

THE “I-9 DILEMMA” - EMPLOYER SANCTIONS

Federal Law requires all employers to verify that each of their employees has a legal right to work in the U.S. A record of that, the form “I-9”, must be prepared and retained for each employee, regardless of citizenship or place of birth. US immigration authorities may inspect and audit the employer’s I-9 records. Potentially substantial fines can be imposed for knowing violations of the applicable federal regulations. Criminal penalties, jail etc., can be imposed for engaging in a pattern or practice of violations, or continuing to employ a person after the employer knows that person is not authorized to work in the U.S.

But, the same set of laws and regulations also makes it unlawful to “discriminate” against a worker in hiring, recruitment or termination because of his or her national origin or citizenship status.

A short summary of the law is available at the Congressional Research Service of the Library of Congress: <http://www.au.af.mil/au/awc/awcgate/crs/rs22180.pdf>

Extensive information is available on the US Citizenship and Immigration Services website: USCIS “I-9 Central” at:
<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=84c267ee5cb38210VgnVCM100000082ca60aRCRD&vgnnextchannel=84c267ee5cb38210VgnVCM100000082ca60aRCRD>

and in the “USCIS Employer Handbook.”
<http://www.uscis.gov/files/form/m-274.pdf>

The government also has an online program, called “**E-Verify**” by which employers may gain certain protections in the event of a government audit, by first submitting a job applicant’s name to USCIS for pre-employment screening regarding the applicant’s right to work in the U.S. The government data base is not error free, however. An employer might want to consult with immigration counsel about the company’s business conditions before making a decision.

USCIS E-Verify:

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=75bce2e261405110VgnVCM1000004718190aRCRD&vgnnextchannel=75bce2e261405110VgnVCM1000004718190aRCRD>

Tip: You might want to avoid terminating an employee the moment you get a “no match” letter from Social Security Administration. Government errors do occur. It may be wise to consult your legal counsel, then contact the employee promptly. Be cordial. Give him or her a copy of the “no match” letter. A reasonable period of time may be in order for him or her to resolve any issue with Social Security, if possible, or to submit an alternate type of document. If the employee is unable to do so, you may need to terminate that individual, or risk penalties for knowingly retaining an employee not entitled to work in the U.S.

You may also wish to contact legal counsel to arrange for a “friendly” audit of your I-9 files, or a basic individual or group presentation on the practical tips, perils and pitfalls in this often frustrating area of business regulation.