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Immigration Compliance - Employment Eligibility Verification

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Immigration Compliance – Points to Ponder

- Do you currently have a consistent and transparent policy dealing with I-9 and immigration compliance?
- Have you designated a responsible person for I-9 compliance and is there review and oversight within the company or by outside firm?
- Do you regularly conduct internal audit of your I-9, including a mechanism to update when necessary?
- Do you have a protocol for responding to an ICE audit?
- Is immigration-related employment discrimination training part of your EEO and immigration compliance training?

Immigration Compliance – Landscape

- New worksite enforcement strategic focus
 - Increase audits and fines
 - E-Verify expansion
 - ICE IMAGE
 - Other enforcement action implicating worksite enforcement
 - State and local enforcement, other non-immigration federal enforcement, Secure Communities
- Increase in OSC enforcement
 - New structure emphasizing litigation
 - Hotline and intervention
- Resumption of SSA “no-match” letters
 - SSA DÉCOR letters, IRS quarterly reports, SSNVS, private background checks
 - Strong opposition to employer action by organized labor
 - Need for employer guidance in the absence of regulation
- Private action
 - Civil RICO
 - Securities Fraud

ICE Enforcement Statistics

- "The main reason people enter the United States illegally is the opportunity to work. The public can and should choose to reward companies who follow the law and employ a legal workforce." - Ass't Secretary John Morton, ICE
- "Since January 2009, ICE has audited more than 3,200 employers suspected of hiring illegal labor, debarred 225 companies and individuals, and imposed approximately \$50 million in financial sanctions—more than the total amount of audits and debarments than during the entire previous administration." - DHS Secretary Janet Napolitano (10/6/10).

Legal Workforce Act

Introduced June 14, 2011

Civil Violation	Penalty
Hiring unauthorized employee (Civil)	Range of Penalty
First offense	\$2,500 to \$5,000
Second offense	\$5,000 to \$10,000
Third or more offenses	\$10,000 to \$25,000
Paperwork violations	\$1,000 to \$25,000
Criminal Violation	Penalty
Knowingly hiring unauthorized employee (Pattern of Practice)	Not more than \$15,000 for each unauthorized worker, and/or imprisonment of not less than one year.
Knowingly providing false Social Security information in verification process	Not more than 2 years of imprisonment plus unspecified fine. No possibility of probation and sentence must run consecutively with any other prison sentence.

State (and Local) Enforcement Trends

- Restrictive immigration enforcement laws as reaction to perceived federal inaction
- Growing list of states with E-Verify requirements
- Supreme Court decision bolsters state legislation
- Concerns to H.R. community:
 - Federal preemption – inconsistent requirements in various jurisdictions
 - Incompetent enforcement – lack of understanding on the part of state or local officials
 - Unnecessary disruption to business

Anatomy of an Audit

- Notice of Inspection
- Time and scope of the audit
 - Work with agents to make scope manageable
 - 72 hours response time unless extension granted
- ICE subpoena
- Inspection and audit
- Notice of Intent to Fine/Warning
- Negotiation – civil penalty matrix
 - 25% upward or downward adjustment
 - Discretion still exists
 - United State v. Subway Restaurant #3718

ICE Civil Penalties

- Violations of I-9 requirements (paperwork):
 - \$110 - \$1,100 per I-9
 - Consideration given to history of compliance, size of business and good faith of the employer
- Knowingly hired or continuing to employ
 - \$375 - \$3,200 per unauthorized employee (1st offense)
 - \$3,200 - \$6,500 (2nd offense)
 - \$4,300 - \$16,000 (subsequent offenses)
- Debarment from government contracts for “knowingly employing an unauthorized worker”

Tips for Section 1

- Section 1 must be completed by employees on or before first day of hire even if they don't have their documents.
- Ensure that employee checks box, and signs and dates the form.
- If employee checks box 3 (*box 2 on older forms*), A # must be entered.
- If employee checks box 4 (*box 3 on older forms*), expiration date and A# or I-94 number must be entered.

