

Tips for I-9 Completion and E-Verify

When hiring new workers, most employers are aware of the need to complete Form I-9, Employment Eligibility Verification. What many employers may not be aware of is that a seemingly harmless error may result in a civil, or worse, a criminal penalty for the employer. The government's enforcement of immigration laws with regards to businesses has increased in light of the intensifying debate over immigration. Businesses of all sizes may be subjected to an I-9 audit by Immigration Customs and Enforcement ("ICE"). In light of this, we suggest implementing an internal I-9 compliance policy to better shield your business from potential liability. The following is a list of helpful procedures that should be part of any compliance policy:

1. Have every new hire complete Section 1 of Form I-9 no later than the first day of work for pay. However, make sure not to "pre-screen" applicants by requesting proof of employment eligibility prior to extending an offer of employment. Complete Section 2 of Form I-9 within 3 business days.
2. Make sure you are using the most recent version of Form I-9, which is updated regularly and is accessible through uscis.gov, the official website of the U.S. Citizenship and Immigration Services ("USCIS", formerly "INS").
3. Make sure you require ALL new hires to complete the Form I-9, even US citizens.
4. Do not specify which document(s) from list A, B or C is acceptable to you, as this may constitute unlawful discrimination - let the employee choose.
5. Accept documents unless they have obvious signs of tampering or forgery, but do not accept photocopies, you must inspect original documents.
6. Make photocopies of the documents presented - doing so will make it easier to show your good faith compliance and may limit your liability in case of a government audit. Do not photocopy documents for some workers but not others, as this again may constitute discrimination.
7. Familiarize yourself with types of documents that require I-9 re-verification upon their expiration.
8. Although independent contractors are not required to complete the Form I-9, know that simply designating a worker as an "independent contractor" does not necessarily mean they will be recognized as such for I-9 purposes - make sure they meet the independent contractor "test".
9. If hiring workers through a recruiter, realize that you may still be liable for employing unauthorized workers if you have "actual knowledge" that workers did not have employment authorization.

Although USCIS has implemented E-Verify, an on-line system for employers to verify employment eligibility of workers, this system is not immune from error. Additionally, participation in the program does not provide a "safe harbor" from worksite enforcement and only establishes a "rebuttable presumption" that a business has not knowingly hired an unauthorized alien. A bonus to using the program, however, is that it permits the extension of work authorization for certain eligible employees who obtained a degree from a U.S. college or university. The use of the program is not currently mandatory in Massachusetts, though it may soon become a requirement. Both conservative leaders in Congress and President Obama's recent blueprint for immigration reform propose phasing in mandatory use of E-Verify. Additionally, the Supreme Court's recent decision to uphold an Arizona law mandating the use of E-Verify opens the door for other states to follow Arizona's footsteps. In light of this, it is important for employers to familiarize themselves with the E-Verify system and determine whether it is right for their business needs.

If you have any questions regarding I-9 completion and compliance, or the E-Verify program, please do not hesitate to contact Isabel Rybalnik at (508) 532-3512 or irybalnik@fletchertilton.com.

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