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REQUIRING DIRECT SELLERS TO USE E-VERIFY IS INAPPROPRIATE FOR THE DIRECT SELLING BUSINESS MODEL

Background

To combat the problem of employing individuals not eligible to work in the United States, state legislation has been introduced to require employers to use E-Verify, a federal Internet-based system to confirm employment eligibility. Some proposals have specifically required employers to use E-Verify to confirm the employment eligibility of independent contractors, which would include direct sellers.

Position

DSA has received guidance from the Department of Homeland Security (DHS) stating there is a statutory prohibition against using E-Verify on independent contractors because they are not required to complete a Form I-9 – which is required to use E-Verify.

Furthermore, requiring use of E-Verify by direct selling companies to confirm the employment status of prospective direct sellers is inappropriate due to both the direct selling business model and the intent of E-Verify to confirm eligibility in an employer-employee relationship. Most individuals can start their own independent direct selling business with low startup costs over the phone or online in minutes. States should heed guidance from DHS and exempt direct sellers from being required to use E-Verify.

Policy Alternatives

One of the major benefits of the independent, entrepreneurial salesforce is the freedom and flexibility to operate their own businesses. DSA suggests exempting direct sellers—as defined by 26 USC § 3508, the direct sellers exemption in the federal tax code, or under a similar state definition,—from any requirement to participate in E-Verify.

A direct selling exemption will protect the integrity of the independent contractor salesforce and ensure that these small business owners can start their business immediately without a bureaucratic, administrative delay.