



To: All Florida Pension Clients

From: Klausner Kaufman Jensen & Levinson

Subject: New Florida Law Requirement §448.095 - Registration and Use of E-Verify

Date: January 8, 2021

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Effective January 1, 2021, a new law went into effect (see attached copy of Florida Statutes §448.095) with two requirements which are applicable for public retirement plans:

- Public Employers are required to register with and use the free E-Verify system to verify the work authorization status of all newly hired employees; and
- Contracts entered into by Public Employers must contain a provision requiring the parties to use the E-Verify system.

Pursuant to the definition of “Public Employer” in Section 448.095(1)(i), the new law applies to the Pension Fund because it is an entity within the State (or municipal) government that enters into contracts with persons or entities for services in exchange for remuneration. Therefore, all new contracts with Service Providers (referred to in the law as “Contractors”) should contain a sentence that the Contractor will register with and use the E-Verify system to verify the work authorization status of all employees hired after 1/1/2021 and, if applicable require any Subcontractor to do the same.

Additionally, the Pension Fund itself will need to register with E-Verify. Attached is the E-Verify enrollment checklist. Here is a link to enroll on the E-Verify website:

<https://www.e-verify.gov/employers/enrolling-in-e-verify>

Service Providers should be notified of the requirements of the new law by providing a copy of this memo. A sample letter is attached. This memo should be placed on the next available agenda for discussion by the Board.

**E-Verify and myE-Verify are Temporarily Unavailable. For more information read our [news release \(/node/5753\)](/node/5753).**

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## ENROLLMENT CHECKLIST

Enrolling in E-Verify is easy. This checklist helps you prepare.

### Before you enroll, you must decide:

- Who will electronically sign the [E-Verify memorandum of understanding \(MOU\) \(PDF, 92.83 KB\) \(/sites/default/files/everify/memos/MOUforEVerifyEmployer.pdf\)](/sites/default/files/everify/memos/MOUforEVerifyEmployer.pdf) on behalf of your company?
- Which hiring sites will participate in E-Verify?
- If you are a federal contractor with the FAR E-Verify clause, which employees will you verify?
- Which company location(s) will access E-Verify?
- Who in your company will have access to E-Verify?
- Who in your company should be a program administrator?
- Review the [system requirements \(/employers/enrolling-in-e-verify/system-requirements\)](/employers/enrolling-in-e-verify/system-requirements).

### To enroll, you will need to know:

- Contact information for your company's E-Verify memorandum of understanding (MOU) signatory (name, phone number, fax number and e-mail address)
- Company name
- Doing business as' name (optional)
- Data Universal Numbering System (DUNS) number (optional)
- The physical address of the location from which your company will access E-Verify (including county)
- Company mailing address (if different from the physical address)
- Employer identification number (also called a Federal Tax ID Number)
- Total number of employees for all of your company's hiring sites that will participate in E-Verify (you'll choose from a range of numbers)
- Parent organization (optional)
- Administrator name (E-Verify corporate account) (optional)
- The first three digits of your company's primary North American Industry Classification System (NAICS) code (if you don't know it, we'll help you find it when you enroll)
- The number of hiring sites that will participate in E-Verify in each state

### For all registered users, you must be ready to provide:

- Name
- Phone Number

- Fax Number (optional)
- Email address

## **ENROLLING IN E-Verify IS EASY! WANT TO LEARN MORE?**

E-Verify ENROLLMENT (/employers/enrolling-in-e-verify)

Last Updated Date: 04/10/2018

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1  
2 An act relating to the verification of employment  
3 eligibility; amending s. 288.061, F.S.; prohibiting  
4 the approval of certain economic development incentive  
5 applications after a specified date; requiring an  
6 awardee to repay certain moneys within a specified  
7 timeframe under certain circumstances; creating s.  
8 448.095, F.S.; providing definitions; requiring public  
9 employers, contractors, and subcontractors to register  
10 with and use the E-Verify system; prohibiting such  
11 entities from entering into a contract unless each  
12 party to the contract registers with and uses the E-  
13 Verify system; requiring a subcontractor to provide a  
14 contractor with a certain affidavit; requiring a  
15 contractor to maintain a copy of such affidavit;  
16 authorizing the termination of a contract under  
17 certain conditions; providing that such termination is  
18 not a breach of contract; authorizing a challenge to  
19 such termination; providing certain liability for  
20 contractors if a contract is terminated; requiring  
21 private employers to verify the employment eligibility  
22 of newly hired employees beginning on a specified  
23 date; providing an exception; providing acceptable  
24 methods for verifying employment eligibility;  
25 requiring a private employer to maintain certain  
26 documentation for a specified time period; providing  
27 specified immunity and nonliability for private  
28 employers; creating a rebuttable presumption for  
29 private employers; requiring private employers to

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30 provide copies of certain documentation, upon request,  
31 to specified persons and entities for certain  
32 purposes; prohibiting specified persons and entities  
33 from making a determination as to whether a person is  
34 an unauthorized alien; requiring a specified affidavit  
35 from certain private employers; providing for the  
36 suspension or permanent revocation of certain licenses  
37 under certain circumstances; providing construction;  
38 providing an effective date.

