



New Employee Eligibility and E-Verify — FREQUENTLY ASKED QUESTIONS

1. Who is required to verify employment eligibility in the state of Florida?

Beginning July 1, 2023, section 448.095, Florida Statutes, requires that an employer shall verify each new employee's employment eligibility within three business days after the first day that the new employee begins working for pay.

An "employee" is defined as an individual filling a permanent position who performs labor or services under the control or direction of an employer that has the power or right to control and direct the employee in the material details of how the work is to be performed in exchange for salary, wages, or other remuneration. The term "employee" does not include:

- An individual hired for casual labor that is to be performed entirely within a private residence
- An independent contractor, as defined in federal laws or regulations, hired to perform a specified portion of labor or services

2. How can an employer verify employment eligibility of new Florida employees?

Employers must verify that a newly hired employee is eligible for employment within the United States using either the Employment Eligibility Verification process, using federal form I-9 issued by the U.S. Citizenship and Immigration Services, or the E-Verify system.

E-Verify is a free, internet-based application operated by the U.S. Department of Homeland Security that allows employers to electronically verify employment eligibility of newly hired employees. Information on how to register and access the E-Verify system is located at e-verify.gov/employers.

If the E-Verify system is unavailable for three business days after the first day the new employee begins working for salary, wages, or other remuneration, an employer must use the Employment Eligibility Verification process using federal form I-9 issued by the U.S. Citizenship and Immigration Services to verify employment eligibility.

3. Is an employer required to use E-Verify or the Employment Eligibility Verification form (federal form I-9) to verify employment eligibility of newly hired employees?

All employers are required to verify the employment eligibility of all new employees using either the I-9 or E-Verify system. However, public agencies and private employers with 25 or more employees are required to use the E-Verify system to verify that a newly hired employee is eligible for employment within the United States. Public agencies are defined below:

- Public agencies – Any office, department, agency, division, subdivision, political subdivision, board, bureau, commission, authority, district, public body, body politic, state, county, city, town, village, municipality, or any other separate unit of government created or established pursuant to law, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

Employers not required to provide certification may voluntarily certify compliance each year as provided in section 448.095, Florida Statutes.

4. How does an employer certify compliance with the provisions of section 448.095, Florida Statutes, that require it to verify the employment eligibility of newly hired Florida employees?

After July 1, 2023, each public agency and private employer required to use E-Verify must certify use of the E-Verify system on its first Florida reemployment tax return filed in a calendar year.

5. Is an employer required to certify the employment eligibility of Florida and non-Florida employees?

Section 448.095, Florida Statutes, requires that private employers with 25 or more employees performing services in Florida and all public agencies must certify the eligibility of their employees performing services in Florida.

6. Is an employer required to use the E-Verify system to verify employment if it employs fewer than 25 employees during part of the calendar year and 25 or more employees during the other part of the calendar year?

A private employer must verify its new employee's employment eligibility using E-Verify if that new employee will be the 25th or greater employee performing services in Florida at the time of the new employee's employment verification.

7. Should an employer include employees of related companies toward its total count of employees when determining if it is required to use the E-Verify system?

No, only include employees who are performing services for the private employer, unless the private employer is an authorized common paymaster. If the private employer is an authorized common paymaster for related companies, the common paymaster should count all employees for which it performs common paymaster duties as well as its own employees.

8. If a private employer has 25 or more employees in a calendar year but has fewer than 25 employees in the following year, is the private employer still required to use the E-Verify system?

No, a private employer is not required to use the E-Verify system if it has fewer than 25 employees in the following calendar year. (See Question No. 6 above regarding private employers who have 25 or more employees during part of a calendar year but not during the entire calendar year.)

9. If an employer is not able to register for E-Verify immediately, how should the employer verify a new employee's employment eligibility?

If the E-Verify system is unavailable for three business days after the first day the new employee begins working for salary, wages, or other remuneration, the employer must use the Employment Eligibility Verification process using federal form I-9 issued by the U.S. Citizenship and Immigration Services to verify employment eligibility.

10. Is an employer required to use the E-Verify system for new employees who were hired prior to July 1, 2023?

No. Section 448.095, Florida Statutes, only applies to new employees hired on or after July 1, 2023.

11. How do companies certify use of E-Verify with the Florida Department of Revenue?

Certifying use of the E-Verify system must be made on one of the following four platforms:

- *Employer E-Verify Certification* (Form E-Verify)
- Paper Report (Forms RT-6, RT-6EW, RT-6A, RT-6NF, RT-7, or RT-8A)
- Online File and Pay Application
- Extensible Markup Language (XML)

The public agency or private employer certifies the use of the E-Verify system by signing and dating the certificate available on the platforms described above. The certificate must be completed on the public agency or private employer's first unemployment compensation or reemployment assistance "return" or report. The certificate must be signed and dated by:

(1) the individual owner; (2) the corporate president, treasurer, or other principal officer; or (3) a partner or member/managing member.

