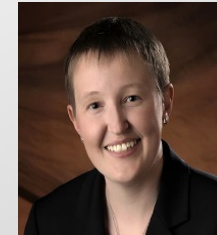


# Handling SSA No Match Letters, I-9s, E-Verify and Discipline and Termination of Employees, and Handbooks



Presented For:  
**Insulation Contractors  
Association of America (ICAA)**



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**CAVANAGH**

# Important Legal Notice

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This presentation is to provide general information and updates regarding some potential legal issues. These materials are not intended to provide legal advice on specific compliance issues. Attendees should consult with legal counsel for legal advice about whether, based on specific facts and circumstances, the company complies with the applicable laws.

# Avoid “Knowingly”

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Fully Complete I-9 Forms

People and Comments -  
No discussions about  
legal status 24/7

**COMPANY**

- Response to government investigations
- ICE investigations
- Crisis Communication Plan
- Response to requests for personnel documents
- Response to inquiries
  - SSA
  - DES (State Unemployment Agencies)
  - Police
  - Citizens
- SSA no-match
- Response to customers or third parties
- New hire packet
- W-9 forms
- Employment policies and handbooks
- Anti-harassment, anti-discrimination policies
- Avoiding national origin discrimination
- Agreements with leased employment agencies
- Contract provisions (delay, immigration compliance)
- Attorney-client privilege

# Procedures & Processes for Govt. Agency Visit

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1. If Approached By Government Officer: If a government officer (ICE, OSHA, Police, Border Patrol, Department of Economic Security, etc.) approaches you and requests information on the Company or a Company employee:

- a. Direct the officer to the supervisor, on-site manager, or company's attorney and allow that person to deal with the officer directly. Politely state:

**I am sure that the Company will cooperate. However, I am not the person to provide you that information. Let me get my supervisor or our lawyer who can work with you.**

# Procedures & Processes for Govt. Agency Visit

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2. If there is no supervisor available or the officer will not wait to allow you to get a supervisor, the supervisor or you could follow the steps outlined below:
  - a. The supervisor should restate:  
**I am sure the Company will cooperate. However, I am not the person to handle your request. Let me get some information and get the person who should handle this for you.**
  - b. Ask the officer his or her name (or look for his name badge on his shirt, if any);

# Procedures & Processes for Govt. Agency Visit

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- c. Ask the officer what agency/department he or she is with (local police, sheriff, DPS, ICE, Border Patrol, Dept. of Economic Security, etc.) or look for any insignia on uniform, etc.
- d. Ask for a business card. If the officer does not have one, write down the information that he or she provides, such as name, agency, badge number, etc.;
- e. If the officer is in “plain clothes” ask if you could see his official identification (to ferret out imposters or bounty hunters, etc.);

# Procedures & Processes for Govt. Agency Visit

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- f. Ask the officer what agency/department he or she is with (local police, sheriff, DPS, Try to determine why the officer is there, what he or she wants, and if he or she is looking for someone in particular. If the officer requests information about a specific individual, tell the officer that you are not authorized to provide that information, but you are happy to contact someone who can handle the request.
- g. If the officer states that he has a subpoena or warrant, ask for a copy so that you may review it and also consider sending it to the company's lawyer to review;
- h. Contact the Company's designated contact person immediately so that they may communicate with the officer directly by cell phone or in person.

# Procedures & Processes for Govt. Agency Visit

3. If Agent Has Search Warrant or Subpoena for Records: If a government officer has a search warrant or subpoena for records, contact your supervisor and the Company's designated contact person immediately. A supervisor or manager should:
  - a. Ask for and KEEP a copy of the search warrant or subpoena;
  - b. Comply with the warrant or subpoena;
  - c. Attempt to maintain a list or log of documents, records or other things taken away by law enforcement;



# Procedures & Processes for Govt. Agency Visit

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- d. If asked by law enforcement if they may take certain documents, records or other things, reply as follows, “only if it is covered by the search warrant.” Refrain from providing consent to the removal of documents, records or things not covered in the search warrant;
- e. Do not argue, resist or get into a confrontation with law enforcement;
- f. Contact the Company’s designated contact person immediately so that they may communicate with the officer directly in person or by phone.

# Procedures & Processes for Govt. Agency Visit

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4. If Agent Requests SSNs, I-9 Forms, or Documents: If law enforcement requests the names and Social Security Numbers of employees, requests copies of Company or employee records or files, or requests to review their I-9 forms, you should:
  - a. Politely state:  
**I am not the individual authorized to handle such a request, but I would be willing to contact my supervisor. Let me get some information from you and get the person who should handle this.**
  - b. Resist pressure from the agent to consent to provide documents or records even if they threaten to return with a search warrant or subpoena. Tell the agent that you do not have authority to provide the documents, but that you believe the company will cooperate and you will get the appropriate person who can communicate with them.
  - c. Contact the Company's designated contact person immediately so that they may communicate with the officer directly in person or by phone.

# Social Security # Discrepancies

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1. Immediately forward information to HR
2. HR will conduct investigation into identity allegations.
3. Forward letter to legal counsel along with information on employee. Legal counsel will respond to inquiry to maintain privilege.
4. If individual calls and states they did not work at Company (or child's SSN was used, etc.) get:
  - a. Name (and name of person's whose SSN is being used, if different)
  - b. SSN
  - c. Telephone Number
  - d. Mailing Address, email address and/or fax number

# Social Security # Discrepancies

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5. Do not provide personnel information –
  - a. **“I am sure the Company is happy to cooperate. However, I am not the person to provide you with that information. Let me get some information and get the person who can handle this for you.”**
  - b. Get contact information of person making inquiry (name, address, phone number, badge number if officer) and name and SSN of person they are inquiring about .
6. Use Form W-9 as part of new-hire paperwork to verify Social Security number.

# SSA No Match Letter

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1. In 2019 SSA resumed issuing Employer Notice Request, otherwise known as a SSN No No Match Letter
2. Letter notifies employers of the number of employees whose SSN and name in the SSA database do not match what the employer reported on their W-2, but employer must create account with SSA to log-on and identify names of impacted employees

# SSA No Match Letter

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3. Letter states that it does not imply that employer or employee deliberately provided incorrect information
4. Letter states that it does not say anything or imply anything about employee's immigration status
5. No Match letter cannot be the basis for adverse action –any adverse action may be considered illegal discrimination

# Increased Worksite Enforcement

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1. ICE initiated over 6400 worksite investigations (5,981 audits) in 2018, almost 5 times the previous highest number of annual investigations.
  - a. ICE made 1,525 administrative arrests and 789 criminal arrests during worksite investigations.
2. ICE is on track to conduct a similar number of audits in 2019.
  - a. ICE served over 3300 Notices of Inspection by June 2019.
  - b. ICE was expected to serve over 5,000 notices by the end of summer.

