

Immigration and Construction

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SOC

Speakers

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Program

Riana Smith	Basic I-9 procedures
David Garrett	Documents
Amanda Bryant	ICE Raid preparedness
Jack Pinnix	Recent Developments

Basic I-9 Procedures

Riana Smith

Penalties

- * I-9 paperwork violations result in penalty of \$110 to \$1,100 for each individual
- * Document abuse discrimination violations result in a fine of \$110 to \$1,100
- * 10 years and/or \$250,000 fine for harboring, smuggling, concealing, or transporting illegal aliens
- * Criminal sanctions for conspiracy to harbor, smuggle, conceal, or transport an illegal alien for financial gain

Penalties

- * Fine per unauthorized alien for Illegal Employment Violations:

First Violation	\$275 to \$2,200
Second Violation	\$2,200 to \$5,500
Third & Other Violations	\$3,300 to \$11,000

**CRIMINAL SANCTIONS LIKELY
AFTER FIRST VIOLATION**

Do's and Don'ts of I-9 Procedures

- * **Do not** have an employee fill out an I-9 as part of the interview process, this could lead to a claim of discriminatory hiring practices. An individual should only fill out the I-9 after they have been hired.
- * **Do** have an I-9 for every employee, unless they were hired prior to 6 November 1986.
- * **Do** make sure you are using the most recent I-9 form.
- * **Do** review original documents only and not photocopies for purposes of completing Section 2

Do's and Don'ts Continued

- * **Do not** require an employee to present more or different documents than are minimally required.
- * **Do not** tell an employee which document you prefer from List A or List B and C
- * **Do** apply company I-9 policies uniformly to all employees.
- * **Do** keep I-9 forms separate from employees personnel files.

Revised I-9 Form

- ✱ As of **3 April 2009**, the current I-9 form dated 06/05/2007, will no longer be valid for use.
- ✱ Employers must use the I-9 dated **2/2/09** for all new hires and to reverify any employee with expiring employment authorization documents.
- ✱ This form can be found at the following link:
www.uscis.gov/files/form/I-9_IFR_02-02-09.pdf

Revised I-9 Form

- * The changes will:
 - * Require all documents presented during the verification process be unexpired;
 - * Eliminates List A documents - Forms I-688, I-688A, and I-688B (Temporary Resident Card and outdated Employment Authorization Cards);
 - * Adds foreign passports containing certain machine-readable immigrant visas to List A;

Revised I-9 Form

- ✱ Adds to List A valid passports for citizens of the Federated States of Micronesia and the Republic of the Marshall Islands, along with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association between the United States and the FSM or RMI;
- ✱ Section 1: Adds as a status option “A noncitizen national of the United States.”
- ✱ Noncitizen nationals of the US are persons born in American Samoa, certain former citizens of the former Trust Territory of the Pacific Islands, and certain children of noncitizen nationals born abroad.

Photocopy Rule

- * Copying of documents presented by the employee is permitted, but not required.
- * Mere copying of documents does not constitute compliance and will result in penalties if I-9 form is not also properly completed.
- * Pros / Cons of Maintaining Photocopies:
 - * Pros: Photocopies can be used to correct problems identified during a periodic self-audit or in advance of a government audit,
 - * Cons: Photocopies can also be used by ICE to note deficiencies in the I-9 form or accepted documents.

The Receipt Rule

- ✱ Under current rules, persons eligible to work, but who are unable to present a required document as listed on the I-9 form, may present a receipt for a replacement work authorization document, such as a receipt for a social security card or a permanent resident alien card.
- ✱ The receipt authorizes work for 90 days from the date of the receipt or expiration of the prior work authorization, whichever is later.

Rehired Employees

- * A new I-9 form need not be completed for persons re-hired within three years of completing a prior I-9 form.
- * Instead, the employer can complete Section 3 of the Form I-9 by confirming that the employment eligibility document originally presented remains valid.
- * Make sure when reverifying to use the revised Form I-9 with the new list of acceptable document
- * An employer cannot reverify by completing Section 3 on a previous version of Form I-9
- * If the employment eligibility document originally presented remains valid, then the employer need only record the re-hire date in Section 3 of the revised I-9 form.
- * However, for hiring done on the job-site, the best practice is to have the employee complete a new I-9 form so it can be timely completed.

