

FORM I-9 COMPLIANCE

Immigration Customs and Enforcement ("ICE") continues to increase its worksite enforcement efforts. More and more employers are being subject to Form I-9 inspections, and E-Verify legislation is surging across the country. Now more than ever is the time for employers to ensure that they are prepared for the changing immigration landscape.

There are many **MYTHS** about immigration compliance, such as:

- "We record as many documents as the employee presents for Form I-9 purposes, so we are covered from an I-9 standpoint."

FACT: If the employer records more documentation than necessary, this is an I-9 violation called "over-documentation," which typically cannot be corrected. Where an employer commits over-documentation on several I-9s, this may constitute a pattern or practice of discrimination, which can lead to significant penalties.

- "Our I-9s will not be inspected by the government because our organization is too large."

FACT: ICE created the Employment Compliance Inspection Center, which assists ICE offices around the country and provides a forum for conducting audits of even the largest employers.

- "We retain all of our I-9s, even for employees who left years ago, so we have all the I-9s on file we are required to."

FACT: The I-9 regulations require employers to retain Forms I-9 for all employees on their payrolls who are not otherwise exempt from completing an I-9. For individuals who no longer work for an employer, their I-9s must be retained for either one year after the date of termination or three years after the date of hire, whichever is later. If an employer retains I-9s that it should have purged, the employer can be penalized for mistakes on those I-9s during an inspection.

- "We review our I-9s internally each year, and we know we are doing it correctly."

FACT: The I-9 requirements are ever-changing, and reviewing I-9s for errors is extremely complex. Employers commonly make more errors on their I-9s in self-audits, and those can result in higher penalties in the event of an inspection.

The government is in the process of creating a new Form I-9, and information sharing between governmental entities has increased, so other types of government audits can now lead to I-9 inspections. In this era of worksite enforcement, it is critical that employers are focusing on immigration compliance.

For more information on immigration compliance and its application to your organization, please contact Jonathan Bumgarner at 317.977.1474 or jbumgarner@hallrender.com, Michael Kim at 317.977.1418 or mkim@hallrender.com or Natalie Murphy at 317.977.1481 or nmurphy@hallrender.com.