



## Immigration Compliance Webinar

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*The NFIB Small Business Legal Center is the voice for small business in the courts and the legal resource for small business owners nationwide.*

*While the information provided in this webinar is intended to be accurate, it should not be considered legal advice. The Legal Center cannot be held responsible for any errors or omissions.*



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## Overview

- Immigration Enforcement
  - Employers Targeted
  - Higher Fines and Criminal Penalties
- Compliance Tips
  - I-9 Compliance – Procedures and Common Issues
  - E-Verify
  - Social Security No-Match Letters



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## Immigration Enforcement

- Stricter federal (and state) enforcement
- Worksite enforcement activities
- Increased civil fines and criminal penalties
- I-9 inspections and audits



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## Worksite Enforcement

- **Bush Administration Enforcement**
  - Typically targeted businesses with a significant number of Social Security Administration “no-match” letters
  - Targeted raids and arrests of illegal aliens followed by charging employers and employer representatives because they employed unauthorized workers
- **Obama Administration Enforcement Tactics**
  - Shifts focus to criminal prosecution of businesses that knowingly hire illegal workers
  - Immigration Customs Enforcement (ICE) will use all available civil and administrative tools to enforce laws



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## Fines & Criminal Penalties

### Civil Fines For Paperwork Violations Are Back

- Haven't been enforced like this since the late 1990s
- There will be fewer chances to negotiate lower settlements
- ICE will assess fines on the higher end of the fine range (*i.e.*, closer to \$1,000, instead of the minimum of \$110 per violation)



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## Fines & Criminal Penalties

- Increased criminal prosecution against the company and individual managers/executives for:
  - Knowingly hiring illegal aliens (up to five years in prison)
  - Harboring illegal aliens (up to 10 years in prison)
  - Money laundering (up to 20 years in prison)



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## I-9 Investigations

### New I-9 Audit Initiative

- Increased chance employer will face I-9 audit
- On July 1, 2009, 652 employers received a "Notice of Inspection" compared with 503 notices in all of 2008
- "Notice of Inspection" means ICE is investigating your business
- Paperwork civil fines or criminal charges will likely result



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## Quiz Time

The Obama administration is emphasizing:

- A) Larger fines and more criminal prosecutions
- B) More raids to pick up illegal workers
- C) More audits of paperwork and I-9 forms
- D) All of the Above
- E) Only A & C above



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The Answer is:

E: Only A and C

Expect more paperwork audits leading to larger fines and more criminal prosecutions.



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## I-9 Compliance

### IT'S A BALANCING ACT!

- Employer Obligations under the Immigration Reform and Control Act of 1986 (ICRA)
  - **MUST** complete Form I-9 for every new hire after November 6, 1986
  - May not knowingly hire or continue to employ any person who is not authorized to work in the U.S.
- Citizenship/national origin discrimination concerns
  - Protected classes include citizens, permanent residents, asylees and refugees
  - Document abuse
  - Employers may not ask for more or different documents
  - Employers may not specify which documents are acceptable
  - Employers may not refuse to accept valid documents



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## I-9: Employer Penalties

- Employer cannot knowingly employ an unauthorized alien
- Penalties for employing unauthorized aliens
  - 1st offense: \$375 to \$3,200 for each alien
  - 2nd offense: \$3,200 to \$6,500 for each alien
  - 3+ offenses: \$4,300 to \$16,000 for each alien
- Penalties for I-9 paperwork violations:
  - Failure to complete and maintain I-9s correctly: \$110 to \$1,100 for each I-9



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## Unlawful Discrimination

- Four types of unlawful conduct
  - Citizenship or immigration status
    - Permanent residents, asylees, refugees
  - National origin
    - Place of birth, country of origin, ancestry, native language, accent, perceived as looking or sounding “foreign”
  - Document abuse -- Employers may not
    - Ask for more documents than required by I-9
    - Ask for a particular document
    - Reject documents that reasonably appear genuine
    - Require certain groups of employees to produce particular documents
  - Retaliation



