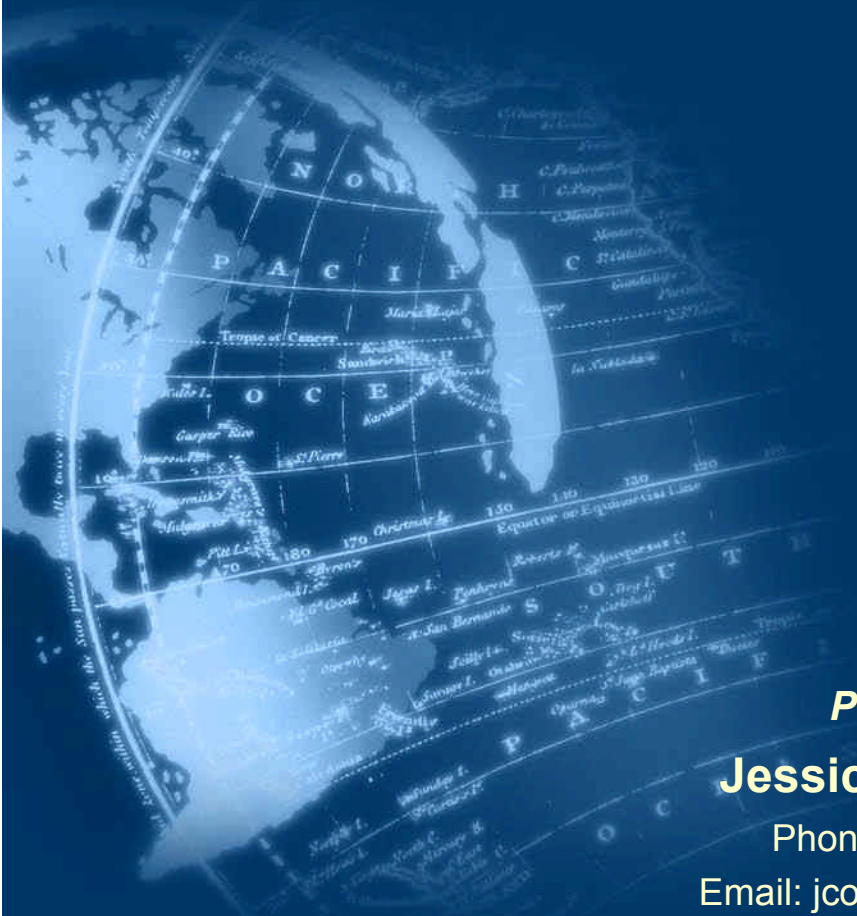


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Understanding the Georgia E-Verify Requirements and How it Impacts My Business

Presented by:

Jessica T. Cook, Esq.

Phone: (404) 231-1400

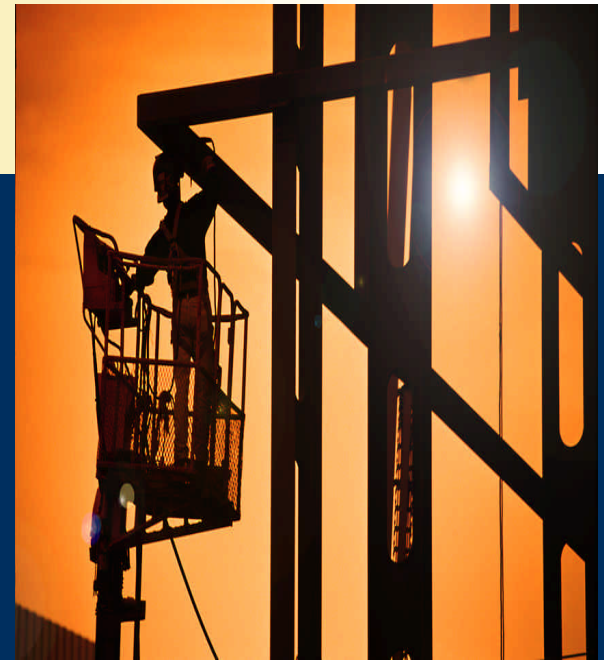
Email: jcook@laborlawyers.com

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Overview

- Requirements for Government and Public Contractors
- E-Verify for Georgia Employers
- I-9 Forms/E-Verify Pointers



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Important Dates



- HB 87 Passed April 14, 2011.
- Governor signed law on May 13, 2011.
- Effective Date: July 1, 2011.

- Private Employer E-Verify effective:
 - Jan. 1, 2012 – 500 or more employees;
 - July 1, 2012 – 100 to 499 employees;
 - July 1, 2013 – 11 to 99 employees.

