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Employer Liability and Reluctance
When Employers Refuse to Participate

Employers are being conscripted as verification infrastructure without their consent, creating resistance that ranges from passive non-cooperation to active avoidance.

Ray Gutierrez owns a landscaping company in suburban Phoenix. He has eleven employees, three trucks, and twenty-seven years of experience building a business through hot summers and economic downturns. In March, he receives an envelope from the Arizona Health Care Cost Containment System requesting verification of work hours for three of his crew members.

Ray stares at the form for a long time. The questions seem straightforward: employee name, hours worked during the prior month, employer signature attesting to accuracy. But Ray's mind races through implications the form doesn't mention. Two of the three employees are documented, their I-9 forms properly filed and their work authorization verified when he hired them. The third, Miguel, has worked for Ray for six years. Ray has always had a sense that Miguel's documentation might not withstand scrutiny, though he completed an I-9 when hired and Ray has never had reason to question it formally.

Does responding to this form invite ICE attention? Ray doesn't know. His brother-in-law, who runs a roofing company in Tucson, told him about a contractor who cooperated with a government records request and found immigration agents at his worksite two weeks later. The story might be exaggerated or entirely invented, but Ray can't shake the fear. He also worries about the hours themselves. His crew's schedules vary with the weather and the work. He tracks hours informally, paying his guys for what they work, but he doesn't have the kind of precise records the form seems to expect. What if he writes 78 hours and the real number was 82? What if he writes 85 and someone decides that's suspicious? His accountant charges $150 an hour and he can't afford a consultation every time a government form arrives.

The form sits on Ray's desk for two weeks. Then it moves to a filing cabinet. Then, when the follow-up notice arrives threatening penalties for non-response, Ray considers calling the number listed. But he doesn't. He runs a landscaping company, not an HR department. His employees' healthcare isn't his responsibility.

Three months later, all three employees lose their Medicaid coverage for failure to verify work hours. They were working. Ray could have proven it. But the system expected employer participation that Ray was unwilling to provide.

The Conscription Problem

Work requirement verification systems depend on employer cooperation, but employers never volunteered for this role. Unlike tax withholding, where federal law compels employer participation, Medicaid work verification operates largely through voluntary compliance. ***States can ask employers to verify hours. They cannot, in most cases, compel response.***

This creates a fundamental asymmetry in verification architecture. The policy requires workers to document their employment, but the entities holding that documentation have no obligation to provide it. A worker can demonstrate labor force attachment in every way that matters, holding a job, showing up reliably, earning wages, but if their employer declines to respond to a verification request, that work becomes administratively invisible.

The scope of this conscription is substantial. Approximately 18.5 million expansion adults will be subject to work requirements beginning December 2026. These individuals work for millions of employers ranging from Fortune 500 corporations to family restaurants to households hiring domestic help. Each employer becomes, in effect, an agent of the state's verification system whether they want that role or not.

No compensation accompanies this conscription. ***Employers responding to verification requests absorb the cost of staff time, record retrieval, form completion, and submission.*** For large employers with HR

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departments, this cost is modest per verification but substantial in aggregate. For small employers, each verification request represents direct burden on owners already stretched thin across multiple operational demands. The restaurant owner completing a verification form is not doing it instead of nothing; she is doing it instead of managing inventory, handling customer complaints, or covering a shift for an absent employee.

The absence of legal obligation matters enormously for how employers approach verification requests. When compliance is voluntary, employers calculate whether responding serves their interests. Many conclude that it does not. The employee's healthcare coverage is valuable to the employee, perhaps, but employers face no penalty for non-response. The rational employer, particularly one facing other demands on limited time, may simply decline to participate in a system that offers them nothing while demanding their labor.

Fear Factors

Beyond rational calculation of burden versus benefit, many employers resist verification participation out of fear. These fears are not always well-founded, but they are widespread and consequential for system function.

Immigration enforcement exposure represents the most acute fear for employers in industries with significant immigrant workforces. Agriculture, construction, landscaping, food service, hospitality, and domestic services all employ substantial numbers of immigrants, some documented and some not. Employers in these industries have watched as immigration enforcement intensified over recent years, with worksite raids, I-9 audits, and employer sanctions making headlines. For many, any government inquiry about employees triggers anxiety about potential enforcement consequences.

The connection between Medicaid verification and immigration enforcement is not direct. State Medicaid agencies are not immigration enforcement bodies, and verification requests do not necessarily flow to federal immigration authorities. But employers cannot always distinguish between government agencies or predict how information might be shared across bureaucracies. The fear is not about what verification requests actually mean but about what they might mean or might become. In an environment where employers feel targeted by immigration enforcement, any government contact about employees feels potentially dangerous.