Most Common Errors on Section 1

- Name in wrong order
- Address incomplete
- Social Security # field blank (not required except for E-Verify employers)
- Attestation not checked or incomplete, data on wrong line
- Signature missing
- Date missing
- Date of birth instead of current date

OMB No. 1615-0047; Expires 08/31/12
Form I-9, Employment Eligibility Verification

Department of Homeland Security
U.S. Citizenship and Immigration Services

Read instructions carefully before completing this form. The instructions must be available during completion of this form.

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents have a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification (To be completed and signed by employee at the time employment begins.)

Print Name: Last ① John	First Employee	Middle Initial	Maiden Name
Address (Street Name and Number) 123 Main St.		Apt. #	Date of Birth (month/day/year) 12/1/80
City	State	Zip Code	Social Security # ③

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check ③ the following):

A citizen of the United States

A noncitizen national of the United States (see instructions)

A lawful permanent resident (Alien #)

An alien authorized to work (Alien # or Admission #) 5/1/10
until (expiration date, if applicable - month/day/year) ④

Employee's Signature ⑤ Date (month/day/year) 12/1/80 ④

Preparer and/or Translator ⑤ **Verification** (To be completed and signed if Section 1 is prepared by a person other than the employee, I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.)

Preparer's/Translator's Signature Print Name

Address (Street Name and Number, City, State, Zip Code) Date (month/day/year)

⑥ & ⑦

Tips for Section 2

- Section 2 must be completed by company representative within 3 business days from date of hire – (Thursday Rule)
- Verification of IDENTITY and WORK AUTHORIZATION
- New hire must be physically present
- Company representative must review ORIGINAL DOCUMENTS
- Attach copies of documents presented to the I-9 (recommended).

List of Acceptable Documents

LISTS OF ACCEPTABLE DOCUMENTS All documents must be unexpired		
LIST A Documents that Establish Both Identity and Employment Authorization	LIST B Documents that Establish Identity	LIST C Documents that Establish Employment Authorization
	OR	AND
1. U.S. Passport or U.S. Passport Card	1. Driver's license or ID card issued by a State or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address	1. Social Security Account Number card other than one that specifies on the face that the issuance of the card does not authorize employment in the United States
2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)	2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address	2. Certification of Birth Abroad issued by the Department of State (Form FS-545)
3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa	3. School ID card with a photograph	3. Certification of Report of Birth issued by the Department of State (Form DS-1350)
4. Employment Authorization Document that contains a photograph (Form I-766)	4. Voter's registration card	4. Original or certified copy of birth certificate issued by a State, country, municipal authority, or territory of the United States bearing an official seal
5. In the case of a nonimmigrant alien authorized to work for a specific employer incident to status, a foreign passport with Form I-94 or Form I-94A bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, as long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form.	5. U.S. Military card or draft record	5. Native American tribal document
	6. Military dependent's ID card	
	7. U.S. Coast Guard Merchant Mariner Card	6. U.S. Citizen ID Card (Form I-197)
	8. Native American tribal document	7. Identification Card for Use of Resident Citizen in the United States (Form I-179)
	9. Driver's license issued by a Canadian government authority	8. Employment authorization document issued by the Department of Homeland Security
6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI	For persons under age 18 who are unable to present a document listed above:	
	10. School record or report card	
	11. Clinic, doctor, or hospital record	
	12. Day-care or nursery school record	

Illustrations of many of these documents appear in Part 8 of the Handbook for Employers (M-274)

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Most Common Errors on Section 2

- Columns A, B, or C left blank even with copies attached
- Column B & C documents reversed
- Document number missing
- Document expired or expiration date missing
- Date of hire missing
- Certification not signed

Section 2. Employer Review and Verification (To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number, and expiration date, if any, of the document(s).)

