

# IMMIGRATION COMPLIANCE AND ENFORCEMENT UPDATE

**September 15, 2009**

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# Agenda

- I-9: common mistakes and tips for internal audits
- E-Verify: who needs to use it and how to use it
- SC LLR inspections: what the agency is doing vs. what it's authorized to do
- ICE investigations: tips for avoiding criminal sanctions



# ICE and SC LLR Crack Down

CHARLESTON REGIONAL  
**BUSINESS JOURNAL**

Tuesday, Sep 15, 2009

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## Immigration audits concern businesses

By Ashley Fletcher Frampton  
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Published Aug. 18, 2009

State investigators visited 76 companies last month to ensure compliance with a provision of South Carolina's 2008 immigration law that recently kicked in.

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## Immigration Crackdown Shifts Focus to Employers

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## Feds begin immigration crackdown at 625 companies

Updated 7/2/2009 2:15 AM | Comment | Recommend

By Suzanne Gamboa, Associated Press Writer

WASHINGTON — The Obama administration launched investigations of hundreds of businesses around the country Wednesday as part of its strategy to focus immigration enforcement on the employers who hire illegal workers.

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## Businesses, lawyers grapple with state's new immigration law

By JOSH McCANN  
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843-706-8145  
Published Saturday, July 25, 2009  
Comments (7) | Recommend (0)

NEXSEN | PRUET

# I-9 Requirement

- Statutory basis: Immigration Reform and Control Act
- Anatomy of form
  - Section 1 completed by employee at time of hire—no later than date employee starts
  - Section 2 completed by employer within 3 “business days” of employee’s first day of work based on review of original documents
  - Section 3 completed by employer for:
    - Expiring status or documents before expiration date
    - Reverifying employee rehired within 3 years of initial date of hire

# New I-9 Form

- Latest version "Rev. 08/07/09"
  - "Expires 08/31/12"
  - No substantive changes
- Prior version "Rev. 02/02/09"
  - Remains valid but will likely be retired
- Current version of M-274 Handbook for Employers "Rev. 07/31/09"

OMB No. 1615-0047, Expires 08/31/12  
**Form I-9, Employment Eligibility Verification**

Department of Homeland Security  
U.S. Citizenship and Immigration Services

Read instructions carefully before completing this form. The instructions must be available during completion of this form.

**ANTI-DISCRIMINATION NOTICE:** It is illegal to discriminate against work-authorized individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents have a future expiration date may also constitute illegal discrimination.

**Section 1. Employee Information and Verification** (To be completed and signed by employee at the time employment begins.)

Print Name: Last	First	Middle Initial	Maiden Name
Address (Street Name and Number)		Apt. #	Date of Birth (month/day/year)
City		State	Zip Code
			Social Security #

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

A citizen of the United States

A national of the United States (see instructions)

A lawful permanent resident (Alien #) \_\_\_\_\_

An alien authorized to work (Alien # or Admission #) \_\_\_\_\_ and I (specify date, if applicable - month/day/year) \_\_\_\_\_

Employer's Signature \_\_\_\_\_ Date (month/day/year) \_\_\_\_\_

**Preparer and/or Translator Certification** (To be completed and signed if prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Preparer/Translator's Signature \_\_\_\_\_ Print Name \_\_\_\_\_

Address (Street Name and Number, City, State, Zip Code) \_\_\_\_\_ Date (month/day/year) \_\_\_\_\_

**Section 2. Employer Review and Verification** (To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number, and expiration date, if any, of the document(s).)

Document Title:	List A	OR	List B	AND	List C
Issuing authority:	_____		_____		_____
Document #:	_____		_____		_____
Expiration Date (if any):	_____		_____		_____
Document #:	_____		_____		_____
Expiration Date (if any):	_____		_____		_____

**CERTIFICATION:** I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) \_\_\_\_\_ and that to the best of my knowledge the employee is authorized to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative \_\_\_\_\_ Print Name \_\_\_\_\_ Title \_\_\_\_\_

Business or Organization Name and Address (Street Name and Number, City, State, Zip Code) \_\_\_\_\_ Date (month/day/year) \_\_\_\_\_

**Section 3. Updating and Reverification** (To be completed and signed by employer.)

A. New Name (if applicable) \_\_\_\_\_ B. Date of Return (month/day/year) (if applicable) \_\_\_\_\_

C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment authorization.