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## The “New” I-9

- August 7, 2009, Newest I-9 released by USCIS ([www.uscis.gov/i-9](http://www.uscis.gov/i-9))
  - Use the new I-9 version (dated 8/7/09 in the lower right corner) going forward
- Only minor changes in the form itself
- Please remember due to several changes over the past two years, the following documents are no longer valid
  - Certificate of U.S. Citizenship (Form N-560 or Form N-561)
  - Certificate of Naturalization (Form N-550 or N-570)
  - Reentry permit (Form I-327)
  - Refugee travel document (Form I-571)
- You do not need to re-do old I-9s. Use the new form only for new hires or for reverifications where the prior reverification section has already been used
- See the USCIS Employer Handbook and Employer Bulletin updates for samples/questions



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## I-9 Document Request & Timing

- DO NOT prescreen before making offer
  - ❖ DO NOT ask applicants about their nationality or citizenship
  - ❖ DO ask applicants “Are you authorized to work in the U.S. for ANY employer”
- DO inform hires of I-9 requirements after an employment offer is made
  - ❖ Employee must complete employee section of I-9 on first day of hire
  - ❖ Employee must present **original** identity and employment eligibility documents no later than third business day of hire
  - ❖ Employer must leave choice of documents to employee; employer cannot specify which documents



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## New Hire Processing

- **Who?** All new employees and re-hires
- **When?**
  - First day of work: New employee to complete Section 1
  - Within three days of hire: Presentation of supporting documents
- **How?**
  - Employer provides I-9 plus instructions (double-sided, if possible)
  - If language barrier, employer rep must translate every item from each list to the employee
  - Translator should complete the "Preparer/Translator Certification" portion of the I-9
- **Why?**
  - \$100 to \$1,100 for paperwork violations (per employee) in fines
  - \$375 to \$3,200 for knowingly hiring or continuing to employ an unauthorized alien
- **Employer representative responsible for ensuring:**
  - Employee completes Section 1 in full
  - Completing Section 2




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## Section 1 of I-9

**Section 1. Employee Information and Verification** (To be completed and signed by employee on the first day of work.)

First Name: Last First Middle Initial (if any) (Printed Name)

Address: Street Name and Number Apt. # (if applicable) City or Town State and Zip Code

DOB: / / State: Day, Month, Year Social Security #: - - -

I am aware that federal law provides for imprisonment and/or fines for false statements on one of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am the law of the following:

A citizen of the United States

A permanent resident of the United States (see instructions)

A lawful permanent resident (alien ID)

An alien authorized to work (Public Law 106-386) (with expiration date, if applicable) (see instructions)

Employee's Signature: Date: mm/dd/yyyy

**Preparer or Translator Certification** (To be completed and signed by someone who is prepared to provide advice about the requirements of federal immigration laws to persons who do not understand the requirements of this form and that to the best of your knowledge the information is true and correct.)

Preparer's/Translator's Signature: First Name: Last Name

Address (Street Name and Number, City, State, Zip Code) Title: (print/typed name)




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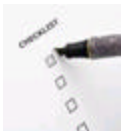
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## Common Employee Errors

- Employee fails to complete Section 1
- Employee fails to check one of the four boxes
- Employee checks the wrong box
- Employee fails to list their Alien Number, Admission Number or expiration date




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## List A Documents

- Establish both identity and employment eligibility
- Accept only one of the following:
  - U.S. passport
  - Permanent Resident Card or Alien Registration Receipt Card (Form I-551)
  - Current foreign passport with temporary I-551 stamp
  - Current Employment Authorization Document ("EAD") with photo
  - Current foreign passport with current form I-94 (Arrival-Departure Record) with endorsement of nonimmigrant status authorizing employment
  - Current passport from Micronesia or the Marshall Islands with current form I-94



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## List B Documents

- Establish identity
- Accept one from this list, plus one from list C
  - Driver's license or ID card, with photo, issued by state or outlying U.S. possession
  - ID card issued by federal, state, or local government with photo or identifying information
  - School photo ID card
  - Voter registration card
  - U.S. military card or draft record
  - Military dependent ID card
  - U.S. Coast Guard Merchant Mariner Card
  - Native American tribal document
  - Driver's license issued by Canadian government authority



