

*This information is intended to be general information and does not constitute legal advice.*

(Revised December 26, 2006)

## General Information on HB 06-1343 and HB 06S-1017

### **1. What are House Bill 06-1343 and House Bill 06S-1017? When are they effective?**

House Bill 06-1343, concerns measures to ensure that an illegal alien does not perform work on a public contract for services. House Bill 06-1343 was effective August 7, 2006.

House Bill 06S-1017, concerns documentation by an employer that demonstrates compliance with Federal employment verification requirements. In addition, the employer must show that he/she has not altered or falsified the employee's identification documents and that the employer has not knowingly hired an unauthorized alien. Lastly, the employer must keep a written or electronic copy of the affirmation, and of the documents required by 8 U.S.C. Sec. 1324a, for the term of employment of each employee. House Bill 06S-1017 will become effective January 1, 2007.

While both bills address illegal aliens, the bills also recognize that individuals providing documentation for U.S. DHS Form I-9 purposes may be using another individual's Social Security number and/or identity. As a result, the new legislation also addresses identity theft and the use of forged documents.

House Bill 06-1343 amends Colorado Revised Statutes by the addition of a new Article 8-17.5-101 and 8-17.5-102

House Bill 06S-1017 amends Colorado Revised Statutes by the addition of a new Section 8-2-122

### **2. What procedures should an employer have in place to comply with the new State laws resulting from House Bill 06-1343 and House Bill 06S-1017?**

Follow the Federal I-9 requirements with regard to types of identification. See [www.uscis.gov](http://www.uscis.gov) and click on the Immigration Forms tab. The site provides the 1991 edition of form I-9, rebranded with a current printing date. Until a new edition is issued, please note the "Special Instructions" regarding changes to acceptable I-9 documentation. In the interest of promoting good business practices, educate staff and document the process. Read and complete the [AFFIRMATION OF LEGAL WORK STATUS](#) form available from this website for HB 06S-1017.

House Bill 06-1343 requires that the contractor has verified or attempted to verify through participation in the Basic Pilot Program that the contractor does not employ any illegal aliens.

**3. If a new employee is hired after January 1, 2007, how long does an employer have to comply with the new law?**

To comply with State law, an employer must affirm within 20 days after hiring a new employee, that the employer has examined the legal work status of the new employee. For purposes of the federal law, employers should consult [www.uscis.gov](http://www.uscis.gov)

**4. Are employers required to keep copies of the documents provided by an employee?**

The Federal law does not require, nor prohibit maintenance of copies of such documents for your files; State law (House Bill 06S-1017) does require employers to keep copies of the documents provided by an employee.

**5. Is there a special form an employer must complete to affirm that the employer has examined the legal work status of the new employee?**

Initially, the Department did not envision the use of a form, however, in an effort to better enable employers to come into compliance with the new law, the Department has developed a recommended [AFFIRMATION OF LEGAL WORK STATUS](#) form that must be signed by the person designated to affirm the legal work status of new employees. Employers are required within 20 days of hiring a new employee to affirm, in writing, under penalty of perjury, the following:

- **The employer has examined the legal work status of each new employee hired on or after January 1, 2007.**
- **The employer has retained copies of required I-9 documents for examination.**
- **The employer has not altered or falsified the documents.**
- **The employer has not knowingly hired an illegal alien.**
- The law requires an employer to keep a written or electronic copy of the [AFFIRMATION OF LEGAL WORK STATUS](#) form and supporting documents.

The Department is working on establishing rules for the use of this form.

**6. Are there penalties prescribed for non-compliance with this new law?**

Yes. “An employer who, with reckless disregard, fails to submit proper or submits false documents shall be subject to a fine of not more than \$5,000, and not more than \$25,000 for second and subsequent offenses.”

## **7. What is the difference in employer responsibility between the Federal and State law?**

A distinguishing factor between Federal and State law is that the Federal law permits a good faith defense to employers. That is, the Federal law permits employers to accept the documents on their face without verification. The State law does not permit this exception. You must examine the legal work status of each newly-hired employee.

## **8. How does an employer verify the information provided by an employee?**

The Colorado Department of Labor and Employment (CDLE) suggests utilizing two free online databases:

### A) <https://www.vis-dhs.com/EmployerRegistration>

The site is maintained by the Department of Homeland Security, U.S. Citizenship and Immigration Services Bureau (USCIS). The site is called the “Basic Pilot Program.” The site allows an employer to verify the employment eligibility of all newly hired employees, regardless of citizenship. CDLE recommends printing the query and results screens and placing them in the employee’s I-9 file. The Basic Pilot Program involves verification checks of the Social Security Administration and Department of Homeland Security databases, using an automated system to verify the employment authorization of all newly hired employees.

and

### B) <http://www.socialsecurity.gov/employer/ssnv.htm>

The site is maintained by the Social Security Administration and called “The Social Security Number Verification Service” (SSNVS). This site is for Social Security number verification and most inquiries are answered instantaneously. CDLE recommends printing the query and results screens and placing them in the employee’s I-9 file. With SSNVS an employer may verify up to 10 names and Social Security numbers online and receive immediate results, or upload batch files of up to 250,000 names and Social Security numbers and usually receive results the next government business day. According to the U.S. Social Security Administration, it takes about two weeks from the time you register until you receive your activation code and can begin using SSNVS.

