I-9 Compliance Workshop:
The 10 Commandments of Employee Verification

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What should we be concerned with?

- Thou shall comply with immigration compliance best practices
- Thou shall be aware of the I-9 requirements
- Thou shall not condone discriminatory practices
- Thou shall understand E-Verify laws and requirements
- Provide training to ensure your Form I-9s are correct
- Thou shall only accept genuine documents using the reasonableness standard
- Thou shall not take the use of electronic I-9s lightly
- Thou shall verify all remote employee forms
- Honor the government’s mandate to take compliance seriously and acknowledge ICE could arrive on anyone’s door
- Thou shall establish written standard operating procedures (SOP)s
The Immigration Reform & Control Act of 1986

- Established an employment eligibility verification requirement utilizing the Form I-9 to collect data on all new hires.

- Established an anti-discrimination provision designed to keep employers from discriminating against people because of a foreign accent, national origin, or the fact they don’t look “American”, employers may also not commit "document abuse" by requiring more or different documents in a way that discriminates.
Who Must Complete an I-9?

- All employees hired after November 6, 1986
- Re-hired employees, if the original I-9 is beyond the retention date or otherwise unavailable

Simple, yet the devil IS in the details

- The I-9 process is designed to assure that we do not knowingly hire workers who are ineligible to work in the United States
- Clearly document that Fresh Direct does everything required in a responsible and conscientious manner to verify:
  - That **EVERY** employee is who he/she says he/she is AND
  - That **EVERY** employee is eligible to work in the United States
By When Must the I-9 Be Completed?

- Section 1 is to be completed by the employee at the time employment begins (Day 1).

- Section 2 must be completed by the employer by the 3rd business day after I-9 (Thursday Rule).

- Section 3 must be completed before a person’s EAD expires or at the time an update becomes necessary. This is governed by the expiration date entered when the employee marks attestation box 3.
Basic Rules

- Employee should *always* be given the choice of what documentation to present

- You cannot ask to see specific immigration documentation

- Do not over document
  - One List A document
  - Or one from List B and C

- Must be completed *after* employee is hired, no prescreening
Section 2-Who does what?

- You take the documents from the Employee
- You complete the form in front of them
- You copy the documents (back and front) but work off the originals
- You make sure that you have the correct ORIGINAL documents
- You ensure that you establish the identity of the employee
- Verify employment eligibility by reviewing the authenticity of the documents
And the other Documents?

LIST OF ACCEPTABLE DOCUMENTS FOR FORM I-9

All documents must be original unless otherwise noted.

### LIST A
Documents that Establish Both Identity and Employment Authorization

<table>
<thead>
<tr>
<th>Document</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S. Passport or U.S. Postal Card</td>
<td>Driver's license or I.D. card issued by a State or to the United States, which contains a photograph or information such as name, date of birth, gender, height, eye color and signature, or a U.S. passport.</td>
</tr>
<tr>
<td>Permanent Resident Card or Alien Registration Receipt Card (Form I-551)</td>
<td>Certificate of Naturalization issued by the U.S. Department of Homeland Security.</td>
</tr>
<tr>
<td>The alien portion of Form I-20 or I-194A contains a Temporary I-539 stamp and photograph</td>
<td>Certificate of Non-Immigrant Visa issued by the U.S. Department of Homeland Security.</td>
</tr>
<tr>
<td>B-Verify, as a POA with 2-year or 5-year extension date of the stamp, or no expiration date, lawful presence in the United States.</td>
<td>Certificate of Non-Immigrant Visa issued by the U.S. Department of Homeland Security.</td>
</tr>
<tr>
<td>Expired EAAD with original date of issuance and original expiration date</td>
<td>Certificate of Non-Immigrant Visa issued by the U.S. Department of Homeland Security.</td>
</tr>
<tr>
<td>Expired EAAD with original date of issuance and original expiration date, or a U.S. military card or draft record</td>
<td>Certificate of Non-Immigrant Visa issued by the U.S. Department of Homeland Security.</td>
</tr>
<tr>
<td>Expired EAAD with original date of issuance and original expiration date</td>
<td>Certificate of Non-Immigrant Visa issued by the U.S. Department of Homeland Security.</td>
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### LIST B
Documents that Establish Identity

<table>
<thead>
<tr>
<th>Document</th>
<th>Description</th>
</tr>
</thead>
</table>

### LIST C
Documents that Establish Employment Authorization

<table>
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<tr>
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<th>Description</th>
</tr>
</thead>
</table>

Please see 8 CFR §274A for additional details regarding what documents must be presented after acceptance.
Reviewing the Documents

- If documents appear to be genuine, you must accept them, unless you have knowledge to the contrary.
- However, if you have knowledge that they are not legitimate, you should not accept them.
- Does the card look tampered with?
- Is something spelled wrong on the document, like United States?
- YOU ARE NOT A DOCUMENT POLICEMAN but must employ the reasonable person standard.
Permanent Resident Card

- Alien Registration Number
- Expiration
- Coding that matches the number
- Expiration of card, not Status
- Document Number vs. A Number
Older Resident Alien (Permanent Resident) Cards

- Last issued in August 1989 – look at the person’s age
- Only white cards (no expiration date) are valid, not pink cards (expired)
- Wavy lines through the photo
- Seal is superimposed over top of photo
Permanent Resident Cards

1997 Revision

- Laser-engraved photograph (should not be raised)
- Hologram
- Optical memory strip on back of card containing individual’s photograph and card information

2004 Revision

- INS becomes DHS
- Photographs change from ¾ view to full-facial view on September 1, 2004
Employment Authorization Document (EAD)

- Previous versions of card will turn red when light is shined through them from below.
- Seal with off-center circle comprised of agency text.
- Hologram.
- Fingerprinting and signature may be waived depending on source of work authorization.

