

IMMIGRATION COMPLIANCE

Presented by: **Renata Sobral** Phone: (407) 541-0857 | Email: rsobral@fisherphillips.com

Shanon R. Stevenson Phone: (404) 240-5842 | Email: sstevenson@fisherphillips.com

OVERVIEW

- Increased Government Audits/Raids
- I-9 Basics
- I-9 Self Audits
- ICE Notice of Inspection



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Record-Breaking Immigration Enforcement Continues

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- ICE made 452 criminal arrests tied to worksite enforcement investigations.
- Of the individuals criminally arrested, 179 were owners, managers, supervisors or human resources employees.
- They face charges such as harboring or knowingly hiring illegal aliens. The remaining workers who were criminally arrested face charges such as aggravated identity theft and Social Security fraud.

Record-Breaking Immigration Enforcement Continues

• ICE served 3,127 Notices of Inspection and 637 Final Orders, totaling \$15,808,365.00 in administrative fines. Fishe

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- ICE debarred 277 business and individuals for administrative and criminal violations.
- ICE believes utilizing enforcement, compliance and outreach is an effective approach to deter illegal employment and create a culture of compliance.
- HSI prioritizes investigations involving critical infrastructure and key resources. No industry, regardless of size, type or location is exempt from complying with the law or being the subject of an ICE investigation.

Record-Breaking Immigration Enforcement Continues

- Administration has spent more on immigration enforcement than on all other federal criminal law enforcement combined, with an estimated \$18 billion in expenditures
- Surpassed combined budgets of the FBI, ATF, DEA and Secret Service by \$3.6 billion

Largest Immigration Fine in History

- \$34 Million Dollar Fine software company headquartered in Texas paid \$34 million for, among other immigration violations:
 - Failing to maintain I-9 records for many of its foreign nationals; and
 - Widespread failure to update and re-verify the employment authorization status of a large percentage of its foreign national employees.

\$2 Million in Forfeitures

- Employing Unauthorized Workers:
 - Two Houston companies each forfeited \$2 million and agreed to adhere to revised immigration compliance programs for employing unauthorized workers.
 - Many individuals were employed with numerous "egregiously suspect" identification documents, including misspellings of agency names and/or containing the words "novelty item."

\$250,000 Civil Penalty

- Discriminating Against Non-U.S. Citizens During the I-9 Process:
 - USDOJOSC settled with food service vendor for discriminating against non-U.S. citizens during the I-9 process
 - Non-U.S. citizens were asked to provide specific documents that U.S. citizens were not required to produce

\$175,000 In Penalties

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- I-9 Document Abuse:
 - USDOJ settled a lawsuit against a major retailer with over 180,000 employees for \$175,000 for unfair documentary practices during the I-9 process.
 - \$100,000 back pay fund to compensate any individuals who suffered lost wages or loss of seniority as a result of its practices.
 - I-9 practices will be subject to monitoring for two years.

Protect Your Business

- I-9 audit may be foundation for raid, civil money penalties and criminal sanctions.
- Ensure I-9 compliance programs are in place, up-todate, and followed.
- Conduct regular internal I-9 audits and remedy identified errors.
- Have outside counsel conduct periodic I-9 audits.



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I-9 Basic Requirements

- All employees hired after November 6, 1986 must have a I-9 form on file.
- Current version of the form issued 3/8/2013, expiration date 3/31/16.
- Section 1 completed by employee prior to starting work.
- Section 2 completed by employer by end of third business day after employee starts work.

Form I-9

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- Revised I-9 Form issued, expiration date (3/31/16) Still in effect
- Instructions are 6 pages (formerly 3)
- Obtain two-page form at: <u>http://www.uscis.gov/files/form/i-9.pdf</u>
- I-9 Handbook for Employers: http://www.uscis.gov/files/form/m-274.pdf

Section 1 - Employee

• Employee must complete section one before work commences.

