

I-9 Compliance Under The Obama Administration

Well, the day rumored to be coming is here. The Department of Homeland Security (DHS) announced guidelines regarding enforcement priorities. The target: employers.

Senior Policy Analyst Michele Wilson of the Immigration Policy Center (IPC) stated, "The newly announced guidelines will focus on criminal prosecution of employers who knowingly hire unauthorized workers.... The new guidelines emphasize investigating and criminally prosecuting abusive employers thereby honing in on one of the root causes of undocumented immigration."

While many are calling for additional reform to the immigration system - on a family immigration level as well as calling for guidance for employers - we must live with the regulations we have today. What does that mean? Well, I am advising employers to do two things: Conduct a proactive audit of your I-9 forms, and jump quickly when you receive a no-match letter.

I-9s. Assign a task force to review your I-9 forms and confirm that they are completed according to the regulations. Are you using the current form? (It's found at: <http://www.uscis.gov/files/form/i-9.pdf>). Are they organized and kept apart from other documents? Are they completed appropriately (fines for administrative violations, even for small mistakes, add up quickly)? Do you have an audit plan, if ICE asks to see records? Do you have a document retention / destruction plan? Do you ask appropriate interview questions? (See our thoughts on that, here <http://www.irelandstapleton.com/files/File/CHRA%20Handout%20-%20Web.pdf>).

Educating yourself in advance is a must in this area. Know your rights and obligations and avoid confusion and chaos (and allegations of non-compliance, as fear can lead even the most compliant employers to run afoul of the regulations).

No Match Letter. In some ways, it may be inevitable. Someday you are likely to receive a no match letter. Whether it is because your employee is a John Jones, Jr. and his records are mixed up with another or because you have inadvertently hired an employee with false paperwork, you may someday hear from Immigration and Customs Enforcement (ICE).

As the ICE website explains: "Every year, the Social Security Administration (SSA) informs thousands of employers via a "no-match" letter that certain employees' names and corresponding Social Security numbers provided on Forms W-2 do not match SSA's records. Out of approximately 250 million wage reports the SSA receives each year, as many as four percent belong to employees whose names and corresponding Social Security numbers do not match SSA's records."

What should you look for during your audit? The following is a list of common technical mistakes:

- Use of the Spanish version of the Form I-9 except in Puerto Rico
- Failure to use current version of Form I-9 at the time of hire
- Employee's maiden name, address or birth date missing in Section 1
- No alien registration number next to the phrase in Section 1, "A Lawful Permanent Resident" where the number is in Sections 2 or 3 of the Form I-9 (or on a document retained with the Form I-9 and presented at the Form I-9 inspection)
- No alien registration number or admission number next to the phrase in Section 1, "An alien authorized to work until" where the number is in Sections 2 or 3 of the Form I-9 (or on a document retained with the Form I-9 and presented at the Form I-9 inspection)
- Employee attestation date missing in Section 1
- Employee attestation not completed at the time of hire in Section 1
- Name, address or signature of the preparer and/or translator missing in Section 1
- No date in the preparer and/or translator certification box in Section 1
- No document identification number of a List A, B or C document in Section 2 where a copy of document(s) is retained with the Form I-9 and presented at the Form I-9 inspection
- No document expiration date of a List A, B or C document where a copy of document(s) is retained with the Form I-9 and presented at the Form I-9 inspection
- Failure to state "Individual under age 18" in Column B, for employees under the age of 18 that used only List C documents
- Failure to state "Special Placement" in Column B, for employees with a disability using only a List C document
- Business name or address missing in Section 2
- Date employment begins missing in Section 2
- Employer's or authorized representative's title missing in Section 2
- No employer attestation date in Section 2
- Employer attestation in Section 2 not completed within 3 business days of hire. If the employee is hired for 3 business days or less, at the time of hire
- Employment Authorization Documentation in Section 2, failed to use document number (effective 2/2/2009)
- No document identification number of a List A, B or C document in Section 3 where a copy of document(s) is retained with the Form I-9 and presented at the Form I-9 inspection
- No document expiration date of a List A, B or C document in Section 3 where a copy of document(s) is retained with the Form I-9 and presented at the Form I-9 inspection
- Date of rehire missing in Section 3, if applicable
- New name missing in Section 3, if applicable

Take a minute to create a plan for dealing with no-match letters. Again, an ounce of prevention is a .. You know the drill.

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