Note: If the employer uses the ten name verification system, the screen print for each individual must remain legible. However, the other names that are listed must be redacted for privacy purposes. Therefore, employers should print ten copies and redact the “non-relevant” information and maintain the relevant individual employee’s information for filing with the I-9 information.

## **9. Whose employment eligibility may I verify through the Basic Pilot Program?**

An employer may verify the employment eligibility of all newly hired employees. The Basic Pilot Program may not be used for pre-employment screening of job applicants.

An employer may not take adverse action against an employee based upon the employee's employment eligibility status while the Social Security Administration or the Department of Homeland Security is processing the verification request. Employers found to use the Basic Pilot Program inappropriately may be subject to corrective action. The Social Security Administration's or Department of Homeland Security's initial inability or a tentative nonconfirmation to verify work authorization should not be interpreted as an indication that the employee is not authorized to work. An employer should refer individuals to the Department of Homeland Security after a tentative nonconfirmation and the employee contests the nonconfirmation.

**10. Whose names and Social Security numbers may I verify through the Social Security Verification Service (SSNVS)?**

The Social Security Verification Service (SSNVS) will verify Social Security numbers and names solely to ensure the records of current employees are correct. Social Security will audit the use of SSNVS to ensure that employers are using it for the proper purposes.

Do not use SSNVS before hiring an employee. You may not verify someone's name and Social Security number until after an individual is in your employ. Do not use SSNVS to take punitive action against an employee whose name and Social Security number do not match Social Security's records. A mismatch does not imply that you or the employee intentionally provided incorrect information. A mismatch does not make any statement about an employee's immigration status and is not a basis, in and of itself, for taking any adverse action against an employee. Doing so could subject you to anti-discrimination or labor law sanctions.

Company policy concerning the use of SSNVS should be applied consistently to all workers. Third-party use of SSNVS is strictly limited to organizations that handle annual wage reporting responsibilities for employers and have an authorized and valid contract to do so. SSNVS is not for individuals/companies who conduct identity verification, background checks, or other related services for employers or other parties. Anyone who knowingly and willfully uses SSNVS to request or obtain information from Social Security under false pretenses violates Federal law and may be punished by a fine, imprisonment or both.

**11. What does an employer do if the Social Security number does not come back as a match to the employee?**

Follow these steps for each Social Security number that failed verification:

- 1) Compare the failed Social Security number to your employment records to see if you made a typographical error. Resend only the correct data (not the entire submission.)
- 2) If your employment records match what you submitted, ask your employee to check his/her Social Security card and inform you of any name or Social Security number difference between your records and his/her card. If your employment

- records and the name and Social Security number shown on the Social Security card match, ask the employee to check with any local Social Security Office to determine and resolve the issue. Tell the employee that once he/she has visited the Social Security Office, he/she should inform you of any changes. You should correct your records accordingly.
- 3) If the employee is unable to provide a valid Social Security number, document your efforts to obtain the corrected information. Retain your documentation for a period of three years.
  - 4) If the employee no longer works for you, try to get the correct information from the employee and correct your records.
  - 5) If you are unable to contact the employee, document your efforts.
  - 6) Conform closely with the time limits found in the I-9 instructions referred to in Paragraph 2) above.

The Social Security Administration provides a sample letter to an employee. This letter may be located at <http://www.socialsecurity.gov/employer/ssnv.htm> under the heading "More Information", "Sample Letter to Give Employees." The letter language may be placed on an employer's letterhead.

**12. May an employee continue to work if their Social Security number comes back as invalid?**

Yes. During the verification process and corresponding time limits, the employee is assumed to be eligible for purposes of State and Federal law. Further, the employee must be paid their earned wages and compensation. It is not permissible for an employer to delay or withhold payment of earned wages and compensation during the verification process.

**13. May an employer accept a photocopy of a document presented by an employee?**

No. Employees must present original documents. The only exception is an employee may present a certified copy of a birth certificate.

**14. Should employers maintain employee I-9 forms and corresponding documents in an employee's personnel file?**

No. The I-9 forms, the corresponding verification documents, and the [AFFIRMATION OF LEGAL WORK STATUS](#) form should be maintained securely and separate from the personnel file.

