



EMPLOYMENT VERIFICATION AND PUBLIC CONTRACTS FOR SERVICES LAWS

Performance Audit, October 2011 Report Highlights



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PURPOSE

Examine the Division of Labor's auditing, enforcement, and employer education and outreach activities to implement the Employment Verification Law and the Public Contracts for Services Law.

BACKGROUND

- Employment is often the magnet that attracts individuals to reside in the United States illegally.
- Colorado employers are responsible for verifying new employees' employment eligibility using a process that is governed by both federal and state laws.
- Colorado's Employment Verification Law was enacted to help ensure that individuals hired to work in the state are authorized to work in the United States by requiring employers to take steps beyond the federal Form I-9 process.
- Colorado's Public Contracts for Services Law was enacted to help ensure that state agencies and political subdivisions do not procure services from entities that knowingly hire illegal aliens.
- The Division of Labor audits and investigates employers to determine their compliance with state employment verification requirements.

KEY RECOMMENDATIONS

The Division of Labor should:

- Ensure that compliance determinations are appropriate and have adequate support.
- Ensure that fine assessments are handled appropriately and consistently for all employers on the basis of clearly defined standards.
- Incorporate risk-based principles when selecting employers for audit.

The Division of Labor agreed with all of our recommendations.

EVALUATION CONCERN

- **In Calendar Year 2010, approximately 48 percent of audited employers with newly hired employees were noncompliant with the Employment Verification Law.**
- **The Division of Labor faces many challenges in monitoring for compliance with the Public Contracts for Services Law.**

KEY FACTS AND FINDINGS

- The Division of Labor needs to make a number of improvements to help ensure and promote employers' compliance with the Employment Verification Law. We found:
 - Compliance determinations were not appropriate for 13 of 35 employer audits we reviewed. The Division of Labor's compliance officers:
 - Missed relevant facts, such as late and unsigned employer affirmations.
 - Did not utilize evidence of backdated employer affirmations.
 - Did not maintain sufficient documentation of the tests performed or judgments made during the audits.
 - The Division of Labor does not have a well-structured or transparent approach for assessing monetary fines against noncompliant employers:
 - Four noncompliant employers met the Division of Labor's fine assessment criteria, yet no fine was assessed.
 - Fine assessment notices took an average of 155 days, or about 5 months, to issue.
 - One fine assessment totaling \$50,700 may have exceeded the statutorily allowable maximum fine amount.
 - Fines for 22 of the 45 employers that were originally assessed a fine as of March 2011 were subsequently reduced or dismissed. The total dollar amount of the fines was reduced by 58 percent, from \$226,100 to \$94,100.
 - The process for selecting employers for audit is not well targeted to ensure that resources are spent auditing those employers with the greatest potential to be noncompliant.
- Several practical and legal factors limit the Division of Labor's role with respect to monitoring for compliance with the Public Contracts for Services Law.
- The Department of Personnel & Administration and the Office of the State Controller, respectively, can make improvements to help ensure that state agencies comply with the Employment Verification Law when hiring new state employees and the Public Contracts for Services Law when purchasing services of \$5,000 or less.