

HR-E ALERT

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I-9 Employment Eligibility Verification Form Used During Hiring Process Updated Noncompliance Expensive Mistake For Businesses

The U.S. Citizenship and Immigration Services (USCIS) and U.S. Immigration and Customs Enforcement (ICE) recently published an updated version of the Employment Eligibility Verification Form (Form I-9) used by U.S. employers to document the eligibility of workers to work in the United States. A pdf of the recently updated Form I-9 is available for review and/or download a CynthiaStamer.com.

The updated Form I-9, which carries an edition date "(Rev. 05/31/05)" has been updated to replace outdated references to the former Immigration and Naturalization Service (INS) and its parent agency, the Department of Justice. These updates were necessitated by the March 1, 2003 enactment of the Homeland Security Act of 2002 (Public Law 107-296), which transferred the functions of the former INS from the Department of Justice to the Department of Homeland Security (DHS). USCIS, an entity within DHS, presently maintains many of the immigration forms that USCIS and ICE inherited from the former INS. USCIS is currently rebranding these forms, including the I-9, to reflect the transfer to DHS. Aside from replacing outdated references to the Department of Justice and the former INS with references to DHS and its components, the current edition of Form I-9 is the same as the 11/21/91 edition.

The edition date on the rebranded Form I-9 reads "(Rev. 05/31/05)Y." Employers may meet their employment verification requirements under the law by completing a Form I-9 that has an edition date of either "(Rev. 5/31/05)Y," "(Rev. 05/31/05)N," or "(Rev. 11/21/91)N" in the lower right corner of the form.

DHS is currently in the process of making substantive changes to the Form I-9 in connection with previous rulemakings and plans to introduce a new Form I-9 at the end of this process. All employers should be alert to the future need to update their Form I-9 when this planned update is released in the future. In the meanwhile, all U.S. businesses should continue to monitor the adequacy of their current Form I-9 and other practices that they, and any of their outside staffing contractors, use to verify and document the employment eligibility of workers performing services on behalf of their business under applicable immigration laws, while minimizing liability for prohibited employment discrimination.

Violation of these employment eligibility verification requirements and other Federal requirements concerning the employment of foreign workers can expose businesses to substantial civil – and in some instances- criminal liability. In June, 2005, for instance, the U.S. Department of Labor's Administrative Review Board (ARB) ordered a Tennessee medical clinic to pay over \$1 million in back wages and reimburse certain other expenses to 17 physicians, hired to work under the Immigration and Nationality Act's H-1B visa program, upheld the assessment of over \$100,000 in civil money penalties for "willful" violations of the law, and ruled that the owner of the clinic where the doctors worked, was personally liable for the back wages and civil money penalties. The H-1B visa program permits employers to temporarily hire nonimmigrants to fill specialized jobs in the United States. An employer must pay an H-1B worker at least the same wage it pays other employees who perform the same type of work or the prevailing wage in the area. The ARB also found that the clinic engaged in prohibited retaliation in violation of Federal law provision by refusing to pay physicians who complained about wage violations and firing seven physicians on the same day that an investigator from the department's Wage and Hour Division arrived at the office to examine records. Consequently, both public companies subject to Sarbanes-Oxley and privately held businesses should include appropriate strategies to monitor compliance with these requirements to minimize their liability exposure under the Federal Sentencing Guidelines and other applicable laws.

If you are interested in more information about the employment verification process requirements, to register to receive future updates about developments affecting these or other regulations affecting employers, or to request information about upcoming programs or alerts, please contact: **Cynthia Marcotte Stamer, P.C.**, Member, Glast, Phillips & Murray, P.C., 2200 One Galleria Tower, 13355 Noel Road, LB 48, Dallas, Texas 75240. Telephone (972) 419-7188. E-mail cstamer@gpm-law.com. For additional information about Ms. Stamer and/or Glast, Phillips & Murray, P.C., contact Ms. Stamer or see CynthiaStamer.com or gpm-law.com.

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