

# Immigration News

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## I-9/E-Verify Services:

- I-9/E-Verify consultations to determine how we can help you improve your compliance procedures
- I-9 and E-Verify Training
- I-9 Audits
- Assisting your company with E-Verify Registration
- Drafting I-9 and E-Verify Policies and Procedures or reviewing your company's written policies

## OCAHO Reduces I-9 Fines for Two Small Restaurants

The Office of the Chief Administrative Hearing Officer ("OCAHO") found that Immigration and Customs Enforcement ("ICE") improperly sought fines close to the maximum allowed for I-9 violations for two small family owned restaurants. The decision, which focused on the two businesses' size and financial health, provides great case law for businesses negotiating I-9 fines with ICE.

In making its ruling, OCAHO found, "A company's ability to pay the proposed fine may be weighed in assessing the amount of the penalty." The OCAHO held "The goal in calculating civil penalties is to set a sufficiently meaningful fine in order to enhance the probability of future compliance," and went on to say, "but the penalties are not intended to cause employees to lose their jobs or to force employers out of business."

The OCAHO stated that the employer's financial health, the economy, the employer's ability to pay and the potential effect of the fine on the company are relevant considerations. Citing previous holdings by the OCAHO, Administrative Law Judge Ellen K. Thomas stated that penalties that are close to the maximum, "should be reserved for the most egregious violations."

For these particular cases, the OCAHO found that the bad economy in the area had caused them to lose money over the past three years. The OCAHO did find the I-9 violations to be serious in light of the fact that they did



OCAHO reduced the I-9 fines for two small businesses.

not have I-9s for many of their employees. However, after weighing all of the factors, the OCAHO reduced the fines substantially in light of the businesses' financial situation, and after finding that the violations, while serious, were not egregious enough to warrant the maximum fines allowed under the statute.

## BALCA Upholds PERM Denial—Failure to Submit Documents

An employer's failure to submit the required documents in response to an audit notice justifies denial of a permanent labor certification, even if that failure was inadvertent, the Board of Alien Labor Certification Appeals ("BALCA") held.

The employer at issue in the

case failed to provide the prevailing wage determination from the State Workforce Agency as well as a copy of the prevailing wage request that they had made in their response to an audit notification from the Department of Labor ("DOL"). The Certifying

Officer for the DOL denied the PERM application for failure to comply with PERM regulations.

BALCA affirmed the finding that the documentation was "required" under the regulations and therefore must be produced.

## New MOUs for E-Verify as of December, 2013

Effective December 8, 2013, the U.S. Citizenship and Immigration Services ("USCIS") has updated the Memoranda of Understanding ("MOU") for the E-Verify electronic employment eligibility verification system.

The MOUs have been updated and given new titles. The process for enrolling in E-Verify has not changed. New Users will simply review and execute a new MOU when they enroll in E-Verify. Existing users won't need to execute a new MOU, USCIS has said, but will be bound by E-Verify changes, including the new or updated MOUs effective January 8, 2014.

According to USCIS, the changes to the MOUs contain "improved language and organization" so that they are "clearer and easier to understand", including:

- Titles that clearly identify the access method to which the MOU applies;
- More plain language, active voice and



E-Verify MOUs updated on 12-8-13.

reorganized content to improve flow and readability;

- Changing bullet points to letters and numbers to make searching and citation easier; and
- Breaking up lengthy sections.

In addition, the USCIS fact sheet states that the new MOUs contain enhanced privacy protections and instructions for reporting privacy and security breaches.

## Restaurant Settles I-9 Document Discrimination Claim

The Department of Justice ("DOJ") has reached a settlement with a San Francisco restaurant over claims that the restaurant improperly rejected a non-U.S. citizen's documents when reverifying her employment eligibility, the DOJ said.

According to the DOJ, the restaurant rejected valid work authorization documents provided by an immigrant employee, causing her to believe she had been fired. The DOJ's investigation also revealed that the employer believed that it was permissible to require noncitizen employees to produce specific documentation when verifying their employment eligibility, but

that U.S. citizens would not have to produce such documentation.

The DOJ confirmed that the anti-discrimination provision of the Immigration and Nationality Act ("INA") prohibits employers from requiring different documents from citizens and noncitizens to prove work eligibility.

The restaurant was required to provide back pay and rehire the affected employee. They also had to pay civil penalties, undergo training in the INA anti-discrimination provisions and submit to I-9 monitoring for three years.

"The anti-discrimination provisions of the INA prohibits employers from requiring different documents from citizens and noncitizens to prove work eligibility."

## HR Professionals— SHRM Conference Schedule

Our firm will have an exhibit booth at many of the upcoming SHRM Conferences. Please stop by and visit for a few minutes and pick up some materials detailing our services. We would love to talk with you about how we can help your business with its I-9 and E-Verify issues or



Check out the firm's Exhibit Booth at the upcoming SHRM Conferences!

assist with obtaining visas for foreign workers.

We will be at these conferences:

- Louisiana State SHRM Conference in Baton Rouge on April 6, 7 and 8.
- Arkansas State SHRM Conference in Fort Smith on April 9

and 10.

- ICHRMA Conference in Lake Charles, Louisiana on May 2.
- Mississippi State SHRM Conference in Biloxi on May 7 and 8.

If you will be attending any of these conferences, please stop by our booth, say hello and take a chance on our door prize.

