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Helping Employers with Workforce Compliance in the United States

by Bruce E. Buchanan & Greg Siskind

***The I-9 and E-Verify Handbook* seeks to provide comprehensive information on a topic that affects every employer in the country regardless of whether the company hires foreign employees.**

TN, MEMPHIS, September 2017—*The Problem:* In 2017, employers across the United States have been assessed millions of dollars in civil penalties for I-9 violations and employment discrimination. In addition, some companies are having their business licenses revoked and state contracts denied and/or revoked when they are found to have hired unauthorized employees.

Employers are being targeted for a variety of criminal sanctions, including harboring illegal aliens and money laundering, in addition to the criminal penalties contained in the employer sanctions and anti-discrimination clauses within the Immigration Reform and Control Act of 1986 (IRCA). Twenty-three states have now passed employer sanctions laws; and of those 23 states, 8 states require all employers who meet jurisdictional standards to use E-Verify, while 12 states require contractors working with state or local governments to participate in E-Verify.

The Solution: The I-9 and E-Verify Handbook: A Guide to Employment Verification and Compliance provides comprehensive information on a topic that affects every employer in the country regardless of whether the company hires foreign employees. Written by Bruce E. Buchanan and Greg Siskind, two of the nation's top business immigration and employment/labor attorneys, *The I-9 and E-Verify Handbook* serves as a one-stop shop for those who need to know the intricacies of the I-9, E-Verify, and anti-discrimination laws and regulations governing the U.S. workforce.

“Over the past 10 years, immigration worksite enforcement has increased dramatically at both the federal and state levels,” says Buchanan, co-author of *The I-9 and E-Verify Handbook*. Buchanan points out that in 2007 after President George W. Bush's efforts to pass Comprehensive Immigration Reform failed in Congress, enforcement began to increase at the federal level. During the first six years of President Barack Obama's administration, worksite enforcement increased to unprecedented levels, and it has begun to increase under President Donald Trump.

“It would not be surprising to see worksite enforcement reach the highest level ever,” says Buchanan. “The situation for today's employers is much more complex than perhaps at any time, and it will only get more confusing. Employers may feel caught in the middle: abiding by the Form I-9 requirements enforced by U.S. Immigration and Customs Enforcement while not being overzealous in those efforts because it might be viewed as violating the anti-discrimination laws as enforced by the Immigrant and Employee Rights Section (IER), Civil Rights Division of the Department of Justice.”

Because Buchanan and Siskind have represented U.S. employers of all sizes in immigration, employment/labor law, and worksite compliance, they have written *The I-9 and E-Verify Handbook* as a guide for human resource professionals, recruiters, attorneys, and even government officials who need to understand the array of compliance-related statutes and regulations. The *Handbook* is organized in an easy-to-understand question-and-answer format with illustrations, checklists, and sample documents, which give the reader the tools to implement and improve any immigration compliance program.

The I-9 and E-Verify Handbook contains detailed answers to the most common questions about the I-9 and E-Verify process, such as:

- What is the Form I-9 and when must it be completed?
- What is the employee's/employer's responsibility when completing Form I-9?
- Does an independent contractor need to complete a Form I-9?
- Can an employer specify which documents to accept from an employee?
- What if an employee changes his or her name?
- What are the Form I-9 re-verification requirements?
- What is E-Verify and how does it work?
- What are the best ways to prevent being prosecuted for Form I-9 employer violations?
- When would an employer be considered to have "constructive knowledge" of unlawful immigration status?
- How is a complaint filed for an Immigration Reform and Control Act anti-discrimination violation?

And many more!

About the Authors:

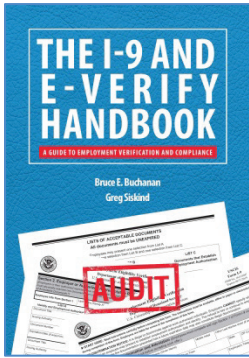


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About the Book:



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Excerpt (Chapter 8: “Penalties and Other Risks”)

8.1 What penalties does an employer face for Form I-9 violations?

Employers can face stiff penalties for Immigration Reform and Control Act (IRCA) violations that include substantial fines and debarment from government contracts. Penalties can be imposed for knowingly hiring unauthorized employees as well as for simply committing paperwork violations even if all employees are authorized to work. Fines for knowingly hiring unauthorized employees amount to anywhere from \$539 to \$21,563 per employee, depending on the prior history of violations. Employers also can be barred from competing for government contracts for one year if they knowingly hire or continue to employ unauthorized employees. Furthermore, there is the possibility of criminal prosecution for a pattern or practice of hiring or employing undocumented workers.

Paperwork violations can result in significant fines. Each Form I-9 with a substantive error—mistake or missing item—can result in a penalty from \$220 to \$2,191 per form for the first offense. The level of the penalty is based on the percentage of I-9 errors. The revised matrix on the exact amount of penalty at each of the levels stated above was not issued at the time of publication. The following is an educated estimate:

- 0–9%: \$220;
- 10–19%: \$545;
- 20–29%: \$873;
- 30–39%: \$1,202;
- 40–49%: \$1,530; and
- 50% and above: \$1,859.

For second offenses, the matrix starts at approximately \$871 and goes up to \$2,191, depending on the percentage of violations. For a third offense, each error costs \$2,191.

An employer, for example, that has 100 employees and has substantive errors on 50 Forms I-9 might face a fine of about more than \$100,000. U.S. Immigration and Customs Enforcement (ICE) investigators have considerable discretion

in assessing fines. All of these fines increased to the dollar amounts stated in 2016, pursuant to a new regulation.

Employers should be cautioned that knowingly accepting fraudulent documents from employees is a different kind of violation that can be criminally prosecuted under other immigration laws.

Aside from federal violations, many states have passed laws that penalize employers violating their immigration laws and the Immigration Reform and Control Act (IRCA), including barring such employers from state contracts and revoking their business licenses. Civil and criminal penalties are as follows for IRCA violations:

Hiring or continuing to employ unauthorized aliens

Fines will vary depending on past violations:

- First offense: \$548 to 4,384 for each unauthorized employee.
- Second offense: \$4,384 to \$10,957 for each unauthorized employee.
- Subsequent offenses: \$10,957 to \$21,916 for each unauthorized employee.

Failing to comply with the Form I-9 requirements

The fine is \$220 to \$2,191 per individual employee for each substantive and uncorrected technical error—failing to properly complete, retain, or make available for inspection Forms I-9. U.S. Immigration and Customs Enforcement (ICE) will consider the following factors in mitigating or aggravating the fine by 5 percent per factor:

- Business’s size.
- Employer’s good faith.
- Seriousness of the violation.
- Whether the individual was, in fact, unauthorized to work.
- History of violations by the employer.