



A DIVISION OF LEAVITT PACIFIC INSURANCE BROKERS

Newsletter June 2011

## USCIS Launches I-9 Central

WASHINGTON—U.S. Citizenship and Immigration Services (USCIS) today launched [I-9 Central](#), a new online resource center dedicated to the most frequently accessed form on USCIS.gov: [Form I-9, Employee Eligibility Verification](#). This free, easy-to-use website builds on recent employment-related enhancements by providing employers and employees simple one-click access to resources, tips and guidance to properly complete Form I-9 and better understand the Form I-9 process.

“I-9 Central is the latest in our ongoing efforts to better serve the 7.5 million employers who use Form I-9 every time they hire an employee,” said USCIS Director Alejandro Mayorkas. “It provides critical information for all employers – whether they hire a single employee or hundreds – in an accessible, intuitive and comprehensive online format.”

The launch of I-9 Central follows the introduction of other important USCIS employment-related resources. These resources include [E-Verify Self Check](#), a service launched in March that allows workers and job seekers in the United States to check their own employment eligibility status online, and an updated [“Handbook for Employers: Instructions for Completing Form I-9 \(M-274\)”](#) published earlier this year.

I-9 Central includes sections about employer and employee rights and responsibilities, step-by-step instructions for completing the form, and information on acceptable documents for establishing identity and employment authorization. I-9 Central also includes a discussion of common mistakes to avoid when completing the form, guidance on how to

correct errors, and answers to employers’ recent questions about the Form I-9 process.

I-9 Central complements existing Form I-9 resources including the current Form I-9 Web page, the form instructions, and the above-referenced “Handbook for Employers.” USCIS also offers free [webinars](#) on completing Form I-9.

By law, U.S. employers must verify the identity and employment authorization for every worker they hire after Nov. 6, 1986, regardless of the employee’s immigration status. To comply with the law, employers must complete Form I-9.

## What Happens During an I-9 Inspection?

Employers subject to an inspection of their Form I-9 will receive a “Notice of Inspection” from the U.S. Department of Homeland Security. Employers are required to hire only United States citizens and aliens who are authorized to work in the United States.

The ICE (U.S. Immigration and Customs Enforcement) regulations require employers be given a 3 day notice prior to review of an employers I-9 forms. However, employers may waive the three-day period if they wish to do so.

The inspector will request various documents for inspection. Sometimes the inspection occurs at the work site, other times; it is conducted in the DHS office. The Inspector will request the original forms from the employer. Although the forms will be returned, the employer should maintain a copy of any and all documents produced for the inspection. The documents requested may include:

1. Original I-9 forms for all current employees and all terminated employees within a specified period.
2. A list of all current and terminated employees, containing the related social security numbers, gender, date of birth, date of hire, date of termination in both digital and hardcopy format. The DHS will not accept the data via email submission. Employers must prepare a compact disk, or submit the data via flash drive.
3. Copies of quarterly wage and hour reports and/or payroll data for all employees, current and terminated, for the specified period of time.
4. Quarterly tax statements (IRS Form 941) for the specified period of time.
5. Business information.
6. Copies of any correspondence from the Social Security Administration (SSA) to the employer regarding mismatched or no matched SSNs.

The DHS will inspect the documents and provide a written report. In some cases the DHS will request missed documents, or assess fines for technical errors. What employers should do to prepare for an inspection?

- Train managers to complete the Form I-9 process accurately and completely.
- Assign one person to be responsible for completion of the I-9 and custodianship of the documents. Employers are required to have I-9 forms on file for every employee for 3 years after the date of hire or 1 year after the date of termination whichever is a longer period of time.
- Conduct an internal I 9 audit on an annual basis or hire an expert to complete the audit for you, to ensure all new forms are completed correctly, and also to remove I-9 forms that have reached their retention requirements and should be purged.

Fines assessed, if any, can be significant depending on the type of violation. The DHS

has published a penalty schedule. Fines range from \$375 to \$14,050 if the employer is charged with knowingly hiring undocumented workers. Fines are calculated by determining the percentage of known unauthorized workers in the employer's overall workforce. The fines can increase for employers with multiple violations. If the employer commits a "substantive" violation, such as failure to keep I-9 records, fines range from \$110 to \$1,100. The fines are calculated by determining the percentage of substantive I-9 verification violations by the employer. ICE also can increase or decrease the fines based on the employer's size, good faith, and history of compliance or noncompliance. ICE may even prosecute criminally if the violations are substantial.

### **Non-Disclosure/Non-Compete Agreements**

#### **What level of employee should be required to sign Non-Disclosure/Non-Compete Agreements?**

Even though any level of employee can be required to sign such an agreement, when it comes to enforcing one in court, that's a different matter...Only those employees who could truly affect the company's success by unfairly sharing trade secrets, should be required to sign one.

