

Your Company, Your Solutions

By Bruce E. Buchanan, Partner-In-Charge, Immigration Law Section

YOUR QUESTIONS ANSWERED

I am grateful to have personally met with some of you to discuss Immigration Compliance issues that affect your companies. We discussed the structure of an Immigration and Customs Enforcement (ICE) audit, the penalties associated with such an audit, preparing for an audit, Form I-9, E-Verify, and Immigration Reform. Here are the answers to key Immigration questions that were recently raised:

Can you please clarify the rule for the length of time an employer should retain I-9 files for former employees?

A company should keep I-9 documents of former employees for three years after the date of hire or one year after termination, whichever is longer.

Example: If Joe is hired on 01/01/2010, and is subsequently terminated on 01/15/2010, your company should retain his I-9 file until 01/01/2013. If, however, he is terminated on 01/01/2013, your company should retain his I-9 file until 01/01/2014, as that time period would be longer than the initial three years.

If our company has a representative that works out in the field, how should we secure a copy of supporting documents (form List A or Lists B and C)?

The company representative should make every effort possible to secure copies of these documents—not securing a copy of these documents opens you (as the employer) up for potential penalties in the event of an ICE audit. Some of our clients use portable scanners to scan a digital image of the document(s), while others utilize a satellite office or service to make copies on the spot. The bottom line—you don't want to unnecessarily place your company in a position to be defenseless.

If our company recruits employees on behalf of another company, who should actually be filling out Form I-9? Example: Our company is located in Nashville but the employee is actually working for a company in another city.

There are several factors to consider in this scenario:

- 1) Which company's payroll is the employee on?
- 2) Which company carries liability insurance for these employees?
- 3) Does the recruiting company place these employees with other contractors, or just one sole contractor?
- 4) Does the "end user" company have agents available in the recruiting company's region?

As you can see, this scenario poses several employment and immigration related issues. It is best to retain legal counsel so that your specific needs can be addressed.

AVOID PENALTIES—SCHEDULE YOUR COMPANY'S I-9 AUDIT

Scheduling an in-house audit gives your company the tools necessary to avoid receiving penalties from federal and state agencies. As heavily publicized, there have been recent developments in Immigration Law in Arizona. You may ask, “Why / how can this affect me or my company?” These changes, along with proposals by other states, will increase pressure on our federal and state agencies. While the outcome of this pressure is not immediately foreseeable, now is the time to be prepared. Please let me know how I can be of service to you and your company. Call me at 615-726-5484.