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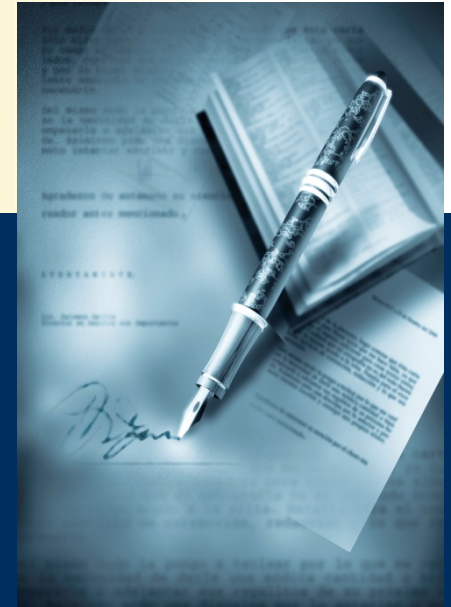
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Public Employer Contracts

- Public Employers:
 - Cannot enter into contract for physical performance of services unless contractor uses E-Verify.
 - Bid must include contractor's signed, notarized affidavit stating:
 - Uses E-Verify;
 - E-Verify ID # & authorization date;
 - Will obtain affidavit from subcontractors.



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Public Employer Contracts - Subcontractors



- Subcontractors must:
 - Use E-Verify;
 - Submit signed, notarized affidavit to contractor at time of contract;
 - Provide contractor with affidavits/documents from any sub-subcontractor(s) within 5 business days of receipt.

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In Lieu of Affidavit

- Contractor, subcontractor, sub-subcontractor with no employees or will not hire employees to fulfill terms of contract, must provide:
 - Copy of state issued driver's license or ID card;
 - Driver's license or ID card must be issued by US state verifying lawful immigration status prior to issuance of document.



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In Lieu of Affidavit - Requirements

- Contractor is required to submit all documents received from subcontractor and sub-subcontractor to public employer within five days of receipt.
- Documents may be transmitted electronically.



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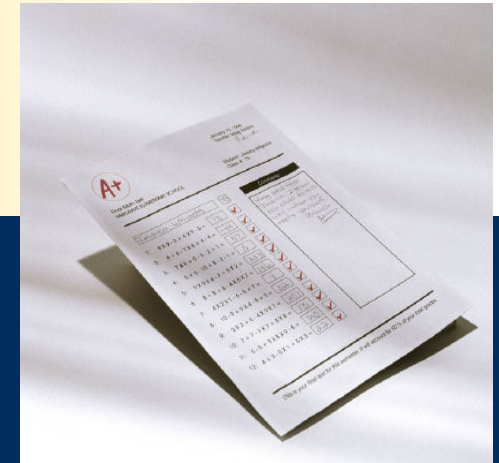
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Compliance Reports

- Each year by December 31, public employer must submit compliance report to state auditor containing:
 - Public Employer's E-Verify user # and authorization date;
 - Contractor's legal name, address , E-Verify number and date of contract.
- State auditor will conduct annual compliance audits & publish results on department's website.
- 30 days to correct any violations.



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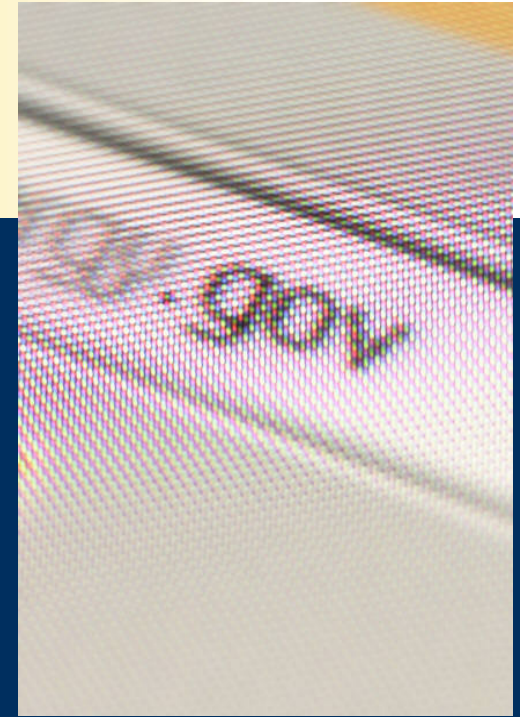
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Enforcement

- Subject to funding, Commissioner required to conduct 100+ random audits per year of public employers and contractors.
- Commissioner also may conduct an audit based upon reasonable grounds to suspect a violation.
- Violators listed on State website – identity, nature of contract, date of conviction.