39  
40 Be It Enacted by the Legislature of the State of Florida:

41  
42 Section 1. Subsection (6) of section 288.061, Florida  
43 Statutes, is renumbered as subsection (7), and a new subsection  
44 (6) is added to that section to read:

45 288.061 Economic development incentive application  
46 process.—

47 (6) Beginning July 1, 2020, the executive director may not  
48 approve an economic development incentive application unless the  
49 application includes proof to the department that the applicant  
50 business is registered with and uses the E-Verify system, as  
51 defined in s. 448.095, to verify the work authorization status  
52 of all newly hired employees. If the department determines that  
53 an awardee is not complying with this subsection, the department  
54 must notify the awardee by certified mail of the department's  
55 determination of noncompliance and the awardee's right to appeal  
56 the determination. Upon a final determination of noncompliance,  
57 the awardee must repay all moneys received as an economic  
58 development incentive to the department within 30 days after the

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59 final determination.

60 Section 2. Section 448.095, Florida Statutes, is created to  
61 read:

62 448.095 Employment eligibility.—

63 (1) DEFINITIONS.—As used in this section, the term:

64 (a) "Agency" means any agency, department, board, or  
65 commission of this state or a county or municipality in this  
66 state that issues a license to operate a business in this state.

67 (b) "Contractor" means a person or entity that has entered  
68 or is attempting to enter into a contract with a public employer  
69 to provide labor, supplies, or services to such employer in  
70 exchange for salary, wages, or other remuneration.

71 (c) "Department" means the Department of Economic  
72 Opportunity.

73 (d) "Employee" means a person filling an authorized and  
74 established position who performs labor or services for a public  
75 or private employer in exchange for salary, wages, or other  
76 remuneration.

77 (e) "E-Verify system" means an Internet-based system  
78 operated by the United States Department of Homeland Security  
79 that allows participating employers to electronically verify the  
80 employment eligibility of newly hired employees.

81 (f) "Legal alien" means a person who is or was lawfully  
82 present or permanently residing legally in the United States and  
83 allowed to work at the time of employment and remains so  
84 throughout the duration of that employment.

85 (g) "License" means a franchise, a permit, a certificate,  
86 an approval, a registration, a charter, or any similar form of  
87 authorization required by state law and issued by an agency for

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the purpose of operating a business in this state. The term includes, but is not limited to:

1. An article of incorporation.
2. A certificate of partnership, a partnership registration, or an article of organization.
3. A grant of authority issued pursuant to state or federal law.
4. A transaction privilege tax license.

(h) "Private employer" means a person or entity that transacts business in this state, has a license issued by an agency, and employs persons to perform labor or services in this state in exchange for salary, wages, or other remuneration. The term does not include:

1. A public employer;
2. The occupant or owner of a private residence who hires:
  - a. Casual labor, as defined in s. 443.036, to be performed entirely within the private residence; or
  - b. A licensed independent contractor, as defined in federal laws or regulations, to perform a specified portion of labor or services; or
3. An employee leasing company licensed under part XI of chapter 468 that enters into a written agreement or understanding with a client company which places the primary obligation for compliance with this section upon the client company. In the absence of a written agreement or understanding, the employee leasing company is responsible for compliance with this section. Such employee leasing company shall, at all times, remain an employer as otherwise defined in federal laws or regulations.

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(i) "Public employer" means an entity within state, regional, county, local, or municipal government, whether executive, judicial, or legislative, or any public school, community college, or state university that employs persons who perform labor or services for that employer in exchange for salary, wages, or other remuneration or that enters or attempts to enter into a contract with a contractor.

(j) "Subcontractor" means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.

(k) "Unauthorized alien" means a person who is not authorized under federal law to be employed in the United States, as described in 8 U.S.C. s. 1324a(h)(3). The term shall be interpreted consistently with that section and any applicable federal rules or regulations.

(2) PUBLIC EMPLOYERS, CONTRACTORS, AND SUBCONTRACTORS.—

(a) Beginning January 1, 2021, every public employer, contractor, and subcontractor shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees. A public employer, contractor, or subcontractor may not enter into a contract unless each party to the contract registers with and uses the E-Verify system.

(b)1. If a contractor enters into a contract with a subcontractor, the subcontractor must provide the contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien.

2. The contractor shall maintain a copy of such affidavit



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146 for the duration of the contract.

147 (c)1. A public employer, contractor, or subcontractor who  
148 has a good faith belief that a person or entity with which it is  
149 contracting has knowingly violated s. 448.09(1) shall terminate  
150 the contract with the person or entity.

