



**August 2009**

## EMPLOYEE WORK AUTHORIZATION

The Immigration Reform and Control Act of 1986 prohibits the hiring or continued employment of aliens that employers know are unauthorized to work in the United States. To comply with the law, all employers must verify the employment eligibility and identity of all employees by completing an Employment Eligibility Verification form (Form I-9) for all employees, including U.S. citizens.

Under the Bush administration, the number of worksite enforcement raids by Immigration and Customs Enforcement (ICE) grew dramatically as did the number of related arrests. In fiscal year 2002, ICE made 25 criminal and 485 administrative arrests through its worksite enforcement program, a number that jumped to 1,101 criminal and 5,173 administrative arrests in fiscal year 2008.

Under a recently revised policy from Homeland Security Secretary Janet Napolitano, ICE has decided to target employers who knowingly hire unauthorized immigrants, rather than the unauthorized immigrants themselves. Accordingly, it is more important than ever that employers review their Form I-9 records to determine they have fully complied with the law and that they obtain and maintain Form I-9s and backup documentation for each employee.

The employee must complete Section 1 of Form I-9 no later than the beginning of employment, and the employer must obtain documents to establish identity and employment authorization within 3 business days of the date employment begins. However, if an employer hires a person for less than three days, documentation must be provided at the time employment begins. The types of acceptable documents are set forth on Form I-9. The employee must present original documents, except the employer may accept a certified copy of a birth certificate. The employer can accept any document that reasonably appears on its face to be genuine (but metal or plastic reproductions of Social Security cards are not acceptable). The existence of an expiration date on an employment authorization document cannot be considered in determining whether an alien is qualified for a particular position, and consideration of the expiration date may constitute employment discrimination. However, the employer will need to re-verify employment authorization when the employment authorization expires.

An employer must retain the completed Forms I-9 and copies of the other documents for 3 years after the date the employee is hired, or 1 year after the date employment is terminated, whichever is later. These documents can be retained in paper, microfilm, microfiche, or electronically. If a company acquires another business, the company may choose to keep the previous owner's Forms I-9 for each acquired employee; however, the company is responsible for any errors or omissions on the existing Form I-9s. If the company elects to obtain new Form I-9s, it must do so for all employees of the acquired company, without regard to actual or perceived citizenship status or national origin.

An employer who fails to properly complete, retain and make available for inspection Form I-9s as required by law is subject to civil penalties that range from \$110 to \$1,100 for each violation. An employer who has knowingly hired or continues to employ aliens knowing that they are not authorized to be employed in the United States may face civil and criminal penalties of (a) not less than \$375 and not more than \$3,200 for each unauthorized alien for the first offense, (b) not less than \$3,200 and not more than \$6,500 for each unauthorized alien for the second offense, and (c) not less than \$4,300 and not more than \$11,000 for each unauthorized alien for subsequent offenses. If the employer is convicted of having engaged in a pattern or practice of knowingly hiring or continuing to employ unauthorized aliens, the employer may be subject to fines of up to \$3,000 per employee and/or 6 months imprisonment.

*This complimentary newsletter is intended to provide general information. Because of the complexities and constant changes in the law, it is important to seek professional advice before acting on any of the matters covered herein.*

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**Please contact David R. Deutsch, Esq. for further information concerning matters in this Newsletter.**

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