I-9 compliance anxiety compounds these concerns. Employers are required to verify work authorization for all employees through the I-9 process, but compliance with these requirements is imperfect across the economy. Some employers have accepted documents they shouldn't have. Some have employees whose authorization has expired. Some have simply lost paperwork over years of informal record-keeping. A verification request that prompts employers to examine their own I-9 files may reveal problems they would rather not confront. Easier to not respond at all than to discover that responding creates new compliance obligations.

Liability for incorrect attestations generates additional fear. When employers sign verification forms, they attest to the accuracy of the information provided. What happens if that information turns out to be wrong? Employers may not track hours with the precision that verification requires, particularly for employees with variable schedules, multiple job sites, or informal arrangements. The fear of being held liable for good-faith errors, even when those errors are minor and unintentional, deters participation among employers who would otherwise cooperate.

Data privacy concerns round out the fear landscape. Employers providing verification information transmit employee data to government systems. What happens to that data? Who can access it? Could it be used against employees or employers in ways not related to Medicaid eligibility? These questions have answers, but employers often don't know those answers and assume the worst. In an era of data breaches, identity theft, and government surveillance controversies, reluctance to transmit employee information to state databases reflects broader cultural anxieties about data security.

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Administrative Burden by Employer Size

The burden of verification participation varies dramatically by employer size, creating patterns that shape which workers can easily prove their employment and which cannot.

Large employers with sophisticated HR infrastructure can potentially automate verification through payroll system integration. Companies using major payroll processors like ADP, Paychex, or Workday already transmit employee data for unemployment insurance, tax withholding, and other purposes. Adding Medicaid verification to these automated flows requires one-time integration costs of $500 to $5,000 per employer, after which ongoing verification happens without human intervention. For employers with thousands of employees, this investment makes sense: build once, verify automatically forever.

But automation requires initiative. Large employers must decide to invest in integration, negotiate data sharing agreements with states, and implement technical connections. Many will make this investment because automated verification serves their interests in workforce stability and reduces manual administrative burden. Others will decline, calculating that the benefit doesn't justify the effort or that they prefer to remain uninvolved in their employees' healthcare arrangements.

Medium employers face more challenging calculations. Companies with 100 to 500 employees typically have HR staff but not sophisticated payroll integration capabilities. Each verification request requires manual processing: retrieving records, completing forms, submitting documentation. At 15 minutes per verification, an employer with 50 employees on Medicaid faces 12 hours of staff time monthly for monthly verification, or 6 hours for semi-annual reporting. This burden is not crushing but is substantial enough to generate resentment and resistance, particularly when employers perceive no benefit from participation.

Small employers bear the heaviest proportional burden, and they employ disproportionate shares of the Medicaid expansion population. Retail, restaurants, construction, landscaping, and personal services feature small employers without HR departments, often without dedicated administrative staff at all. The owner does everything: payroll, scheduling, customer service, operations, and now, apparently, government verification paperwork.

A restaurant owner with 15 employees, 4 on Medicaid, faces 48 verifications annually under monthly reporting. At 15 minutes each, that's 12 hours per year of the owner's time devoted to a function that provides no direct benefit to the business. For someone already working 60-hour weeks, this represents an unfunded mandate that generates hostility rather than cooperation.

The inverse relationship between employer size and Medicaid employee concentration compounds this burden distribution. Large employers have relatively few Medicaid-enrolled employees as a percentage of total workforce; their employees often earn enough to disqualify from expansion Medicaid. Small employers in low-wage industries may have half or more of their workforce enrolled. The employers least equipped to handle verification burden have the most verifications to complete.

Strategic Non-Participation

Some employer reluctance reflects not fear or burden but deliberate strategy. Employers may conclude that non-participation serves their business interests better than cooperation.

The calculation is straightforward for employers who view Medicaid coverage as enabling labor market arrangements they prefer. When employees have healthcare through Medicaid, employers can offer low wages without providing health benefits. Employees accept these arrangements partly because Medicaid fills the healthcare gap. If work requirements cause some employees to lose Medicaid, those employees might demand employer-sponsored coverage, accept marketplace plans that increase pressure for higher wages, or leave for employers offering better benefits. Some employers may quietly prefer a system where not all their employees maintain Medicaid eligibility.

Competitive dynamics reinforce this logic. In industries where employers compete for the same labor pools, supporting employee benefits creates costs that competitors may not bear. The restaurant that

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invests staff time in verification paperwork operates at a disadvantage compared to the restaurant that ignores verification requests and lets employees sort out their own healthcare. In a race to the bottom, employers who invest in worker support face pressure from those who do not.

Benefits cost shifting provides another motivation for strategic non-participation. Employers have historically shifted healthcare costs to public programs whenever possible, designing jobs to avoid benefits thresholds, scheduling workers to prevent full-time status, and structuring compensation to keep employees Medicaid-eligible rather than entitled to employer coverage. Work requirements threaten this arrangement by potentially disqualifying employees from Medicaid. Employers who prefer the status quo may not enthusiastically participate in systems that could destabilize it.

