

AMENDED IN ASSEMBLY APRIL 27, 2015

AMENDED IN ASSEMBLY APRIL 15, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 622

Introduced by Assembly Member Roger Hernández
(Coauthor: Senator Hall)

February 24, 2015

An act to add Section 2814 to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 622, as amended, Roger Hernández. Employment: E-Verify system: unlawful business practices.

The federal E-Verify system, administered by the United States Citizenship and Immigration Services, the United States Department of Homeland Security, and the United States Social Security Administration, enables participating employers to use the system, on a voluntary basis, to verify that the employees they hire are authorized to work in the United States.

Existing law prohibits the state, or a city, county, city and county, or special district, from requiring an employer, other than one of those government entities, to use an electronic employment verification system, including E-Verify, except when required by federal law or as a condition of receiving federal funds. Existing law prohibits an employer or any other person or entity from engaging in unfair immigration-related practices, as defined, against any person for the purpose of retaliating against the person for exercising specified rights.

This bill would expand the definition of an unlawful employment practice to prohibit an employer or any other person or entity from using the E-Verify system to check the employment authorization status of an *existing* employee or ~~applicant, as specified, an applicant who has not received an offer of employment~~, except as required by federal law or as a condition of receiving federal funds. The bill would also require an employer that uses the E-Verify system to provide to the affected employee any notification issued by the Social Security Administration or the United States Department of Homeland Security containing information specific to the employee’s E-Verify case or any tentative nonconfirmation notice. The bill would provide for a civil penalty of \$10,000 for an employer for each violation of these provisions. The bill would include a statement of intent.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2814 is added to the Labor Code, to read:
 2 2814. (a) (1) Except as required by federal law, or as a
 3 condition of receiving federal funds, it shall be unlawful for an
 4 employer, or any other person or entity to use the federal electronic
 5 employment verification system known as E-Verify to check the
 6 employment authorization status of an *existing* employee or *an*
 7 *applicant who has not been offered employment* at a time or in a
 8 manner not required under subsection (b) of Section 1324a of Title
 9 8 of the United States Code, or not authorized under any
 10 memorandum of understanding governing the use of a federal
 11 electronic employment verification system.
 12 (2) *Nothing in this section shall prohibit an employer from*
 13 *utilizing an employment verification system, in accordance with*
 14 *federal law, to check the employment authorization status of a*
 15 *person who has been offered employment.*
 16 (b) Upon using the federal E-Verify system to check the
 17 employment authorization status of a person, if the employer
 18 receives a tentative nonconfirmation issued by the Social Security
 19 Administration or the United States Department of Homeland
 20 Security, which indicates the information entered in E-Verify did
 21 not match federal records, the employer shall comply with the
 22 required employee notification procedures under any memorandum

1 of understanding governing the use of the federal E-Verify system.
2 The employer shall furnish to the employee any notification issued
3 by the Social Security Administration or the United States
4 Department of Homeland Security containing information specific
5 to the employee's E-Verify case or any tentative nonconfirmation
6 notice. The notification shall be furnished promptly but not exceed
7 the timeframe provided in the Referral Date Confirmation notice,
8 which is generated by E-Verify after an employee chooses to
9 contest the tentative nonconfirmation notice.

10 (c) In addition to other remedies available, an employer who
11 violates this section is liable for a civil penalty not to exceed ten
12 thousand dollars (\$10,000) for each violation of this section. Each
13 unlawful use of the E-Verify system on an employee or applicant
14 constitutes a separate violation.

15 (d) This section is intended to prevent discrimination in
16 employment rather than to sanction the potential hiring and
17 employment of persons who are not authorized for employment
18 under federal law.

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