

# H.R. Alert

## July 2011

### Immigration 101- The Basics

This is a very complicated and complex subject that cannot be addressed adequately in three pages. However, I wanted to provide you with a short summary knowing you would have questions. Please do not hesitate to call me.

#### Overview

Federal immigration and naturalization laws impose a rigorous set of legal requirements on every employer in the country regardless of size. These laws require employers to institute procedures for verifying an employee is authorized to work in the United States. Employers face both civil and criminal penalties if they knowingly hire, refer, recruit or continue to employ individuals not authorized to work in the U.S. You must verify within three business days of hiring an individual that he or she is authorized to work in the U.S. by examining evidence of his/her identity and employment eligibility. The documents are listed on the back of the Form I-9. The Form I-9 which can be easily downloaded must be completed for any employee you hire after November 1986.

If you comply with the aforementioned procedure and then discover your employee is not authorized to work in the U.S. you may not continue to employ that person. Similarly, it is illegal to knowingly hire an individual you know is unauthorized to work in the United States.

#### Requiring Documents

Upon hiring you may not require more or different identity or work authorization documents other than those specified by the U.S. Citizenship and Immigration Services.

If an employee can produce the required documents it then becomes illegal for an employer to discriminate against that individual on the basis of national origin, citizenship or verifying the documents' expiration dates.

#### Fines

So what are the fines and penalties if you blow it?

- Failing to complete the Form I-9 or make the form available for inspection carries a fine ranging from \$100.00 to \$1,100.00 **per individual form;**
- knowingly hiring or retaining unauthorized workers carries fines ranging from \$250.00 to \$11,000.00 per violation; and
- engaging in a practice of knowingly hiring or continuing to retain unauthorized workers carries criminal penalties as high as \$3,000.00 per unauthorized worker and/or six months in jail.

How do you complete the Form I-9?

It is important you use the most current version of the Form I-9 which has a revision date of August 7, 2009 and an expiration date of August 31, 2012.

An employee need not provide their Social Security number unless the employee is participating in the E-Verify system.

All the requested documents must be current and unexpired with the exception of a Permanent Resident Card or an employee on a Temporary Protected Status.

Once the employee has provided you with the documents and you have completed the Form I-9 you make copies of the documents and then secure all your Form I-9's and the document copies **in a single file.**

### **Common mistakes Employers Make**

- They fail to download and implement the new Form I-9
- The employee fails to sign his signature in section 1
- There is no employer signature or recordation of the documents in section 2
- The employer fails to re-verify in section 3 the section focusing on non-citizens and non-permanent residents
- The employer fails to complete the Form I-9 within the first three days of hiring a new employee.
- There are procedural or technical errors in the paperwork
- The employer has 10 days to make these corrections following an Immigration and Custom Enforcement (ICE) audit.

### **Obama Administration Enforcement Tactics**

On April 30, 2009 the Department of Homeland Security (DHS) provided new enforcement guidelines for the ICE field offices. The focus shifted from workplace raids to pick up illegal workers to the criminal prosecution of businesses that knowingly hire illegal aliens. ICE will use all available civil and administrative remedies including civil

finances, debarment, and the criminal prosecution of employers who knowingly hire illegal aliens. However, ICE will continue to arrest and process for removal any illegal aliens found in the course of their investigation.

## **Federal Contractors must use the E-Verify System**

After September 8, 2009 certain federal contractors must use the new E-Verify to ascertain the work status of any new employees working on their contract. Sub-contractors must also use E-Verify if their contract exceeds \$3,000. E-Verify must be used for all new hires and existing employees assigned to the contract. You cannot E-Verify existing employees unless the employer is currently a federal contractor/sub-contractor and covered under an existing contract with an E-Verify clause.

## **What do you do if you discover an Unauthorized Worker?**

If you discover you have an employee who is unauthorized you should re-verify the work authorization by allowing the employee another opportunity to present acceptable documentation. Complete a new Form I-9 and suspend the employee for three days while he produces the acceptable documentation. If she/he fails to produce the acceptable documentation you must terminate his/her employment to avoid the civil fines.

## **How do you know the Documents are Valid?**

If the documents appear on their face to be legitimate accept them as such. On the other hand, if the printed name does not match the signature or the photograph is peeling off and there is a second photograph of another person beneath decline to accept the documents.

I hope this information has been useful and if you have any feedback or questions please call.

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