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IMMIGRATION WORK AUTHORIZATION OVERVIEW

The Who, Where, When, How and Why of I-9 Compliance

WHO ENFORCES IRCA?

United States Immigration and Customs Enforcement (“ICE”) conducts worksite investigations to determine whether employers have complied with their I-9 obligations under IRCA.

The most common work site investigation is the I-9 Notice of Inspection.

ICE presents a subpoena requiring the employer to produce all of the I-9 forms for its current employees and, typically, the I-9 forms for former employees retained pursuant to the regulatory retention formula.

Employers are required to retain I-9 forms for all former employees for a period of three years after hire or one year after termination of employment, whichever is longer.

ICE reviews employers' original I-9 forms to determine whether they were completed accurately and within required time frames.

Some errors are considered to be “procedural” or “technical” violations. After the ICE inspection, employers are given 10 days to correct them to avoid fines.

Other errors are considered to be “substantive” violations. Substantive violations cannot be corrected and are subject to fines ranging from \$220 - \$1,862 per violation (i.e., per defective I-9 form).

Substantive violations include:

- Failure to complete an I-9 form for a new hire;
- The employer's failure to ensure that the new hire checks a box confirming the new hire's immigration status and signs the attestation in Section 1 of the form;
- The employer's failure to review and verify the new hire's documents in Section 2 of the I-9 form;
- Failure of the employer to complete and sign the attestation in Section 2 of the form confirming that the employer has reviewed the new hire's documents and verified the new hire's employment eligibility.

WHEN AND HOW TO COMPLETE THE I-9 FORM

Section 1

- New hire must complete Section 1 on the first day of employment. However, Section 1 **may** be completed before the first day of employment if the employer and the new hire have agreed that the employee will start work at a later date.
- The employer is responsible for ensuring that the new hire fills in all of the blanks, answers all of the questions and signs the attestation in Section 1 of the form.

Section 2

- Section 2 must be completed and signed within three days of the new hire's first day of employment by an individual authorized by the employer to do so (the "authorized individual").
- Before completing Section 2, the authorized individual must view the new hire's original documents to determine whether the documents reasonably appear to be genuine and relate to the person presenting them. Lists of Acceptable Documents to prove identity and work authorization are on page 3 of the I-9 form.

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- List A documents establish both identity and work authorization. A United States passport is an example of a List A document. The new hire may present one document from List A.
 - List B documents establish identity. A state driver's license or ID is an example of a List B document. List C documents establish work authorization. An unrestricted Social Security card is an example of a List C document. A new hire may present a combination of one document from List B and one document from List C to establish identity and work authorization.
 - The authorized individual must not request that the new hire present specific documents (e.g., a driver's license and Social Security card). Requiring specific documents is an unfair immigration-related practice.

WHERE TO FIND HELP ON I-9 COMPLIANCE

Detailed guidance may be found in U.S. Citizenship and Immigration Services' ("USCIS") "Handbook for Employers," which is available at <https://www.uscis.gov/i-9-central/handbook-employers-m-274>



QUESTIONS?