

## ***First Wednesday — A Monthly Discussion of Employment Law Issues and Other Hot Topics for Management***

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***By Jeffrey A. Snyder - Issue No. 15: October 1, 2003***

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### **Federal Immigration Law – A Quick Look at the Employee Verification Process**

To comply with immigration laws, employers must verify both the identity of each new employee and the new employee's eligibility to work in the United States. All employers are required to complete the Federal I-9 form for each new employee. This includes citizens and non-citizens.

The Immigration and Naturalization Service (INS), now known as the Bureau of Citizenship and Immigration Services, under the Department of Homeland Security, can impose fines up to \$10,000 per violation of immigration laws relating to the hiring and retention of unauthorized aliens. Other civil and criminal penalties may apply. In a recent trial involving Tyson Foods, six Tyson managers were charged for allegedly hiring illegal immigrants and conspiring to make fraudulent documents.

Federal immigration law applies to all employers, regardless of size, and requires that employers establish procedures to verify that each new hire is either a United States citizen or authorized to work here. The verification process begins with requiring each new employee to provide original documents establishing both (1) the employee's identity; and (2) eligibility to work in the United States. The types of documents that are acceptable are listed on the back of the I-9 form. Importantly, the employer cannot specify which types of

documents will be accepted but must simply show the employee the I-9 list and review whichever type of documentation the employee submits from that list.

The employer must then examine the documents and complete the I-9 form within three business days of the date of hire. The documents need only be examined for reasonable authenticity. As a general rule, documents that appear genuine on their face, and relate to the person presenting them, must be accepted. Additional detective work is not required. In fact, the employer cannot require more evidence unless the employer has some actual or constructive knowledge of the employee's false identity or lack of work authorization. Mere suspicion is not enough. This is a tricky issue because the employer potentially commits an act of discrimination (or unfair immigration-related employment practice) by requiring more or "better" documents from some employees and not others. Thus, the employer should consult with immigration counsel if there is any question about the employee's documents.

If the employee cannot present acceptable documents, the employer may conditionally hire that person. Within three days of being hired, the employee must give the employer a receipt showing that he or she has applied for the necessary documents. The person can then be hired subject to providing the actual documents within ninety days. If the documents have not arrived within ninety days, the employee must be temporarily laid off or terminated. Assuming the documents arrive, the I-9 form should be completed promptly, and within the 90-day period.

The I-9 forms are not filed with any agency but must be retained for three years from the date of hire or one year from the date of termination, whichever is later. They are subject to inspection by the INS upon three days' notice.

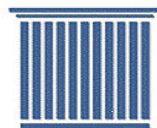
More information and forms can be found at the INS web site, [www.immigration.gov](http://www.immigration.gov). The site should be checked routinely for updates regarding acceptable verification documents and any new instructions.

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