



I-9 Compliance – 2015 Updates & Planning Items

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Since 1986, the U.S. has placed upon employers the burden of acting as gate-keepers in the enforcement of its immigration laws. The government's policies view employers as "magnets," and the primary cause of illegal immigration. The I-9 Form, deceptively simple in appearance, creates numerous and complex compliance issues for the employer. I-9 enforcement is not primarily concerned with locating illegal workers with the goal of deporting them. Instead, I-9 enforcement is heavily focused on Form I-9 itself, and the employer's strict accuracy in completing the form and complying with related regulations in assembling its workforce. Thus, employers who do not dot every "i" and cross every "t" in strict compliance with U.S. Immigration and Customs Enforcement (ICE)'s exacting standards are at risk for penalties, ***regardless of whether any unlawful employment exists!***

As 2015 year-end planning approaches, here are some "hot" areas, updates and reminders for your consideration:

- **Enforcement Activity Continues to Increase.** I-9 audits, assessment of fines, and charging of criminal penalties by ICE continues to increase, and has increased dramatically since fiscal year 2007.
- **I-9 Section 1 Pre-Population.** Many employers pre-populate the employee's information in Section 1 for administrative convenience. However, this convenience should be evaluated against additional risks inherent in pre-population. One such risk is that ICE and other affiliated government agencies have disseminated inconsistent statements of the government's position as to whether pre-population is a permissible employer practice. Another risk is the increased likelihood of including inaccurate or outdated information as a result of pre-population.

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- **I-9 Non-Disclosure.** An employer may be inclined to share its I-9s with 3rd parties (for example, payroll vendors, HR compliance companies, etc.), or with unauthorized employees within its organization. Disclosing such information or disseminating the forms may violate the law and the rights of an employee. An employer needs to carefully review I-9 non-disclosure requirements prior to disseminating this information.
- **Internal I-9 Compliance Policy.** Every employer should have a formal internal I-9 Compliance Policy detailing the employer's exact policies and procedures for properly completing, verifying and retaining I-9 and employment authorization documentation, for assigning supervisory responsibility within the company for these duties, for ensuring adequate training of I-9 responsible employees, and for self-audits or other periodic internal monitoring efforts to ensure compliance. The **best defense** in response to an I-9 Audit or ICE investigation is documentation establishing the employer's consistent pattern of responsible good faith efforts to maintain an I-9 compliant workforce.
- **Conduct an I-9 Self-Audit.** Once an employer has its compliance policy in place, it should promptly conduct its initial self-audit, guided by its attorney. If an employer has a good compliance policy in place and has processed self-audits before, first quarter is typically a good time of year to engage in an annual review and self-audit.
- **Provide Training for all Hiring and I-9 Compliance Personnel.** All human resources (HR) and other employees involved in the I-9 and immigration compliance process should receive proper initial and ongoing training to ensure I-9 compliance. If self-audits are to be performed internally, the responsible persons should also receive specialized I-9 self-audit training. It is the employer's responsibility to provide these resources and properly train its work force.

The experienced immigration and employment attorneys at Foster Swift welcome an opportunity to discuss a comprehensive approach for labor needs in your business.

For more information on immigration and employment, please contact Ryan Lamb at rlamb@fosterswift.com or 616.796.2503.