



# WHAT EVERY CONVENIENCE STORE Should Know About Immigration Compliance

Presentation prepared for NAC Members **NACS**

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## Some of the questions we hope to answer for you today are:

- ☐ How will the recent enforcement actions impact an industry that already has a greater than 50% turnover rate?
- ☐ How do you prepare for ICE coming to your store or stores?
- ☐ What is the administration's focus? Will their efforts increase?
- ☐ What does the future hold for immigration under the Trump administration?

*Let's Begin...*

# Trump Administration and Immigration Enforcement

- Increased enforcement and compliance
- Agency told to increase worksite by 400%
- Repeat offenders and companies that deliberately hire illegal immigrants are the next target



Created a new “*comprehensive worksite strategy*”

## Three pronged approach

- Inspections/Fines/Debarments
- Arrests of Employers and Employees
- Outreach and Education through IMAGE

## Predictors of ICE action

- Previous criminal or administrative actions by ICE/DOL
- Existence of complaints against employers
- Being part of a “high-risk” industry or sector of the economy

# ICE “Operations” Path Ahead

Each worksite enforcement investigation is “unique”

With many contributing factors:

- Knowingly hiring unauthorized workers
- Evidence of trafficking, harboring, fraud, money laundering, mistreatment of employees
- Threats of deportation, coercion, substandard wages, unsafe working conditions





# Who Completes I-9?

**REMEMBER everyone that you hire to work in your stores must complete an I-9.**

- This includes U.S. citizens, Permanent Residents and aliens authorized to work in the United States.
- Exempt groups:
  - Employees hired before November 7, 1986
  - Independent contractors
  - Persons employed by a contractor providing contract services



# When is the I-9 Completed?

## Section One:

- Completed by employee on first day of commencement of work (referred to as Date of Hire in DHS regulations)
- Can be before the first day of hire, if you have offered them a job and they have accepted

## Section Two:

- Employer complete and sign within three business days
- Employer or authorized representative must physically examine documents presented

Timeframe Example		
Monday	First Day of Work	Employee completes Section 1
Tuesday		
Wednesday		
Thursday	Form I-9 Completion Due	Employer Completes Section 2



# Recent Changes to the Form I-9

- I-9 was revised on **07/17/2017**
- Employers must use the this current form for new hires and reverifications
- Updated form includes
  - Employee must now certify whether he/she used preparer and/or translator
  - Addendum for multiple translators
  - Additional space was added to Section 2 for more information, if necessary



The image shows the Form I-9, Employment Eligibility Verification, Department of Homeland Security, U.S. Citizenship and Immigration Services. The form is titled "Employment Eligibility Verification" and "Form I-9". It includes the following sections:

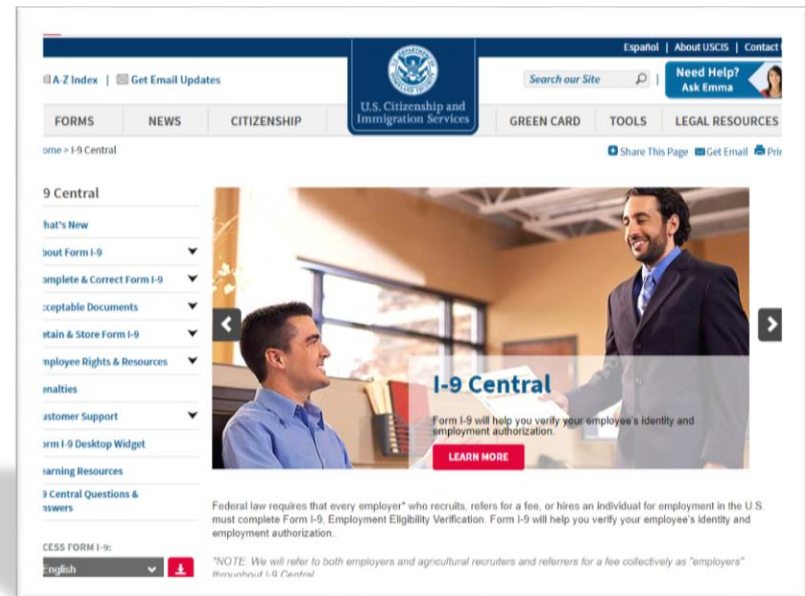
- Section 1: Employee Information and Attestation** (Employees must complete and sign Section 1 of Form I-9 (a) later).
- Section 2: Preparer and/or Translator Certification** (To be completed and signed if Section 1 is prepared by a person other than the employee).

The form includes fields for Employee Information, Attestation, and Preparer and/or Translator Certification. It also includes a "3-D Barcode" field and a "Signature of Employer" field.

# USCIS I-9 Central

USCIS.gov provides employers with an informative and comprehensive resource regarding I-9's

- Walks you through completing an I-9
- What documents are acceptable
- Employee rights
- And much more...