The absence of consequences for non-response makes strategic non-participation low-risk. Employers who ignore verification requests face no penalties in most state frameworks. Their employees may lose coverage, but that consequence falls on workers rather than employers. *The employer who calculates that non-response serves their interests can act on that calculation without fear of enforcement action.*

Building Employer Cooperation

If verification systems depend on employer participation that is largely voluntary, how can states encourage cooperation from reluctant employers?

Safe harbor provisions offer one approach. Employers may resist verification out of fear that responding creates liability for errors or invites scrutiny of other compliance issues. States can address these fears by providing explicit protections: employers who respond to verification requests in good faith will not face penalties for minor errors, will not have their information shared with immigration authorities, and will not be subject to additional audits based solely on verification participation. These protections must be credible and well-communicated; employers won't believe safe harbors they haven't heard about or don't trust.

Incentive structures can shift the cost-benefit calculation. Tax credits for employers participating in verification programs convert an unfunded mandate into a compensated activity. Recognition programs creating public acknowledgment of "workforce-supportive employers" provide reputational benefits some employers value. Preferred vendor status for government contracts gives participating employers competitive advantages. These incentives need not be large to shift behavior; they need only be sufficient to tip the calculation for employers on the margin between participation and non-response.

Simplification reduces the burden that generates resistance. *Two-minute verification processes generate less resentment than 15-minute processes.* Standard templates requiring only employee name, hours worked, and employer signature minimize complexity. Digital submission allowing employers to complete verification on smartphones eliminates mailing and form management. The lower the burden, the less resistance employers generate.

Third-party verification services offer scalable solutions for employers lacking internal capacity. Payroll processors could add Medicaid verification as an optional service, handling documentation automatically for employers who authorize the function. Industry associations could provide verification assistance to members, spreading administrative burden across collective infrastructure. Managed care organizations could serve as verification intermediaries, accepting employer submissions and transmitting to state systems. These intermediaries reduce direct employer burden while maintaining verification integrity.

When Employers Actively Obstruct

Beyond passive non-participation, some employers actively obstruct workers' ability to demonstrate compliance. These obstructive practices represent the darker end of employer reluctance.

Misclassification as independent contractors removes employer verification obligations entirely. Workers classified as independent contractors have no employer to verify their hours; they must document their own work through means that verification systems often don't accommodate. Some misclassification reflects genuine ambiguity about employment relationships. But some represent deliberate strategy to avoid

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employment obligations including, now, participation in Medicaid verification. Employees misclassified as contractors lose both employer verification and the employment protections that come with employee status.

Hour manipulation can prevent workers from reaching compliance thresholds. Employers who cap hours at 28 weekly to avoid benefits obligations may welcome work requirements that give them another reason to limit hours. An employee who never reaches 80 monthly hours cannot demonstrate compliance regardless of how much verification documentation their employer provides. The manipulation is difficult to prove and rarely illegal, but it serves employer interests at employee expense.

Retaliation against employees seeking verification represents the most directly harmful obstruction. Employees who press employers for documentation, ask repeatedly for verification letters, or involve state agencies in employer non-response may face schedule reductions, hour cuts, or termination. At-will employment provides limited protection against retaliation for verification requests, and employees dependent on their jobs may accept coverage loss rather than risk employment by pressing for documentation.

Legal protections against these practices are weak. Misclassification enforcement is sporadic and resource-constrained. Hour manipulation is generally legal unless it violates specific contracts or policies. Retaliation is difficult to prove and expensive to challenge. Employees facing obstruction have few effective remedies; they simply cannot prove they are working, regardless of whether they actually are.

The Verification Gap

Employer reluctance creates what might be called a verification gap: the distance between employment reality and documented employment. Workers whose employers participate actively in verification have their work hours automatically transmitted to state systems, their compliance demonstrated without personal effort. Workers whose employers ignore verification requests must somehow prove their employment through alternative means, often failing despite working the required hours.

This gap is not randomly distributed across the workforce. Large employers are more likely to participate, advantaging their employees. Small employers in low-wage industries are less likely to participate, disadvantaging workers already facing structural barriers to economic stability. Employers with immigrant workforces are particularly likely to resist participation, creating coverage vulnerability for workers whose healthcare access is already precarious.

The policy implications are significant. If work requirements genuinely aim to encourage employment, verification systems should capture work wherever it occurs. Employers who refuse to participate undermine this goal, but the consequences fall entirely on employees rather than on non-participating employers. A system that tolerates employer non-participation while penalizing employee verification failure is not neutral; it systematically advantages workers whose employers cooperate and disadvantages those whose employers do not.

The question is whether states designing verification systems will treat employer cooperation as essential infrastructure requiring investment and enforcement, or as optional participation whose absence simply reduces the population maintaining coverage. The answer will determine whether verification systems actually measure work or merely measure which workers happen to have cooperative employers.

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6

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