



# JW | Immigration e-Alert

An important immigration law update from the law firm of Jackson Walker.

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## Immigration Reform May Be on the Horizon, But What Does it Mean to Employers Now?

By J. Jay Strimel

On January 28, 2013, Senators Schumer, McCain, Durbin, Graham, Menendez, Rubio, Bennet, and Flake released a document titled "Bipartisan Framework for Comprehensive Immigration Reform." However, as we know, this proposal is merely a synopsis of what will likely be covered in the first draft of legislation concerning Immigration Reform presented by the Senators.

The White House also will release a proposal. Undoubtedly, there will be many others before the ink is dry on the final bill. With that in mind, it is uncertain just when and how the changes will ultimately play out. The framework does indicate, however, that both parties understand they must undertake the actions necessary to repair our broken immigration system. With suggested reforms in mind, what can we discern to counsel employers right now?

In their synopsis, the Senators lay out what they refer to as "Four Basic Legislative Pillars." Of those four pillars, the one unlikely to change significantly during the legislative process is the one regarding verification of employment authorization in the U.S. The pillar reads "*[c]reate an effective employment verification system that will prevent identity theft and end the hiring of future unauthorized workers.*"

Employers have been required to verify employment authorization for persons working in the United States since the enactment of The Immigration Reform and Control Act of 1986. This law created the Employment Eligibility Verification Form, more widely known as the Form I-9. More recently, the government created the E-Verify system for employers to determine the eligibility of their employees to work in the U.S. The E-Verify system is not used in place of the Form I-9, but in conjunction with it. Unlike the Form I-9 requirement, the employer's decision to participate in E-Verify generally is voluntary, unless the employer is a federal contractor or a government contractor in certain states which require E-Verify for state contractors. The language in the Senators' proposal, however, seems to indicate that enrollment and participation in E-Verify or similar systems *will be required for all employers*. Additionally, other members of Congress have indicated they will submit competing proposed legislation to require the creation and utilization of an effective employment verification system.

The question then is: With the required participation in E-Verify or a similar system looming on the horizon, when is a good time to make sure your Forms I-9 are in order?

The best practice recommendation is to comply now by (i) confirming you only have employees eligible to work in the U.S.; and (ii) confirming you have prepared the Forms I-9 correctly,

accurately, and completely. Auditing your Forms I-9 now at a self-determined pace can be less costly in time and money - not to mention stress - than rushing to do so at the last minute when friendly Department of Homeland Security (DHS) Officers arrive and request an audit.

An important fact to keep in mind is that when DHS does audit an employer's I-9 files, they can assess fines if the I-9 Forms are not completed correctly regardless of whether the employee listed on that I-9 Form was born in the U.S. or if the person is a foreign national. When it comes to assessing fines for improperly prepared I-9 Forms - or failure to prepare an I-9 Form for an employee - DHS is an equal opportunity assessor of fines regardless of the employee's nationality.

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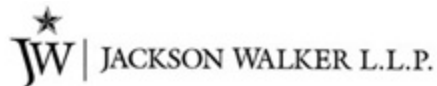
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