Document Title:	Document #:	Expiration Date (if any):
_____	_____	_____

I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative \_\_\_\_\_ Date (month/day/year) \_\_\_\_\_

Form I-9 (Rev. 08/07/09) Y Page 4

# Common I-9 Mistakes—Section 1

- Incomplete name
- Incomplete address
- No or incorrect date of birth
- No employee signature
- No or incorrect signature date
- No citizenship box checked (and missing information if third or fourth boxes checked)



## Handbook for Employers

Instructions for Completing Form I-9  
(Employment Eligibility Verification Form)



U.S. Citizenship  
and Immigration  
Services

HS-279 (Rev. 07/2014)

## Common I-9 Mistakes—Section 2

- List A or B and C not completed
- Documents provided not acceptable
- Information listed in wrong column
- No document expiration date if applicable
- No or incorrect start date
- No employer signature
- Employer information missing or incomplete
- No or incorrect signature date
- Not completed within three days of start date

## Common I-9 Mistakes—Section 3

- Employment authorization expired and Section 3 not completed
- Inappropriate document listed
- Document title, number, or expiration date missing or incorrect
- No employer signature
- No or incorrect signature date

# Exemptions

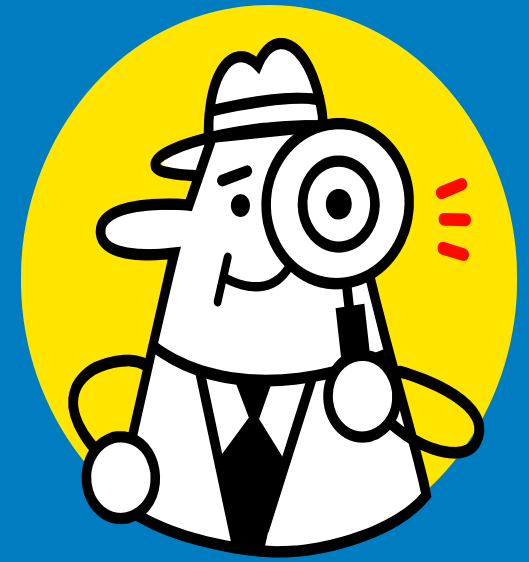
- Applies to all employees hired by all U.S. employers except:
  - Employees hired before Nov. 11, 1986 and continuously employed by same employer
  - Employees hired for private, casual domestic work on irregular basis
  - True independent contractors
  - Employees of contractors if no joint employment relationship
  - Employees not physically working in U.S.

# Retention

- Requirements
  - Full duration of employment
  - Later of 3 years after date of hire or 1 year after termination
- Tips
  - Keep separate from personnel files
  - Binder system for small employers
  - Purge at appropriate time
  - To copy or not to copy documents?
  - Tickler system to keep up with expiration dates

# Internal Audits

- With increased enforcement, error-free I-9's critical
- Good faith efforts like internal audits and training helpful
- Don't be surprised to find errors
- On regular basis, get trained staff to check randomly selected forms



# Internal Audits

- Form is missing information
  - Employee or employer must add it and date and initial
- Form has incorrect information
  - Do not use “white out”
  - Draw line through it, insert correct information, and date and initial
- Form is lost
  - Get new one completed
  - Prepare explanatory memo

# E-Verify Registration

- Go to [www.dhs.gov/E-Verify](http://www.dhs.gov/E-Verify) and choose Related Links on right
- Web-based, free and voluntary
  - Checks DHS, DOS and SSA databases
  - **General rule:** New hires only; Exception: Federal Contractors

# E-Verify Access Methods

- **Employer**
  - Allows company to electronically verify employment eligibility of newly hired employees
  - Employer can register some locations but not others
- **Corporate Administrator**
  - Use when multiple offices or locations and want to centralize administration
  - Can create, manage and oversee E-Verify accounts; run reports
  - CANNOT perform E-Verify queries unless registered as “Employer”
- **Designated Agent**

