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## **Make Sure You are in Compliance With the Federal and State Immigration Laws**

In the wake of recently passed controversial immigration law by the state of Arizona, which many other states are trying to mimic, and the recent shift in Obama administration's policy for stricter worksite compliance, it becomes imperative to ensure that you, your business and your employees are in compliance with the federal and the state immigration laws.

The federal E-verify system, which was introduced in 2008 and implemented across the board in September 2009 along with its state ratified variants, may affect businesses and contractors who deal in federal and state contracts, but the Immigration Reform and Control Act (IRCA) of 1986 is applicable to every business and employer. The IRCA makes employers liable for knowingly employing aliens not authorized to work in the United States. Employers are required to maintain I-9 forms showing that all employees, including U.S. citizens, are authorized to work. Employers commit many common errors while completing this small and simple looking form. This intricate area of law requires careful attention by all employers. With passage of stricter compliance regulations and modifications in the IRCA, employers cannot afford to make any mistakes on the I-9 forms. Employers should be as careful as ever in ensuring that the I-9 form is meticulously filled in and is without errors.

### **What sanctions can employers face?**

Employers must verify the identity and employment authorization of every employee hired after November 6, 1986, by use of form I-9. This form must be retained for three years after employment begins or one year after termination, whichever is longer. I-9's must be made available for inspection to the Department of Homeland Security upon three days written demand notice by the Department. In the event of violations, employers have a right to a hearing before an administrative law judge. Employers can be fined from \$110 up to \$11,000 for any paperwork or employment violations. Criminal penalties may apply for "pattern of practice" of hiring unauthorized aliens. Employers also have to ensure that they do not discriminate against employees based on citizenship, lawful resident status, or national origin.

### **Employment Verification Requirements**

The employer must maintain Employment Eligibility Verification Form (I-9) on file for every employee as per the conditions stated above. The employer must examine and record information concerning the documents, and accurately record identification numbers and expiration dates. Section 1 of the I-9 form must be completed by the employee before or at the time the employment begins. Section 2 must be completed by the employer before employment

begins or within three days of the start of employment. Both employer and employee must sign the form.

An employer may not require an employee to produce a specific document, such as a green card or a passport but let the employee produce any document complying with the requirements of documents listed in List A or a combination of documents from list B and C. Requiring a particular document is a prohibited practice. However, standard procedures at the time of hire are recommended, such as verifying the authenticity of the document and re-checking the documents with expiration dates, etc.

### **Which employees are not required to fill out I-9 form?**

- Employees hired on or before November 6, 1986.
- Self-employed people, as they are not considered employees of an employer.
- Casual employees who provide domestic service in a private home on a sporadic, irregular, or incidental basis (once a week employment requires an I-9).
- Independent contractors who carry on independent business or who are paid by piecework or assignment completed offsite.

### **Common errors while completing I-9 forms**

Pay careful attention to the following while preparing the I-9 forms.

- Do not omit to record expiration date (if any) of the document.
- Make sure that the employee completes every part in section 1 and has signed and dated the form.
- Any document from the list, which has an issuing country or state, name of the country or state along with the document number must be recorded.
- Employer's representative or HR personnel, who viewed the original documents produced by the employee must sign section 2 (Employer Review and Verification) and must print or type his or her name. Do not sign if the documents have not been viewed personally.
- Do not omit name and address of the business in employer's certification blocks.
- Make sure the recertification section of the I-9 form is completed on or before the expiration date mentioned on the submitted document.

These steps may help in eliminating common errors, however businesses and employers should also consider an annual audit by an external agency to ensure that the I-9's are in order and they are in compliance with the federal and state immigration laws.

If you would like more information on the topic, please contact your Lashly & Baer attorney or [Vivek Malik](mailto:vmalik@lashlybaer.com) at [vmalik@lashlybaer.com](mailto:vmalik@lashlybaer.com) or (314) 436-8317.