



## **Recent Federal Activity Regarding Hiring Requirements**

By: Jennifer Welfley Cordesman, Esq.  
Millisor & Nobil Co., LPA

The federal government has taken three actions recently that affect all employers regarding their hiring process and requirements. Employers must be aware of these requirements as the failure to take appropriate action could result in civil and/or criminal action and penalties.

First, as our article in the May edition of this newsletter indicated, the U.S. Citizenship and Immigration Services (USCIS) revised the Form I-9 used to verify employment eligibility effective April 3, 2009. Generally, the revised Form I-9 regulation narrows the list of acceptable documents and requires that only *unexpired* documents be used. List A expanded with the addition of two documents that are acceptable for identity verification (specially-marked machine-readable visas and documentation for certain citizens of the Federated States of Micronesia and the Republic of the Marshall Islands) and eliminated three documents that are no longer issued and have expired (Forms I-688, I-688A and I-688B). The revised I-9 contains other technical changes, including clarification that the only Social Security account number cards acceptable for List C are those that do not specify on the face that the “issuance of the card does not authorize employment in the United States.”

Second, the U.S. Department of Homeland Security (DHS) announced last month that the current administration intends to rescind regulations and procedures for employers that receive employee “no-match” letters from the Social Security Administration. The administration continues to support the use by federal contractors and subcontractors of E-Verify- the electronic employment verification system operated by the USCIS. Seemingly, these announcements reflect a new immigration enforcement approach to target employers who hire illegal immigrants rather than individual employees who do not have the right to work in the United States.

Third, and ostensibly in support of the apparent shift in focus, the U.S. Immigration and Customs Enforcement (ICE) issued notices of inspection for a Form I-9 audit to 652 businesses nationwide on July 1, 2009. In issuing those notices, ICE stated that they were “a direct result” of its new strategy to build criminal cases against businesses suspected of hiring undocumented immigrants before they raid workplaces. With this one action, ICE issued more notices of inspection than it did during the entirety of 2008, and more notices are expected to come this year. In particular, ICE appears to be targeting industries and areas of the country that traditionally use undocumented workers, and employers who in the past have been flagged as potentially non-compliant (i.e., received no-match letters in recent years).

When conducting an audit, ICE may seek information including:

- Original I-9s, which must be retained for three years after the date of hire or one year after the date of termination, whichever period is longer;

- An alphabetical list of all current and former employees with the hire and termination dates in electronic format;
- Copies of quarterly wage and hour reports and/or payroll data for all employees (current and terminated) covering the period of inspection, and quarterly tax statements;
- Business documentation (contact information, employee numbers, Social Security numbers, articles of incorporation, licenses, etc.);
- Copies of Social Security no-match letters;
- A copy of any I-9 policy;
- The name and responsibility of those who complete I-9s;
- The date the business was established, form of the business, where it is incorporated and its revenue;
- The department or job titles of employees; and
- Quarterly unemployment insurance reports with the state or quarterly returns for Federal Income Contributions Act taxes.

### Practice Pointer

In light of the government's increased focus in this area, be prepared for an audit. Be sure to use the current Form I-9 for new employees. Check employment files to ensure a Form I-9 is completed for all employees (new, existing and former) within the required timeframes. Maintain the I-9 documents in a separate file for ease in compiling the required information in case of an audit (and to avoid any violation of various federal and state discrimination laws). Finally, be responsive to any indication that information an employee provided as part of the Form I-9 is inaccurate.

If you have any questions or need training on complying with I-9 requirements, please contact Melanie Webber, Jennifer Welfley Cordesman or Maribeth Wuertz in Millisor & Nobil's HR Practice Group at (440) 838-8800.<sup>1</sup> Also visit our website, [www.millisor.com](http://www.millisor.com), which we recently and significantly revised. The website includes additional information regarding a variety of employment issues relevant to Ohio employers and additional information regarding all of our firm's products and services.

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<sup>1</sup> This article was written to provide accurate information; however, it is not intended as legal advice.

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