# User Accounts

- **General User**
  - Performs verification queries
  - May review reports on E-Verify system for own activity
  - Given User ID and Password
- **Program Administrator**
  - Creates user accounts at E-Verify site for other Program Administrators and General Users
  - May review reports at specific locations, run queries, update profiles, reset passwords and unlock user accounts

# E-Verify Enrollment

- Must electronically sign Memorandum of Understanding (MOU) with DHS and SSA
  - Who will sign MOU?
  - Has MOU been reviewed with appropriate company officials?
- User name, password and E-Verify web address emailed within 24 to 48 hours
- Must read user manual and complete web-based tutorial/online training

# TNC- Tentative Non-Confirmation

- Determine if employee wants to contest "as soon as possible"
- Provide copy of notice; both parties must sign and staple to I-9 form
- If employee chooses not to contest, it will be considered a final non-confirmation; employer should terminate employee and "resolve case"



## If Employee Contests TNC

- Employer must initiate referral to SSA/DHS through E-Verify website
  - Select “Initiate SSA or DHS Referral” on Case Details Page
- Print and provide Referral Letter to employee
  - Contains info about resolving TNC and contact info
  - Employee has 8 federal work days from date of Referral to take notice and contact appropriate agency to resolve discrepancy

# TNC Process

- No adverse action during TNC appeal process
  - Unless independent knowledge
- E-Verify system will automatically update once employee visits SSA or DHS to resolve case
  - Agency has 10 federal work days from referral date to transmit result but may ask for more time
  - Employer checks periodically for SSA or DHS TNC response; employee should notify once resolved



# Resolving TNC

- Remember to “Resolve Case” after reviewing E-Verify response (“View Cases”)
- Print “Case Details” page and attach to I-9 form

# TNC Penalties

- If employer continues to employ worker after Final Non-Confirmation:
  - Employer must inform DHS via E-Verify
    - Monetary penalty up to \$1,000 for failure to notify
  - Employer subject to rebuttable presumption that it knowingly employed unauthorized alien

# Federal Contractor Rule

- Applies to federal contractors awarded new contract on or after September 8, 2009 which includes E-Verify clause
- Must verify:
  - All new hires, and
  - Existing employees currently assigned to federal contract
- If not federal contractor and/or no clause in contract, only verify new hires
- Review “E-Verify Supplemental Guide,” 9/8/2009

# Federal Contractor Rule

- Option to verify entire workforce
- If already enrolled, update E-Verify profile as federal contractor and choose verification method
  - Timing issues
- Remember special E-Verify rules:
  - List B documents must contain photo
  - Must keep copy of EAD (I-765) or green card (I-551) if provided by employee for Section 2 purposes
  - SSN must be provided in Section 1 of I-9 form

## Does the Contract Qualify?

- Awarded after September 8, 2009 and includes E-Verify Clause?
- For prime federal contracts, is performance period more than 120 days and does value exceed \$100,000?
- Will at least some portion of contract be performed in U.S.?
- For subcontracts, does value exceed \$3,000?
- Does contract include commercially available off the shelf (COTS) items and related services?

# Federal Contractor Rule Timing Issues

- If not enrolled, enroll within 30 days of contract award
  - New hires:
    - Begin verification within 90 days of enrollment and follow 3 day rule
  - Existing employees:
    - Initiate verification within 90 days of enrollment, or within 30 days of employee's assignment to contract, whichever is later
  - If choose to verify entire existing workforce, notify DHS and verify within 180 days of notice

# Federal Contractor – Timing Issues, cont.

- If already enrolled in E-Verify, but not designated as federal contractor:
  - Update company profile within 30 days of award
  - **New hires:**
    - If enrolled more than 90 days, follow 3 day rule; if enrolled less than 90 days, begin within 90 days of enrollment
  - **Existing employees:**
    - Within 90 days of award, or within 30 days of employee's assignment to contract, whichever is later
  - If choose to verify entire existing workforce, notify DHS and verify within 180 days of notice

