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Important I-9 Tips for Every Employer

According to Bernhard Mueller, immigration attorney with the Ogletree Deakins Law Firm, Immigration and Customs Enforcement (ICE) changed their strategy in 2009 to focus on employers who hire illegal immigrants and issued Notices of Intent to Fine amounting to more than \$20 million. Below are some useful compliance clarifications and tips to minimize potential liability.

1. Employers who have constructive knowledge that an employee is not authorized to work, but continue to allow the employee to work are subject to fines. Examples of constructive knowledge are:
 - a. Failure to complete an I-9 form for an employee
 - b. Failure of the employer to ensure that Section 1 is properly completed and signed
 - c. Failure of the employer to sign the I-9
 - d. Failure to re-verify employment authorization after it expires
 - e. Inconsistencies, like an employee who checked the Permanent Resident box in Section 1 but subsequently asks the employer to sponsor him/her
2. Although employers are not required to do I-9's for contractors, they have a duty to ensure to the best of their ability that contractors are legally authorized to work. Include the following in the contracting agreement (contact an attorney for assistance as applicable):
 - a. A statement that your company is committed to compliance with all federal and state employment laws including hiring only employees authorized to work in the US, and that you expect the contractor to comply as well
 - b. That you reserve the right to inspect the I-9's of contracted workers that are supplied to you at any time
 - c. An indemnification clause
3. Employers cannot require an employee to present specific documentation to support the Section 1 information. The employee attests by signature that this information is correct. The employer may only examine the documents the employee elects to present to satisfy the I-9 requirements (a List A document, **or** List B & C documents). For example, do not ask new employees to bring their drivers license and social security card to work on their first day. All documents must be unexpired.

— Continued on next page

4. Employers or their agents are not required to notify ICE of illegal aliens discovered through the I-9 process, and it is not recommended that you do so.
5. The I-9 form cannot be completed until a job offer is made and accepted. Because the I-9 requires date of birth and identifies whether the person is a US citizen or alien, it could be a source of potential discrimination charges if an applicant were required to complete it pre-offer and then not hired.
6. A Spanish version of the I-9 is available, but it can only be completed in Puerto Rico. Employers may show the Spanish version to employees who have difficulty reading English, but the employee must complete the English version.
7. The I-9 Form states that Section 1 should be completed and signed by the employee on the day employment begins which is defined as the first day of work where the employee is providing labor or services in exchange for pay.
8. It is fraud if someone other than the employee fills in Section 1 but does not provide the required information and a signature in the Preparer and/or Translator Certification box, or if HR or a company representative fills in missing information in Section 1 for the employee.

Processing & Recordkeeping Tips:

- The recommended practice is to separate I-9s from other records. If you are audited by a government agency you can supply the I-9s efficiently from one central file. Moreover, you avoid opening up all your other personnel files and thus may be able to limit the scope of the audit.
- Use the current copy of Form I-9, Employment Eligibility Verification. Check to be sure the form you're using has the 8/31/12 expiration date and a revision date of 8/7/09. Form I-9 is available at www.uscis.gov.
- The I-9 must be retained for each employee **either** three years after the date of hire **or** one year after the employee's last date of employment, **whichever is later**.
- If an employee checks a box in Section 1 indicating they possess only temporary employment authorization, make sure that you have a tickler system to provide advance notice to the employee of the expiring document and the need for them to update their I-9 form.
- Carefully read and review the *Handbook for Employers, Instructions for Completing Form I-9, M-274*, most recently revised 7/31/09. The various sections in this handbook go into greater detail about all of the basic steps above and more. There is a thorough question and answer section as well. The handbook can be found at: <http://www.uscis.gov/files/form/m-274.pdf>
- Re-reading the first two pages of the Instructions for Form I-9 can provide a quick and thorough reminder of the importance and appropriate steps to properly complete the required form.