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- Name, address, date of birth, Social Security number (optional unless use E-Verify), e-mail (optional), telephone # (optional)
- Employee must check box regarding authorization to work in the U.S.
- Must sign and date form.

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• May have assistance completing form.

Properly	Comple	eted	Secti	on	1			Fisher Phillips
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1	03/02/1994 0.00	00-000 paul:	ouis?email.com		(30)	1) 765-4321		
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Section 2 - Employer

- Complete no later than end of 3rd business day after employee starts work.
- Re-enter employee's name at top
- Examine & record documents presented by employee to verify identify & employment authorization (List A or one for List B and List C).
- Insert start date, name & title of employer representative, business name & address & sign and date.

Section 2 - Employer

- Certify that the documents:
 - reasonably appear to be genuine;
 - relate to the individual; and
 - $\ensuremath{\bullet}$ authorize the individual to work
- Documents examined must be originals not photocopies.



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Section 2. Employer or Authori					
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EAD Issuing Authority:	Issuing Authority:		Issuing /	uthority:	
DIIS Document Number	Document Number:		Docume	nt Number:	
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08/31/2015	Expiration Date (if an	((000548833999))	Expando	n Date (if eny)	www.hkbyyyy/
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above-listed document(s) appear to be employee is authorized to work in the		to the employee	named, and (3)	to the best o	f my knowledge the
The employee's first day of employme	nt (mm/dd/yyyy) 06/	10/2013 (8	ee instructions	for exempti	0.95.)
Signature of Employer or Authorized Represe	relation Date	(mm/dd/yyyy)	Title of Employer		Representative
Last Norre (Faculty Norres)	First Name (Given Ner	30/2013	Project Ma wer's Dusiness or		
Bardy	Timothy		puter Techs		
Employer's Business or Organization Address				State	Zp Code
456 Linux Avenue				MD	12345

Section 3 - Reverification

- If employee's authorization to work in U.S. will expire re verify.
- If rehire employee within 3 years of original hire date may re verify use current version of Form I-9.
- If employment authorization document originally presented is still valid, no need to review document.



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Section 3. Reverification and Rehires (To be completed and sign	ned by employ	ver or author	ized representative.)
A. New Name (if applicable) Last Name (Family Name) F	First Name (Given Name)	Middle In	itial B. Date	of Rehire (if applicable) (mm/dd/yyyy)
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attest, under penalty of perjury, that to the best o he employee presented document(s), the docume				
Signature of Employer or Authorized Representative:	Date (mm/dd/yyyy):			or Authorized Representative:
alice Smith	03/28/2015	Alice &	Smith	

List of Acceptable Documents List A – Documents that Establish both Identity and Employment Authorization

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- 1. U.S. Passport or Passport Card
- 2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)
- Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa (MRIV)
- Employment Authorization Document (Card) that contains a photograph (Form I-766)
- 5. In the case of a nonimmigrant alien authorized to work for a specific employer incident to status, a foreign passport with Form I-94 or Form I-94A bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, as long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form
- Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with 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

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List of Acceptable Documents List B Identification & List C Work Authorization

LIST B: Documents That Establish Identity For individuals 18 years of age or older:

- 1. Driver's license or ID card issued by a state or outlying possession of the United States, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address
- gender, height, eye color, and address 2. ID card issued by federal, state, or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address 3. School ID card with a photograph V bords motivation april V bords motivations
- Voter's registration card
 U.S. military card or draft record

- Military dependent's ID card
 U.S. Coast Guard Merchant Mariner Card
 Native American tribal document
- 9. Driver's license issued by a Canadian government authority
- authority For persons under age 18 who are unable to present a document listed above: 1. School record or report card 2. Clinic, doctor or hospital record 3. Day-care or nursery school record

LIST C: Documents That Establish Employment Authorization 1. U.S. Social Security account number card, unless the card included one of the following restrictions:

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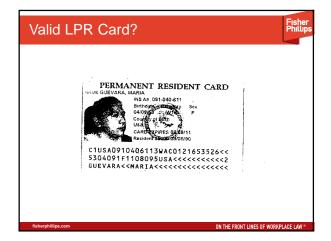
- Unlies the card include one of the tonowing restrictions: (1) Not valid for Employment (2) Valid for Work only with DRS Authorization. (2) Valid for Work only with DRS Authorization. (2) Cartification of Birth Aproad Saude Jyh BU.S. Department of State (Form FS-645) (3) Cartification of Report of Birth issued by the U.S. Department of State (Form DS-1530) (4) Original or certified copy of a birth certificate issued by a state, county, municipal authority, or outhying Dossission of the United States bearing an official seal (5) Native American tribal document
- an official seal 5. Native American tribal document 6. U.S. Citizen Identification Card (Form I-197) 7. Identification Card for Use of Resident Citizen in the United States (Form I-179)
- 8. Employment authorization document issued by DHS

Document Acceptance Standards

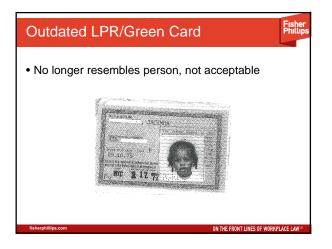
The I-9 states that you must review the original documents presented to determine if they are "genuine" and "relate" to the person presenting them to you.

































• There are at least 50 valid versions of the Social Security Number Card:

- Example 1: UNRESTRICTED SS cards: "Valid for Work Authorization".
- Example 2: RESTRICTED SS cards: "Not valid for Employment"; "Valid for work only with INS Authorization" and "Valid for Work only with DHS Authorization".





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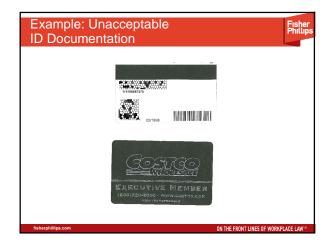


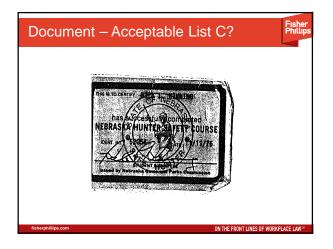












Completing I-9s for Deferred Action For Childhood Arrivals

- Unexpired EAD issued to eligible deferred action recipient is an acceptable List A document.
- If such an EAD is presented, may not ask for additional proof.
- When validity of EAD expires, employer must re-verify in Section 3 of the I-9.
- If current employee provides this EAD and name, DOB, attestation, or SSN changed, gov't advises complete new I-9 with original hire date & attach to previous I-9.



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Photocopy Rule

- Copying of documents permitted but not required.
- Even if copy documents, penalty may result if form is not also properly completed.
- Photocopies can be used to correct problems identified during a periodic self-audit or in advance of a government audit.



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Retention Requirements

- Once employee terminated, you must retain I-9 form for:
 - At least three years from date of hire; and
 - At least one year from date of termination;
 - Whichever is later.
- Once retention requirements met, purge form.



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Self-Audit – Getting Started

- Generate a list of all current employees:
 - Include name, date of hire, and distinguishing fact (SSN or DOB).
- Pull I-9 forms for all current employees.
- Make sure that you have an I-9 form for each employee on the list.
- Make a note on the list if an I-9 form is missing for a particular employee.



Missing Form I-9

- If you determine that an I-9 form is missing for a current employee – complete a form immediately.
- Ask employee to complete Section 1, sign and date (with current date).
- Complete Section 2 (insert original start date) and sign and date (with current date).



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Self Audit - Review Form

- Review each I-9 form for errors.
- Use "stick-on" notes to highlight errors.
- Things to look for:
 - Missing information?
 - Incomplete listing for documents?
 - Signatures in Sections 1 and 2?
 - Section 1 Status Box Checked?
 - Too many documents in Section 2?
 - Was the correct version of the form used?