List A	OR	List B	AND	List C
Document title: _____		① _____		Drivers License ←
Issuing authority: _____		② _____		NJ DMV
Document #: _____		_____		③ _____
Expiration Date (if any): _____		① _____		④ _____
Document #: _____		_____		_____
Expiration Date (if any): _____		_____		_____

CERTIFICATION: I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) ⑤ and that to the best of my knowledge the employee is authorized to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative ⑥	Print Name Jane Employer	Title HR Rep
Business or Organization and Address (Street Name and Number, City, State, Zip Code) XYZ Corp., 345 Local St, City, ST, zip	Date (month/day/year) 5/1/09	

Section 3. Updating and Reverification (To be completed and signed by employer.)

A. New Name (if applicable) ⑥ _____ B. Date of Rehire (month/day/year) (if applicable) _____

C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment authorization.

Document Title: _____	Document #: _____	Expiration Date (if any): _____
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I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative _____	Date (month/day/year) _____
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Form I-9 – Section 3

Section 3. Updating and Reverification <i>(To be completed and signed by employer.)</i>	
A. New Name <i>(if applicable)</i>	B. Date of Rehire <i>(month/day/year)</i> <i>(if applicable)</i>
C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment authorization.	
Document Title: <u>1-94</u>	Document #: <u>626633123 12</u> Expiration Date <i>(if any)</i> : <u>5/1/12</u>
I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.	
Signature of Employer or Authorized Representative <u>Jane Employer</u>	Date <i>(month/day/year)</i> <u>4/30/09</u>

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Most Common Errors on Section 3

- Reverification not completed in a timely manner
- Document provided was not acceptable or inadequately described
- Over-documentation (do not reverify identity)
- Employer signature or date missing
- Failure to reverify LPR when only I-551 stamp was presented

Examples of Substantive Violations

- Violations will incur fines
- Missing I-9
- Employee name missing
- Failure of employee to check a box in Section 1
- Failure of an employee to sign Section 1
- Improper document(s) accepted
- Section 2 not signed or completed
- Section 3 not completed or signed if applicable

Examples of Technical Violations

- Maiden name, address or date of birth missing
- No A#, admission number or expiration date in attestation section of box 3 or 4 checked (box 2 or 3 on older forms), if copies of documents attached
- Not dated or if date of hire missing
- Not timely completed
- Document information incomplete (if copies attached)
- No title, business name or address
- Employer signature not dated

Correcting Forms I-9

- Make corrections on original Form I-9
- Initial and date all corrections
- Employees should make corrections to Section 1
 - HR can make corrections to A#, Admission # and expiration date in attestation if copies attached
- Do not back date
- Do not use correction fluid
- Cross-outs (but not black-outs) are OK

Anti-discrimination laws

- Document Abuse
 - occurs when certain employees or applicants are subject to more stringent verification measures than necessary to verify that they are eligible to work in the United States
- Citizenship Status Discrimination
 - occurs when individuals are not hired or are fired because of their real or perceived immigration or citizenship status, or because of their type of work authorization
- National Origin Discrimination
 - employer treats an employee or applicant differently during the hiring and firing process because of his or her place of birth, country of origin, ancestry, native language, accent or because the individual is perceived as looking or sounding foreign
- Retaliation
 - ex.: employee terminated for filing complaint

“Protected Class” Includes

- U.S. Citizens or Nationals
- Permanent Residents
- Refugees
- Asylees
- Temporary Residents under the legalization program (Special Agricultural Worker or amnesty applicant)

Penalties for Unlawful Discrimination

- National origin or citizenship status discrimination
 - First offense: \$375 - \$3,200
 - Second offense: \$3,200 - \$6,500
 - Subsequent offenses: \$4,300 - \$16,000
- Document abuse:
 - \$110 - \$1,100 per offense
 - Any employee may bring charge, not just protected workers

Immigration Compliance-Recommendations

- Adopt an Immigration Compliance Policy
 - Build internal policies for recruitment, monitoring and tracking of migrant workers
 - Review and manage business visitor policies and policing
- Appoint a Corporate Compliance Officer
 - Draft an internal compliance and ethics manual
- Implement a Global Immigration Program
- Educate Key Corporate Players: HR, Legal, Business Leaders and Project Supervisors
- Plan Strategically for each destination