

# Effectively Managing I-9 Employment Eligibility in the Face of Changing Legislation

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management, tracking and compliance by using an  
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## Executive Summary

With increased federal and state legislation and more stringent enforcement policies, employers of all sizes and in all industries are finding themselves in the center of immigration reform and enforcement. The I-9 form is the primary component of the employment eligibility verification process and as regulations evolve, the requirements for effective I-9 management are becoming more complex. At the same time, the stakes are only growing higher as the government steps up its enforcement of immigration employment law with stiff penalties, steep fines and worksite enforcement and raids. These government penalties are not administered to organizations solely for hiring individuals who are not legally eligible to work, but also for incomplete, inaccurate or missing I-9 forms. As a tool to both enable employers to verify the employment eligibility of their employees and increase accountability for employers, the Department of Homeland Security has developed the E-Verify database. E-Verify is an online national database of individuals who can legally work in the U.S. Implementing a complete I-9 management system and automated E-Verify checks can help address many of the common security, management and compliance issues companies are facing. This white paper helps employers understand their responsibilities, as well as the procedural and security considerations they need to keep in mind, and provides best practices guidelines to ensure that their I-9 procedures and systems are effective and comprehensive.

## A National Security Risk

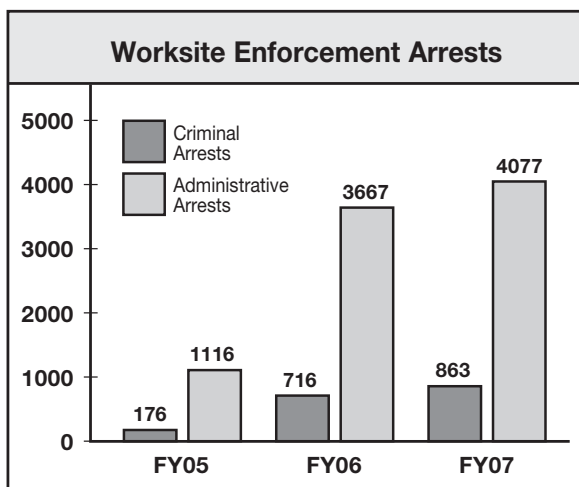
The government is taking very seriously the potential national security risks posed by illegal immigration, and an array of new requirements represents a major effort to decrease it. This means that for today's employers, the risks in not confirming legality to work are great. There have been cases of known and suspected terrorists entering the country illegally and security officers must understand and guard against the possibility that a person with malicious intent could obtain access to critical infrastructures, such as power plants or chemical and water treatment systems, through employment. Recently, it was discovered that illegal workers had access or attempted to gain access to a shipyard where U.S. Navy vessels were being built. In addition, industrial espionage is a risk as an illegal employee could become privy to sensitive information and technologies. The bottom line is that when individuals use fraudulent documents to get a job, they hide

their true identities and histories, so companies cannot verify their backgrounds. This constitutes a real security risk.

## Enforcement of Employment Eligibility on the Rise

Employers of all sizes and in all industries are at the heart of immigration enforcement. Federal and state government agencies are increasing audits, raids and even criminal indictments against organizations suspected of employing unauthorized workers. In addition, steep fines are being meted out for incomplete employment eligibility (I-9) forms and procedures that result in inaccurate or missing I-9 documentation.

Recently a major food processor in the Northwest was the subject of a raid by the Immigration and Customs Enforcement (ICE) Agency and 600 employees were checked for their immigration status and legal right to work in the U.S. Only 48 of those employees turned out to have a legal and valid Social



Security number and were eligible to work in the U.S. A separate ICE raid on a mid-size company in the Northeast with 650 employees and government contracts worth millions of dollars resulted in the discovery, arrest and deportation of over 300 illegal workers and the arrest of the company president and two executives on criminal charges.

The government is stepping up enforcement with stiff penalties and fines for organizations found to have hired illegal immigrants.

Penalties of over \$11 million were levied by the government against a major national retailer over the hiring of illegal immigrants. In 2006, ICE arrested over 700 individuals on criminal charges related to illegal employment issues and more than 3,600 on administrative issues. These figures are about seven times higher than the number of arrests that the Immigration and Naturalization Service made during its last year in operation and those numbers are expected to continue to rise. Employers are at risk regardless of whether they knowingly hire ineligible employees or not.

For many more employers, the greatest risk is not necessarily from hiring employees who are not legally allowed to work, but from new regulations and stiffer enforcement that results in increasing fines for incomplete, incorrect or missing I-9 forms. Even seemingly simple mistakes could result in very steep fines for an organization that is found to be out of compliance. Because regulations continually change, it is critical that the I-9 management

procedure not be a static process, but be consistently updated as necessary to ensure compliance and avoid sanctions.

