<u>E-Verify/Basic Pilot Information</u>

The federal government enacted laws in 1996 that created the optional Basic Pilot program, which is now known as E-Verify and provides a means for employers to perform a secondary verification of an employee's work authorization. It is a no-cost, Internet-based system and **references to either Basic Pilot or E-Verify are to the same system**. The system has also added Department of Homeland Security (DHS) photos to add an extra measure of certainty or uncertainty to the process, depending upon DHS' ability to accurately match the right photographs with the right record.

An employer must register online and designate a program administrator. The administrator and any other users must go through about 45 minutes of training and testing.

After completing a new hire's I-9 form, an employer makes an electronic verification check of the Social Security Administration and DHS databases, which uses automated systems to verify Social Security account numbers and alien registration numbers. **Employers must verify all newly hired employees without exception, and must make verification inquiries within three days of the hiring**. A copy of the system confirmation must be kept with the completed I-9 form.

If the electronic queries do not result in a confirmation, the system generates a "tentative nonconfirmation" response. At this point, employers and affected employees are required to do the following:

o   Employer must print and provide the system-generated referral notice of the tentative nonconfirmation to the employee (unless employee opts not to contest)
o   Employer must provide the employee an opportunity to contest the response
o   Employer must input a referral in the system and direct the employee to contact the appropriate agency to resolve information discrepancies
o   Employer then either re-submits the query to receive a final confirmation or the system will generate a notice of final confirmation
o   If the employer receives a final nonconfirmation, it may terminate the employment relationship and shall not be civilly or criminally liable under any law for the termination, as long as the action was taken in good faith reliance on information provided through the confirmation system. **If the employer does not terminate an employee after final nonconfirmation, the employer must notify the government**. Failure to notify the government of continued employment after receiving final nonconfirmation will be deemed a violation of the law and may result in a civil penalty of $500 to $1,000.

There are advantages and disadvantages to using E-Verify/Basic Pilot. **Advantages** include a potential reduction in the risk of employing unauthorized workers (assuming the accuracy of the DHS databases, which has been called into doubt) and additional legal defenses if the system is used properly.

Disadvantages include taking on additional work and providing additional information to the government it would otherwise have to request, as well as the risk of taking an employment action based on potentially incorrect information in the DHS database. **E-Verify/Basic Pilot does not detect use of a false identity by a worker**.