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LABOR BRIEF

USCIS UPDATES FORM 1-9 FOR EMPLOYMENT ELIGIBILITY VERIFICATION

The U.S. Citizenship and Immigration Services ("USCIS") released a revised Employment Eligibility Verification form, Form I-9, on March 8, 2013. The revised form contains formatting changes, the inclusion of additional data fields for employee email addresses and telephone numbers, and improved instructions. Employers must begin using the new form by May 7, 2013, but should not complete a new Form I-9 for current employees if a properly completed Form I-9 is already on file. The new Form I-9 can be identified by the date 03/08/13 in the bottom left corner of the document. Failure to use the revised Form I-9 after May 7, 2013 is an administrative violation that may result in penalties. The fines for paperwork violations range from $110 to $1,100 per violation.

The number of Form I-9 audits has increased dramatically over the past decade, rising from only three audits in 2004, to 500 audits in 2008, and 3,004 audits in 2012. I-9 audits may result from unhappy former employees complaining to the U.S. Immigration and Customs Enforcement ("ICE"). ICE may also target employers connected to the U.S. infrastructure, such as power plants and food-service businesses.

Employers are required to complete a Form I-9 for each new employee hired in the United States in order to verify the identity and employment authorization of the individual. Form I-9 is not filed with USCIS or any other government agency. Rather, an employer must retain Form I-9 for three years after the employee's date of hire or one year after the date the employment ends, whichever is later. An employer's I-9 Forms are subject to inspection by the Department of Homeland Security, the Department of Labor, and the Office of Special Counsel for Immigration-Related Unfair Employment Practices.

Employers can download the new form and instructions at http://www.uscis.gov/files/form/i-9.pdf.

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WHAT'S IN A NAME? CLASSIFYING SOMEONE AS AN "EMPLOYEE" OR AN "INDEPENDENT CONTRACTOR" CAN HAVE SIGNIFICANT EFFECTS

"What is in a name? That which we call a rose. By any other name would smell as sweet . . ."

-William Shakespeare, Romeo and Juliet

Roses aside, classifying someone as an "employee" or an "independent contractor" (or rather misclassifying them) can have significant effects. The misclassification of employees as independent contractors is the focus of a U.S. Department of Labor Wage and Hour Division enforcement initiative. The DOL and the IRS have joined forces and signed a memorandum of understanding that will allow the sharing of information across the two agencies in an effort to improve compliance. More importantly, the Louisiana Workforce Commission has likewise entered into an agreement with the DOL to establish "a collaborative relationship to promote compliance..." For more information on the enforcement initiative and other states who have signed similar agreements with the DOL, visit http://www.dol.gov/whd/workers/misclassification/.

The potential cost of misclassification of employees as independent contractors can be high. For example, the DOL recently obtained a $1.3 million consent judgment against a technology company that had misclassified employees as independent contractors. So, what is in a name (or classification) can be very important.

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