

Legal Alert

February 15, 2017

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QUESTION: ISN'T THE GOVERNMENT'S FORM I-9 JUST MORE RED TAPE IN THE HIRING PROCESS?

ANSWER: THAT GOVERNMENT RED TAPE FOR EMPLOYMENT ELIGIBILITY VERIFICATION COMES WITH STICKY PENALTIES FOR EVEN HONEST MISTAKES!

Employers need to properly complete I-9 forms for required employment eligibility verification. Even if you never have any unauthorized workers in your workforce, your company may be fined big money for technical mistakes in your form I-9 record keeping.

The ICEman Cometh...with Big Penalties!

I-9 form audits by Immigration and Customs Enforcement ("ICE") are increasing. Simple paperwork errors led to a fine of \$605,250 against Hartmann Studios. Most of the violations were failures to complete section 2 of I-9 forms. Immigration and Customs Enforcement did not charge Hartmann Studios for failing to obtain and review appropriate verification and employment authorization documents as required in section 2. Rather, it charged the company for failing to complete and sign the form.

A drywall installation company was ordered to pay a civil penalty of \$173,250 for doing a bad job of completing and keeping I-9 forms. *Ketchikan Drywall Services Inc. v. Immigration and Customs Enforcement*, 725 F.3d 1103 (9th Cir., 2013). Some Burger King restaurants in Phoenix, Arizona were penalized \$77,835 for failing to properly complete sections of 83 I-9 forms. *United States of America v. Barnett Taylor LLC*, 10 OCAHO 1155 (2012).

American Apparel lost 40 percent of its workforce after a form I-9 inspection in 2009. American Apparel's stock dropped 41 percent due to the lost productivity. Not complying with the form I-9 process for employment eligibility verification cost ABC Professional Services Inc. \$2 million in 2012. Abercrombie & Fitch paid \$1 million because its electronic form I-9 system was found to be non-compliant, even though it had no unauthorized workers and it had used e-Verify for years.

Is your business ready to use the new I-9 forms? I-9 Forms are required employment eligibility verification. Even honest mistakes can cost you a lot.

Penalties for Clerical Errors!

The U.S. Department of Homeland Security raised the civil penalties under the Immigration and Nationality Act on August 1, 2016. The civil penalties for even technical violations in completing I-9 Forms are now a minimum of \$216 and a maximum of \$2,156 per form.

Even if you have all of the correct information on the I-9 Form, your company is subject to the fine if the information is not in the correct sections of the form. Leaving any of the sections of Form I-9 blank is also a technical violation.

While \$216 may not seem like much, multiply it by the number of employees that you have. A simple mistake in your system or in your process for completing the forms results in automatic civil penalties. Depending upon the number of penalties and the extent of the deficiencies, the penalties can be as much as \$2,156 for each mistake!

New I-9 Forms, too!

As of January 22, 2017, the I-9 Forms that your Human Resources staff has been completing since 2013 are obsolete. You don't need new forms for existing employees, but you better use the new forms for new employees. The new form is available at the U.S. Citizenship and Immigration Services website (www.uscis.gov/i-9).

President Trump has said that he will triple the number of ICE agents. Expect more audits, more investigating officers and harsh enforcement.

Your friendly federal government now provides 15 pages of guidance for completing the forms.

Your staff better read and understand and follow all 15 pages of instructions!

The small stuff matters. Don't leave any blanks because that would be a violation. If any field would have been left blank fill it in with "N/A" or you will be penalized.

If you need an explanation of the rules, let us know. We can audit your compliance system to help assure compliance. An ounce of prevention beats a pound of cure!