**15. How long should an employer retain the I-9 forms and corresponding documents?**

According to U.S. DHS USCIS, the I-9 forms and corresponding documents must be retained for three (3) years after the date of hire or one (1) year after the date employment ends, whichever is later.

**16. What happens if the information the employee provides does not confirm or verify his/her eligibility to work?**

An employer should consult [www.uscis.gov](http://www.uscis.gov) for instructions on appropriate steps and time limits in which action must be taken.

**17. May an employer use eligibility to work as a condition to hire?**

No. An employer may not use eligibility to work as a precondition to employment. The employee must be employed before the verification process begins, otherwise it is discriminatory and could result in a lawsuit.

**18. Do contractors and subcontractors who perform services pursuant to a contract with a State agency or governmental entity have to comply with House Bill 06-1343 and House Bill 06S-1017?**

Yes. Under House Bill 06-1343, if you contract with a contractor or subcontractor to perform services pursuant to a public contract, you have an obligation to verify that the subcontractor has followed the new law. The contract from the governmental entity will contain language referencing compliance with House Bill 06-1343.

**19. Do contractors and subcontractors who do not perform services pursuant to a public contract have to comply with House Bill 06-1343 and House Bill 06S-1017?**

Contractors and subcontractors who do not perform services to a public contract must only comply with HB06S-1017.

**20. How do I go about reporting illegal immigrants working at a place of business?**

If the place of business is a contractor for services pursuant to a contract with a State agency or other governmental entity, you may file a complaint form found at the CDLE website [www.coworkforce.com/ICE](http://www.coworkforce.com/ICE). Alternatively, you may contact at any time the United State Department of Homeland Security, Immigration and Customs Enforcement (DHS/ICE) tip line at 1-866-DHS-2-ICE. If the place of business is not a contractor for services pursuant to a State or governmental entity and your complaint is before January 1, 2007, you should contact the United States Department of Homeland Security, Immigration and Customs Enforcement tip line at 1-866-DHS-2-ICE. If the event occurs after January 1, 2007, you may contact either CDLE or DHS/ICE tip line provided herein, or both.

**21. Where does one file a complaint to report illegal aliens working on public contracts for services in accordance with House Bill 06-1343?**

The Colorado Department of Labor and Employment (CDLE) has a complaint form and guidelines available on their website at [www.coworkforce.com/ice](http://www.coworkforce.com/ice) The complainant

must sign the form and declare under penalty of perjury that the complaint is true and correct. CDLE is authorized to conduct on-site inspections of applicable contracts, to request and review documentation that proves citizenship, or to take any other reasonable steps necessary to determine whether a contractor is in compliance. CDLE has the discretion to determine which complaints, if any, are to be investigated.

**22. Does this form have to be signed or can this report be made anonymously?**

The form must be signed with an original signature and mailed to the address located on the form. No action will be taken on anonymous tips or unsigned tips. CDLE will accept facsimile complaints; however, the facsimile must be followed by the original complaint before action will be taken.

**23. Does House Bill 06-1343 apply to employers located outside Colorado?**

Yes, House Bill 06-1343 applies to any employer hiring employees to discharge contractual obligations pursuant to a public contract(s) for services. Most contracts have provisions that read “under the applicable laws of the state of....” Accordingly, under terms and conditions of the contract, this law has contractual applicability for employers outside the State of Colorado.

**24. What will the Colorado Department of Labor and Employment (CDLE) look for when examining an employer’s records under House Bill 06-1343 and House Bill 06S-1017?**

For public contracts for services, CDLE investigators will examine evidence that the Basic Pilot Program has been utilized to determine the legal work status for employees.

For all employers, CDLE investigators will examine the federal I-9 form, supporting documents, and the [AFFIRMATION OF LEGAL WORK STATUS](#) form. Ideally, the copied or printed website screen queries and returns from both the Social Security Number Verification Service, and Basic Pilot Program along with the I-9 documentation will support the affirmation form.

**25. How may an employer comply with the new law if the employer does not have Internet access?**

During the legislative process there was discussion that many employers may not have access to the Internet or other technologies. However, the General Assembly felt there was a compelling State interest to issue the mandate.

Because CDLE may audit for purposes of reviewing documentation, alternative methods may not protect the employer as well as the suggested method. Employers without Internet access may verify Social Security numbers with the Social Security Administration by mail. Some local Social Security offices will accept verification requests via fax. Whether by mail or fax, the paper listing may contain up to 50

names/SSN's to verify, and must include the employee SSN, last name, first name, middle initial (if applicable), date of birth, and gender.

For a copy of the [AFFIRMATION OF LEGAL WORK STATUS](#) form, or further questions, please contact this office at (303) 318-8227.