



## UPDATE

### Tips for Employers - Avoid Violations that Trigger Liability

May 24, 2010

Verification failures that are NOT “technical or procedural” in nature are most likely due to failure of the person or company to properly prepare or present the Form I-9.

The following are some common areas where individuals or organization can run into trouble:

#### Section 1 of the Form I-9:

- Ensure that the individual provides his or her printed name in Section 1.
- Ensure that the individual checks a box in Section 1 attesting to whether he or she is a citizen or national of the United States, a Lawful Permanent Resident or an alien authorized to work in the United States until a specified date.
- Ensure that the individual provides his or her Alien or Admission (A) number on the line next to the phrase in Section 1, “A Lawful Permanent Resident,” but only if the A number is not provided in Sections 2 or 3 (or on a legible copy of a document retained with the Form I-9 and presented at the I-9 inspection).
- Ensure that the individual provides the A number on the line provided under the phrase in Section 1, “An alien authorized to work until,” but only if the A number is not provided in Sections 2 or 3 (or on a legible copy of a document retained with the Form I-9 and presented at the I-9 inspection).
- Ensure that the individual signs the attestation in Section 1.
- Ensure that the individual dates Section 1 at the time of hire if the date of hire occurred before September 30, 1996.

#### Section 2 of the Form I-9:

- Review and verify a proper List A document or proper List B and List C documents in Section 2.
- Provide the document title, identification number(s) and/or expiration date(s) of a proper List A document or proper List B and List C documents in Section 2, unless a legible copy of the document(s) is retained with the Form I-9 and presented at the I-9 inspection.
- Sign the attestation in Section 2.
- Date Section 2 within three business days of the date the individual is hired or, if the individual is hired for three business days or less, at the time of hire if the date that Section 2 was to be completed occurred before September 30, 1996.

#### Section 3 of the Form I-9:

- Review and verify a proper List A document or proper List B and List C documents in Section 3.
- Provide the document title, identification number(s) and/or expiration date(s) of a proper List A document or proper List B and List C documents in Section 3, unless a legible copy of the document(s) is retained with the Form I-9 and presented at the I-9 inspection.
- Sign Section 3.
- Date Section 3.
- Date Section 3 no later than the date that the work authorization of the individual hired, recruited or referred for a fee expires.

A person or entity that has committed one or more of the above failures has violated the verification requirements of Section 274A(b) of the Act.

## Verification Failures that May Allow Protection, If Corrected Within Ten Days

### Section 1 of the Form I-9:

- Ensure that an individual provides his or her maiden name, address or birth date in Section 1.
- Ensure that an individual provides his or her A number on the line next to the phrase in Section 1, "A Lawful Permanent Resident," but only if the A number is provided in Sections 2 or 3 (or on a legible copy of a document retained with the Form I-9 and presented at the I-9 inspection).
- Ensure that an individual provides his or her Alien number or Admission number (A number) on the line provided under the phrase in Section 1, "An alien authorized to work until," but only if the A number is provided in Sections 2 or 3 (or on a legible copy of a document retained with the Form I-9 and presented at the I-9 inspection).
- Ensure that an individual dates Section 1.
- Ensure that an individual dates Section 1 at the time of hire if the time of hire occurred on or after September 30, 1996.
- Ensure that a preparer and or translator provides his or her name, address, signature or date.

### Section 2 of the Form I-9:

- Provide the document title, identification number(s) and/or expiration date(s) of a proper List A document or proper List B and List C documents in Section 2 but only if a legible copy of the document(s) is retained with the Form I-9 and presented at the I-9 inspection.
- Provide the title, business name and business address in Section 2.
- Provide the date of hire in the attestation portion of Section 2.
- Date Section 2.
- Date Section 2 within three business days of the date the individuals hired or, if the individual is hired for three business days or less, at the time of hire if the date on which Section 2 had to be completed occurred on or after September 30, 1996.

### Section 3 of the Form I-9:

- Provide the document title, identification number(s) and/or expiration date(s) of a proper List A document or proper List B and List C documents in Section 3 but only if a legible copy of the document(s) is retained with the Form I-9 and presented at the I-9 inspection.
- Provide the date of rehire in Section 3.

A person or entity will be considered to have made a **good faith attempt** to comply with a requirement for I-9 verification notwithstanding a technical or procedural failure to meet such requirement unless:

- The technical or procedural failure was committed with the intent to avoid a requirement of the Act, as demonstrated by the totality of circumstances including but not limited to the substantial presence of unauthorized aliens hired by the employer and a pattern of repeated failures in the completion of the Form I-9.
- The technical or procedural failure was committed in knowing reliance on Section 274A(b)(6) of the Act.
- The employer corrected or attempted to correct the technical or procedural failure with knowledge or in reckless disregard of the fact that the correction or the attempted correction contains a false, fictitious, or fraudulent statement or material misrepresentation, or has no basis in law or fact.
- The employer or recruiter or referrer for a fee prepared the Form I-9 with knowledge or in reckless disregard of the fact that the Form I-9 contains a false, fictitious, or fraudulent statement or material misrepresentation, or has no basis in law or fact.
- The type of failure was previously the subject of a Warning Notice issued by the INS, Notice of Intent to Fine or Notification of Technical or Procedural Failures Letter.

For more information on this and other immigration and employment issues, please contact your Bracewell attorney or one of the following:

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