



NEW POLICIES GOVERN EMPLOYMENT OF IMMIGRANTS

Businesses must fill out federal ID forms, verify immigration status

By JENNIFER L. MARQUIS

Two recent developments require employers to review their employee verification policies to ensure continued compliance with the Immigration Reform and Control Act (IRCA) of 1986, and to avoid the imposition of civil and criminal penalties. The purpose of IRCA is to control illegal immigration by eradicating employment prospect as an inducement for unlawful individuals to come to the United States. The law bars the hiring or continued employment of aliens whom employers know are not authorized to work in the United States. Most employers are familiar with the act through the I-9 process that they are required to complete for all new employees.

The Department of Homeland Security recently updated the federal I-9 identification form that employers are required to complete for each employee. The most noteworthy change to the form is the requirement that all documents presented during the I-9 form completion process not be expired. As of April 3, 2009, employers were required to revise their process for confirming the identity of new employees, and their right to work in the United States. All U.S. employers must complete and retain an I-9 for every individual they hire, whether a citizen or not. On the form, the employer must verify the employment eligibility and identity documents presented by the employee and record the document information on the I-9 form. Employers are

required to use the revised form for all new hires and to re-verify any employee with expiring employment authorization. The previous edition of Form I-9, dated June 5, 2007, is no longer valid for use.

The revised I-9 form, like its predecessor, prominently displays a nondiscrimination statement and makes significant changes to the type of documents that a new employee must provide to establish his or her identity and employment eligibility. Three documents have been removed from the list of acceptable Column A documents, namely: (1) Form I-688, Temporary Resident Card; (2) Form I-688A, Employment Authorization Card; and (3) Form I-688B, Employment Authorization Card.

The revised I-9 form also adds new Column A documents to the category of acceptable proof of identity and employment verification. Other acceptable documents now include a temporary I-551 printed notation on a machine-readable immigrant visa in addition to the foreign passport with a temporary I-551 stamp; and a passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with a valid Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI.

Internet Verification

In other employment eligibility news, on June 6, 2008, then-President George W. Bush amended Executive Order 12989 in regard to federal contractors' compliance with immigration laws. In response, the U.S. Citizenship and Immigration Services proposed an interim final rule that is scheduled to take



Jennifer L. Marquis

effect on May 21, 2009, codifying the executive order. The rule mandates that, beginning May 21, contractors must electronically verify employee immigration status as a prerequisite to doing business

with the federal government.

Verification can be achieved through E-Verify, an internet-based system administered jointly by the Department of Homeland Security and the Social Security Administration. Federal contractors can authenticate Social Security numbers through E-Verify to ensure that their employees are eligible for employment. Based on information provided by an employee on his or her I-9, the system checks this information electronically against records held by the Department of Homeland Security and the Social Security Administration databases.

After May 21, federal contractors must confirm the eligibility of all new hires and existing employees who are classified as employees assigned to a federal contract. Employees who have already been verified through E-Verify need not be re-verified. However, an employee's previous employment authorization through E-Verify from another employer does not satisfy an employer's obligation to use E-Verify once it has hired him or her. Under the final rule, employers are required to enroll in E-Verify if they are awarded a federal contract or subcontract which requires participation in E-Verify as an express term of the contract. Verification of employees through E-Verify is limited to new hires only, unless the em-

Jennifer L. Marquis is an associate in the Milford office of Berchem, Moses & Devlin, P.C. She practices in the areas of labor and employment law.

ployer is a federal contractor who has been awarded a contract on or after May 21.

The rule compels the inclusion of the E-Verify language in prime federal contracts with a period of performance longer than one hundred twenty days and a value above \$100,000. The rule covers subcontractors only if the underlying contract includes the language. For subcontracts that flow from those contracts, the rule extends the E-Verify requirement to subcontracts for services or for construction with a value over \$3,000. The rule applies only to employees employed in the United States, which is defined to include the District of Columbia, Guam, Puerto Rico, and the U.S.

Virgin Islands. The rule exempts: (1) contracts that include only commercially available off-the-shelf (COTS) items (or minor alterations to a COTS item) and associated services; (2) contracts of less than \$100,000; (3) contracts lasting less than 120 days; and (4) contracts where all work is performed outside the United States.

Similarly, the Connecticut General Assembly introduced its own bill, S.B. 221, on Jan. 21, 2009, which would require Connecticut employers with three or more employees to use the federal E-Verify program to confirm the employment eligibility of newly hired employees. Introduced by state Sen. Michael McLachlan, R-Danbury,

the bill has been referred to the Committee on Labor and Public Employees. Connecticut seeks to join a growing number of states across the nation requiring the use of the E-Verify system in order to ensure that employees are authorized to work in the United States.

Employers are encouraged to revisit their employment eligibility verification policies to ensure compliance with these new regulations, particularly because enforcement by the Immigration and Customs Enforcement, the agency of the Department of Homeland Security charged with the task of enforcement, has been on the rise in recent years. ■