Additional information regarding the platforms can be found on the Department's website at floridarevenue.com/taxes/taxesfees/Pages/reemployment.aspx.

12. Will the Department process an employer's reemployment tax return if the certification field is left blank?

Yes. However, private employers with 25 or more employees and public agencies that do not certify are subject to sanctions by the Florida Department of Commerce for failure to comply with section 448.095, Florida Statutes.

13. An employer forgot to certify use of the E-Verify system on their first Florida reemployment tax return filed in a calendar year. How can they resubmit certification?

The employer may certify use of the E-Verify system on a *Correction to Employer's Quarterly or Annual Domestic Report* (Form RT-8A).

14. Who is authorized to certify use of the E-Verify system if someone other than the owner submits the reemployment tax report?

The individual owner, corporate president, treasurer, or other principal officer, or a partner or member/managing member should certify use of the E-Verify system.

15. Can an agent or management company certify use of the E-Verify system on behalf of the client company?

No, these entities do not have the statutory authority to certify use of the E-Verify system on behalf of an employer. These entities will continue to file reemployment assistance reports with the Department on behalf of the employer, and the employer will separately certify use of E-Verify by filing a *Correction to Employer's Quarterly or Annual Domestic Report* (Form RT-8A) or by using the Employer E-Verify Certification form.

16. If an employer doesn't file electronically, how does it certify use of the E-Verify system?

The employer can certify use of the E-Verify system by completing paper versions of the reemployment tax reports (Forms RT-6, RT-6EW, RT-6A, RT-6NF, RT-7, or RT-8A) or the *Employer E-Verify Certification*.

17. An employer files quarterly reports. When reporting on the first return in a calendar year, does this mean the December return filed in January of a calendar year, or the March return (first quarter) filed in April?

The law requires that the employer must certify use of the E-Verify system on its first return each calendar year. The first return (report) each calendar year is due in January for quarterly filers, so the certification would occur on the employer's fourth-quarter report since this is the first return filed in a calendar year.

18. What responsibility does an employee leasing company (ELC) have in certifying eligibility of a new employee for a client company?

An employee leasing company (ELC) is responsible for certifying the employment eligibility of any new employee of a client company that meets the definition of a private employer with 25 or more employees or is a public agency. Responsibility for verification and certification of employment eligibility using E-Verify may be transferred from the ELC to the client company only by written agreement or written understanding. If this occurs, the ELC will continue to file reports with the Department, and the client company will be required to certify use of the E-Verify system.

19. If an employer or an authorized agent filed the employer's first quarter of 2023 reemployment tax return, does the employer still need to certify use of the E-Verify system during the 2023 calendar year?

No, the employer will not need to certify use of the E-Verify system until its first report of calendar year 2024.

20. Can a professional employer organization (PEO) certify use of the E-Verify system on behalf of a client company?

The Department does not distinguish between professional employer organizations (PEOs) and employee leasing companies (ELCs) and refers to them generally as PEOs since that is the more commonly used name. (See question No. 18 above for the roles and responsibilities of an ELC.)

21. Is an employer required to certify use of the E-Verify system if it is a private employer with 25 or more employees, it certified use of the E-Verify system in the previous calendar year, and it has not hired any new employees in the current calendar year?

Yes. After July 1, 2023, each private employer and public agency required to use E-Verify must certify use of the E-Verify system on its first Florida reemployment tax return filed each calendar year.

22. The law states qualified employers must certify use of the E-Verify system on the first reemployment tax return filed each calendar year. If the first return an employer is required to file is for the second quarter of 2023, is the employer required to certify even though the law did not take effect until July 1, 2023?

The law does not apply retroactively. Although an employer will file a return after the law is in effect, the second quarter covers a period of time prior to the law change. Certification would be required for any new employees hired after July 1, 2023, not before July 1, 2023.

23. How often is a qualified employer required to certify use of the E-Verify system to validate the employment eligibility of newly hired employees?

Each employer required to use the E-Verify system must recertify each year on its first reemployment tax return filed in the calendar year.

24. I filed my fourth-quarter or annual reemployment tax return in January. Is my E-Verify certification good for the year in which it was signed and dated, or the prior year represented by the applied date of the return?

The certification would be credited to the year in which the certification statement was signed and dated.