151 2. A public employer that has a good faith belief that a  
152 subcontractor knowingly violated this subsection, but the  
153 contractor otherwise complied with this subsection, shall  
154 promptly notify the contractor and order the contractor to  
155 immediately terminate the contract with the subcontractor.

156 3. A contract terminated under subparagraph 1. or  
157 subparagraph 2. is not a breach of contract and may not be  
158 considered as such.

159 (d) A public employer, contractor, or subcontractor may  
160 file an action with a circuit or county court to challenge a  
161 termination under paragraph (c) no later than 20 calendar days  
162 after the date on which the contract was terminated.

163 (e) If a public employer terminates a contract with a  
164 contractor under paragraph (c), the contractor may not be  
165 awarded a public contract for at least 1 year after the date on  
166 which the contract was terminated.

167 (f) A contractor is liable for any additional costs  
168 incurred by a public employer as a result of the termination of  
169 a contract.

170 (3) PRIVATE EMPLOYERS.—

171 (a) Beginning January 1, 2021, a private employer shall,  
172 after making an offer of employment which has been accepted by a  
173 person, verify such person's employment eligibility. A private  
174 employer is not required to verify the employment eligibility of

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175 a continuing employee hired before January 1, 2021. However, if a  
176 person is a contract employee retained by a private employer, the  
177 private employer must verify the employee's employment eligibility  
178 upon the renewal or extension of his or her  
179 contract.

180 (b) A private employer shall verify a person's employment  
181 eligibility by:

- 182 1. Using the E-Verify system; or
- 183 2. Requiring the person to provide the same documentation  
184 that is required by the United States Citizenship and  
185 Immigration Services on its Employment Eligibility Verification  
186 form (Form I-9).

187  
188 The private employer must retain a copy of the documentation  
189 provided under this subparagraph for at least 3 years after the  
190 person's initial date of employment.

191 (c) A private employer that complies with this subsection  
192 may not be held civilly or criminally liable under state law for  
193 hiring, continuing to employ, or refusing to hire an  
194 unauthorized alien if the information obtained under paragraph  
195 (b) indicates that the person's work authorization status was  
196 not that of an unauthorized alien.

197 (d) For purposes of this subsection, compliance with  
198 paragraph (b) creates a rebuttable presumption that a private  
199 employer did not knowingly employ an unauthorized alien in  
200 violation of s. 448.09(1).

201 (e) For the purpose of enforcement of this section, the  
202 following persons or entities may request, and a private  
203 employer must provide, copies of any documentation relied upon

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204 by the private employer for the verification of a person's  
205 employment eligibility, including, but not limited to, any  
206 documentation required under paragraph (b):

- 207 1. The Department of Law Enforcement.
- 208 2. The Attorney General.
- 209 3. The state attorney.
- 210 4. The statewide prosecutor.

211  
212 A person or entity that makes a request under this paragraph  
213 must rely upon the federal government to verify a person's  
214 employment eligibility and may not independently make a final  
215 determination as to whether a person is an unauthorized alien.

216 (f) If a private employer does not comply with paragraph  
217 (b), the department shall require the private employer to  
218 provide an affidavit to the department stating that the private  
219 employer will comply with paragraph (b), the private employer  
220 has terminated the employment of all unauthorized aliens in this  
221 state, and the employer will not intentionally or knowingly  
222 employ an unauthorized alien in this state. If the private  
223 employer does not provide the required affidavit within 30 days  
224 after the department's request, the appropriate licensing agency  
225 shall suspend all applicable licenses held by the private  
226 employer until the private employer provides the department with  
227 the required affidavit. For purposes of this paragraph, the  
228 licenses that are subject to suspension under this paragraph are  
229 all licenses that are held by the private employer specific to  
230 the business location where the unauthorized alien performed  
231 work. If the private employer does not hold a license specific  
232 to the business location where the unauthorized alien performed

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233 work, but a license is necessary to operate the private  
234 employer's business in general, the licenses that are subject to  
235 suspension under this paragraph are all licenses that are held by  
236 the private employer at the private employer's primary place of  
237 business.

238 (g) For any private employer found to have violated  
239 paragraph (f) three times within any 36 month period, the  
240 appropriate licensing agency shall permanently revoke all  
241 licenses that are held by the private employer specific to the  
242 business location where the unauthorized alien performed work.  
243 If the private employer does not hold a license specific to the  
244 business location where the unauthorized alien performed work,  
245 but a license is necessary to operate the private employer's  
246 business in general, the appropriate licensing agency shall  
247 permanently revoke all licenses that are held by the private  
248 employer at the private employer's primary place of business.

249 (4) CONSTRUCTION.—This section shall be enforced without  
250 regard to race, color, or national origin and shall be construed  
251 in a manner so as to be fully consistent with any applicable  
252 federal laws or regulations.

253 Section 3. This act shall take effect July 1, 2020.