

When must federal contractor/subcontractor begin FAR E-Verify – 90 or 180 days?

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Since FAR E-Verify for federal contractors and subcontractors has been in effect for about four months, some of you have received your first federal contract containing the FAR E-Verify clause. And many of you may have lingering questions about FAR E-Verify. Though it is always best to call your immigration counsel with these lingering questions, I will generally discuss a couple of them.

As you know, FAR E-Verify covers all contracts entered into between federal agencies and contractors for goods or services of \$100,000 or more. Furthermore, subcontracts of \$3,000 or more in performance of federal contracts require subcontractors to utilize FAR E-Verify. After receiving a contract which incorporates the E-Verify clause, the federal contractor and subcontractor must use E-Verify to verify all existing employees assigned to the federal contract, and all newly-hired employees, regardless of whether they are assigned to the federal contract. Additionally, federal contractors and subcontractors may elect to verify all existing employees regardless of whether they are working on a federal contract.

Since many federal contractors/subcontractors correctly believe it is simpler to check everyone than to try to decide which employees are assigned to the qualifying contract, they often opt to put all their existing employees through E-Verify.

It would appear the federal contractors/subcontractors have 180 days to verify all current employees. However, federal contractors opting to E-Verify all employees within 180 days does not eliminate the requirement that all employees assigned to the federal contract must be verified within 90 days. The lesson to be learned is the 180-day rule does not trump the 90-day rule.

One solution to the 90-day/180-day dilemma is speed up your rollout of E-Verify and complete it for all current workers within the 90 days. Though this may sound easy, it may not be because many older I-9s may not comply with E-Verify standards for inputting into the system and will require new I-9s to be completed. However, it is best to make plans to implement E-Verify within 90 days, particularly if your employees work directly on many federal contracts and it is extremely difficult to differentiate the ones “assigned” to the FAR E-Verify contract.

A second issue is whether independent contractors, who are self-employed, are covered by E-Verify. The USCIS advises the federal contractor it must ensure all “covered subcontracts at every tier” incorporate the FAR E-Verify clause, using “whatever means the contractor considers appropriate.” The definition of "subcontract" is quite broad and states it is any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. In this situation, there is a clear answer. A self-employed independent contractor does not have to complete an I-9 since he is not employee; thus, he does not have to enroll in E-Verify.