



# Business Immigration Reporter

## THE IMPORTANCE OF I-9 EMPLOYMENT ELIGIBILITY VERIFICATION

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### THE IMPORTANCE OF I-9 EMPLOYMENT ELIGIBILITY VERIFICATION

The hiring and employment of unauthorized workers in the United States is illegal. U.S. law requires companies to employ only individuals who may legally work in the United States, such as U.S. citizens, or foreign citizens who have the necessary employment authorization. The Department of Homeland Security (DHS) has charged Immigration & Customs Enforcement (ICE) with the authority to investigate and prosecute the hiring, harboring, and employing of unauthorized workers. Non-compliance with these laws results in employer sanctions, including severe civil penalties and even criminal prosecution.

For example; depending on the date and type of offense, civil penalties for knowingly hiring or continuing to employ unauthorized workers range from \$275.00 to \$16,000.00 per worker, per violation. Criminal liability penalties that result from the prosecution of certain "knowingly hired violations," fraud, conspiracy, harboring/transporting illegal aliens, money laundering, RICO claims, etc., range from and have resulted in, hefty fines and prison sentences for both company principals and HR personnel.

The prospect of employment remains the strongest magnet that attracts foreign individuals to enter the U.S. illegally and to accept unauthorized employment. ICE's purpose of employer sanctions is to weaken this magnet by requiring employers to hire only individuals who may legally work in the U.S., without discriminating against individuals based on national origin or citizenship.

In an effort to remain in compliance with the worksite enforcement laws; specifically, Employment Eligibility Verification, every employer must verify the identity and employment authorization of each person they hire regardless of nationality. Employers must complete a Form I-9 for each employee they hire within three days of hire, and they must properly store



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and maintain Form I-9 for each employee for three years, or one year after termination, whichever is longer.

Form I-9 is available [HERE](#). Although on its face this two-page form appears simple, its simplicity is deceptive because it is fraught with pitfalls. Proper completion requires knowledge of complex rules. It is no coincidence that the form comes with a six-page instruction addendum and that the DHS published a 66-page manual with instructions how to complete a two-page form. The Handbook for Employers, Instructions for Completing Form I-9 (Employment Eligibility Verification Form) is available [HERE](#)

To maintain compliance, many employers have signed on to E-Verify, which is an Internet-based system that allows employers to determine the eligibility of their employees to work in the United States. While participation in E-Verify will help an employer to assure that its workforce is authorized to work in the United States, E-Verify participation will not shield or exempt the employer from the responsibility to complete, retain, and make available for inspection Forms I-9 that relate to its employees, or from other requirements of applicable laws and regulations, including the obligations to comply with antidiscrimination requirements that relate to Form I-9 procedures.

While the mandatory and timely completion of Form I-9 for each worker, and possible participation in E-Verify, is a good start for an employer to achieve compliance, it is of utmost importance to properly train HR staff, to develop an internal compliance program, and to frequently audit for compliance. Typically, companies want to comply because poorly administered I-9 procedures can lead to costly business interruptions and result in civil penalties or criminal liability. It is only prudent to seek outside professional guidance for internal compliance audits, which should consist of (1) I-9 Audit, (2) Compliance Program Audit, (3) Antidiscrimination Audit and (4) Liability Audit. A proactive approach to these complex requirements will strengthen a company whereas complacency will bring with it the consequences of a reactive response to a worksite enforcement investigation.

## **AUGUST 2015 VISA BULLETIN**

Good news for applicants in the employment-based third preference category (Eb-3) from all chargeability areas except China, India, Mexico, and the Philippines. The category is all but current for the month of August 2015 with a priority date cut-off of 15 July 2015. This means applicants with priority dates earlier than 15 July 2015 may file for their adjustment of status or consular processing beginning August 1, 2015.

The Philippines Eb-3 is once again available, but the China Eb-3 (other workers) retrogressed due to high demand.

The employment-based fifth category (Eb-5) for China remains retrogressed at 01 September 2013, especially adversely impacting Eb-5 Regional Centers who rely on Chinese investors who comprise 85% of all Regional Center Eb-5 applicants.

Finally, as we near the end of fiscal year 2015 (September 30), and visa number demand for the year reaches its limits, expect little or no advancements for the remainder of the fiscal year.

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505-266-8739

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## **STATUS UPDATE ON IMMIGRATION EXECUTIVE ACTION**

Millions of undocumented immigrants are closely following the developments concerning the President's executive actions on immigration, which we announced in November 2014, and which is now on hold under an injunction while the legality of the President's authority is being litigated.

In a recent court hearing in the 5th Circuit in New Orleans the Administration's lawyers received a chilling reception when Judge Smith assessed the President's prosecutorial discretion action as "It puts them on step ahead in terms of being eligible for lots of potential benefits, whether those are Social Security and Medicare, work authorization, earned income tax credits, and on the state level, drivers' licenses...just seems to me that it really is a lot more than prosecutorial discretion."

If you are an employer, you will be impacted by the outcome and potential implementation of those presidential orders. Ask yourself – is my workforce legal now? What do I do if I think my workforce is legal and the President's executive orders are implemented and Mr. X, who's worked for me for years then tells me he's really Mr. Y and he wasn't work authorized but he is now? How will I bring my I-9 household in order and avoid liability?

## **CHANGES IN E-1 & E-2 PROCESSING IN MEXICO**

Beginning July 7, 2015, the U.S. Embassy in Mexico City will no longer process E-1 treaty trader and E-2 treaty investor applications. All E-2 non-immigrant applications will be processed at the U.S. Consulate in Ciudad Juarez and all E-1 non-immigrant applications will be processed at the U.S. Consulates in Monterrey and Tijuana.

Any E-1 or E-2 applications received in application Support Centers after July 7, will no longer be processed in Mexico City.

## **FIRM NEWS**

We enjoyed exhibiting and offering our professional services at NAFSA (National Association of Foreign Student Affairs): Association of International Educators and SHRM (Society for Human Resource Management) in Boston and Las Vegas respectively.

A big THANK YOU to all who visited our booth; we enjoyed meeting you! Congratulations to Meghan Houghton of Dartmouth, MA our "purse winner" in Boston and Mynique McDonnell of Louisville, KY our "purse winner" in Las Vegas.

Stay tuned to find out where to find us at conferences and events around the country.



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