



**IMMIGRATION COMPLIANCE**

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**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**

- 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.

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**Record-Breaking Immigration Enforcement Continues** 

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

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**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

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**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.

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**\$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."

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**\$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

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**\$175,000 In Penalties** 

- **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.

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**Protect Your Business** Fisher Phillips

- I-9 audit may be foundation for raid, civil money penalties and criminal sanctions.
- Ensure I-9 compliance programs are in place, up-to-date, 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** Fisher Phillips

- 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.

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**Form I-9** Fisher Phillips

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

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## Section 1 - Employee

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- Employee must complete section one before work commences.
- 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.
- May have assistance completing form.

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## Properly Completed Section 1

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**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 completing a job offer)

|                                  |                  |                         |          |  |  |
|----------------------------------|------------------|-------------------------|----------|--|--|
| Last Name (Family Name)          |                  | First Name (Given Name) |          | Middle Initial (Other Names Used if any) |  |
| Doe, J                           |                  | John                    |          | M  |  |
| Address (Street Number and Name) | City or Town     | State                   | Zip Code |  |  |
| 123 Main Street                  | Chicago, IL      | IL                      | 60601    |  |  |
| Date of Birth (mm/dd/yyyy)       | SSN (dd-mm-yyyy) | Employer Number         |          |  |  |
| 01/01/1984                       | 000-00-0000      | 12345678901234567890    |          |  |  |

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.

**Attest, under penalty of perjury, that I am (check one of the following):**

A citizen of the United States

A non-citizen national of the United States (See instructions)

A lawful permanent resident (Alien Registration Number/USCIS Number) Some aliens may write "NA" in this field. (See instructions)

An alien authorized to work (provide your Alien Registration Number/USCIS Number OR Form I-94 Admission Number) (See instructions)

OR

1. Alien Registration Number/USCIS Number: 1 2 3 4 5 6 7 8 9

2. Form I-94 Admission Number: Do Not Write in This Space

If you obtained your admission number from CBP in connection with your arrival in the United States, include the following:

Foreign Passport Number: \_\_\_\_\_

Country of Issuance: \_\_\_\_\_

Some aliens may write "NA" on the Foreign Passport Number and Country of Issuance fields. (See instructions)

Signature of Employee: Paul W. Doe Date (mm/dd/yyyy): 01/20/2013

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## Properly Completed P/T Section

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**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 Names Used if any) |  |
| Doe, J                           |                  | John                    |          | M  |  |
| Address (Street Number and Name) | City or Town     | State                   | Zip Code |  |  |
| 123 Main Street                  | Chicago, IL      | IL                      | 60601    |  |  |
| Date of Birth (mm/dd/yyyy)       | SSN (dd-mm-yyyy) | Employer Number         |          |  |  |
| 01/01/1984                       | 000-00-0000      | 12345678901234567890    |          |  |  |

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.

**Attest, under penalty of perjury, that I am (check one of the following):**

A citizen of the United States

A non-citizen national of the United States (See instructions)

A lawful permanent resident (Alien Registration Number/USCIS Number) Some aliens may write "NA" in this field. (See instructions)

An alien authorized to work (provide your Alien Registration Number/USCIS Number OR Form I-94 Admission Number) (See instructions)

OR

1. Alien Registration Number/USCIS Number: 1 2 3 4 5 6 7 8 9

2. Form I-94 Admission Number: Do Not Write in This Space

If you obtained your admission number from CBP in connection with your arrival in the United States, include the following:

Foreign Passport Number: \_\_\_\_\_

Country of Issuance: \_\_\_\_\_

Some aliens may write "NA" on the Foreign Passport Number and Country of Issuance fields. (See instructions)

Signature of Employee: John A. Doe Date (mm/dd/yyyy): 01/20/2013

**Preparer and/or Translator Certification** (To be completed and signed if Section 1 is prepared by a person other than the employee)

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

Signature of Preparer or Translator: \_\_\_\_\_ Date (mm/dd/yyyy): \_\_\_\_\_

|                                  |  |                         |       |          |  |
|----------------------------------|--|-------------------------|-------|----------|--|
| Last Name (Family Name)          |  | First Name (Given Name) |       |          |  |
| Address (Street Number and Name) |  | City or Town            | State | Zip Code |  |
| 123 Main Street                  |  | Chicago, IL             | IL    | 60601    |  |