## How does an employer know if a document is real?

- **REASONABLE TEST** – acceptable if it reasonably appears to be genuine and relates to the individual
- **INDICATION OF FRAUD** – document does not reflect the proper agency that issued it (DOJ vs DHS), information of the front of card does not match the back



## Original versus photocopies of documents

- Must personally examine the original document
- Even for remote hires – webcam = not permissible
- Can designate authorized representative to fill out I-9 (no need for specific agreements but you are still liable for violations)
- Notary public can act as authorized representative (no need to provide notary seal on I-9)

## Photocopies not acceptable

- Exception: certified copy of birth certificate

## Document Abuse – DO NOT:

- Request documents before hire or during interview
- Specify which documents to accept –
  - Provide list and let employee choose which documents to present
- Require more documents than required
- Refuse to honor acceptable documents

# Should Employer Copy Supporting Documents?

## ➤ **WE RECOMMEND, BUT YOU MUST BE CONSISTENT**

- Same practice for all employees
- Benefits: Critical to efficient review and completion of I-9s during internal audit
  - Useful defense in government audit or investigation against a claim that documents never presented
  - Evidence to show good faith – copy shows that document reasonably appeared genuine
- E-Verify Employers must photocopy if document used as part of the Photo Screening Tool



**BE CONSISTENT!**



## OVER DOCUMENTATION = DISCRIMINATION

The Immigration and Employee Rights Section (IER) enforces the anti-discrimination provision (§ 274B) of the Immigration and Nationality Act (INA).

### Prohibits:

- Citizenship status discrimination in hiring, firing, or recruitment or referral for a fee;
- National origin discrimination in hiring, firing, or recruitment or referral for a fee;
- Document abuse (unfair documentary practices during the employment eligibility verification, form I-9, process); and
- Retaliation or intimidation.

# Over Documentation — What to do?

- Identify the number of over-documented I-9 forms
- Evaluate those to determine if pattern of non-compliant practice
- Remediate non-compliance I-9 forms
- Create organization-wide non-discrimination policy
- Provide refresher training for all hiring professionals on I-9 processes

# Retention Rules

## After termination, must retain until

- three years after the date of hire, **OR**
- one year after the date of termination **WHICHEVER IS LATER**

### Example #1

Hired: 3/1/2000

Left: 5/1/2001

3 yrs after hire = 3/1/2003

1 yr after term = 5/1/2002

Retain until: 3/1/2003

### Example #2

Hired: 3/1/2000

Left: 8/5/2003

3/1/2003

8/5/2004

Retain until: 8/5/2004

# Organization of I-9s

- Never keep I-9s with personnel files
- Organize in 3 categories
  - 1) I-9s for current employees
  - 2) I-9s for employees with expiration dates that require reverification
  - 3) I-9s for terminated employees that may require purging/destruction at the appropriate time



# Penalties

## *Fines can add up*



### **Civil/Administrative**

The penalty for knowingly hire and continuing to employ can range from \$548 to \$4384 per violation for a first offense.

For substantive violations, including failing to produce a Form I-9, range from \$220 to \$2,191 per violation.

### **Criminal**

Engaging in a pattern or practice of hiring, recruiting or referring for a fee unauthorized aliens the penalty can be up to \$3000 for each unauthorized alien and up to six months in prison.

# Examples of Technical Vs. Substantive Violations

## Technical Violations

VS.

## Substantive Violations

- Involve I-9s that have not been correctly completed
  - No Date of Birth for employee
- Fail to enter date of hire

\*\* May be granted 10-days to correct the failure

- No I-9
- The employee fails to sign in Section 1;
- The employer fails to review a list A document or a combination of List B and List C documents



# Potential Mitigating Factors for Employers

- Participation in DHS E-Verify program
- “Level of cooperation” with ICE & HSI Agents
- Employers who seek assistance through ICE, including participation in IMAGE
- Existence of a robust internal immigration compliance program

## Program Summary

- Government system to help confirm employment authorization
- Does not eliminate identify fraud or guarantee I-9s are accurate
- Staff members using E-Verify must complete tutorial online
- Electronic query submitted once I-9 is completed
  - No prescreening
  - Only for new hires, not existing workforce
- Automated response regarding employment eligibility
- Follow-up required for “tentative non-confirmations”



# Strategies for When ICE Comes to Your Place of Business

## BE PREPARED AND HAVE A STRATEGY!

- Designate in advance which employer representative will handle site visit (identify a backup)
- Inform other staff members they are not authorized and should refer any investigators to responsible person
- Determine type of action ICE is engaged in
  - Do they have a subpoena, arrest warrant, search warrant or *nothing*
- Obtain the name of the ICE agent in charge of the operation
- Call your counsel or compliance advisor



# California Worker Protection Act

- Effective January 1, 2018
- Employer must give notice to employees of any immigration review of employment records, e.g. I-9s, within 72 hours



NEW YEAR  
NEW LAWS  
2018

## **Notice Must:**

- Be posted in language employer normally uses to communicate employment related information to employee
- Include name of immigration agency conducting inspection
- Include the date employer received notice
- Nature of the inspection (to the extent known)
- Include a copy of the Notice Of Inspection

# California Worker Protection Act

- Upon reasonable request – provide an “affected employee” and any collective bargaining representative a copy of the NOI
- Delivery by hand at workplace, if possible, or by mail/email
- “Affected employee” is one that:
  - Is identified by the immigration agency inspection to be ‘an employee who may lack work authorization, or an employee whose work authorization documents have been identified by the immigration agency inspection to have deficiencies.’



# What's Next?

There will certainly be change in the near future.

- Congress continues to debate the immigration issue.
- The President has detailed the plan he would like to see.
- Employers must be vigilant to ensure they keep up to date as changes are made.



# Questions?



ANY  
QUESTIONS?

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