Making Corrections

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- Correct errors, as allowed, on each form:
 - Section 1 Employee makes corrections.
 - Section 2 Employer makes corrections.
- All corrections should be initialed, dated, and include the words "Per Self Audit".



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Section 1 – Common Errors

- Employee completed Section 1 after commencing work Not Correctable.
- Employee did not check box regarding authorization to work in the U.S. Correctable.
- Missing Social Security number Not required (unless using E-Verify at time of hire).
- Employee failed to check or fully complete Citizenship Status Box Correctable.
- Employee did not sign/date Correctable w/ current date.

Section 2 – Common Errors

- No Start Date Listed in Certification Box Correctable.
- Issuing Authority, Document Number, and/or Expiration Date missing for identity and work authorization document(s) - Correctable.
- Too many or too few documents listed Correctable.
- Employer signature box incomplete Correctable.



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Section 3 – Common Errors

- Date of Rehire Missing Correctable.
- Section 3 completed when not required (e.g., for Permanent Resident) Correctable.
- Employer signature and date missing Correctable.
- Incorrect version of form used Not Correctable.
- Date of Rehire more than 3 years after original hire date Not Correctable.
- Re-verification of employment eligibility not timely Not Correctable.

Terminated Employees – Auditing Retained Forms

- Print List of terminated employees hired after November 6, 1986.
- Check hire date & termination date to determine whether I-9 form should be on file.
- Purge forms not required to retain.
- Review retained I-9 forms and correct errors where allowed/possible.



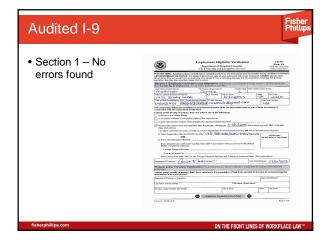
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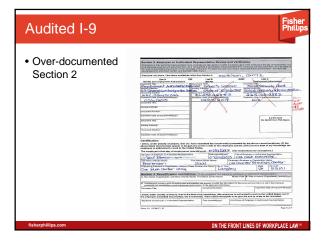
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Missing I-9 – Terminated Employee

- If you discover that you are missing an I-9 form for a terminated employee, you may contact terminated employee and complete I-9 form now.
- Good practice to review I-9 form at termination/exit interview.







Things to Remember

- Fishe Philli
- DO NOT re-verify expired U.S. passports or passport cards, Unrestricted Permanent Resident Cards, or List B Identity documents.
- As of April 3, 2009, expired documents may not be accepted (with some exceptions).
- Social Security card marked "Not Valid for Employment" or "Only Valid with DHS Authorization" is not acceptable List C document.



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ICE Arrives - Notice of Inspection

- Three days notice prior to ICE review of I-9 Forms allowed (may waive but not recommended).
- Original, microfilm, microfiche or electronic I-9 forms acceptable for inspection.
- Personal appearance to give testimony and turn over documents may be required.
- Subpoena/warrant not required for I-9 inspection.



Providing Forms to ICE

- Notice of Inspection requires employer to produce documents for review.
- Review may be at employer's location or at ICE office.
- May, but not required to, turn over originals or copies of I-9 forms to ICE – may insist on inspection in presence of company representative.



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What May Be Inspected?

- I-9 Forms for current employees hired after Nov. 6, 1986.
- I-9 Forms for terminated employees within the required retention period.
- Electronic employee listing.
- Quarterly wage and hour reports.
- · Payroll data.
- SSA Mismatch correspondence.
- E-Verify and/or SSNVS documents.
- Business information (Employer ID number, owner's SSN/address, business licenses, etc.)

After ICE Inspection

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- ICE issues Notice of Inspection Results if found in compliance.
- If not in compliance, may receive:
 - Notice of Technical or Procedural Failures
 - Notice of Intent to Fine
 - Notice of Suspect Documents
 - Notice of Discrepancies
 - Warning Notice
- Notice of Intent to Fine employer has opportunity to negotiate settlement or request hearing.

