

What You Don't Know COULD Hurt Your Business!

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Today is Monday. You have a \$110,000 construction project on a federal government building starting today. You have hired 10 new employees who will supplement your current workforce. Your new employees just reported to the office to fill out their new hire paperwork. Connie Clerical, who is responsible for getting this done, tells your new employees to photocopy their driver's license and social security card and give her the copies. She then has them fill out the top of the I-9 Form and staples the photocopies to the forms. One employee says he forgot his social security card. She tells him to bring it in next week when you have a project meeting. Another employee tells her that he doesn't have a social security card, but he has a Mexican passport with a work authorization stamp. She tells him that anyone authorized to work in the United States must have a social security card and that he needs to get one. She told him to get the social security card and bring it to next week's project meeting. After she gets the new employees' I-9 forms, she puts them in a file folder, marks it "I-9 forms," and puts the file in her "to do" pile. She is out sick the rest of the week.

Connie reports to work the next Monday morning. Andy Agent, an Immigration and Customs Enforcement ("ICE") agent, shows up ten minutes later and asks to see the I-9 forms for current employees. Connie has the file with new employees' I-9 forms in it and gives it to Andy to get him started. Andy says he will come back on Thursday to get the rest of the forms. A week later, you receive a letter from Andy saying he has completed his audit and is fining you \$42,600.

Here is the itemization of violations and fines:

Ten I-9 forms with three non-technical errors each (failure to complete Section 2 List A or List B& C; failure to attest to having viewed original acceptable documents; failure to complete Section 2 within 3 days of hire): **$10 \times 3 \times \$1110 = \$33,000$**

One employee not authorized to work in the U.S.: **$1 \times \$3,200 = \$3,200$**

Discriminatorily requiring two employees to provide social security card rather than any acceptable document: **$2 \times 3200 = \$6400$**

Andy's letter states that this is just the preliminary fine, as he has not yet reviewed the I-9 forms for the rest of your workforce. Then the final death knell. The letter says that, because you are a federal contractor and you did not use E-Verify to ensure your workers were authorized to work in the United States, Andy has reported your noncompliance and your company may be debarred from performing any federal contracts for up to 10 years.

Do you think this scenario is farfetched? Until recently, employers may have had reason to feel that this risk was remote because ICE's predecessor, INS, rarely did I-9 compliance audits. Instead, immigration enforcement efforts largely involved raids in ethnic neighborhoods. The Obama Administration, however, is no longer primarily targeting illegal aliens but, instead, is

going after their employers to fight unlawful immigration. To this end, ICE has hired additional enforcement agents and those agents are hard at work. In July 2009, ICE sent out 652 Notices of Inspection and in November, it sent out another 1000 Notices. These Notices tell employers that they are coming in, generally within 72 hours, to audit their I-9 forms. It is common for ICE to take information gathered during the audit to obtain a warrant to conduct a workplace raid. ICE decides who to target based on complaints and industry. The construction industry is a prime target.

So what can you do to protect your company? Here are some tips:

- 1.) Make sure at least two of your employees at each location where new employees complete paperwork are well trained in all aspects of I-9 form compliance so that, if one is absent, the other can ensure prompt and accurate I-9 completion.
- 2.) If you are a federal contractor or subcontractor, check your contract to determine whether you are required to comply with E-Verify. There are dollar thresholds and, aside from not requiring compliance for small contracts and even smaller subcontracts, exceptions are very limited.
- 3.) E-Verify is a computerized process used to verify that the social security numbers and other identifying characteristics of your employees are consistent with government records. Four states currently require that all employers comply with E-Verify, even if they are not a federal or state contractor. Consult legal counsel to find out if any of the states in which you do business require that you utilize E-Verify.
- 4.) Periodically conduct I-9 form audits to ensure ongoing I-9 form completion compliance.
- 5.) Establish a method to notify existing and future subcontractors to comply with federal I-9 requirements.
- 6.) If you are a federal contractor or do business in states that require E-Verify, develop a process to notify your subcontractors of requirements that they use the E-Verify system.

By following these simple steps, you will be far more prepared than most of your competitors and should be able to survive an I-9 audit unscathed.