



Employer Immigration Law Compliance and the New Administration

By Mariya Khilyuk

The new administration made it clear that it is making immigration a priority and employers should expect stepped up enforcement of workplace immigration laws. Based on the administration's indications, ICE audits will increase, new investigation officers will be hired, and enforcement in this area will get a lot of focus.

As of January 22, 2017, employers are required to use the new Form I-9, marked 11/14/2016, for all new employees. Failure to use the new form after January 22, 2017 will expose employers to penalties, which have recently nearly doubled. But despite the increased enforcement suggested by the new administration, employers must still be careful when completing the Form I-9 in order to avoid facing document abuse and/or discrimination charges.

New Form I-9

The new Form I-9 appears very similar to the previous version, but there are a few key revisions in the form instructions and in the individual fields. The new instructions nearly doubled in length, from six pages to 15. Although the instructions are much longer, they provide guidance for accurately completing the new Form I-9. A few key changes worth noting are below.

- Section 1, Employee Information and Attestation must be completed and signed by the employee no later than the first day of employment, but not before accepting a job offer. One key change with the new Form I-9 is that employees must enter "N/A" in any field that they would have previously left blank. Therefore, there should not be any blank fields in Section 1 of the Form I-9.
- Under Section 1, there is a separate box for Preparer and/or Translator Certification. All employees are required to complete this field by affirmatively marking either "I did not use a preparer or translator" or "A preparer(s) and/or translator(s) assisted the employee in completing Section 1."
- Section 2, Employer or Authorized Representative Review and Verification must be completed and signed by the employer within three business days of the employee's first day of employment. The employer representative who is verifying employment eligibility for a new employee must be in the physical presence of the employee being verified and must review and verify original documents presented by the employee. This means that reviewing employee documents via Skype, FaceTime, or some other remote technology is not permitted.
- Under Section 2, there is a new field for additional information. This field could be used to note important information that employers used to have to cram into the margins of the form, such as an employee's termination date. But remember, if you are subject to an investigation, comments or additional information written on the form is fair game in the investigation.

- Although there are no changes to Section 3, Reverification, employers must use the new Form I-9 for all reverifications done after January 22, 2017. As a reminder, reverifications must be performed when a worker's employment authorization or employment authorization documentation expires.

The new Form I-9 can be completed electronically using the new smart version of the form. With the new smart version of the form, once the employee and employer complete their entries, the entries are reviewed to make sure that the necessary fields are completed and the correct format is used. It is crucial to remember that even if the employee and the employer complete the form electronically, the electronic form must be printed and signed, and stored in a safe and accessible place.

Increased Fines

Failing to comply with the Form I-9 employment verification requirements may result in civil fines, criminal penalties, or debarment from government contracts. The civil fines for Form I-9 violations range from \$216 to \$2,156 per form.

Avoiding Exposure to Document Abuse and Discrimination Charges

The Form I-9 provides a list of acceptable documents for employers to verify a worker's employment eligibility. The employer representative reviewing and verifying an employee's documents does not have to be a document specialist. Therefore, the employer representative must accept the Form I-9 acceptable documents presented by an employee as long as the documents reasonably appear to be genuine and relate to the individual. If an employer specifies which documents an employee must use instead of permitting an employee to use any combination of documents that are legally acceptable per the Form I-9, an employer may face civil fines for document abuse and/or discrimination charges. The fines for committing document abuse range from \$178 to \$1,782 per violation. Discrimination charges may result in fines ranging from \$445 to \$17,816 per violation, a court order requiring the payment of back pay to the individual discriminated against, and/or a court order requiring the employer to hire the individual discriminated against.

Conclusion

Despite the new administration's stated focus on immigration enforcement, it is not yet clear what employers should expect with regard to ICE investigations, audits, and raids. In the meantime, employers should ensure that their Form I-9s are updated with the new form and that the forms are being completed correctly.