## OIG Report: ICE Needs To Do Better Job of Monitoring Worksite Enforcement

The Department of Homeland Security's Office of Inspector General ("OIG") released a report on February 25, 2014 which said that Immigration and Customs Enforcement Department of Homeland Security Investigations ("HSI") isn't sufficiently monitoring the agency's worksite enforcement operations. The report states that the result of this is inconsistent enforcement of the Immigration and Nationality

Act's ("INA") Employment Eligibility Verification provisions. The OIG found that although generally HSI is meeting the



OIG finds inconsistent results in I-9 audits across the country.

requirements of the INA with respect to I-9 audits, it said HSI isn't adequately overseeing its field offices to ensure that they are consistent in issuing fines and warnings, or to ensure consistency in fine amounts.

Among the issues cited in the report is

HIS's failure to ensure that its field offices were consistent in determining whether to

issue a fine versus a warning to an employer, with some field offices issuing significantly more warnings than others. ICE did not concur with the findings of the OIG and stated that differences in outcomes among various field offices—such as issuing a warning instead of a fine—relates to differences in local mission priorities, resources and local socioeconomic characteristics, rather than a lack of oversight. OIS responded that allowing field offices to develop and implement their own internal practices could cause differences in outcomes of I-9 audits and ICE should assess the fairness of that to employers across the country.

## Form I-9 Q & A

**Question:** Do I have to fill out a Form I-9 for independent contractors or their employees?

**Answer:** No, you only have to complete a Form I-9 for W-2 employees. For example, if you contract with a construction company to perform renovations on your building you do not have to prepare Form I-9s for that company's employees. The construction company is responsible for preparing Form I-9s for its own employees. Or if you use a labor provider to supply temporary workers to your business, the labor provider is responsible for

preparing Form I-9s for those employees. However, you may not use a contract, subcontract or exchange agreement to obtain labor or services for an employee knowing that the employee is unauthorized to work.

Businesses should make sure that their contracts with independent contractors, including those providing services or labor to your compa-

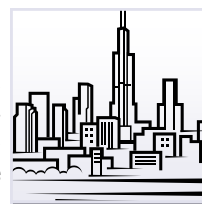
ny, include language which requires that they are compliant with all Employment Eligibility Verification federal and state laws.

"Businesses may not use a contract, subcontract or exchange to obtain labor or services for an employee knowing that the employee is unauthorized to work."

## Prospects for Immigration Reform Discussed at Chicago Forum

The question surrounding legislation to overhaul the nation's immigration system has become one of when, not if, speakers said at an event sponsored by the Chicago Council on Global Affairs and the Illinois Business Immigration Coalition. Rep. Kinzinger (R-III) said once Republican House members get through some critical primary elections, bills on border security and high-skill employment visas should

start to move in the chamber. There is talk about immigration being a dead issue, but the presence of Republican and Democratic legislators on an immigration panel show that it is "alive and well", Rep. Gutierrez (D-III) said. Rep. Kinzinger added that "everybody agrees there's a broken system". So stay tuned!



Immigration Reform was discussed at a forum in Chicago.

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***Specializing in employment  
and family-based Immigration  
and Nationality law.***

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Compliance and Training***

## ***Just A Note...***

Spring is officially here! In New Orleans that means that flowers are blooming, the temperatures are rising and there is a festival being held every weekend somewhere nearby! It is also time to do some spring cleaning.

For businesses, part of your spring cleaning should include reviewing your Form I-9s. Now would be a good time to have an audit done and make certain that you do not have any potential liability if your company is subject to an ICE audit. Also, make sure you have pulled the I-9s of any employee who has been terminated and have appropriately marked the I-9 with the date for destruction. Double check to confirm that any I-9s requiring re-verification are up-to-date. The average cost per Form I-9 for an ICE audit is \$1,300. That adds up quickly and makes the cost of taking proactive steps to audit and correct your I-9s very cost effective.

We are I-9 and E-Verify Specialists. Let us help you with your I-9 spring cleaning!

***Patricia***

## **Proposed FY2015 DHS Budget Includes \$124.8 Million for E-Verify**

The Obama Administration's \$60.9 billion Fiscal Year 2015 budget request for the Department of Homeland Security ("DHS"), released March 4, 2014, includes \$124.8 million for enhancements to the E-Verify electronic employment eligibility verification system. The E-Verify funding request is 9.3 percent higher than what was requested for FY 2014.

According to the White House, the increased funding request is to "support, expand, and enhance" the program. "Proposed funding bolsters the system's fraud prevention and detection capabilities, provides for additional customer service enhancements, and supports E-Verify's continued expansion" the statement said.

The DHS added that the requested funds "would help support E-Verify Self Check, which allows workers to check the status

of their government records before applying for a job. U.S. Citizenship and Immigration Services ("USCIS") which administers E-Verify, announced in late January that more than 500,000 employers have enrolled in the program. About 1,500 new employers enroll in the program each week.

The total \$3.3 billion budget request for USCIS, which is largely funded by fees collected through those applying for immigration benefits rather than through appropriations, asks for authority to use \$3.1 billion to process immigration applications. It also seeks \$184.9 million to help USCIS transition from a paper-based to an electronic filing system.



The proposed FY2015 budget includes funds to enhance the E-Verify system.