### **E-Verify Now a Reality**

Organizations must take seriously their responsibility to ensure that they only hire individuals who are legally allowed to work in the U.S. and managing the I-9 form process is key to meeting this requirement. The I-9 form is a federal document to help ensure individuals are legally eligible to work in the U.S. I-9 compliance includes proper completion of the form and review of supporting documentation, accurate record keeping and secure storage of the data, and ongoing management of the process so that updates are made and expired documents are tracked and acted upon at the proper time. I-9 compliance is evolving with the development of the E-Verify database and new federal and state legislation requiring its usage. The U.S. Citizenship and Immigration Services (USCIS), in partnership with the Department of Homeland Security (DHS) and the Social Security Administration (SSA) has created E-Verify, an online national database of individuals who can legally work in the U.S., as a tool that employers can use to verify the employment eligibility status of employees. After the new employee completes an I-9 form, the information may be sent to the DHS for an electronic employment eligibility check. It makes it easier for employers to verify employment eligibility and its availability increases the government's ability to hold employers accountable for the workers they hire.

### **Government Mandates Increasing**

To enforce new levels of accountability, there are a variety of both federal and state regulations that require the use of E-Verify in the hiring process. Over the past few years, several pieces of high-profile immigration reform legislation have been proposed at both the federal and state levels. A number of these regulations have focused on employers and their responsibility to take steps to ensure that individuals are legally eligible to work in the U.S. Current and pending

legislation beefs up employer requirements and the penalties and consequences for hiring individuals who cannot legally be employed.

The E-Verify database is an important component of a number of immigration reform bills. The DHS E-Verify system is a database of individuals who are legally allowed to work in the U.S. and its use is mandated for all federal government agency employees. In addition, as of the date of this publication, pending reforms are aimed at requiring that all employees of organizations with federal government contracts be screened through E-Verify. In addition, all 50 states have considered, have passed or have pending some form of immigration-related legislation, and many include sections on employment eligibility. Some states have already passed immigration legislation that specifically includes requirements to verify employment eligibility through E-Verify and several more states are currently considering such legislation. Organizations must understand and comply with both federal regulations and the legislation of every state in which they have employees.

North Carolina recently mandated that all state agencies and universities use E-Verify, and Arizona has required screening through E-Verify be conducted by every employer operating in the state. Oklahoma requires screening through E-Verify for employers who participate in state contracts only; Arizona requires it for all employees. Colorado legislation requires E-Verify screening by all state agencies and employers with public contracts with state agencies. This trend is continuing as several other states, such as California, have also proposed legislation that would require that all state contractors screen employees through E-Verify.

In addition to mandating the use of E-Verify, some state legislation stipulates financial consequences or rewards related to the use of the system. For example, Arizona legislation includes progressive fines for violations and severe sanctions for non-compliance, while Georgia offers tax exemptions for employers who opt to use E-Verify.

Further complicating matters is that some state legislation may be contradictory to federal mandates and/or to the laws of other states in which the organization does business. For example, while there is a federal mandate in place for all federal government agencies to check employment eligibility through the E-Verify database and there are several state laws requiring its usage, Illinois has passed legislation making the use of the E-Verify database illegal until the federal database can deliver a 99 percent accurate evaluation of an employee's legal status within three days. This is a difficult situation for organizations in Illinois that mandate the use of E-Verify for new hires in offices in other states. Because of these kinds of complexities, it is important for organizations to understand the current legislation or work with a partner that does in order to navigate the legal requirements appropriately.

In addition to legislation regarding E-Verify, there are new regulations mandating new requirements on the I-9 form itself and on the acceptable documents that employees may provide as proof of eligibility. As these document requirements change, employers must stay on top of the evolving regulations and update their I-9 procedures accordingly to stay in compliance and avoid censures.

### **Challenges with the Historical I-9 Process**

In today's complex environment, I-9 regulations are changing and companies need to understand how to navigate current legislation as well as business and procedural requirements for an effective I-9 management system. In addition to the security and liability concerns, there are also several procedural issues that human resources professionals must address in the I-9 management process. Mistakes in filling out the form, missing or incorrect information, forms completed in an untimely manner, and lack of good tracking and follow up are all management issues companies must tackle in their I-9 compliance programs. To develop a comprehensive I-9 management system, companies must take into account governmental regulations, security issues, HR

procedural requirements and organizational demands, and create a process that addresses these needs with best practices solutions.

There are a number of procedural challenges organizations must keep in mind when creating an I-9 management system.

