

LEGALLY SPEAKING

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Ohio E-Verify Update: Existing Employees, Conflicting Rules, and Next Steps.

Our earlier article, “Ohio’s New E-Verify Law: What Contractors Need to Do Before the Next Bid,” walked through the core requirements of House Bill 246 going into effect on March 20, 2026. Since then, many contractors have raised a narrower but important question: how the Ohio statute’s text fits with the federal E-Verify program rules. Our original article described the basic structure of the law and its focus on employees hired to perform work on nonresidential construction projects. The new wrinkle is not a change in the law, but growing recognition of a tension between the Ohio statute and the longstanding federal E-Verify Memorandum of Understanding (MOU) that employers must sign to participate.

HB 246 requires covered contractors, subcontractors, and labor brokers to use E-Verify for each employee hired to work on a nonresidential construction project, with a limited exception for workers previously verified through E-Verify and not subject to reverification under federal law. By contrast, the E-Verify MOU generally bars non-federal contractors from using the system to verify employees who were hired before the company’s E-Verify enrollment date. Read together, these provisions create real ambiguity about whether and how existing employees on ongoing projects could be run through E-Verify without violating the MOU.

We understand that industry groups and associations have flagged this conflict with the Ohio Attorney General’s office and key legislators. All indications are that the General Assembly intended HB 246 to operate prospectively, so that contractors enroll in E-Verify and use it for new hires going forward, not to force retroactive verification of the existing workforce. Technical amendments could confirm that intent and align the statute more clearly with the E-Verify framework. Further clarification may be sought from the Attorney General.

While that process plays out, there are practical suggestions for industrial contractors straddling the two laws. Treat E-Verify as a “new-hire system,” in compliance with the federal MOU. Enroll and integrate E-Verify case creation into onboarding for employees hired for nonresidential projects on or after the March 20 effective date. Do not attempt to run long-standing employees through E-Verify, unless you fall within specific federal-contractor rules that permit existing-employee checks. At the same time, continue to maintain strong Form I-9 practices for all employees, follow required procedures for tentative and final E-Verify nonconfirmations, and document your good-faith efforts to comply.

We will issue further updates if the legislature adopts clarifying language or the Attorney General provides formal guidance. In the meantime, a disciplined, prospective E-Verify approach, combined with solid I-9 compliance and careful documentation, remains the most defensible path for contractors preparing bids and staffing projects under HB 246.

For more information, contact Taft. Certified Specialists in Labor and Employment Law **Bob Dunlevey** (937-641-1743) and **Marc Fleischauer** (937-641-2086) represent employers and trade associations throughout the United States involving NLRB, EEOC, OSHA, DOL, and other federal and state employment matters. They have repeatedly been awarded Best Lawyers in America and Super Lawyer designations in labor and employment law.