

10 Practical Compliance Tips for Growing Companies

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Florida companies need to be aware of the high risks and possible penalties, monetary and civil, of failing to comply with the federal laws that govern the documentation of newly-hired employees. Specifically, these laws require employers to complete and maintain Form I-9 (employment verification form). The federal government has increased the number of worksite enforcement actions in the past five years from 250 employers in 2007 to more than 3,000 employers in 2012. Immigration-related audits can lead to significant losses in productivity, criminal fines, and sizable legal expenses. Audits may also lead to unwanted press coverage regarding immigration and hiring practices. The following practical tips can help keep your company compliant and ready for a possible audit from the U.S. Customs and Immigration Enforcement (ICE), the government agency responsible for the I-9 program. **1. Complete an I-9 for every new hire.**

The 1986 law, Immigration Reform and Control Act (IRCA), mandated that every employer, regardless of the number of employees, complete an I-9 form verifying the employment authorization of each employee who is a new hire. The form must be completed within three days of hire. Failure to complete the I-9 within the three days can lead to civil fines, criminal penalties, or debarment from government contracts. The I-9 form can be printed from the USCIS website (www.uscis.gov). Print all sides of the form and present the list of acceptable documents to all new hires. The most current I-9 form is dated March 8, 2013. Use only that version. **2. Ensure that the employee completes the correct I-9 section.**

The I-9 form is divided into three distinct sections. Only the employee can complete Section 1 of the form, including the attestation box regarding citizenship status. The employer cannot complete this section under most circumstances. The employee must sign and date the I-9 form. **3. Ensure that the employer (or its agent) completes the correct I-9 section.**

The employer or its designated agent must complete Section 2 of the form and review the original documents presented by the employee to demonstrate work authorization. The employer is only allowed to accept for review original documents listed on the back side of the I-9 form. Physically examine each original document to determine if it reasonably appears to be genuine and to relate to the person presenting it. The person reviewing must be the person signing Section 2. The only document that need not be an original is a certified copy of a birth certificate. **4. Employers cannot request specific documents from the employee.**

The employee can choose from among three lists of acceptable documents to present to the employer. They include List A documents that show both identity and work authorization, such as U.S. passports and passport cards; or a combination of documents that establish identity (List B) and authorization (List C), separately. An employer is prohibited by law from requesting specific documents. It is the employee who must select the documents from List A, or List B and List C.

Requesting specific documents from a new hire may lead to a charge of discrimination or document abuse. Further, refusing to hire an individual because the document has a future expiration date may also constitute illegal discrimination. **5. Employers should know how long to retain I-9s.**

Employers need to know when to discard I-9s so as to limit exposure in the event of an audit. ICE may issue fines for improperly prepared or maintained forms even if the employer was no longer obliged to maintain the forms. The rules require the employer to retain I-9s for either three years after the date of hire or one year after termination or departure, whichever is later. Keep current I-9s separate from I-9s for terminated employees for ease of reference in the event of an audit. **6.**

Employers should timely update forms when necessary and develop a call-up system.

Employers must request new documents (re-verify) when employees submit documents with expiration dates. It is critical for employers to review documents at the time of hire, record the expiration dates, and set reminders for future action. Employers should set reminders to call up forms requiring updates 30 days in advance of expiration to allow sufficient time for updating.

Rehires (past employees who return to the employer) can either complete a new I-9 form or have an old form updated if rehired within three years of the date of the original I-9 completion. Be aware that U.S. citizens or lawful permanent residents (green card holders) who presented a green card in Section 2 do not have to be updated. **7. Employers should know which employees must complete an I-9 form.**

Knowing who needs to complete an I-9 form can help prevent charges of discrimination or document abuse. Federal law states that employers are not required to complete I-9 forms for several categories of employees: 1) individuals hired before November 7, 1986; 2) individuals hired after November 7, 1986 who left the job before June 1, 1987; 3) domestic workers at homes or those engaged in sporadic, intermittent, or irregular work; and 4) independent contractors, i.e., leasing companies; or employees not physically present on U.S. soil. **8. Employers should institute and maintain an I-9 completion and maintenance policy.**

Employers should have a written I-9 completion and maintenance policy and disseminate to all staffing, human resources, or other parties responsible for hiring, particularly those designated to complete and maintain I-9s on the employer's behalf. The policy should be clear and concise and reviewed periodically to ensure the most current I-9 form is being used. **9. Employers should conduct I-9 training for human resources or designated employer representatives.**

It is wise and cost effective to hold I-9 trainings at least twice annually, and to make attendance mandatory. Make the USCIS *Handbook for Employers: Guidance for Completing I-9 (Employment Eligibility Verification Form)*(M274) required reading for employees responsible for I-9 completion. This handbook was updated on April 30, 2013 and can be found online at www.uscis.gov. Additionally, keep color copies of the acceptable documents (found in the handbook) readily

available for ease of reference. Always ensure that the most current I-9 is used. Periodically check I-9 Central at <http://www.uscis.gov/i-9-central/> for updated Form I-9 information. **10. Employers should have experienced and knowledgeable immigration counsel.**

Employers benefit from having immigration counsel who are trained in I-9 compliance and ready to review documents presented by new hires. These counsel can address I-9 retention issues, issues regarding I-9 completion or maintenance programs, and be available for internal audits or to address and prepare the employer for a possible I-9 audit following a visit from ICE. Immigration counsel can also conduct I-9 training for the employer's designated employees.

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