

Complying with I-9 Laws and Staying Sane- Esther Contreras – Thursday (1/12/17)

Questions people have:

- What to do when you find a mistake
- Re-verification process

E-Verify will likely be the law of the land in the next few years. We want to be sure you are using it and using it correctly.

In the US, it is unlawful to hire and continually employ people not authorized to work in the US:

- Must verify identity and work authorization
- Verified through the I-9 process
- Attestation Process
 - Keep it in your drawer
 - Signed under penalty of perjury
 - Compliance is checked through audits
 - Potential criminal charges if not following procedures
- Many US agencies are involved and collaborate to investigate and share information
 - ICE will knock at your door if you are audited
 - You will have to produce all forms within 3 business days
 - More agencies collaborating to investigate and share information
 - Electronic systems make collaboration easier
 - Hot political issue right now under Trump
 - Every time there is any kind of change in the laws addressing immigration, it becomes more difficult for employers to comply
- Audits
 - 3 business days to comply per ICE (hopefully if you are the only person handling I-9s you have a backup)
 - Audit can be triggered in many ways and there is no rhyme or reason to how/when you may be audited
- Penalties
 - Fines were recently increased
 - Be sure to look at the violations document www.usics.gov/i-9-central/penalties
 - Common penalty is for requesting more or different documents than are required to verify employment eligibility or reject genuine looking documents or specify certain documents over others
 - You can be fined even if there are no unauthorized workers
 - If your I-9s are deficient, you can be fined. (Abercrombie and Fitch was fined \$1M for electronic deficiencies- no one completed one of the boxes in section 1- where you say you are a citizen, etc.)
- I-9 Process
 - EE accepts job offer (cannot do anything before that)
 - I-9 is provided to EE with list of acceptable documents and instructions

- Section 1 must be completed on or before the first day of work for pay
- EE has 3 business days to choose which documents to provide (they do NOT have to come in with the documents on day 1)
- Documents must be original and unexpired
- Section 2 must be completed no later than 3rd business day of work for pay (M-Th)- also called the Thursday Rule
 - If not completed by the third business day of work for pay, it is late
- Section 1
 - All fields must be completed
 - Only employee or translator can complete
 - Enter N/A if not appropriate
 - SSN, email and telephone # are optional unless e-Verify
- Section 2
 - Can only accept original and unexpired documents
 - List A OR B and C (they must choose which to provide- you cannot)
 - Documents on list of acceptable documents
 - You review for clarification and consistency
- Section 3
 - Expiration of Work Authorization
 - EE must present new work document
 - If it shows limited work authorization, track and re-verify
 - A stamp on a passport does not apply- it should be a card
 - Rehires within 3 years of I-9 date completion
 - Prepare new I-9 or use the old one IF it shows they are still eligible to work- new date of hire can be recorded in Section 3- It is better to do a new form.
 - Name Changes
 - You have the option to do a new I-9 for name changes
 - Good rule of thumb to do a new I-9
 - Be sure you reflect new name change- use common sense with what you request for documentation and be consistent
 - Remember when you do this you are checking “identity”, doing more than that may be too much.
 - Special Cases
 - M274 is employer handbook – note PPT document provided by speaker to see individual issues for employees and pages noted
 - There are special provisions for each of these
 - Remote employees – Someone must be there to review the document- you can assign an agent to review for you - In CA it is unlawful for a notary to do this.
 - Independent contractor- liability cannot be outsourced because they are not your employee
 - Document Maintenance
 - Keep I-9s and document copies together, but separate from personnel records (easier in an audit) You want them protected in how they are stored.

- Electronic Maintenance- Be sure your system is compliant
 - Reasonable controls: integrity, accuracy, reliability of electronic generation or storage
 - Reasonable controls prevent and detect unauthorized if accidental creation, alteration, deletion, etc.
 - Ability to reproduce legible and readable paper copies- if audited you should be able to print and provide info to the auditor- this should be part of the software
 - Security
 - Issues with pre-filling of forms - employee should be filling out Section 1 manually
 - Good idea to keep copies (but not “too many” documents)
- Destruction after employee no longer employed
 - Date of hire _____
 - Add 3 years to line 1 _____
 - Date of termination _____
 - Add one year to line 2 _____
 - Destroy I9 on later date
- Most common mistakes
 - No I-9
 - Improper Completion
 - Not adhering to timing requirements
 - Requesting specific documents
 - Accepting documents not on the list of acceptable documents
 - Not tracking expiring work authorization
 - Re-verifying Green cards
 - Status box #3 & #4 Documents
 - Use correct/latest version of form (Spanish can only be used in Puerto Rico)
- Best Practices
 - Independent review by immigration legal counsel to identify deficiencies, compliance and provide training and develop an audit plan
 - Destroy and correct I-9s
 - Self audit every year thereafter
 - Track expiration dates
 - Temporary work authorization and destruction dates
 - Ensure that staff is properly trained
 - Alternates and contingency planes
 - Consistent company policy
 - Treat all ee the same
 - Check with immigration counsel before taking action against an employee
 - Beware of improper use of
 - E-Verify
 - SSNVS- Social Security Number Verification System

- Doubt? Check resources available
 - Still not sure, ask an expert
 - Stay informed
 - connect with Esther Contreras on LinkedIn
- Recent Developments
 - New form- old form valid through 1/21/17
 - New form will expire on 8/31/19
 - Not fully electronic
 - Most employers will still do this manually
 - No connection to government systems
 - Drop down list for acceptable documents
- E- Verify- does not replace I-9 – is an addition to the I-9
 - What?
 - Free Web based system
 - Verifies work authorization of new hires using information on I-9
 - Does not replace I-9 process
 - SSA and Dept of Homeland Security Database
 - Who must use?
 - Fed and state contractors with FAR clause
 - Employers in some states
 - STEM Opt employees
 - Voluntary
 - How is the process different for E-Verify Employers
 - Employee must enter SSN on Section 1 of I-9
 - List B must have a photo
 - Photo matching the document (keep a copy of the document)
 - If ee enters email you must enter it into e-verify
 - Add case verification # to I-9 or print the form
- See Resources in PPT handout

Questions:

Privacy- use best discretion and be careful about sharing personal info - no one of opinion should see the information.

To the extent you make corrections to the form – Strike-out mistake and then initial and add a new date, maybe even use a new color of pen - make it clear - think about what an auditor may be looking for, and do not use white-out.

If I am late or find missing information on an I-9: DO NOT back date- make sure the date of hire is correct. Do a memo to each file.

If you have E-Verify will have a red flag at the bottom saying someone is expiring ...as of right now, you only need to do another I-9 not another E-Verify