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**Section 3 - Reverification** Fisher Phillips

- 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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**Properly Completed Section 3** Fisher Phillips

**Section 3. Reverification and Rehires** *(To be completed and signed by employer or authorized representative.)*

|   |                    |
|---|--------------------|
| A. New Name (if applicable) Last Name (Family Name) First Name (Given Name) Middle Initial B. Date of Rehire (if applicable) (mm/dd/yyyy) |                    |
| Doe   | Jason A 03/28/2015 |

C. If employee's previous grant of employment authorization has expired, provide the information for the document from List A or List C the employee presented that establishes current employment authorization in the space provided below.

|                 |                  |                                       |
|-----------------|------------------|---------------------------------------|
| Document Title: | Document Number: | Expiration Date (if any)(mm/dd/yyyy): |
| RAD             | XXX1987654321    | 06/30/2019                            |

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: | Date (mm/dd/yyyy): | Print Name of Employer or Authorized Representative: |
| <i>Alice Smith</i>                                  | 03/28/2015         | Alice Smith  |

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**List of Acceptable Documents** Fisher Phillips

List A – Documents that Establish both Identity and Employment Authorization

1. **U.S. Passport or Passport Card**
2. **Permanent Resident Card or Alien Registration Receipt Card** (Form I-551)
3. Foreign passport that contains a temporary **I-551 stamp** or temporary I-551 printed notation on a machine-readable immigrant visa (MRIV)
4. **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
6. 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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**Examples: Unacceptable Social Security Cards**

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**Current Version of Employment Authorization Card**

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**List A Identification and Work Authorization – Must Re-verify Expiration Date**

- Unexpired Foreign Passport with I-551 Stamp
- Employment Authorization Document (Form I 766)

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**Example: Unacceptable ID Documentation** Fisher Phillips



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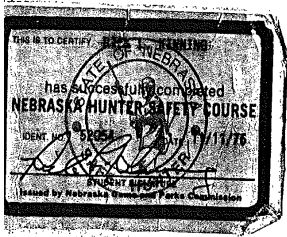
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**Document – Acceptable List C?** Fisher Phillips



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**Completing I-9s for Deferred Action For Childhood Arrivals** Fisher Phillips

- 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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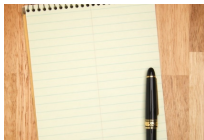
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### Self-Audit – Getting Started

- 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.



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**Missing Form I-9** Fisher Phillips

- 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** Fisher Phillips

- 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?



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**Making Corrections** Fisher Phillips

- 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** Fisher Phillips

- 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.

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**Section 2 – Common Errors** Fisher Phillips

- 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** Fisher Phillips

- 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.

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**Providing Forms to ICE** Fisher Phillips

- 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?** Fisher Phillips

- 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.)

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**After ICE Inspection** Fisher Phillips

- 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.

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### Search Warrant

- 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.



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### 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.



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### 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.



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## Monetary Penalties Fisher Phillips

- 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 (1<sup>st</sup> violation)
  - \$3,200-\$6,500 (2<sup>nd</sup> violation)
  - \$4,300-\$16,000 (Subsequent violation)



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## Determining Penalty Amounts Fisher Phillips

- 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.



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## ICE: I-9 Inspection Overview and New Civil Penalties Schedule Fisher Phillips

| Standard Fine Amount – Substantive or Uncorrected Technical Violation Fine Schedule |  |  |  |
|---|--|--|--|
| Substantive Verification Violations   | 1 <sup>st</sup> Offense<br>\$110 - \$1,100 | 2 <sup>nd</sup> Offense<br>\$110 - \$1,100 | 3 <sup>rd</sup> Offense<br>\$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                                    |

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## Knowing Hire/Continuing To Employ Fisher Phillips

- 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<br>\$95 - \$1,200 | Second Tier<br>\$1,200 - \$5,500 | Third Tier<br>\$4,900 - \$15,000 |
|--|------------------------------|----------------------------------|----------------------------------|
| 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                         |

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## Criminal Penalties Fisher Phillips

- 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 Discrimination Charges Fisher Phillips

- Charges of Discrimination
  - I-9 Violations
    - Citizenship Status
    - Immigration Status
    - National Origin
    - Retaliation
  - E-Verify Violations



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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.

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**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.

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**FINAL QUESTIONS**

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**THANK YOU**  
FOR THIS OPPORTUNITY

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