

Colorado Employment Verification Law, § 8-2-122, C.R.S.

Frequently Asked Questions

October, 2014

Overview: As of January 1, 2007, the Colorado employment verification law (§ 8-2-122, C.R.S.) requires Colorado employers to verify and document the legal eligibility of employment of all newly hired employees. This law is in addition to federal employment verification laws, such as federal Form I-9 requirements. For more information, visit www.colorado.gov/cdle/evr

1. Which employers does the law cover?

The law applies to all private and public Colorado employers. An employer is a person or entity that: transacts business in Colorado; at any time, employs another person to perform services of any nature; and has control of the payment of wages for such services or is the officer, agent, or employee of the person or entity having control of the payment of wages. See § 8-2-122(1)(c).

2. Which employees are subject to the employment eligibility requirements?

The law applies to Colorado employees hired on and after January 1, 2007, and who are currently still employed by their employer. See § 8-2-122(2).

3. What are the core requirements of the law?

Effective on and after January 1, 2007, within 20 calendar days after hiring a new employee, each employer in Colorado shall: (1) complete and retain a written or electronic copy of the required affirmation, and (2) create and retain a written or electronic copy of the documents required by 8 U.S.C. sec. 1324a (copies of the identity and employment authorization documents which an employee presents to the employer for the federal Form I-9). See § 8-2-122(2).

4. How do I comply with the affirmation requirement?

Effective on and after January 1, 2007, within 20 calendar days after hiring a new employee, each employer in Colorado shall complete and retain an affirmation form for each new hire. The affirmation form is available for download [here](#). An employer may complete the affirmation form earlier, as long as the person has been offered and has accepted the job. The employer must retain this affirmation for the employee's term of employment. Electronic copies of the affirmation form are acceptable. Visit www.colorado.gov/cdle/evr to obtain the current mandatory affirmation form. Employers must use a form provided by the Division for all employees hired on and after January 1, 2007. See § 8-2-122(2).

5. How do I comply with the requirement to make copies of the employee's identity and employment authorization documents?

In order to comply with Colorado law, employers must first complete Section 2 of the federal Form I-9 by examining evidence of the employee's identity and employment authorization within three business days of the date employment begins. Employees may present any List A document OR a combination of a List B AND a List C document.

After properly completing Section 2 of the I-9 Form pursuant to federal law, employers must photocopy the List A or List B AND List C documents to comply with the Colorado employment verification law. The employer must retain the copies of these identity and employment authorization document(s) for the employee's term of employment. Electronic copies of the identity and employment authorization document(s) are acceptable. See § 8-2-122(2). Visit [here](#) for more information on the Form I-9.

6. How long do I have to retain the copies of the affirmation form and the identity and employment authorization document(s)?

The employer must retain the affirmation forms and the copies of the identity and employment authorization document(s) for the term of employment of each employee. These required documents do not need to be submitted to the Division of Labor, unless specifically requested by the Division. See § 8-2-122(2).

7. Can I comply with the Colorado employment verification law through other methods such as by: (1) completing the federal Form I-9, (2) participating in the federal E-Verify program, (3) using the federal Social Security Number Verification Service (SSNVS), or (4) reporting new hires to the Colorado State Directory of New Hires?

No. The Colorado employment verification law is distinct from other federal and Colorado laws, and there are no available substitutes for compliance.

8. What can an employer do if they have not complied with the law?

Employers must provide accurate and complete information on affirmation forms. Provision of false or fraudulent information on the form may subject the employer to a significant fine and/or additional penalties. If the employer has not properly completed the affirmation form within 20 calendar days of hiring the employee, or the employer has not made and retained copies of employee identity and employment authorization documentation within 20 calendar days of hiring the employee:

- **DO NOT** complete an affirmation form for the affected employee(s). The employer cannot complete a valid form once the 20 calendar days have elapsed since hire.
- **DO NOT** backdate or otherwise enter incorrect information onto the form for the affected employee(s). The employer must not enter false or fraudulent information onto the form.

- **DO NOT** attempt to make and retain copies of employee identity and employment authorization documentation if you did not comply with this requirement within 20 calendar days of hiring the employee. Seeking such documentation after the 20 calendar days have elapsed does not comply with Colorado law, and may also violate separate federal immigration laws.
- **DO** comply with the employment verification law for all new hires going forward. The employer must: (1) properly complete affirmations, and (2) make and retain copies of employee identity and employment authorization documentation, within 20 calendar days of hire for all employees hired after the discovery of the historical noncompliance. Following the steps above, and engaging in other appropriate compliance actions, may reduce the likelihood of a fine, or may mitigate the value of a fine, depending upon the circumstances. Consult with an attorney for legal advice.

9. May I complete the affirmation form and make copies of the employee's identity and employment authorization documentation in advance of the newly hired employee's start date?

You may complete the requirements before the employee begins work, as long as the person has been offered and has accepted the job. You may not complete the affirmation form and copies of the employee identity and employment authorization documentation requirements until you offer an individual a job and he or she accepts your offer. You may not use the process to screen job applicants, and the requirements must be fulfilled no later than 20 calendar days post-hire.

10. Do employers need to complete new affirmations when rehiring former employees, or when reverifying employees whose employment authorization documents have expired?

The Colorado law applies to new hires, and a new affirmation is only required when an employee is classified as a new hire. A general guideline is that if an employer is required to complete a new Form I-9 for an employee, then the employer should also complete the Colorado requirements at that time. Visit [here](#) for more information on the Form I-9.

11. What are the penalties for non-compliance?

An employer who, (1) with reckless disregard, fails to submit the documentation required by the law, or who, (2) with reckless disregard, submits false or fraudulent documentation, shall be subject to a fine of not more than \$5,000 for the first offense, and not more than \$25,000 for the second and any subsequent offense. See § 8-2-122(4).

12. Does the Colorado Division of Labor conduct audits of employers?

The Colorado Division of Labor conducts random audits of employers in Colorado to obtain the required documentation. When the Director of the Division has reason to believe that an employer has not complied with the employment verification and examination requirements, the Director shall request the employer to submit the documentation. The Division also conducts audits based upon complaints, as well as re-audits of non-compliant employers. See § 8-2-122(3).

13. I believe that an employer in Colorado is violating the law. Can I file a complaint?

The Division accepts written complaints for alleged violations of the employment verification law. A complaint form is available [here](#). The Division does not accept anonymous complaints.

14. Where can I obtain more information on the law?

The Colorado Division of Labor enforces the provisions of this law. For more information, or to file a complaint against an employer, contact the Division of Labor at 303-318-8441, or visit www.colorado.gov/cdle/evr