



# Sunshine State Shines Spotlight on Employment Verification Audits

## Recent Enforcement Actions Show Florida's Continued Interest in Employment Eligibility Verification Compliance

*The Florida Department of Economic Opportunity recently sent “final chance” letters to six organizations that previously refused to respond to demands for information regarding compliance with Florida’s employment eligibility verification laws.*

We all know that ignoring problems will not make them disappear, especially when the problem is a document demand from a regulator. Six organizations that do business in Florida learned this lesson the hard way in December upon receipt of “final chance” letters from the Florida Department

of Economic Opportunity (FDEO). The letters announced an urgent deadline: 30 days to file affidavits of compliance or face suspension and/or termination of their business licenses. These demand letters heralded Florida’s dogged focus regarding enforcement of section 448.095 of the Florida Statutes, detailed previously [here](#).

### Florida-Specific Employee Work Authorization Requirements

Like the federal government, Florida seeks to prevent unauthorized employment through a prohibition on the employment of unauthorized aliens and an affirmative obligation on the employer to document that employees are *authorized to work*. The FDEO polices this regulation via audits and document demands.

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Under Florida’s employment eligibility verification regime, public employers and contractors are required to participate in the federal E-Verify program. Subcontractors utilized must provide the contractor with an affidavit affirming that they do not employ, contract with, or subcontract with an unauthorized alien.<sup>1</sup> Private employers are required to either (a) participate in E-Verify; or (b) make photocopies of the documents used to complete Form I-9 for each employee hired (including existing contract employees who have their contracts renewed) on or after January 1, 2021.<sup>2</sup> Employers must retain these photocopies for three years after the person’s initial hire date.

## The High Cost of Avoiding Compliance Obligations

Florida has implemented potentially crippling sanctions for failure to comply with the recordkeeping *and* actual unauthorized employment statutes. Section 448.09 provides for criminal sanctions, including fines, for each unauthorized alien employed. Section 448.095 provides for suspension and/or permanent termination of business licenses related to the offending organization.<sup>3</sup>

The “final chance” letters for the six aforementioned employers were issued on December 16, 2022 and published to the FDEO website.<sup>4</sup> Each organization had received – and failed to comply with – two demands from the FDLE “requesting production of all documentation relied upon by your company for verification of a person’s employment with your company.” The “final chance” letters command the recipient to, within 30 days, “provide DEO with an affidavit stating that: (1) your company will comply with Section 448.095(3)(b) of Florida Statutes; (2) your company has terminated the employment of all unauthorized aliens employed by the company in the state of Florida; and (3) your company will not intentionally or knowingly employ

an unauthorized alien in the state of Florida.” Failure to comply with this deadline “will result in the suspension of all licenses” held by the organization specific to a business location where the unauthorized alien(s) performed work, or the organization’s primary place of business *and* such suspension will continue until they produce the affidavit.

Notably, the Florida requirements discussed above operate *in addition to* federal Form I-9 and E-Verify requirements. Compliance with the Florida Statutes does *not* relieve an employer of their federal Form I-9 and E-Verify obligations. Further, Florida has not implemented any COVID-19-based flexibilities akin to the allowances made by the federal government, which expire on July 31, 2023, as previously published [here](#).

## Takeaways and Considerations

- All employers, regardless of the state(s) in which they operate, should be cognizant of state employment eligibility verification requirements and be prepared for state audits. **BIG** has recently noticed an increase in such audits in South Carolina and Florida.
- Some state requirements, such as keeping photocopies of each document used for Form I-9 completion, may trigger additional federal obligations; i.e. if you make photocopies for one employee, you must make them for all employees and produce them in an ICE audit.
- Every employer should have an employment eligibility verification compliance policy, which covers both federal and state (if applicable) recordkeeping requirements.
- Employers should train staff involved in the employment eligibility verification process on state and federal requirements, including federal and state anti-discrimination provisions.
- Employers are encouraged to create a reporting system to monitor Form I-9 compliance in real-time in addition to periodic audits. ■

1 See [Statutes & Constitution :View Statutes : Online Sunshine \(state.fl.us\)](#) at Section 448.095(2).

2 See [Statutes & Constitution :View Statutes : Online Sunshine \(state.fl.us\)](#) at Section 448.095(3).

3 See [Statutes & Constitution :View Statutes : Online Sunshine \(state.fl.us\)](#) at Section 448.095(3)(f); (g).

4 Available at [E-Verify Non-Compliance Letters - FloridaJobs.org](#)