires, as it authorizes, but does not require, employers to maintain copies of identification documents.

When must the Employment Verification Form be filled out? The form must be filled out and signed by the employer, and supporting documents examined, copied, and retained by the employer, within 20 days of new hire. Any failure to do so within the 20-day time limit, or any attempt to post-date the Employment Verification Form, is a violation of the statute and will subject the employer to fines. This requirement is different from Form I-9, which must be completed within three business days.

How long must an employer retain documentation? The employer must keep either a written or electronic copy of these documents for the term of employment of each employee. This contrasts with Form I-9, which must be kept for the later of three years after the date of hire or until one year after termination of employment.

What is a "Colorado employer" under the law? Any private or public entity or person that transacts business in Colorado, employs another to perform services, and has control over the payment of wages for such services or is the officer, agent, or employee of the person or entity having control over the payment of wages. This definition includes the officers, agents, and employees of the entity or person, and therefore can lead to personal liability for individuals who act on behalf of another entity or person and recklessly fail to make the required affirmation or keep the required documentation.

What is a "Colorado employee" under the law? Any person who is a Colorado resident and serves as an employee, regardless of the kind of work or services that person performs. Independent contractors are not included within this definition, but employers must be careful not to misclassify employees as independent contractors simply to avoid complying with the employment verification law. If they do so, in addition to still being liable for a failure to abide by the Employment Verification Law, employers

could be subject to liability for failure to pay employment taxes, workman's compensation, and other costs an employer is legally obligated to pay on behalf of its employees.

How does the state verify compliance? The Director of the Division of Labor may audit any Colorado employer at any time to determine if the employer is in compliance with the Employment Verification Law. These audits may be either random or targeted if the Director believes a violation has occurred.

What fines are possible? If the Director determines that a violation of the Employment Verification Law has occurred, the employer may be subject to a fine of up to \$5,000 for the first offense and up to \$25,000 for any second or subsequent offense. Each failure to retain documentation constitutes a separate offense.

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