# Increased Worksite Enforcement

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3. ICE has resumed worksite raids and arrests of undocumented workers at the workplace.
  - a. January 2019 – appx. 30 workers arrested at San Diego shopping market
  - b. August 2018 – 160 workers arrested at manufacturing plant in Paris Texas.
  - c. April 2018 – 98 workers arrested at meatpacking plant in TN



# Increased Worksite Enforcement

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- d. On August 7, 2019, ICE conducted worksite raids at seven poultry plants across the state of Mississippi.
  - i. The raids involved plants owned by 5 different companies.
  - ii. 600+ ICE agents were involved
  - iii. Approximately 680 immigrants believed to be working in the U.S. without authorization were arrested at the worksites
  - iv. The investigation also includes allegations that some managers and HR were complicit and knowingly hired undocumented workers

# IMMIGRATION REFORM AND CONTROL ACT OF 1986

18

1. In 1986, IRCA was the first time employers became responsible for verifying eligibility of employees to work in the United States
2. Prohibited conduct under IRCA
  - a. Hire or continue to employ an individual knowing the individual is not authorized to work in U.S.
  - b. Hire any person without completing I-9 process
  - c. Discrimination on the basis of national origin or citizenship status (other than unauthorized worker)

# Verification Procedures: I-9 Form

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1. **Employee completes Section 1**
  - a. Must be completed the first day employee works
  - b. Employer may not request documents to verify information in Section 1
2. **Employer completes Section 2**
  - a. Must be completed within three business days after employment begins
  - b. Employee selects which documents to provide, except that under E-Verify if employee provides List B document it must contain a photograph

# Verification Procedures: I-9 Form

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3. Employee representative who signs Section 2 must see, touch, and feel original ID documents used to complete Section 2
  - a. Same employee representative who signs Section 2 must be the one who reviews the original documents
  - b. Photocopies not acceptable.
  - c. Certified copy of birth certificate is acceptable.

# I-9 Form (Rev. 7/17/2017)

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1. Current version of the Form I-9 has revised date of 7/17/2017 and expiration date of 08/31/2019.
2. **USCIS has instructed that companies should continue to use the current Form I-9 until a new one is issued**
3. Proposed changes to Form I-9 are primarily in the instructions and do not substantively change the form.

# I-9 Form

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1. The Form I-9s released 2016 and later can be completed (except signature) on a computer using a “smart” PDF form that contains pop-up instruction boxes when clicking the “?” next to a field, warnings about certain errors, and drop-down menus to complete things such as document title, issuing authority, states, and dates
2. Complete I-9 instructions (now 15 pages) must be made available to employees. Employees completing the smart PDF form on a computer have access through a link at the top of the Form I-9.

# I-9 Form

## Section 1 Employee Information

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► **START HERE:** Read instructions carefully before completing this form. The instructions must be available, either in paper or electronically, during completion of this form. Employers are liable for errors in the completion of this form.

**ANTI-DISCRIMINATION NOTICE:** It is illegal to discriminate against work-authorized individuals. Employers **CANNOT** specify which document(s) an employee may present to establish employment authorization and identity. The refusal to hire or continue to employ an individual because the documentation presented has a future expiration date may also constitute illegal discrimination.

**Section 1. Employee Information and Attestation** (*Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.*)

Last Name (Family Name) ?		First Name (Given Name) ?		Middle Initial ?	Other Last Names Used (if any) ?		
Address (Street Number and Name) ?			Apt. Number ?	City or Town ?		State ? ▼	ZIP Code ?
Date of Birth (mm/dd/yyyy) ?	U.S. Social Security Number ?		Employee's E-mail Address ?		Employee's Telephone Number ?		

# I-9 Form

## Section 1 Employee Information

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1. Employee must complete on first day of employment
2. E-mail address and phone number are **OPTIONAL**
  - a. Employee can leave boxes blank (or insert n/a if completing on computer) if they do not want to provide
  - b. Allows DHS to contact employee about potential Social Security mismatch or E-Verify TNC
  - c. E-Verify sends email with referral information to individuals who receive TNC and sign notice to contest
  - d. If completing I-9 using smart PDF on a computer, employee must put N/A if not providing email or phone number



# I-9 Form Section 1 - Attestation

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

I attest, under penalty of perjury, that I am (check one of the following boxes):

<input type="checkbox"/> 1. A citizen of the United States <a href="#">?</a>
<input type="checkbox"/> 2. A noncitizen national of the United States (See instructions) <a href="#">?</a>
<input type="checkbox"/> 3. A lawful permanent resident <a href="#">?</a> (Alien Registration Number/USCIS Number): <a href="#">?</a> _____
<input type="checkbox"/> 4. An alien authorized to work <a href="#">?</a> until (expiration date, if applicable, mm/dd/yyyy): <a href="#">?</a> _____ Some aliens may write "N/A" in the expiration date field. (See instructions)
<i>Aliens authorized to work must provide only one of the following document numbers to complete Form I-9: An Alien Registration Number/USCIS Number OR Form I-94 Admission Number OR Foreign Passport Number.</i>
1. Alien Registration Number/USCIS Number: <a href="#">?</a> _____ <b>OR</b>
2. Form I-94 Admission Number: <a href="#">?</a> _____ <b>OR</b>
3. Foreign Passport Number: <a href="#">?</a> _____ Country of Issuance: <a href="#">?</a> _____
Signature of Employee <a href="#">?</a>
Today's Date (mm/dd/yyyy) <a href="#">?</a>

QR Code - Section 1  
Do Not Write In This Space



# I-9 Form

## Section 1 - Attestation

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1. For “alien authorized to work” USCIS added OR between Form I-94 and Foreign Passport number to clarify that only one is needed.
2. If completing “smart I-9” on computer, PDF will not allow person to enter information in area that does not relate to box checked and places N/A in those spaces or to check more than one box (provides error message).
3. Employee must complete the information relating to their citizenship status, such as A#/USCIS # for lawful permanent resident
4. Note that currently A# and USCIS # are the same.

# I-9 Form

## Section 1 - Attestation

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5. Each date box under attestation has a drop-down calendar.
6. When employer completes Section 2 of “smart I-9” on computer, system will prompt if documents do not match the citizenship status the employee checked.
7. QR Code will be printed on completed I-9 when completed using the smart PDF I-9. QR scanner will list I-9 information separated by commas.

# I-9 Form

## Section 1 – Preparer/Translator

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### Preparer and/or Translator Certification (check one): ?

I did not use a preparer or translator.  A preparer(s) and/or translator(s) assisted the employee in completing Section 1.

*(Fields below must be completed and signed when preparers and/or translators assist an employee in completing Section 1.)*

**I attest, under penalty of perjury, that I have assisted in the completion of Section 1 of this form and that to the best of my knowledge the information is true and correct.**

Signature of Preparer or Translator ?		Today's Date (mm/dd/yyyy) ?	
Last Name (Family Name) ?		First Name (Given Name) ?	
Address (Street Number and Name) ?		City or Town ?	State ? ZIP Code ?

Click to Finish



*Employer Completes Next Page*



# I-9 Form

## Section 1 – Preparer/Translator

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1. Required if anyone other than the employee completes Section 1
2. Employee must affirmatively check that they did or did not use a preparer/translator.
3. If more than one preparer/translator then the employer is supposed to provide employee with a “Form I-9 Supplement, Section 1 Preparer and/or Translator Certification”

# I-9 Form Section 2

3  
0

## Section 2. Employer or Authorized Representative Review and Verification

*(Employers or their authorized representative must complete and sign Section 2 within 3 business days of the employee's first day of employment. You must physically examine one document from List A OR a combination of one document from List B and one document from List C as listed on the "Lists of Acceptable Documents.")*

Employee Info from Section 1 ?	Last Name (Family Name) ?	First Name (Given Name) ?	M.I. ?	Citizenship/Immigration Status ? ▼
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1. The employee last name, first name, initial were divided into separate boxes to help make it easier for employers to place in correct order;
2. Added a “Citizenship/Immigration Status” box at top of Section 2 for employer to complete to help ensure documents match status – can use numbers 1-4 in box to match attestation numbers or spell out full citizenship status.
3. Smart PDF on computer auto-populates the employee name and citizenship status from Section 1.

