

Recruiting Trends®

Leading Edge Insight and Strategies for the Recruiting Professional

Can Your Company Survive An I-9 Audit?

Recruiters can gain great credit for finding and securing top international talent – and rightly so. The whole world is a talent pool today, and the best people may be located down the street or on the other side of the world.

Once recruited, paperwork must be completed for each and every hire and this includes the I-9 form. The I-9 verifies the identity and the employment authorization of each employee and is part of the federal immigration regulatory process.

Recruiters can assist their organizations, and enhance their value, by knowing something about the I-9 process – in particular, how to survive an I-9 audit. An I-9 audit takes place when Immigration and Customs Enforcement (ICE) serves a Notice of Inspection on an employer, compelling them to surrender their I-9 forms to the government. So far this year, ICE has levied over \$3 million in fines on employers for I-9 violations – a new record.

Recruiters who wish to keep their organizations out of unwanted trouble may wish to share the following tips on how to survive an I-9 audit with their human resource departments:

1. Make sure that each new hire completes Section 1 of the I-9 form the first day of employment. This is the section where the employee indicates his or her status – U.S. citizen, green card holder, or holder of some form of work authorization. Some employers allow employees to defer completion of this section. However, if the employee's information is incomplete, it is the employer who pays the fine. If the employee has temporary work authorization, it is particularly important he or she indicate when the temporary authorization expires.
2. Complete Section 2 of the form by the employee's third day of employment, as required by law. Show the employee the list of documents included on the I-9 form the federal government accepts to verify employment authorization. Have the employee show either one List A document (ID and Employment Authorization) or one List B document (ID) and one list C document (Employment Authorization). Do not request specific documents or additional documents.



*Carl Shusterman,
Managing Partner,
Law Offices of
Carl Shusterman*

3. Keep your I-9 forms separate from employee personnel files. Otherwise, employers will have a lot of sorting to do if they receive a Notice of Inspection. The forms must be retained for three years after the employee is hired or one year after his or her employment ceases, whichever is later. Keep the forms of active employees separate from those of former employees. Purge the latter on a regular basis.
4. Create a tickler system for employees who check the box in Section 1 which indicates they possess only temporary employment authorization. Send them notices well in advance of the termination of their work permits advising them of the need to update their I-9 forms. Remember that certain types of work status are extended simply by submitting an application for an extension to the U.S. Center for Immigration Services (USCIS). Never update the forms of U.S. citizens or permanent residents, even though "green cards" all have expiration dates, as the federal government will not allow such updates.
5. Protect yourself from violating the antidiscrimination provisions of the law by treating employees who may look or sound "foreign" to you the same as employees who are U.S. citizens. Do not ask "Jose Sanchez" for more of different documents than you ask from "Joe Smith."
6. Business owners and/or human resource personnel should carefully read USCIS' "Handbook for Employers" outlining the various rules and regulations pertaining to compliance with employment related immigration law. You can review to the handbook from my web site at <http://shusterman.com/immigrationguide.html#9>. My web site (www.shusterman.com) also features a free video entitled "How to Survive an I-9 Audit" that offers further advice.
7. Have an attorney who has experience in I-9 laws and procedures review all of your I-9 forms periodically. In most cases, employers are receiving fines not for knowingly hiring illegal aliens but for improperly completed paperwork, errors an attorney should be able to detect.

The recruiting process does not end when a new hire signs a contract – it extends through the retention phase. Properly completed I-9 forms are part of an overall retention strategy and recruiters can help ensure this part of the process is handled efficiently.

Carl Shusterman served as a trial attorney with the U.S. Immigration and Naturalization Service (1976-82) and is principal of The Law Offices of Carl Shusterman, Los Angeles. He can be reached at carl@shusterman.com.