



Colorado Public Contracts for Services and Illegal Aliens Law

IMMIGRATION LAW: 8-17.5-101 & 102, C.R.S. (HB 06-1343)

Effective August 7, 2006, a new Colorado law (8-17.5-101 & 102, C.R.S.) imposes requirements upon persons who have a public contract for services with state agencies or political subdivisions. This law was **amended on May 13, 2008**, allowing contractors to use the newly created Department Program as an alternative to E-Verify. For more information, visit www.colorado.gov/cdle/labor

DEFINITIONS 8-17.5-101

Contractor: A person having a public contract for services with a state agency or political subdivision of the state.

Public contract for services: Any type of agreement, regardless of what the agreement may be called, between a state agency or political subdivision and a contractor for the procurement of services.

Services: The furnishing of labor, time, or effort by a contractor or a subcontractor not involving the delivery of a specific end product other than reports that are merely incidental to the required performance.

State agency: Any department, commission, council, board, bureau, committee, institution of higher education, agency, or other governmental unit of the executive, legislative, or judicial branch of state government.

Political subdivision: Any city, county, city and county, town, special district, school district, local improvement district, or any other kind of municipal, quasi-municipal, or public corporation organized pursuant to law.

E-Verify Program: The electronic employment verification program created in Public Law 104-208, as amended, and expanded in Public Law 108-156, as amended, and jointly administered by the United States Department of Homeland Security and the Social Security Administration, or its successor program.

EXCLUDED FROM THE LAW 8-17.5-101(6)(b) (Public contract for services does not include)

Public contract for services does not include:

- (1) Agreements relating to the offer, issuance, or sale of securities, including but not limited to agreements pertaining to:
 - (a) Underwriting, marketing, remarketing, paying, transferring, rating, or registering securities; or
 - (b) The provision of credit enhancement, liquidity support, interest rate exchanges, or trustee or financial consulting services in connection with securities; or
- (2) Agreements for investment advisory services or fund management services;
- (3) Any grant, award, or contract funded by any federal or private entity for any research or sponsored project activity of an institution of higher education or an affiliate of an institution of higher education that is funded from moneys that are restricted by the entity under the grant, award, or contract. For purposes of this paragraph, "sponsored project" means an agreement between an institution of higher education and another party that provides restricted funding and requires oversight responsibilities for research and development or other specified programmatic activities that are sponsored by federal or private agencies and organizations;
- (4) Intergovernmental agreements; or
- (5) Agreements for information technology services or products and services.

OVERVIEW 8-17.5-102(1)

A state agency or political subdivision shall not enter into or renew a public contract for services with a contractor who:

- (1) Knowingly employs or contracts with an illegal alien to perform work under the contract, **or**
- (2) Knowingly contracts with a subcontractor who knowingly employs or contracts with an illegal alien to perform work under the contract.

Prior to executing a public contract for services, each prospective contractor shall certify that, at the time of the certification:

- (1) It does not knowingly employ or contract with an illegal alien who will perform work under the public contract for services, **and**
- (2) That the contractor will participate in the [E-Verify](#) program or the Department Program in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services.

Colorado Public Contracts for Services and Illegal Aliens Law

IMMIGRATION LAW: 8-17.5-101 & 102, C.R.S. (HB 06-1343)

CERTIFICATION AND CONTRACT PROVISIONS

8-17.5-102(2)

Each public contract for services shall include a provision that the contractor shall not:

- (1) Knowingly employ or contract with an illegal alien to perform work under the public contract for services; or
- (2) Enter into a contract with a subcontractor that fails to certify to the contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the public contract for services.

Each public contract for services shall also include the following provisions:

- (1) A provision stating that the contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the E-Verify Program or the Department Program.
- (2) A provision that prohibits the contractor from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed;
- (3) A provision that, if the contractor obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, the contractor shall be required to:
 - (a) Notify the subcontractor and the contracting state agency or political subdivision within three days that the contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien;
 - (b) Terminate the subcontract with the subcontractor if within three days of receiving the required notice the subcontractor does not stop employing or contracting with the illegal alien; except that the contractor shall not terminate the contract with the subcontractor if the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien;
- (4) A provision that requires the contractor to comply with any reasonable request by the department made in the course of an investigation that the department is undertaking pursuant to 8-17.5-102(5).

DEPARTMENT OF LABOR AUTHORITY AND ENFORCEMENT

8-17.5-102(5)

The department may investigate whether a contractor is complying with the provisions of a public contract for services required pursuant to 8-17.5-102(2).

Department Authority:

- (1) Conduct on-site inspections where a public contract for services is being performed within the state of Colorado;
- (2) Request and review documentation that proves the citizenship of any person performing work on a public contract for services;
- (3) Take any other reasonable steps that are necessary to determine whether a contractor is complying with the provisions of a public contract for services required pursuant to 8-17.5-102(2).
- (4) The department may conduct random audits of state agencies and political subdivisions to review documentation required by 8-17.5-102(5)(c).

Receipt of Complaints:

The department shall receive complaints of suspected violations of a provision of a public contract for services required pursuant to 8-17.5-102(2) and shall have discretion to determine which complaints, if any, are to be investigated.

