



I-9 Compliance & E-Verify – A Potentially Useful Tool, But Not A Substitute For A Comprehensive Compliance Policy

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The last few years have witnessed significant increases in workforce audits and raids by U.S. Immigration and Customs Enforcement ("ICE") at all levels. Therefore, while proper I-9 compliance has always been important, it has never been more essential. It is not enough for employers to simply fill out the I-9 form to the best of their ability according to the basic form instructions and throw them in a file. Proper I-9 compliance requires due care and proactive planning.

TWO DOCUMENTS EVERY EMPLOYER NEEDS TO HAVE:

Every employer should have a formal internal I-9 Compliance Policy detailing the employer's exact policies and procedures for properly completing, verifying and retaining I-9 and employment authorization documentation, for assigning supervisory responsibility within the company for these duties, and for self-audits or other periodic internal monitoring efforts to ensure compliance. The other document every employer needs to have is an Employee Handbook which contains a section explaining to the employee the employer's and the employee's respective obligations with respect to Form I-9.

IF I SIGN UP TO PARTICIPATE IN E-VERIFY, AM I RELIEVED OF MY OTHER I-9 COMPLIANCE OBLIGATIONS?

No! E-Verify permits employers to verify the employment eligibility of newly hired employees by comparing the employee's eligibility information with online government databases. The government's "E-Verify" Program has received large shares of attention and publicity, with the U.S. government and many state governments actively encouraging, and in some cases mandating, participation in the program. While E-Verify can be a useful tool supplementing basic I-9 compliance, the employer's strict procedural compliance with I-9 regulations is paramount. An employer could positively verify an employee's employment eligibility using E-Verify and nevertheless remain exposed to fines and penalties for failure to properly complete, retain, or manage its I-9 documentation.

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With all of the enforcement activity, publicity and risks, it is time to get proactive on this issue. As there are a number of positive and negative factors to be considered on an individualized basis, unless mandated, choosing whether to participate in E-Verify is a decision that an employer should review with their legal counsel when implementing or updating its comprehensive I-9 Compliance Policy.

The experienced immigration or employment attorneys at Foster Swift welcome an opportunity to discuss a comprehensive approach to your agricultural business.