# I-9 Form Section 2

List A Identity and Employment Authorization	OR	List B Identity	AND	List C Employment Authorization
Document Title ?		Document Title ?		Document Title ?
Issuing Authority ?		Issuing Authority ?		Issuing Authority ?
Document Number ?		Document Number ?		Document Number ?
Expiration Date (if any)(mm/dd/yyyy) ?		Expiration Date (if any)(mm/dd/yyyy) ?		Expiration Date (if any)(mm/dd/yyyy) ?
Document Title ? <input type="button" value="v"/>		Additional Information ?		QR Code - Sections 2 & 3 Do Not Write In This Space
Issuing Authority ? <input type="button" value="v"/>				
Document Number ?				
Expiration Date (if any)(mm/dd/yyyy) ?				
Document Title ? <input type="button" value="v"/>				
Issuing Authority ? <input type="button" value="v"/>				
Document Number ?				
Expiration Date (if any)(mm/dd/yyyy) ?				



# I-9 Form Section 2

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1. Must be completed within 3 business days after employee's first day of work.
2. Employee must provide one document from List A or one document from both List B or List C.
3. If completing smart PDF I-9, List B and C will be completed with N/A if employer enters information in List A and List A will be completed with N/A if employer enters List B and List C.
4. Document title and issuing authority is generally a drop-down menu if using the smart PDF I-9. New I-9 instructions contain summary of abbreviations used in drop down menu.



# I-9 Form Section 2

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5. Additional Information box added to allow employers room to record E-Verify number, insert additional document information that does not fit in regular boxes, or insert information that used to be in the margins (such as TPS information).
6. We recommend not placing extraneous information in the additional information box and using that only for additional document information.
7. QR Code will print on form if completed on a computer using the smart PDF I-9.

# I-9 Form

## Section 2 Certification

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**Certification:** I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States.

The employee's first day of employment (mm/dd/yyyy): \_\_\_\_\_ (See instructions for exemptions)

Signature of Employer or Authorized Representative ?	Today's Date (mm/dd/yyyy) ?	Title of Employer or Authorized Representative ?	
Last Name of Employer or Authorized Representative ?	First Name of Employer or Authorized Representative ?	Employer's Business or Organization Name ?	
Employer's Business or Organization Address (Street Number and Name) ?	City or Town ?	State ? <input type="text"/>	ZIP Code ? <input type="text"/>

Click to Finish

# I-9 Form

## Section 2 Certification

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1. Employer's duty is to touch and review original document to determine if it reasonably appears to be genuine and relate to person providing it
2. Look for misspelling or photo not matching person or age being significantly different than they appear

# I-9 Form Section 3

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<b>Employee Name from Section 1:</b>	Last Name ( <i>Family Name</i> ) ?	First Name ( <i>Given Name</i> ) ?	Middle Initial ?
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**Section 3. Reverification and Rehires** (*To be completed and signed by employer or authorized representative.*)

<b>A. New Name (if applicable)</b> ?			<b>B. Date of Rehire (if applicable)</b>
Last Name ( <i>Family Name</i> ) ?	First Name ( <i>Given Name</i> ) ?	Middle Initial ?	Date ( <i>mm/dd/yyyy</i> ) ?

**C. If the employee's previous grant of employment authorization has expired, provide the information for the document or receipt that establishes continuing employment authorization in the space provided below.**

Document Title ?	Document Number ?	Expiration Date ( <i>if any</i> ) ( <i>mm/dd/yyyy</i> ) ?
------------------	-------------------	-----------------------------------------------------------

**I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.**

Signature of Employer or Authorized Representative ?	Today's Date ( <i>mm/dd/yyyy</i> ) ?	Name of Employer or Authorized Representative ?
------------------------------------------------------	--------------------------------------	-------------------------------------------------

Click to Finish

# I-9 Form Section 3

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1. Employers may update employee's name in Section 3 for name changes if it does so in a non-discriminatory fashion, but is not required to do so
2. Best practice is to have employee provide evidence of their new name and complete a new W-4 and W-9 for payroll
3. If you do not update the I-9, put a sticky note on it with the employee's new last name so that the document can be identified if necessary

# I-9 Form Section 3

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4. Employers may complete Section 3 for a rehired employee if they are rehired within 3 years after the date that the Form I-9 was originally completed.
5. If original I-9 was completed more than 3 years prior to the rehire date, complete a new Form I-9.
6. Employers always have the option to complete a new Form I-9 for rehired employees.

# I-9 Form Section 3

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7. Section 3 is also used to reverify expired employment authorization
8. Must be completed on or before the date that the employment authorization expires
9. Employee can provide any List A or List C document to complete Section 3. An employer cannot require them to provide a new version of the document originally used for the Form I-9
10. The employer representative must examine and feel the document to determine it reasonably appears to be genuine and relate to the employee
11. Record the document title, document date, & expiration date and sign Section 3

# I-9 Form Section 3

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12. **MAKE SURE COMPANY HAS TICKLER SYSTEM FOR EXPIRING WORK AUTHORIZATION**
  - a. Employer cannot allow individual to work after temporary work authorization expires until employee brings in new documents and updates the I-9 Form
  - b. Anyone that checks box 4, “alien authorized to work until \_\_\_” (other than refugees or asylees whose work authorization does not expire) must be reverified when their work authorization expires, regardless of what documents they provide
  - c. Upon reverification, employee can present List A or List C document
  - d. If work authorization status has changed, complete new Form I-9



# I-9 Form Section 3

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13. Company should have tickler system for receipts as well
  - a. Generally receipts, such as receipt for SS replacement card, are valid for 90 days
  - b. Receipt for permanent resident card (Arrival portion of Form I-94/I-94 A containing photo and unexpired temporary I-551) is valid until expiration date on temporary I-551

# General Tips for Completing I-9 Form

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1. Use black or blue ink or complete on a computer (note that the smart PDF I-9 must be printed and signed)
2. No whiteout, scratch-out, or mark-through
3. Do not use different color ink in same section
4. Write all dates as mm/dd/yyyy
5. If a new form is redone, keep it with the previously completed I-9
6. If mistake occurs → complete new form

# General Tips for Completing I-9 Form

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7. Birth Certificate should be listed as either “birth certificate” or “certificate of live birth” in Section 3. If document says “Certification of Vital Records” you can use “birth certificate” or “Certification of Vital Records-Birth Certificate”
  - a) Certification of Vital Records can include death and divorce records, so best practice is to specify the type of record
  - b) Drop-down menu on the 2016 smart I-9 lists “U.S. Birth Certificate” as the appropriate choice for birth certificate, certificate of live birth, or vital records-certificate of live birth

# General Tips for Completing I-9 Form

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8. You do not need to keep photocopies of documents unless required by E-Verify (photo tool)
9. Make sure Section 1 is fully complete before completing Section 2
  - a. Email address and phone number are OPTIONAL but employee should insert N/A if choosing not to provide
  - b. Make sure that employee completed citizenship or immigration status and related information
  - c. Make sure date is written mm/dd/yyyy – if completing I-9 on computer using smart PDF, user will receive an error message if the date is in the incorrect format.