Reverification

- ✱ If the employee's work authorization document expires, you must reverify the employee's right to work prior to the expiration of the current work authorization document.
 - ✱ Reverification is not necessary for identity documents, U.S. passports, or Permanent Resident cards.
- ✱ Only reverify on the basis of the document presented in Section 2; ignore any expiration date given for a document presented in Section 1

Retention of I-9 Forms

- * I-9 forms for a terminated employee must be retained for either three years from the date of hire or for one year from the date of termination, whichever is later
- * This means an employer must have a form for every single current employee hired after 6 November 1986.

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Identifying Authentic Documents

David Garrett

How Do You Know the Document is Real?

- * The USCIS does NOT expect you to be a document expert.
- * You are only expected to reject documents that:
 - * Do not reasonably appear to be genuine
 - * Or “relate to” the person presenting them
- * DO NOT ask for more documents than are minimally necessary to complete the I-9

Permanent Resident Card (the “Resident Alien” Cards)

- ✱ Even older cards:
 - ✱ 1977 – 1989: Generally no expiration date on the card - No Problem



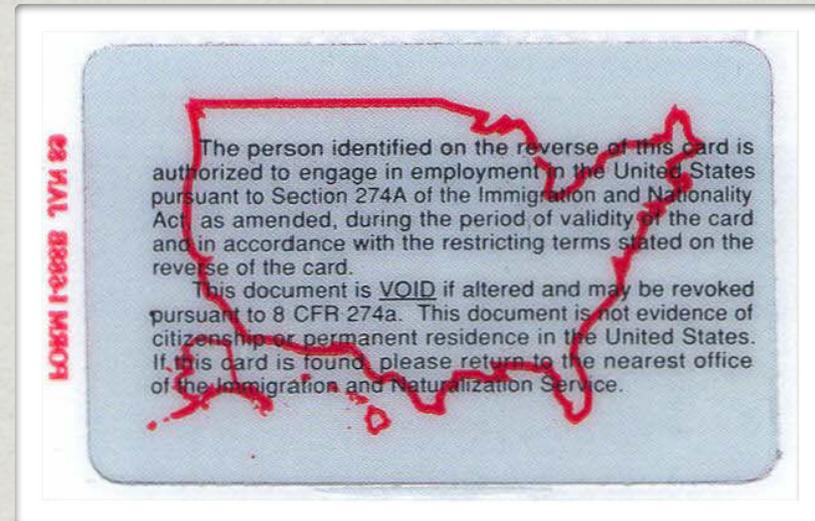
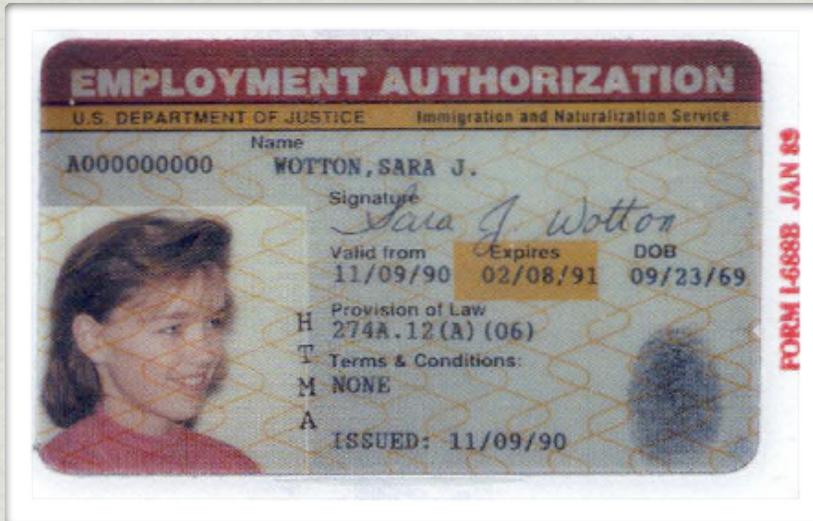
Employment Authorization Document (EAD)