# Existing Employee Issues

- For existing employees, must complete/update I-9 form and perform E-Verify query
  - Is employee exempt?
- Remember: E-Verify will not accept expired documents
- Determine if new I-9 form or update existing form
  - If new I-9, keep original
  - If update existing I-9, carefully follow reverify rules

# SC LLR Inspections

- Statutory basis: SC Illegal Immigration Reform Act
- Effective dates for private employers
  - July 1, 2009 if 100 or more employees
  - July 1, 2010 if less than 100 employees
- Requirements
  - Use E-Verify or
  - Make sure new hire:
    - Has or qualifies for DL or ID card issued by SC DMV
    - Has DL or ID card from another state OK'd by SC DMV

# SC LLR Inspections

- Penalties
  - Monetary penalties from \$100 to \$1,000 per violation
  - Criminal penalties for false documents or statements
  - Suspension or revocation of “imputed license” to employ workers for “knowing or intentional” violation
  - Wrongful discharge cause of action
- Top 3 Targeted Industries
  - Agriculture
  - Construction
  - Manufacturing



# Initial SC Enforcement Issues

- Requesting I-9's
  - Only handful of federal agencies have right to see them
- No advance notice
  - ICE gives three days
- Request to interview employees randomly
  - No basis if documents are in order
- Inspecting for employees hired before July 1, 2009
  - No basis absent evidence of “knowing or intentional” violation
- Selection process
  - Raises constitutional issues

## Status of SC Enforcement Issues

- No longer asking for I-9's and affirmatively telling employers not to produce them
- Giving at least three days advance notice
- Working on resolution to inspecting for violations and interviewing employees hired before July 1, 2009
  - Will likely involve employer showing it takes appropriate measures to verify all workers are legal
- LLR still stands by selection process

# ICE Worksite Enforcement

- ICE worksite enforcement national strategy has **not** changed under Obama administration.
  - *Mission:* Remove incentives to enter the country illegally by cracking down on employers who hire undocumented immigrants.
- In FY 2008, ICE initiated 1,103 criminal arrests and 5,184 administrative arrests.

# ICE Audit Trends

- ICE targeted audits are on the rise.
  - July 1, 2009 – 650 U.S. businesses were selected for audits.
  - Audit focus: employer penalties vs. deporting unauthorized aliens.
- I-9 compliance is critical cornerstone!
- Potential penalties range from civil fines (\$110-\$16,000 per violation) to criminal penalties (harboring, fraud, misrepresentation, etc.) (8 C.F.R. Section 274a.10(b))

# ICE Audit – Anticipating the Process...

- Employer receives Notice of Inspection and Subpoena
  - Provided 3 business days to respond with I-9 forms and other requested documents
- ICE auditor reviews and may ask follow up questions
- ICE sends to its legal counsel for final processing; may close case or send:
  - Warning Letter
  - Notice of Suspect Documents
  - Notice of Technical/Procedural Violations
  - Notice of Intent to Fine (NOIF)
- ICE contacts U.S. Attorney's Office if criminal indictments will be pursued

# Preparing For Audits

- Encourage culture of compliance at the company
- I-9 training
  - Routine and detailed for those involved in process
- Annual I-9 audit and self assessment
- Develop written immigration compliance plan
- Evaluate E-Verify or Social Security Number Verification System (SSNVS) as option

# Evaluating Your Business: How Well Are You Doing?

- (1) Are managers/supervisors/owners trained on I-9 rules and “knowledge” issues?
- (2) Do you have written guidelines outlining:
  - Who is responsible for I-9 compliance?
  - Who conducts I-9 self audits and how often?
  - Who is responsible for following up and correcting I-9 “problem” issues?
  - Who is the company spokesperson and who should be contacted if an ICE or LLR auditor shows up?

## Evaluating Your Business, cont.

- (3) How will you ensure prompt follow up on I-9 reverification issues?
- (4) Will you enroll in E-Verify? Do you qualify as a federal contractor subject to the E-Verify rule?
- (5) Who will review and sign the company's MOU?
- (6) Have you evaluated your I-9 forms for technical/procedural and substantive violations?
- (7) Have you assessed whether the company is "audit-ready" should ICE or LLR come knocking?

# Questions?

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