# General Tips for Completing I-9 Form

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10. Do not request documents to verify information the employee provided in Section 1
11. Allow employees to select which documents to provide, either:
  - a. One document from List A (do not complete anything under List B or C); OR
  - b. One document from List B AND 1 one document from List C
    - i. E-Verify requires that List B document have a photograph
    - ii. Explain to individual it is requirement of E-Verify, provide the list of acceptable documents, and ask if they have other List A or List B document

# General Tips for Completing I-9 Form

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## 12. Document must be unexpired at the time it is used to complete the I-9

- a. TPS Auto Extensions – EAD for employee with TPS may be accepted if expired on its face but auto extended by notice in the Federal Register (print USCIS TPS page from relevant country - <https://www.uscis.gov/humanitarian/temporary-protected-status>)
- b. Permanent Resident Card expired on its face is acceptable with Form I-797 indicating that card is valid for another year as long as the extension is not expired (considered a List C document and must be reverified after the extension expires)
- c. High school ID card expires the year after it is issued – i.e. identification card for junior year is valid for junior year and following summer
- d. If document does not have expiration date, draw a line or put N/A to make it clear that there is no expiration date

# General Tips for Completing I-9 Form

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13. Do not accept SS card that says “valid for work only with DHS authorization,” “not valid for employment” or similar restriction
14. Only accept Unrestricted SSA cards.
15. Do not accept photocopies – must be original documents
  - a. Certified copy of birth certificate is acceptable

# General Tips for Completing I-9 Form

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16. When completing document information, complete:
  - a. Document Title
  - b. Issuing Authority (as it appears on the card)
    - i. Note that the 2016 smart PDF I-9 has a drop down menu that will identify potential issuing authority for documents, such as U.S. Department of State for the passport or choice of SSA, DHHS, Social Security Board, or Dept. of Health, Education and Welfare for Social Security card
  - c. Document Number
  - d. Expiration date (if any—if none put a line in the box or N/A)



# General Tips for Completing I-9 Form

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17. Same person completing Section 2 must see, touch, and feel the original documents and compare the photo to the person
18. Receipts for documents, such as SS Card, permitted if it is a receipt for a replacement for a lost or stolen card. Receipt for original document is not acceptable.
19. Generally must update the I-9 with actual document within 90 days after completing the I-9
  - a) Make sure to create a tickler system to ensure that the I-9 is updated before the 90 days expires

# General Tips for Completing I-9 Form

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20. Do not make extraneous notes on the Form I-9
21. Do not accept a permanent resident card from someone who attests to being a citizen or non-citizen national or temporarily authorized to work
22. Do not accept U.S. passport from someone who attests to being a permanent resident or alien authorized to work
23. If something does not seem right, ask the employee to verify that they checked the correct box.
24. Note that the 2016 smart PDF I-9 provides a warning notice if the documents entered into Section 2 are inconsistent with the citizenship status in Section 1.

# I-9 Retention

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**ALWAYS KEEP CURRENT EMPLOYEES' I-9 FORMS.** After an employee has resigned or is terminated from the company, the length of time after separation the company must keep the I-9 depends on the duration of employment. An easy way to make sure the Company is in compliance with the retention of I-9 forms is to abide by the following rule:

1. 1. Enter date employee started work: \_\_\_\_\_
  - a. Add 3 years to Line 1. A. \_\_\_\_\_
2. 2. Termination date: \_\_\_\_\_
  - a. Add 1 year to Line 2 B. \_\_\_\_\_
3. Which date is later: A or B? Enter later date here. C. \_\_\_\_\_

Store Form I-9 until this date.

# Handling Rehires

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1. If rehired within 3 years after date original I-9 is completed, employers may complete Section 3 of the original Form I-9 after verifying that Section 1 information is still accurate.
2. If more than 3 years after original I-9 is completed, complete a new I-9.
3. If document used on original Form I-9 is expired, do a new Form I-9.
4. If new Form I-9 has been issued since original start date, complete new Form I-9

# Handling Rehires (cont'd)

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5. If the employer uses E-Verify:
  - a. Create a new E-Verify case if the employee did not go through E-Verify on original hire date
  - b. Create a new E-Verify case if it has been more than three years since the employee's original hire date and you are completing new I-9
  - c. Create a new E-Verify case if the documents used on the original I-9 have expired at the time of rehire

# Recommendations Regarding I-9 Forms

54

1. Training
2. Self-audit
3. Anti-discrimination and policies
4. Recordkeeping
5. Consistency

# Recommendations Regarding I-9 Self Audit

55

1. December 2015 USCIS and IER jointly issued Guidance for Employers Conducting Internal Employment Eligibility Verification Form I-9 Audits
2. Guidance emphasizes that any audit must be non-discriminatory and non-retaliatory
  - a. Conducting internal audit of I-9s for only non-citizens would be discriminatory;
  - b. Requiring non-citizens to correct errors but not requiring citizens to correct similar errors would be discriminatory;
  - c. Auditing employee's forms because the employer has stereotyped the employee as potentially unauthorized would be discriminatory;
  - d. Auditing an employee's I-9 after employee raises concerns about wages, discrimination, or other issues or engaging in union or other protected concerted activity may be considered retaliatory;
  - e. Auditing all I-9s from only a location where employees are trying to organize a union could be considered retaliatory

# Recommendations Regarding I-9 Self Audit

56

3. USCIS/IER Guidance states that only the employee can correct errors in Section 1.
  - a. If employee is no longer employed, the USCIS/IER guidance suggests that the employer attach a separate dated statement (do not write on I-9) identifying the error and explaining that it could not be corrected because the individual was no longer employed.
  - b. For employee to correct error or omission:
    - i. Draw a single line through the incorrect information;
    - ii. Write in the correct or omitted information'
    - iii. Initial and date the correction or addition of omitted information.



# Recommendations Regarding I-9 Self Audit

57

- c. If the employee uses a preparer/translator to make the correction, the employee should initial and date the corrected or added information, if possible, and the preparer/translator should also initial and date next to the employee's initials. The preparer/translator should then complete the preparer/translator section. If this section was previously completed, USCIS/IER instruct the preparer/translator to draw a single line through the previous information and enter their own information.
4. Employer can correct errors or omissions in Section 2 or 3 by:
- a. Drawing a single line through the incorrect information;
  - b. Entering the correct or omitted information;
  - c. Initial and date next to the addition or correction.

# Recommendations Regarding I-9 Self Audit

58

5. Do not use white out or scribble out information and do not conceal any changes or backdate the Form I-9.
6. If there are multiple errors in Section 2, the USCIS/IER Guidance suggests that the employer can use Section 2 on a new Form I-9 and attach it to the original Form I-9.

# Recommendations Regarding I-9 Self Audit

59

7. If a Form I-9 was not completed for an employee or if the document information was not recorded in Section 2, the employer should complete a Form I-9 or complete Section 2 as soon as possible, which requires the employee to provide documents from List of Acceptable Documents.
  - a. Employee may select which documents to provide.
  - b. Employer should provide a “reasonable” amount of time for employee to provide documents; guidance suggests this is totality of the circumstances determination and can be several weeks

# Recommendations Regarding I-9 Self Audit

60

8. The USCIS/IER Guidance provides that if an E-Verify registered employer discovers that it do not run E-Verify on an employee hired after the company enrolled in E-Verify:
  - a. If the employer was actively using E-Verify at the time the employee was hired, it should immediately create an E-Verify case.
  - b. If the employer was enrolled in E-Verify but was not actively using it at the time the employee was hired, it should not create an E-Verify case for any employees hired during the time period in which the employer was enrolled in E-Verify but not using it.

# Recommendations Regarding I-9 Self Audit

61

9. The USCIS/IER Guidance prefers that employers correct existing I-9 forms rather than completing a new form, but if the employer does create a new form, the Guidance reminds employers to attach the new Form I-9 to the original Form I-9 and not backdate the form.