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## List C Documents

- Establish employment eligibility
- Accept one from this list, plus one from list B
  - U.S. Social Security card issued by SSA (must be valid for employment)
  - Certification of Birth Abroad issued by U.S. Dept of State (Form FS-545 or Form DS-1350)
  - Original or CERTIFIED copy of a birth certificate issued by a state, county, municipal authority or outlying U.S. possession, bearing official seal
  - Native American tribal document
  - U.S. Citizen ID Card (Form I-197)
  - ID Card for use of Resident Citizen in the U.S. (Form I-179)
  - Unexpired employment authorization document issued by Department of Homeland Security (USCIS)



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## Documentation Review Standards

- Documents must be accepted if they reasonably appear on their face to be genuine
- Do not request or accept any more documentation than the minimum required
- Do not accept a document if it does not reasonably appear on its face to be genuine and relate to the person presenting it
- Do not be overly aggressive in document review



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## Common Issues

- **Receipt Rule** – Receipts can only be accepted where the original was lost, stolen or destroyed
- Be careful of laminated **Social Security** cards – Can only be accepted in limited circumstances



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## “Green” Cards

- *An expired card cannot be used to satisfy Form I-9 requirements for new employment*
- “Green cards” must appear genuine and establish identity of the cardholder
- Though they contain an expiration date, *Green Cards never need to be reverified*
- The terms *Resident Alien Card, Permanent Resident Card, Alien Registration Receipt Card, and Form I-551* = permanent residence in the U.S.
  - Once granted - no expiration date
  - Document *proving status* may expire and new cards will be required
- It is possible that permanent residents may need to be reverified, for example when they present a reentry permit or a passport with an I-551 stamp as a List A document



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## Keeping Copies of Documents

- Not required by federal law, but permitted
- Policy must be applied consistently
- Attaching copies to I-9 doesn't relieve employer of responsibility to complete I-9
- Useful for internal audits or as evidence in charges of fraud or discrimination
- Caution: May establish liability



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## Post-hire Issues

- Reverify expiring documents – establish a “tickler” system
- Keep I-9s separate from personnel files
  - Secure location
  - Easy to access
- Retain I-9 through period of employment, until whichever is later
  - Three years after hire date
  - One year after termination
- DHS/DOL Audit – employer has 3 days to produce records for inspection by INS



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Quiz Time! Spot the issues in the following scenarios:



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## Scenario 1

- Expired state ID card
- Social Security card, marked "Not valid for employment"
- Employee hired on Friday, September 4, 2009
- Documents presented on Thursday, September 10, 2009

**Sample State Identification Card**  
An identification card issued by any state (including the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, and the Northern Mariana Islands) or by a local government is acceptable if it contains a photograph or other identifying information such as name, date of birth, sex, height, color of eyes, and address.



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## Scenario 2

- Driver's license
- Birth certificate
- Employee has a marked "foreign" accent; she says
  - She was born in the U.S.
  - She moved overseas as an infant
  - She only just returned to the U.S.

**Sample Birth Certificates**



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## Updating I-9s

- Maintain "tickler" system for expiration dates for employment authorization documents
- Use new I-9 for reverification
- Updates of employment eligibility
  - ☞ Record new document information, sign, and date



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## Section 3 of I-9

Section 3. Updating and Verifying Information (To be completed and signed by employee)		
I, the holder of this card:		or the person identified as preparer
1. Employer's percentage of work activities for which public documentation is to be provided for the employee's current employment activities:		
Education (%)	Occupation (%)	Executive/Professional (%)
I affirm, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employer provided documentation, the documentation is true and correct as to the facts stated.		
Signature of Employee or Authorized Representative		Date (month/year)



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## Updating I-9s

- Update Sec. 3 of I-9
  - ☞ Complete Sec. 3 of new I-9 version
  - ☞ Attach to old I-9
  - ☞ Only if I-9 version is dated June 5, 2007 or later
- Rehires
  - ☞ Update employee's existing I-9 if within three years of hire date when I-9 was completed and employee still eligible to work on same basis
  - ☞ Record date of rehire, sign, and date



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## I-9 Self-Audits

- Self-audit I-9s annually
- Compare payroll records to I-9 records
- Correct any mistakes
- Request documentation, if under-documented
- Remove I-9s beyond retention period
- Train relevant personnel on I-9 process
- Create "tickler" system for re-verification



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## I-9 Self-Audits, *continued*