Contract Termination:

If a contractor violates a provision of the public contract for services required pursuant to 8-17.5-102(2), the state agency or political subdivision may terminate the contract for a breach of the contract. If the contract is so terminated, the contractor shall be liable for actual and consequential damages to the state agency or political subdivision.

SECRETARY OF STATE NOTIFICATION AND LIST

8-17.5-102(4)

A state agency or political subdivision shall notify the office of the secretary of state if a contractor violates a provision of a public contract for services required pursuant to 8-17.5-102(2) and the state agency or political subdivision terminates the contract for such breach.

Based on this notification, the secretary of state shall maintain a list that includes the name of the contractor, the state agency or political subdivision that terminated the public contract for services, and the date of the termination. A contractor shall be removed from the list if two years have passed since the date the contract was terminated, or if a court of competent jurisdiction determines that there has not been a violation of the provision of the public contract for services required pursuant to 8-17.5-102(2).

A state agency or political subdivision shall notify the office of the secretary of state if a court has made such a determination. The list shall be available for public inspection at the office of the secretary of state and shall be published on the internet on the [website](#) maintained by the office of the secretary of state.

Colorado Public Contracts for Services and Illegal Aliens Law

IMMIGRATION LAW: 8-17.5-101 & 102, C.R.S. (HB 06-1343)

Contractors who enter into or renew a public contract for services with Colorado state agencies or political subdivisions must participate in either the federal E-Verify Program or the Colorado Department of Labor Department Program (“Department Program”).

E-VERIFY PROGRAM

E-Verify

Contractors covered by the Colorado law will participate in the federal E-Verify program or the Department Program.

The E-Verify Program is a web-based application that provides a company with a way to electronically verify the employment authorization of all newly-hired employees, regardless of citizenship.

The E-Verify Program may not be used to undertake pre-employment screening.

Registration for E-Verify

You can register online for E-Verify at:

http://www.dhs.gov/ximgtn/programs/gc_1185221678150.shtm

Questions on registration/use may be directed to the federal Office of Verification (USCIS) toll-free at 1-888-464-4218.

E-Verify Questions and Answers:

Q. How much does it cost to participate in the E-Verify Program?

A: There is no charge to the employer.

Q. What equipment is needed for E-Verify?

A: You need a personal computer with access to the Internet.

Q. What are the advantages for employers to participate in the E-Verify Program?

A: E-Verify removes the guesswork from document review during the Form I-9 process; it allows the employer to confirm the employment eligibility of all newly hired employees; it improves the accuracy of wage and tax reporting; and it protects jobs for authorized workers.

Q. Can I verify the work eligibility of all employees in my company?

A: No, you may only verify the employment eligibility of employees hired after you signed the Memorandum of Understanding (MOU).

Q. Does participation in E-Verify eliminate the requirement of completing a Form I-9, Employment Eligibility Verification Form?

A: No, Form I-9 requirements remain the same with the exception that all "List B" identity documents must contain a photograph.

Q. Can I use the system to re-verify the employment eligibility of an employee whose employment eligibility document has expired?

A: No, the system should not be used to re-verify employment eligibility. You would follow the procedures currently in place by completing Section 3 of the Form I-9.

Resources on federal law and the E-Verify Program

Visit www.uscis.gov > “for employers” >

- a. [About E-Verify](#)
- b. [Form I-9, Employment Eligibility Verification](#) (revised 8/7/09)
- c. [M274, Handbook for Employers](#) (revised 1/5/11)

THE DEPARTMENT PROGRAM

8-17.5-102(5)(c)

The option to enroll in the Department Program instead of E-Verify was created by Colorado State Senate Bill 08-193, which amended the Public Contracts for Services and Illegal Aliens Law, 8-17.5-101 and 102, C.R.S. on May 13, 2008.

Department Program Details:

- (1) Any contractor who participates in the Department Program shall notify the department and the contracting state agency or political subdivision of such participation. A participating contractor shall comply with the provisions of paragraph (2) and shall consent to department audits conducted in accordance with paragraph (3). Failure to meet either of these obligations shall constitute a violation of the Department Program. The Executive Director shall notify a contracting state agency or political subdivision of such violation.
- (2) A participating contractor shall, within twenty days after hiring an employee who is newly hired for employment to perform work under the public contract for services, affirm:
 - That the contractor has examined the legal work status of such employee;
 - Retained file copies of documents required by 8 U.S.C. section 1324a (commonly known as I-9 identity and employment authorization documents), and;
 - Not altered or falsified the identification documents for such employees.

The contractor shall provide a written, notarized copy of the affirmation to the contracting state agency or political subdivision.

- (3) The department may conduct random audits of state agencies and political subdivisions to review documentation required by 8-17.5-102(5)(c).

Nothing in the Department Program shall be construed as requiring a contractor to violate any terms of participation in the E-Verify Program.

Additional Information:

For additional information on the Department Program, please see the following:

- a. [Department Program Process Guide](#)
- b. [Contractor Notice of Participation in the Department Program](#)
- c. [Sample Contractor Affirmation](#)