# Enforcement of IRCA

62

1. Primarily enforced by ICE
2. May involve audit after 72 hour notice or “raid”
  - a. No right to review I-9 without notice or subpoena
  - b. Current trend is to issue subpoena with every audit notice
3. Possible Notices from ICE
  - a. Notice of Technical or Procedural Failures
  - b. Notice of Suspect Documents
  - c. Notice of Discrepancies

# Enforcement of IRCA

63

4. Possible Outcomes of ICE inspection
  - a. Warning Notice – there were errors but ICE will not fine
  - b. Notice of Intent to Fine – Informs employer of fines for I-9 violations
5. Employer may contest through administrative hearing process and appeal to federal court

# Penalties for Substantive I-9 Paperwork Violations

64

1. During first audit, ICE allows employer an opportunity to correct “technical or procedural” violations
2. Substantive violations are fined \$230 to \$2,292 per Form I-9 (increased in 2016 from \$110 - \$1,100 per violation)
3. In future audits, ICE does not allow employers to correct technical or procedural violations of the same type that ICE previously identified and can impose penalties for technical or procedural violations.



# Penalties for Substantive I-9 Paperwork Violations

65

4. ICE has created a “Fine Schedule” in which fines are based on:
  - a. Whether it is first, second, or third or subsequent offense
  - b. The percentage of I-9s containing errors
  - c. Enhancement or mitigation of up to 5% each based on:
    - i. Size of business
    - ii. Good faith
    - iii. Seriousness
    - iv. Unauthorized workers
    - v. History of violations

# Penalties for Knowingly Employing Unauthorized Worker

66

1. Penalties were increased in 2016 and annually going forward. Penalties for 2019 are as follows:
2. 1<sup>st</sup> offense - \$573 to \$4,586 per worker
3. 2<sup>nd</sup> offense – \$4,586 to \$11,463 per worker
4. 3<sup>rd</sup> and subsequent offenses - \$6,878 to \$22,927
5. Pattern and practice – potential criminal penalties

# Penalties for Harboring

67

1. Knowingly hire 10 or more in 12-month period with knowledge of illegal entry = harboring
  
2. Penalties can include asset forfeiture and prison time
  - a. E.g. Golden State Fence
    - i. Company and owner paid/forfeited total of \$4.7 million
    - ii. Owner received 6 months house arrest

# Additional Fines During Second or Subsequent Audit

68

1. Illegal Immigration Reform and Immigrant Responsibility Act created a “good faith” defense to violations of the Form I-9 requirements.
  - a. An employer will be considered to have satisfied the I-9 requirements notwithstanding a “technical or procedural failure” when the employer made a good faith attempt to comply with the requirements.
2. Employers can correct “technical or procedural defects” on the Form I-9 within 10 business days and will not be fined for the violations

# Additional Fines During Second or Subsequent Audit

69

3. Under ICE “Virtue Memo,” during second audit “good faith” defense is not available for same type of technical or procedural defects that were subject of first audit
  - a. If first audit results in Warning Notice, “good faith” defense may be permitted on second audit
4. On second or subsequent audit, ICE may not allow employer to correct technical or procedural defect and may impose fines for even minor errors on the Form I-9

# ICE Regulations Regarding Electronic I-9 Systems

70

1. There are four basic factors that should be considered in choosing an electronic I-9 system:
  - a. Security,
  - b. Usability,
  - c. Cost efficiency, and
  - d. The ability to track usage.
2. The main requirement and concern of ICE is that whatever system is used, it should be trustworthy and transparent.
3. An electronic I-9 system must be able to produce “the electronically stored Forms I-9, any supporting documents, and their associated audit trails, reports, and other data used to maintain the authenticity, integrity, and reliability of the records.”

# ICE Regulations Regarding Electronic I-9 Systems

71

4. Electronic signatures should use system that ensures only the person whose name/signature is applied is able to apply their electronic signature
  - a. Helpful if it complies with Electronic Signatures Act
5. The system and I-9 documents must be secure:
  - a. Ensure that only authorized persons have access to the records;
  - b. Provide for backup and recovery of information;
  - c. Ensure that employees are trained to minimize the risk of accidental alteration or erasure of electronic records;
  - d. Ensure that whenever an electronic record is created, accessed, viewed, updated, or corrected, as secure and permanent record is created that establishes the date of access, the identity of the individual who accessed the electronic record, and the particular action taken.

# ICE Regulations Regarding Electronic I-9 Systems

72

6. An audit trail is one of most important aspects of electronic I-9 systems. The electronic I-9 system should record:
  - a. Name of employee/record for which the data was created or changed
  - b. Type of event (i.e. new doc, addition, update, etc.)
  - c. Date and time stamp (down to the second)
  - d. Name of the user who created document or made the change as well as the IP address of the computer on which the change was made
  - e. The button clicked (or action taken to make this record an event)
  - f. The field that was altered
  - g. The old data (if there was any)
  - h. The new data (if any was added)



# Anti-Discrimination Under the IRCA

73

1. Forbids discrimination on the basis of national origin or citizenship status – any different treatment based on national origin or citizenship presumed discriminatory
2. National origin discrimination also prohibited by Title VII
3. Retaliation prohibited by the Act
4. Immigrant and Employee Rights Section pamphlet “Look at Facts Not Faces”
  - a. Employer must accept documents that reasonably appear genuine
  - b. Prohibits asking for more or different documents than those the employee presents

# Enforcement of Anti-Discrimination Provisions

74

1. Enforced by the US DOJ Civil Rights Division Immigrant and Employee Rights Section (formerly Office of Special Counsel for Unfair Immigration Related Employment Practices)
2. Any person believing discrimination occurred can file charge with DOJ IER Section within 180 days
3. IER must investigate and make determination within 120 days
4. If IER does not bring complaint, individual may do so within 90 days after IER determination

# Recent IER Settlement

75

1. Numerous IER cases involve allegations that the employer required specific documents from non-citizens, but not citizens. Remember that I-9 regulations require employers to allow the employee to choose which documents to accept from the List of Acceptable Documents.
  - a. Allied Universal Holdco, LLC (Sept. 2019) - paid \$194,000 in civil penalties and agreed to provide training and undergo monitoring by IER after requiring permanent residents to provide a permanent resident card;
  - b. Automotive Creations (Aug.. 2019) – paid \$159,000 in civil penalties and and agreed to provide training and undergo monitoring by IER after requiring permanent residents to provide a permanent resident card

# Recent IER Settlement

76

2. Another discriminatory practice found in recent IER cases was reverification of expired permanent resident cards. Although the permanent resident card must be unexpired at the time it is used to complete the Form I-9, it may not be reverified when it expires.
  - a. Wespak, Inc. (May 2019) – company paid civil money penalty in undisclosed amount and agreed to training and monitoring by IER.
  - b. McDonald’s USA, LLC (Nov. 2015) – company paid \$355,000 in civil penalties and agreed to training and monitoring by the IER. In addition, the Company paid back wages to the employees who were suspended or fired after not producing a new permanent resident card when their original card expired.

# Tips Regarding ICE Investigations

77

1. 72-hour notice
2. Keep copies of I-9 forms provided to ICE
3. ICE will review and provide a variety of notices based on the results of the audit:
  - a. Notice of Technical Defects
  - b. Notice of Suspect Documents
  - c. Notice of Discrepancies
  - d. Notice of Intent to Fine

# Tips Regarding ICE Investigations

78

4. Employees may be identified for re-verification or having used counterfeit documents
5. Undocumented employees must be terminated immediately upon notice
6. Employee surveys/raids sometimes occur
7. Crisis Communication Plan
8. Continue correcting Forms I-9 and following best practices.
  - a. ICE may not allow an employer to correct technical or procedural errors in a subsequent audit that have been previously cited on a Notice of Technical or Procedural Failures.