- Correcting errors
  - ✓ Make changes in a different color ink
  - ✓ Sign or initial and date all changes
  - ✓ Cross out wrong information; do not use correction fluid or tape
  - ✓ Note if new or different documentation is used
  - ✓ Never back-date; always use current date
  - ✓ If I-9 is over-documented, cross out extra documents, sign, date



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## E-Verify Program: Employer Obligations

- Internet-based system that allows for electronic verification of employment eligibility
- Cannot use for existing employees or selectively
- Employers using it subject to SSA/DHS inspections
- Photograph verification required in certain circumstances
- Employers must comply with E-Verify MOU
- Employers must become familiar and comply with E-Verify Manual
- Other employer obligations



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## E-Verify for Federal Contractors

- Applies to certain federal contracts awarded/solicitations issued on or after September 8, 2009
- Required for subcontracts over \$3,000 for services or construction
- What contracts are covered?
  - Period of performance > 120 days
  - Contract value > simplified acquisition threshold of \$100,000
  - Work must be performed in the U.S.
  - Product is not "commercially off-the-shelf"



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## E-Verify: Exempt Federal Contracts

- E-Verify for federal contractors exemptions
  - Prime contracts < \$100,000
  - Contracts for commercially available off-the-shelf items
  - Contracts <120 days
  - Contracts where all work performed outside U.S.
  - Partial exemptions for
    - Institutions of Higher Education
    - State and Local Governments
    - Federally Recognized Indian Tribes
    - School Lunch Program
    - Grants & Cooperative Agreements



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## E-Verify for Federal Contractors

If subject, must use E-Verify for

- All new hires
- Existing employees assigned to the contract
- May choose to verify entire workforce at your option
  - This option may require completing new I-9s for some or all employees



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## Immigration: Social Security No-Match

- “No-Match” Letters – Letter sent by the Social Security Administration (SSA) when the name and SSN on a W-2 cannot be matched to an SSA record
- Reasons for “no-match” include: typos, name changes, inaccurate or incomplete employer records, misuse of an SSN
- Employers should NOT ignore these letters if they get them



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## State Laws

- Several states have enacted laws to regulate unauthorized employment, including making the E-Verify system mandatory
  - **Arizona** – all employers must use E-Verify; lawsuit recently decided upholding E-Verify requirement on AZ employers
  - **Arkansas** – state agencies and state contractors must use E-Verify
  - **Colorado** – all employers must complete additional I-9 attestation which is suggestive that E-Verify is required; state contractors are explicitly required to use E-Verify or the Colorado Department of Labor Program
  - **Georgia** – state employers and state contractors must use E-Verify
  - **Idaho** – state agencies required to use E-Verify
  - **Illinois** – law banning E-Verify usage overturned by federal district court
  - **Mississippi** – state agencies and state contractors must use E-Verify; phase-in for E-Verify usage started July 1, 2009, for private employers >100 employees
  - **Minnesota** – state contractors required to use E-Verify by Governor's order
  - **Missouri** – certain government contractors required to use E-Verify as of January 1, 2009
  - **Nebraska** – public employers and public contractors required to use E-Verify
  - **North Carolina** – state agencies required to use E-Verify
  - **Oklahoma** – E-Verify legislation on hold due to lawsuit
  - **Rhode Island** – state contractors required to use E-Verify by Governor's order
  - **South Carolina** – E-Verify usage or driver's license verification required as of July 1, 2009, for private employers >100 employees
  - **Utah** – public employers and public contractors must use E-Verify



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## For More Information

- USCIS website: [www.uscis.gov](http://www.uscis.gov)
- *Handbook for Employers*:  
<http://www.uscis.gov/files/nativedocuments/m-274.pdf>
- I-9 form and instructions:  
<http://www.uscis.gov/files/form/I-9.pdf>
- ICE website:  
<http://www.ice.gov/pi/news/factsheets/worksites.htm>
- Social Security Administration:  
<http://www.ssa.gov/employer/noMatchNotices.htm>



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## Help is Available!



- **NFIB Employment Law Hotline** provides NFIB members **FREE** legal advice on employment law
- **(866) 678-NFIB**



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# Thank you!

Contact us at: [legalcenter@nfib.org](mailto:legalcenter@nfib.org)



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