Traditionally, the I-9 program has been a paper-intensive, manual process that's inefficient, difficult to manage and open to a high potential for human error and even duplicity or fraud. Some common problems with manual completion of paper forms are negligent or purposeful data omission, data entered into the wrong fields, the wrong documents being accepted, forms not properly signed or dated, Social Security numbers mismatched, and forms being completed in an untimely manner.

In addition, in a paper-based system, even with the most carefully completed documents, it is difficult to create effective tracking, follow up and reporting methodologies.

The I-9 process is not simply a one-time on-boarding procedure, in which a form is filled out and stored and then never reviewed again. A company must make sure all of its

employees are authorized to work every single day and that responsibility must be reflected in its I-9 processes. Many kinds of work authorization documents have built-in expiration dates and companies are responsible to keep track of these and act upon them in an appropriate and timely manner.

### Considerations for Implementing an Electronic I-9 Process

Once eligibility has been confirmed, it's important to set up alerts to manage work authorization expirations so employers can follow up on those procedures, obtain new documents as needed and keep the employment records updated. An additional consideration is that the I-9 program be integrated with the organization's employment screening program to leverage existing data and systems and to streamline processes.

A key benefit of electronic I-9 management solutions is that they are continuously updated as new state and federal regulations go into effect. When document and procedural requirements change, the solution automatically alerts the user to the new mandates so that the organization is always in compliance.

### Why Electronic I-9 Makes Sense

There are several important best practices companies should follow in creating their I-9 processes. An electronic I-9 form, complete with an automated and instant E-Verify check, should be part of every employer's I-9 management program. Electronic I-9:

- **Automates** the complete I-9 management process
- **Reduces workloads** by providing employee self-service options
- **Simplifies** E-Verify employment eligibility verifications
- **Reduces data entry errors** and ensures proper document completion
- **Facilitates compliance** with increasing and changing federal and state legislation
- **Reduces paperwork**, storage and manual activities to improve productivity
- **Enables efficiencies** throughout the process
- **Adds control and visibility** enabling better program management
- **Ensures** a legally authorized workforce
- **Minimizes risk** of government penalties by improving compliance
- **Improves searching and reporting** capabilities through electronic records
- **Provides alerts and notifications** for required updates on expired documentation

## What's in an Electronic I-9 Solution?

Following are several components that should be included in a comprehensive I-9 management program.

- Summary Dashboard**  
A convenient dashboard that allows access from a single location to employment eligibility status and relevant forms, which can be viewed, printed, downloaded, or e-mailed in seconds.
- Document Upload**  
The ability to scan and upload supporting documents and previously completed paper I-9 forms to simplify program management and help enable a comprehensive electronic program.
- E-mail Alerts**  
Automated e-mail alerts prior to the expiration dates of supporting documents, when I-9 forms have not been completed on time, or when updates or re-verification of I-9 forms are required. The I-9 solution should also e-mail new employees reminders to bring supporting documentation with them on their first day of work.
- Instant E-Verify Check**  
Performance of instant and automated employment eligibility verifications through the DHS E-Verify program and tools and resources to facilitate the resolution of E-Verify requests that cannot be immediately verified by the DHS.
- Compliance Tools**  
Ability to electronically update and re-verify I-9 forms as necessary and include ready-to-use employee letters to help manage state and federal regulatory requirements in an efficient and proactive way.
- Smart Delete**  
Notification when an I-9 form or supporting documents have met retention requirements and automatic deletion when they become obsolete.
- Employee Kiosk**  
Interactive kiosk feature that allows new and existing employees to self-register and login to complete or update their I-9 forms. This tool should be accessible in a dedicated workstation on company premises for employees without Internet access.
- Management Reports**  
Management reports to facilitate I-9 program operations, with summaries of all I-9 forms on file, eligibility status, terminated employees, obsolete forms, forms requiring re-verification, etc.
- Integration**  
Integration capabilities with all third-party HR systems and the ability to integrate employment eligibility results into an individual's background report.

Organizations of all sizes and in all industries should conduct annual audits of the I-9 program and practices to ensure it meets all the current security, management and regulatory requirements, and to audit its I-9 forms to confirm their completion and accuracy. As the legislation governing E-Verify and the I-9 process evolves, the I-9 procedures will have to evolve as well, so regular audits allow companies to evaluate their systems and alter their programs as necessary.

### **Conclusion**

As the I-9 processes and regulations evolve, the requirements are becoming increasingly complex. At the same time, the stakes are only growing higher as the government continues to step up its enforcement of immigration employment law. Implementing a complete electronic I-9 management system and automated E-Verify checks can help address many of these common security, management and regulatory issues. Today, more than ever, employers must understand their responsibilities and ensure that their I-9 procedures and systems are effective, compliant and comprehensive.