# Trends in Criminal Enforcement: Real Life Cases

79

1. Record ICE Penalty issued against Asplundh Tree Expert Co. for \$95 million after contractor pled guilty to scheme to hire undocumented workers.
  - a. \$80 million civil forfeiture
  - b. \$15 million civil penalty
  - c. Between 2010-2014, company allegedly hired thousands of unauthorized workers across the U.S. using knowingly fraudulent documents.
  - d. Upper management accused of being “willfully blind” to hiring practices of mid-level regional supervisors.
  - e. Decentralized hiring practices criticized by ICE.

# Trends in Criminal Enforcement: Real Life Cases

80

## 2. Recent ICE Settlements

### a. Broetje Orchards

- i. June 2015
- ii. \$2.25 Million
- iii. 2012 audit found over 1,700 unauthorized workers
- iv. 2014 audit found that over 950 of those unauthorized workers were still employed
- v. No criminal action being pursued in exchange



# Trends in Criminal Enforcement: Real Life Cases

81

## b. Advanced Containment Systems

- i. \$2 Million forfeiture and immigration compliance measures in exchange for agreement not to criminally prosecute company
- ii. 44% of workforce undocumented
- iii. Many employed with numerous "egregiously suspect" identification documents, including misspellings of agency names and/or containing the words "novelty item."

# Trends in Criminal Enforcement: Real Life Cases

82

## c. Danny's Carwash

- i. April 2011 audit found over 900 unauthorized workers
- ii. Company separated their employment but owner later ordered that many be rehired under different names
- iii. Company knew unauthorized workers used stolen identity to pass E-Verify
- iv. August 2013 ICE served arrest warrants at 16 locations
- v. Owner and 13 mgrs pleaded guilty to charges including conspiracy, immigration fraud, and identity theft
- vi. Owner sentenced to one year in prison and one year house arrest
- vii. Other managers received probation to 3 months
- viii. Company forfeited \$156,000

# Trends in Criminal Enforcement: Real Life Cases

83

## d. Sun Drywall and Stucco

- i. 27 undocumented workers with no Form I-9 completed
- ii. Company pleaded guilty to knowingly employing undocumented workers
- iii. Accepted blatantly false documents containing misspelled agency name or containing statement “novelty item”
- iv. Had begun correcting practices prior to audit
- v. Company president pleaded guilty to knowingly employing undocumented workers and conspiring to harbor undocumented workers for profit
- vi. Agreed to pay \$225,000 in restitution plus \$225,000 in forfeitures
- vii. Office Mgr/HR sentenced to 2 months prison, 1-year house arrest, 3-years supervised release

# Trends in Criminal Enforcement: Real Life Cases

84

- e. NY Staffing Agency HR Manager
  - i. Knew individual being hired was not authorized
  - ii. Helped employee complete section 1 of I-9
  - iii. HR manager checked “lawful permanent resident” knowing this was false
  - iv. HR manager signed preparer/translator box
  - v. Manager was charged with knowingly providing “false statements to a government agency”
  - vi. She pleaded guilty and received 1 year probation
  - vii. Maximum sentence could be 5 years in prison, \$250,000 fine and 3 years supervised release

# *United States v. Tyson Foods -- Rogue Employee Defense*

85

1. Investigation began in 1997 with undercover agents attempting to get local managers to hire undocumented workers
2. Upper management of Company signed up for pilot employment verification program and alerted federal government when it found false employee documents
3. 2001 - DOJ obtained 36 count indictment against Tyson -- conspiracy to violate IRCA by hiring 136 undocumented workers

# *United States v. Tyson Foods -- Rogue Employee Defense*

86

4. At trial, Tyson used “rogue employee” defense
5. Lower level managers who broke the law were acting against Company’s stated policy
6. Upper management enforced policy and had volunteered for pilot program
7. Company had documentation demonstrating compliance policies and actions
8. Lower level managers testified that they knew they were violating Company policy and hid actions from upper management
9. Judge dismissed 24 counts; jury acquitted on remaining 12

# E-Verify Nuts and Bolts

87

1. E-Verify is internet-based program operated by SSA and DHS that checks information entered by employer against information in SSA and DHS database to confirm employment eligibility
2. Employers register online and electronically sign MOU

# E-Verify Nuts and Bolts

88

3. Employer prohibited from using E-Verify in discriminatory manner
4. OSC published “E-Verify Do’s and Don’ts”
5. Company can use E-Verify site-by-site or company-wide
  - a. Company-wide required for federal contractors



# E-Verify Process

89

1. Start with completed Form I-9
2. Employers enters information from I-9 into E-Verify
  - a. Name
  - b. SSN
  - c. Citizenship status
  - d. Date of birth
  - e. Date of hire
  - f. Document information

# E-Verify Process

90

3. SSA and USCIS verify the data
4. If data matches, employer receives “employment authorized” result and can close the case
5. If data does not match, employer receives Further Action Notice
6. Employer must provide Further Action Notice (FAN) to employee who received TNC
7. Employee should sign FAN and both employer and employee keep copy

# E-Verify Process

91

8. Employee can challenge FAN – employer must refer to SSA or DHS
  - a. If employee does not challenge it is final non-confirmation
9. Employee has 8 business days to go to SSA or DHS to resolve
10. DHS and SSA have 10 business days to resolve discrepancy
  - a. If more time needed may get “case continuance” notice
11. Employer will receive “employment authorized” or “final non-confirmation”

# E-Verify Process

92

12. Final non-confirmation requires employer to terminate employment or risk knowingly employing undocumented worker
  - a. \$550-\$1100 penalty if employer continues to employ individual after final non-confirmation and does not notify DHS
13. Employers cannot take adverse action against employee challenging tentative non-confirmation

# General E-Verify Tips

93

1. Double check all information for typographical errors or transposition of numbers. Make sure the information entered into E-Verify matches the Form I-9.
2. Check the E-Verify Dashboard on a regular basis to ensure that all further action notices are addressed timely.

# General E-Verify Tips

94

3. Complete within 3 days after first date of work
4. Make sure to post E-Verify posters from USCIS and IER
5. Apply the process uniformly to all newly hired employees
6. Do not require individual to use “self-check”

# General E-Verify Tips

95

7. Do not use for existing employees (except those working on federal contracts)
8. Do not use for applicants – can be run only after hire and completion of Form I-9
9. Do not terminate employment, refuse to provide training, refuse to provide benefits, or otherwise take adverse action based on Tentative Non-Confirmation

# General E-Verify Tips

96

10. Make sure to discuss TNC with employee, have them sign the FAN (challenge or not challenge) and give them copy of documents
11. FAN/TNC discussion, as with HR matters, should be confidential and discrete
12. Must allow employee to work while challenging TNC



# General E-Verify Tips

97

13. If employee provides List B document for I-9, it must have photo
14. If employee provides Permanent Resident Card, Employment Authorization Document, US Passport, or US Passport card for List A, must photocopy it and keep it with the I-9 for use with E-Verify photo tool
  - a. Do not copy or keep other documents—only the ones required on List A