Search Warrant

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- No 3 day notice required.
- Review search warrant.
- Monitor the search but do not interfere.
- Comply with terms of warrant.
- Do not resist.
- Notify/contact management and legal counsel immediately.
- Keep track of what is seized/taken.



IRCA Prohibited Acts

• CANNOT:

- Knowingly hire an alien who is not authorized to work.
- Hire any individual without verifying identity and work authorization.
- Continue employing person if you know or should know person is not authorized to work.



Be Ready for ICE Raid

- Establish procedures if warrant presented.
- Ensure supervisors know who to contact.
- Designate a point person in each location to document all aspects of the raid.
- Prepare employees for possible raid.
- Be prepared to address media during and after raid.



Monetary Penalties

- I-9 substantive/uncorrected technical violations (e.g., missing I-9) range from \$110 to \$1,100 per violation.
- Knowing hire/continuing to employ violations range from:
 - -\$375-\$3,200 (1st violation)
 - \$3,200-\$6,500 (2nd violation)
 - \$4,300-\$16,000 (Subsequent violation)



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Determining Penalty Amounts

- Factors considered for enhancement of fine or mitigation:
 - · Good faith effort to comply;
 - · Seriousness of violation;
 - Whether the violation involved unauthorized workers;
 - Size of business; and
 - History of previous violations.
- Violation percentage calculated to determine amount of fine for first, second, subsequent violations.



w Civil Pe	enalties S	Schedule	
Standard Fine Ame Fine Schedule	ount – Substantive	or Uncorrected Tec	hnical Violation
Substantive Verification Violations	1⁵ ^t Offense \$110 - \$1,100	2 nd Offense \$110 - \$1,100	3 rd Offense \$110 - \$1,100
0% - 9%	\$110	\$550	\$1,100
10% - 19%	\$275	\$650	\$1,100
20% - 29%	\$440	\$750	\$1,100
30% - 39%	\$605	\$850	\$1,100
40% - 49%	\$770	\$950	\$1,100
50% or more	\$935	\$1,100	\$1,100



Kno	Knowing Hire/Continuing To Employ								
\$375	• Under the new penalty schedule, fines range from \$375 to \$14,050 if the employer is charged with knowingly hiring undocumented workers.								
	Knowing Hire and Continuing to Employ Violations	First Tier \$375 - \$3,200	Second Tier \$3,200 - \$6,500	Third Tier \$4,300 - \$16,000					
	0% - 9%	\$375	\$3,200	\$4,300					
	10% - 19%	\$845	\$3,750	\$6,250					
	20% - 29%	\$1,315	\$4,300	\$8,200					
	30% - 39%	\$1,785	\$4,850	\$10,150					
	40% - 49%	\$2,255	\$5,400	\$12,100					
	50% or more	\$2,725	\$5,950	\$14,050					

Criminal Penalties

- 10 years and/or \$250,000 fine for harboring, smuggling, concealing, or transporting illegal aliens for financial gain.
- Criminal sanctions for conspiracy to harbor, smuggle, conceal, or transport.



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USDOJ – Charges of Discrimination

- Process
 - Complaint Driven
 - Referral from agency (E-Verify?)
 - Interviewing Witnesses
 - Discovery
 - Settlement
 - Training, Posting Requirements
 - Monetary Fines
 - · Compliance monitoring
 - Private Right of Action



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How Employers Can Avoid Citizenship Discrimination Charges

- If you are going add any language to recruitment ads and do not want to sponsor foreign nationals for visas due to costs, do not specify status required:
 - "Unrestricted authorization to work in the U.S. required."
- Do not ask about specific immigration status until an offer is made.

How Employers Can Avoid Claims of I-9 Document Abuse

• CANNOT:

- Require specific document or combination of documents.
- Require more or different documents than minimally required.
- Refuse to accept documents that reasonably appear to be genuine.

