



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

Ryan E. Lamb

Foster Swift Agricultural Law Update

January 2012

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.

AUTHORS/ CONTRIBUTORS

Ryan E. Lamb

PRACTICE AREAS

Agri-Business

Employment Law

Immigration Law

Labor Relations



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.