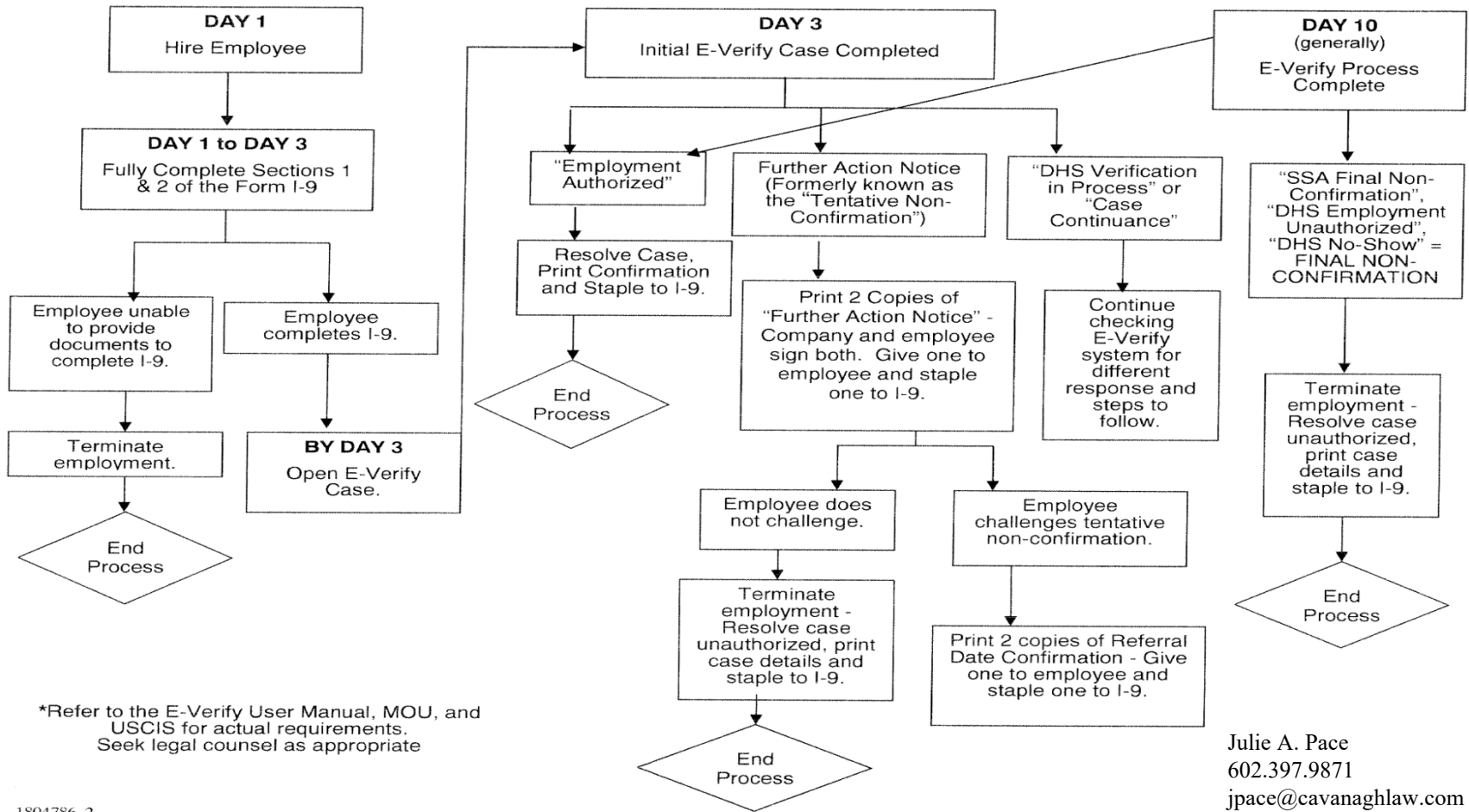
# General E-Verify Tips

98

15. Make sure to close all cases correctly
16. E-Verify User Manual and User Manual for Federal Contractors can provide helpful information
  - a. Keep apprised of updated manuals
  - b. [www.uscis.gov/e-verify](http://www.uscis.gov/e-verify)

# Requirements of I-9 and E-Verify Programs

99



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# ICE IMAGE Program

100

1. Revamped in 2011
2. Employers agree to:
  - a. Enroll in E-Verify
  - b. I-9 review by ICE
  - c. Implement written employment verification program
    - i. Must include annual internal I-9 audit

# ICE IMAGE Program

101

## 3. Benefits to Employers

- a. Waive fines if I-9 audit finds less than 50% substantive violations
- b. Mitigate fines or issue fines of minimum \$110 if more than 50% substantive violations
- c. No ICE audit for two years
- d. Time to correct all violations identified by ICE

# Hiring and Firing Considerations

102

1. Application for Employment.
2. Interview Process.
  - a. Permissible and impermissible questions.
  - b. Should you review of applicant's social media?
3. Americans with Disabilities Act.
4. Background Check/Fair Credit Reporting Act Disclosure.

# Hiring and Firing Considerations

103

## 5. Onboarding Process

- a. I-9 and E-Verify (if applicable);
- b. Handbook and Acknowledgement Forms (including drug & alcohol policy and anti-harassment, anti-discrimination, no retaliation);
- c. New hire reporting;
- d. Safety training and orientation;
- e. Confidentiality and or non-solicitation/non-compete agreement;
- f. Timekeeping policy and acknowledgment.

# Hiring and Firing Considerations

104

## 6. Termination Process considerations:

- a. Reasons for separation;
- b. Documentation of prior issues to support separation;
- c. Messaging to separated employee and to other employees;
- d. Exit interview;
- e. Exit procedures (who should notify employee, how will they be notified, how much notice of the separation, do they need to be escorted off premises, etc)
- f. Confirmation of confidentiality or nonsolicitation obligations.
- g. Severance in exchange for waiver and release.



# Hiring and Firing Considerations

105

## 6. Termination Process Talking Points

- a. Thank you for meeting with us.
- b. The decision has been made to separate your employment effective today.
- c. We want to do so professionally and respectfully.
- d. We want to thank you for your contributions.
- e. We wish you well in your future endeavors and are optimistic that you will find a position that is a better fit for you.
- f. Please return any Company property that is in your possession, including any computer, keys, security card or account passwords [or identify any additional Company property that the employee may have].

# Hypothetical #1

106

1. Applicant, during his interview, states
  - a. He cannot work more than 4 hours per day and cannot lift more than 10 pounds, but he wants to work as an insulation installer;
  - b. He takes marijuana for the pain when needed at night;
  - c. His documents are expired so he is concerned with whether the Company uses E-Verify; and
  - d. 18 years ago, when he was 19 years old, he was convicted of stealing a car (joyriding).
2. What issues are raised in this scenario?
3. How can the company respond?

# Hypothetical #1

107

1. Americans with Disabilities Act – must engage in interactive dialogue and provide reasonable accommodation.
2. Medical marijuana – in some states, a company cannot refuse to hire an applicant solely because they use medical marijuana.
3. I-9/E-Verify require unexpired identification and work authorization documents.
4. Background checks implicate FCRA.
5. EEOC Guidelines for using criminal convictions to disqualify candidates.

## Hypothetical #2

108

1. Supervisor does not believe that employee's time card is accurate—that the employee added hours. Employee has company truck with GPS and supervisor asks accounting to check the GPS.
2. What issues are raised by this scenario?
3. What steps can the company take to address the issues?

## Hypothetical #2

109

1. Privacy considerations relating to GPS in Company truck.
2. Certification on time card that it is accurate and correct.
3. Timekeeping policy and acknowledgment form.
4. Toolbox talks regarding timecards and reporting hours worked.
5. Mini-wage and hour audits.

## Hypothetical #3

110

1. Employee is being discipline for a safety infraction. In response to his own discipline, he reports that there are other situations in which he believes there were OSHA violations. The Company decides to terminate his employment due to the safety infraction.
2. What issues are raised in this scenario?
3. Does the Company need to consider any additional factors?