For instance, your receptionist has probably not been exposed to company secrets, nor is he/she providing a unique function for your company that could damage your business if the individual were to leave. Requiring the receptionist to sign an agreement and then trying to enforce it would next to impossible. As a general rule, the higher up the corporate food chain the position, the easier it is to enforce a Non-Disclosure/Non-Compete Agreement. Key employees should definitely be issued these agreements to prevent them from going to work for a competitor, recruiting employees, sharing trade secrets or taking lists of customers or clients. ND/NC Agreements can be a condition of continued employment and it is not uncommon for key employees to sign a new ND/NC every year.

**\*\*\*Note for California Employers\*\*\***

*Non-Compete agreements are illegal in California with two narrow exceptions. Non-Compete agreements are enforceable for partnerships and when someone is selling their ownership interest in a company. Companies in California can also prevent the “stealing” of trade secrets, customer lists, etc. (language typically found in a Non-Disclosure Agreement), they just cannot prevent fair competition.*

### **How can I maximize the chance of having a Non-Compete agreement enforced by court?**

Though there are a few states like California that do not enforce non-compete agreements (see exceptions above), most courts will enforce one if it is reasonable in terms of duration, scope and geographic region. The first issue to consider is whether or not there is a legitimate business need to have a non-compete agreement. Courts have viewed such things as protection of trade secrets, relationships with specific customers, patients or clients, ongoing goodwill associated with businesses, geographic location or marketing/trade areas as providing legitimate business need for an agreement. Some courts have allowed non-compete agreements in cases where an individual received specialized training.

If there is legitimate business need, the reasonableness of the agreement will then

come into consideration. Most courts view one year, no more than three (though one is more accepted), agreements as fair if they are not too limiting as to where the individual can go to find employment. This element ties into the geographic scope. Limiting the individual by saying you cannot work anywhere in the United States would not be enforceable. Though there is no set mile radius, areas as small as the town to as large as the whole state has been found to be enforceable. Finally, a reasonable scope gets into what specific work is not allowed to be done by the individual bound by a non-compete. If an individual went to work for a competitor without divulging trade secrets from a previous employer would probably not be considered reasonable.

The reasonableness in time, scope and geographic location ultimately maximizes your chances of having your covenant not to compete enforced by courts. Article provided by Todd Anderson, SPHR

To learn more about Records Retention, contact the HR professionals at MyOHR. [www.MyOHR.com](http://www.MyOHR.com)

**These articles should not be construed as legal advice or as pertaining to specific situations. Consult with your legal counsel for further information.**

***MyOHR provides key Human Resources consulting and support for small, emerging and mid-size companies. Focusing on Human Resource Legal Compliance, MyOHR assists business in achieving operational efficiency by providing the infrastructure necessary to manage the workforce in compliance with State and Federal requirements. MyOHR is cost effective for companies that have not budgeted for a full-time HR position. Contact Jaime Orendac, SPHR-CA at [Jaimeo@MyOHR.com](mailto:Jaimeo@MyOHR.com).***

### **Stay “In The Know” in 2011 –**

#### **Educational Seminars**

We have a variety of educational seminars planned for 2011. Some will be live from the office of our partner in Campbell. Others will be conducted using “Go To Meeting” web conferencing.

Leavitt Pacific Insurance Brokers  
695 Campbell Technology Parkway, Ste 250  
Campbell, CA 95008

- Learn about ways participants can take the stress out of managing their investment portfolio

### **June Educational Session**

#### **OHR's Quarterly Harassment Prevention Training for Managers**

As a service to your business we have a quarterly Harassment Prevention Training. Those sessions occur each quarter on the last Thursday of the month at 1:00 PM. Mark your calendars for March, June, September and December. We also do individual sessions for your offices, including Managers and Supervisors and non supervisory employees.

The next OHR Harassment Prevention Training for Managers session is scheduled for **Thursday, June 28th at 1:00 pm** in Campbell, CA. To register please RSVP for the live session at [Harassment Prevention Training](#)

### **July Educational Session**

#### **Background Checks and Drug testing**

Steve Ziemkowski with Parkin Security will address drug screening processes and how to conduct background checks.

This is a webinar. There is no charge to participants. To register please RSVP for the live webinar session at [Drug Screens](#)

### **August Educational Session**

#### **Retirement Plan Success with Jeff Justi**

This presentation will focus on ways to promote your retirement plan by implementing effective defaults which help remove obstacles to managing and maintaining a successful retirement plan.

Agenda:

- Learn how to increase participation from 20% to above 80%.
- Learn how to help participants meet their funding goals, increasing the likelihood of a fully funded retirement

This session is a webinar: "Go to" session for call-in attendees from 10:15 to 11:45 AM  
[Register for Retirement Plan](#)

