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# Understanding The Importance Of The Timely Filing Of The I-9

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All human-resources professionals know about the importance of filing a Form I-9 anytime a person is hired to perform labor or services in return for wages or remuneration.

What they perhaps don't know is that failure to file the I-9 correctly within the time limits can cost their companies a substantial amount of money in fines.

Noncompliance, whether intentional or a simple oversight, has severe legal

## VIEWPOINT

and financial consequences. An employer can be fined up to \$11,000 and up to six months in jail, depending on his reason for not filing and retaining a Form I-9.

It is a hefty price to pay for a simple piece of paper not being filed.

For employers who fail to properly complete, retain, or make I-9 forms available for an audit, fines range from \$100 to \$1,100 per individual. Employers who knowingly hire or continue to employ unauthorized workers can be subject to civic penalties ranging from \$250 to \$11,000 per violation. The criminal penalties of the same violation of employing unauthorized workers can be as much as \$3,000 per unauthorized employee and/or six months of imprisonment.

■ **Avoiding fines and penalties.** To avoid fines and penalties, an employer must have the new employee complete Section I of Form I-9 when he begins work.

It is then the employer's responsibility to complete Section II within three business days of the hire.

■ **New developments in the law.** The Form I-9 was amended in June 2007 and contains substantial changes in the types of documentation that are accepted to prove whether the new employee legally resides in the United States and is eligible to work.

Documents provided to employers must establish both identity and employment eligibility. Three lists were created as a guide to HR managers to help them understand the types of documents they can use legally to prove an employee's identity and employment eligibility.

List A documents establish both identity and employment eligibility and examples include: a U.S. Passport, a Permanent Resident Card or Alien Registration Receipt Card, an unexpired foreign passport with a temporary I-551 stamp, or an unexpired employment authorization document that contains a photograph.

There are 12 types of acceptable List B documents that prove identity, three of which are for those under the age of 18 who may not be able to produce any of the other nine listed. Some of the 12 documents on the list include: a driver's license, a school ID card with a photograph, a voter's registration card, a Native American tribal document, a school record or report card or a day-care or nursery school record.

Form I-9 also contains seven acceptable List C documents that establish employment eligibility. One of these documents is

the Social Security card, but unlike before, the new amendment makes providing a social security number voluntary.

Other List C documents can include: a birth certificate, a Certification of Birth Abroad issued by the Department of State, a Native American tribal document, or a U.S. Citizen ID card among others.

In order to establish both identity and employment eligibility, an employee must submit either one List A document, or a List B and List C document.

There are five documents no longer listed on the Form I-9, and if accepted by employers can result in penalties.

These five documents are: a certificate of U.S. citizenship, a certificate of naturalization, the Form I-151 (an outdated version of the "green card"), an unexpired reentry permit, and an unexpired refugee travel document.

Although the amended Form I-9 informs employees that providing a social security number is voluntary, there is an exception to be aware of. If an employer participates in E-Verify, an employment eligibility verification program, then an employee must provide a social security number.

■ **Requiring indemnification.** Employers that require a bond or indemnity from an employee as a shield to potential liability under the employer sanction laws may be ordered to pay a civil penalty of \$1,000 for each violation if audited. They

may also be required to make restitution, either to the person required to pay the indemnity or to the U.S. Treasury if that person cannot be found.

■ **Good-faith defense.** If an employer can show that they have exercised good faith in complying with the Form I-9 requirements, then they will be able to establish a "good faith" defense with respect to a charge of knowingly hiring an unauthorized citizen.

■ **Criminal penalties for employees.** Employers are not the only ones in danger of substantial fines and penalties involving Form I-9. An employee can also be subject to penalties for falsifying a Form I-9. Any person who uses fraudulent documents or identification lawfully issued to another person, or makes false statements for purposes of satisfying the employment eligibility requirement may be fined, imprisoned for up to five years, or both.

■ **If audited, beware.** The key item that costs businesses money in human-resources audits is the failure to fill out Section II of the I-9 form within 72 hours. Employers are required to retain the completed I-9 form three years from the date of hire or one year after the date of termination, whichever is later. Form I-9 can be retained in paper form, microfilm, microfiche, or electronically. □



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