# Hypothetical #3

111

1. Employee safety training and acknowledgement forms.
2. Separation talking points – how much do you tell the employee regarding the reasons for separation?
3. OSHA retaliation – employers are prohibited from terminating an employee or taking adverse action in retaliation for reporting safety issues or cooperating with an OSHA investigation.

# Hypothetical #4

112

1. Employee leaves and starts a competing business. The Company learns that he was likely using company resources to start the business. The Company believes that he is using the Company's confidential information and client contacts. He is also soliciting the Company's employees to leave the Company and work for him.
2. What are the Company's options in this type of situation?



# Hypothetical #4

113

1. Did the employee sign a confidentiality or non-solicitation agreement?
2. Did the Company have confidentiality policies in its handbook?
3. Was any information “trade secret” – which requires that the Company took steps to mark and keep the information confidential.
4. If the employee used Company resources to compete with the Company, this may breach the duty of loyalty.
5. Lawsuit?

# Employee Handbooks and Policies: Policies to Consider for Handbooks

114

1. Anti-Harassment, Anti-Discrimination, and No Retaliation.
  - a. Define prohibited conduct and give examples.
  - b. Provide multiple avenues to report concerns or complaints.
  - c. Include prohibition on retaliation.
2. Equal Employment Opportunity.
  - a. Identify protected classifications, particularly if they go beyond the categories protected by law, e.g. sexual orientation.
3. At-Will Employment.
4. Probationary/introductory period

# Employee Handbooks and Policies: Policies to Consider for Handbooks

115

5. Employee Code of Conduct.
6. Compensation and payroll deductions.
7. Benefits (all should incorporate by reference any summary plan descriptions.)
8. Discipline.
  - a. Reserve the company's right to decide level of discipline on a case-by-case basis, based on the circumstances.
9. Drug and Alcohol Use and Testing.
10. Safety.
11. Workplace Violence/Weapons.
12. Access to Personnel Records.
  - a. Depends upon state law.

# Employee Handbooks and Policies: Policies to Consider for Handbooks

116

13. Smoking.
14. Computer, Internet and Social Networking.
15. Surveillance and Monitoring.
16. Searches.
17. Attendance and Tardiness.
18. Authorization for overtime.
19. Vacation, personal time off, sick leaves.
20. Leaves of Absences.
  - a. FMLA.
  - b. USERRA.
  - c. Discretionary Leaves.

# Employee Handbooks and Policies: Policies to Consider for Handbooks

117

22. Confidentiality.
23. Conflicts of Interest.
24. Non-Compete, Anti-Solicitation, Anti-Raiding, and Anti-Pirating.
25. Immigration Compliance and E-Verify.
26. Layoffs.
27. Rest and Meal Breaks.
28. Expenses.
29. Personal Appearance/Dress Code.
30. Workers; Compensation/Return to Work.
31. Open Door, Grievance and Alternative Dispute Resolution.
32. Reservation of Rights to Change Policies and Handbook.
33. Employee Acknowledgment Forms.

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Julie Pace has been interviewed and quoted on immigration and employment law in news media across the nation, including *ABA Journal*, *Forbes*, *Wall Street Journal*, *Business Week*, *The New York Times*, CNN, NPR, Associated Press, *USA Today*, *L.A. Times*, CBS News, Fox News, and Arizona publications.

Ms. Pace is a frequent speaker and author on a variety of employment topics. She is Co-Editor-in-Chief of three books on immigration and employment law -- *Employment Verification: An Employer's Guide to Immigration, Form I-9 and E-Verify*; *Arizona Human Resources Manual*; *Model Policies and Forms for Arizona Employers*, all published by American Chamber of Commerce and Industry HR Compliance Library.

Ms. Pace is a recipient of *Arizona Business Magazine's* 2008 Centers of Influence Award, which recognizes the ten leading attorneys, accountants, and bankers in Arizona. Ms. Pace is also a Fellow of the Litigation Counsel of America. She has served as *Judge Pro Tem* for the Arizona Court of Appeals and is a former judicial law clerk to the Honorable Joe W. Contreras of the Arizona State Court of Appeals. Ms. Pace is a fourth generation Arizonan.

# Julie A. Pace

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**JULIE A. PACE** is a partner in the Phoenix office of The Cavanagh Law Firm PA. Ms. Pace's practice is concentrated in representing companies in immigration compliance, commercial litigation, construction, and employment law, with particular emphasis in the defense of sexual harassment, employment discrimination, wrongful discharge suits, EEOC and ACRD charges, matters involving OSHA, ICE, OFCCP, DOL, DOT, NLRB, ADA, FMLA, ERISA, I-9s, E-Verify, Davis-Bacon, wage and hour laws, conducting sexual harassment investigations, and providing training to managers and employees. She also counsels employers on noncompete contracts, confidentiality agreements, employee discipline, drug testing, accommodation of disabled individuals, safety policies, affirmative action plans, wage conformances and wage determinations, and other related human resource policies and procedures.

Ms. Pace also handles issues involving the Affordable Health Care Act and addresses the changes and options it presents to companies. Her Davis-Bacon and prevailing wage practice includes counseling and training on state and federal prevailing wages and benefits requirements, coverage and applicability of prevailing wage laws, coverage exemptions, worker classification and pay issues, addressing wage determinations, wage surveys, and representation of employers before the Department of Labor Wage and Hour Division and similar state agencies.

Ms. Pace has been described by Arizona Business Magazine as the "go to" lawyer in Arizona for businesses on immigration issues. She has handled hundreds of I-9 audits, addresses E-Verify issues, and has provided I-9 and immigration compliance training for thousands of supervisors. She has chaired the Immigration Committee of the Arizona Chamber of Commerce and Industry.

For over the past two decades, Ms. Pace has regularly represented companies in OSHA proceedings. She has been working on fall protection issues since the fall protection standard went into effect in 1995. She has handled hundreds of OSHA matters and numerous fatalities in the workplace.

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**HEIDI NUNN-GILMAN** is a partner with The Cavanagh Law Firm in Phoenix, Arizona. Ms. Nunn-Gilman's practice focuses on employment litigation and human resource matters. She has experience in working with both public and private employers. She advises clients on matters relating to labor and employment law, including I-9 and immigration compliance strategies, E-Verify, ICE and worksite enforcement, Title VII, FLSA, FMLA, ADA, leaves, drug and alcohol, NLRB, wrongful discharge, non-competition and confidentiality agreements, wage and hour laws for both public and private employers, employee handbooks, and executive agreements.

Ms. Nunn-Gilman also handles issues involving the Affordable Health Care Act and addresses the changes and options it presents to companies. Her Davis-Bacon and prevailing wage practice includes counseling and training on state and federal prevailing wages and benefits requirements, coverage and applicability of prevailing wage laws, coverage exemptions, worker classification and pay issues, addressing wage determinations, wage surveys, and representation of employers before the Department of Labor Wage and Hour Division and similar state agencies.

Ms. Nunn-Gilman received her J.D., *summa cum laude*, from Lewis & Clark Law School in Portland, Oregon in 2005, where she graduated first in her class, was on the Trustee's Fellowship Scholar List, and was a member of the Cornelius Honor Society. While at Lewis & Clark, she served as Editor in Chief of the *Lewis & Clark Law Review*. Ms. Nunn-Gilman earned an M.A. degree in Philosophy, Teaching Ethics Emphasis, *summa cum laude*, from the University of Montana in 2000. She earned a B.A. degree in political science, history and philosophy, *summa cum laude*, from Ouachita Baptist University in 1998. Ms. Nunn-Gilman can be reached at (602) 322-4080 or [hnnungilman@cavanaghlaw.com](mailto:hnnungilman@cavanaghlaw.com).