- ✦ Establishes authorization for work AND identity:



Employment Authorization Document (EAD)

- ✦ Older EADs are most likely no longer valid:



Employer-Specific Visas

- * You should know about this person already
- * For I-9 purposes, record their visa information and I-94 information:

The image shows a sample I-94 Departure Record form. At the top left, it says "Departure Number" and "OMB No. 1450-0111". Below this, the number "b26633123 12" is printed. To the right of this number is a blue circular stamp that says "ADMITTED ATL" and "JUN 25 2006". Below the stamp, it says "April 23, 2009". The form has several fields with labels and values:

14. Family Name SAMPLE	
15. First (Given) Name JANE	16. Birth Date (Day/Mo/Yr) 23 03 68
17. Country of Citizenship NEW ZEALAND	

At the bottom of the form, it says "See Other Side" and "CHP Form I-94 (10/04) STAPLE HERE". Three yellow arrows point from the text on the right to the document number, the stamp, and the date field.

DOCUMENT NUMBER

VISA STATUS

DATE THEY MUST LEAVE THE US
(NOT NECESSARILY THE SAME AS THE
EXPIRATION OF THEIR VISA)

Web Resources

- * www.uscis.gov

- * On left-side of page, click on “For Employers”

- * Current I-9 Handbook:

- * http://www.uscis.gov/files/nativedocuments/m-274_3apr09.pdf

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Raid Preparations: Do's and Don'ts

Amanda Bryant

ICE RAIDS – What Happens

- * Investigation
- * Search Warrant
- * Raid
- * Prosecutions and Removal Proceedings (Deportations)

Criminal/Civil Exposure – Who is at risk?

Criminal/Civil Exposure – What Employer Charges?

- * Basic 274A liability
- * Harboring
- * Money laundering
- * Forfeiture
- * RICO (Racketeering)
- * Contractor Debarment

Why Employers are Targeted?

- * “Hot” industry
- * I-9 Audit
- * Labor Certification for an out of status individual
- * Reports from current/former employees to ICE

DURING THE RAID - Do

- * Remember – You have a right to remain silent, and a right to counsel;
- * No warrant = no entry/documents; get a copy;
- * Call your attorney immediately;
- * You may deliver to the employees copies of their documents – but be careful!

DURING THE RAID – Don't

- * Help employees hide or escape;
- * Lie to the government – just let your attorney be the “bad guy;”
- * Mistakenly consent;
- * Mistake a subpoena for a search warrant – ask your attorney.

AFTER THE RAID

- * **DO NOT** rehire employees that you suspect are undocumented (no graveyard shifts or transfers either);
- * Assume that ICE can see everything you are doing;
- * Obtain separate representation from your employees;
- * Conduct an internal I-9 audit immediately.

Best Practices

- * Don't wait for the raid – start early on compliance.
 - * Annual Audits
 - * Employee Manuals
 - * Uniform Policies
- * Know your own hiring practices.
- * Have an attorney relationship in place.
(Immigration **AND** Criminal)



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Comprehensive Immigration Reform

Jack Pinnix

Comprehensive Immigration Reform

- * Documentation for 12 Million
- * Backlog Reduction
- * E-Verify Enhancement
- * Detention and Due Process Reform
- * AgJobs
- * High Skilled Immigration Reform

New H-2B Procedures

- * Wage Determinations by National Processing Center
- * Attestation and Audit System
- * Restricted to Nationals of Designated Countries
- * Reporting Requirements—failure to appear, etc.

E-Verify Postponed to May 21, 2009

- ✱ Requires certain federal contractors to enroll and participate in E-Verify
- ✱ Directs inclusion of E-Verify clause in solicitations; modifies existing indefinite contracts to include an E-Verify clause if performance extends beyond November 21, 2009

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