![Previous Version](image)
![Current Version](image)
The Receipt Rule

Receipt Rule

- You may NOT accept a “Receipt Notice” from USCIS confirming the filing of a Employment authorization document or the extension of same

- DHS regulations only permit an employer to accept an application receipt for:
  - A replacement Alien Registration Receipt Card
  - A replacement Social Security Account Card

- If you receive such a receipt, record the identification number and make a notation on the top of the I-9 indicating the need for a future update
Reverification

Must be done by the expiration date of employment authorization
Section 3 of the I-9

- Only Use Current version of the Form I-9

We need to be monitoring for Section 3 updates when an employee checks the attestation box in Section 1 that says:

“An Alien authorized to work until______”

Section 3 will need to be completed on or before the date listed above

- Your company needs to obtain proof of the employee’s continuing ability to work in the U.S.
- Only verify work eligibility information

- Section 1 controls the reverification date
Section 3

- Employee needs only show documentation establishing continued ability to work – we are not looking at the identity as this is someone we already “know”

- Begin sending reminders at 120 days
  - Continue to send reminders to the employee at 30 day intervals until new documentation is presented
  - Should the expiration date arrive and no new documents are presented, the employee must be terminated and removed from payroll immediately

- Identification cards do not need to be reverified when they expire

- Permanent Resident Cards should not be reverified when they expire
Retention of I-9s

Discard them as soon as legally permissible
Retention

- I-9 must be kept for:
  - Three years from the date of hire
  - One year after the termination of the employee’s employment

WHICHEVER IS LATER!

Example:
DOH: 01/01/2009
TERM DATE: 03/01/09
DISCARD DATE: 03/01/12

DOH: 01/01/2008
TERM DATE: 07/01/09
DISCARD DATE: 07/01/12
Penalties for noncompliance

The money adds up
Constructive vs. Actual Knowledge

It is unlawful to knowingly hire or continue to employ an unauthorized alien.

Constructive knowledge includes having information that would lead a person to reasonably conclude that person is not authorized to work in the United States.

This may include, but is not limited to, situations where an employer:

✓ **Fails to complete or improperly completes** the Form I-9

✓ Employer Fails to sign the I-9 form

✓ Employer does not assure that the employee properly completed Section 1 of the form, such as by failing to enter an expiration date for employment authorization when the employee indicates that he is an alien with employment authorization (attestation box 3)
## Civil Penalties:

### Hiring or Continuing to Employ an Unauthorized Worker

<table>
<thead>
<tr>
<th>Offense</th>
<th>Penalty Per Alien</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st</td>
<td>$375-$3200</td>
</tr>
<tr>
<td>2nd</td>
<td>$3200-$6500</td>
</tr>
<tr>
<td>3rd</td>
<td>$6500-$16000</td>
</tr>
</tbody>
</table>
## Civil Penalties:

**Paperwork or Technical Violations***

<table>
<thead>
<tr>
<th>Offense</th>
<th>Penalty Per Alien</th>
</tr>
</thead>
<tbody>
<tr>
<td>$110</td>
<td>$1100</td>
</tr>
</tbody>
</table>

*On or after 9/29/1999*
E-Verify

The Devil’s in the Details
E-Verify Basics

- The best thing that is currently available
- Statistics still have substantial non-confirm rate for initial review
- Government data bases are not updated quickly
- Federal Contractors have been mandated to use E-Verify as the government claims it will lead by example and contracts awarded on or after September 8, 2009 are mandated to use the system and flow down the requirement
- State Laws
PROS & CONS OF E-VERIFY

First the Pros:

- Relatively easy system to use for new hires
- Free system to ensure businesses are not hiring undocumented workers
- Provides affirmative defense that the employer did not "knowingly" hire an undocumented worker
- Good PR - Clear message to the public: Company is socially responsible
- Photo Screening Tool- Assist in detecting document fraud
- Will improve as other biometrics are added
PROS & CONS OF E-VERIFY

And the Cons:

- Not a "safe harbor" from worksite enforcement

- Agree to permit DHS and SSA to visit work sites to review E-Verify records and other employment records related to E-Verify

- Opportunity & Resource Costs
  - TIME: entering data, dealing with TNCs, finding replacement workers, E-Verify training
  - Cost estimates: $9k per year for any company over 500 employees, or less than 1 percent of expected revenue for small entities—much higher

- Employers are bound by the terms of the MOU

- Discrimination suits based on improper application of E-Verify and MOU standards
Responsibilities

- Unless you are a Federal Contractor, E-Verify must ONLY be used to verify NEW hires, and must be initiated after the employee accepts the position (hire date) and within 3 days of the employee’s actual start date.

- E-Verify procedures must be applied to ALL new hires, regardless of nationality or citizenship status.

- Must have a training and audit protocol in place to review E-Verify and the I-9 process together.

- Must display the E-Verify Poster in an area visible to prospective and existing employees to show that it is an E-Verify Participant (English and Spanish Versions).

- Must display the Anti-Discrimination Poster issued by the Office of Special Counsel for Immigration – Related Unfair Employment Practices, Department of Justice (DOJ) in an area visible to prospective employees (English and Spanish Versions).
Question & Answer Session

- Have a question for the speaker? Press “Star” and then “1” on your phone to enter the queue.

- If, during the Q&A, your question has been answered, or you wish to remove yourself from the queue, press “Star” and then “1.”

- The moderator will open your phone line when it is your turn to speak.


- We’d love your feedback regarding the conference and other topics you’d like to hear about! Contact Heather Rice at: hrice@BusinessManagementDaily.com.

Thank you for participating!
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