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Penalties

- Contractors or subcontractors convicted for false statements - prohibited from bidding on or entering public contract for 12 months.
- No liability for unknowing or unintentional acceptance of a bid in violation of this section.
- Presumption of good faith in receiving and acting upon an affidavit that meets requirements – may rely on as true and correct.



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Additional Penalties

- Any person knowingly or willfully making false statements in an affidavit guilty of crime against public administration.
- Punishment – fine of not more than \$1000 and/or imprisonment for not less than one year and not more than 5 years.



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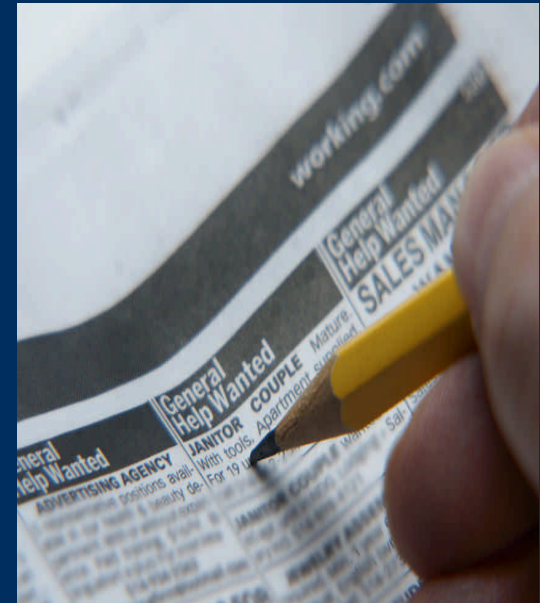
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E-Verify for Private Employers

- Georgia employers with more than ten employees must enroll in and use E-Verify as of the following dates:
 - 500 or more employees - 1/1/2012;
 - 100-499 employees - 7/1/2012;
 - 11-99 employees - 7/1/2013.
- Good faith violation may be corrected within 30 days.



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Determining Number of Employees for E-Verify Requirement

- Employee is person:
 - Employed on Jan. 1;
 - Working no less than 35 hours per week;
 - Who works under the direction and supervision of an employer;
 - To whom you issue W-2 or for whom you withhold FICA, or federal or state income tax from compensation.



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Enforcement of E-Verify Requirements

- Must prove E-Verify use or exemption to obtain/renew business license, occupational tax certificate, document to operate business - use standardized affidavit.
- Misdemeanor to provide false or misleading evidence in affidavit.
- Attorney General will be authorized to conduct an investigation and bring criminal or civil actions, as necessary, to enforce this provision.



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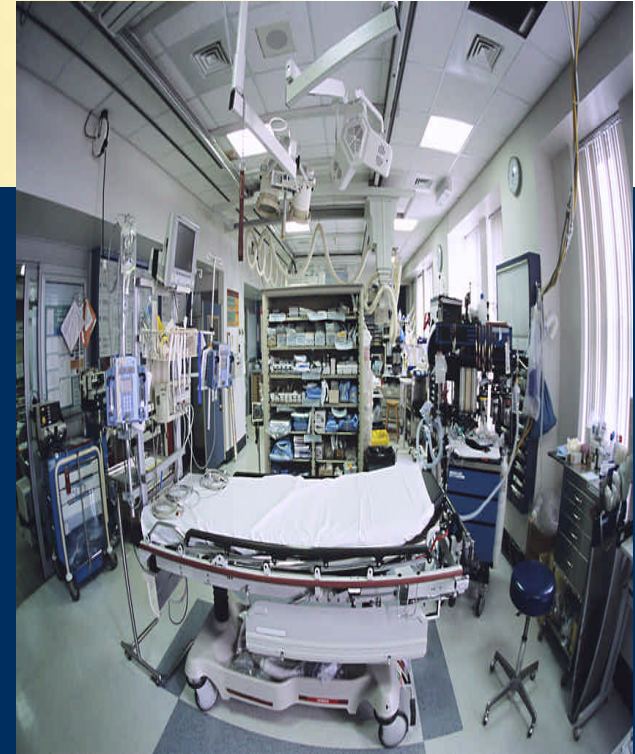
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Public Benefits

- Any agency or political subdivision providing or administering a public benefit must obtain at least one “secure and verifiable” document from every applicant for the benefit and execute sworn affidavit stating applicant is 18 yrs or older and is:
 - A US citizen or permanent resident; or
 - A qualified alien or nonimmigrant under the INA and lawfully present in the US and provide alien number .



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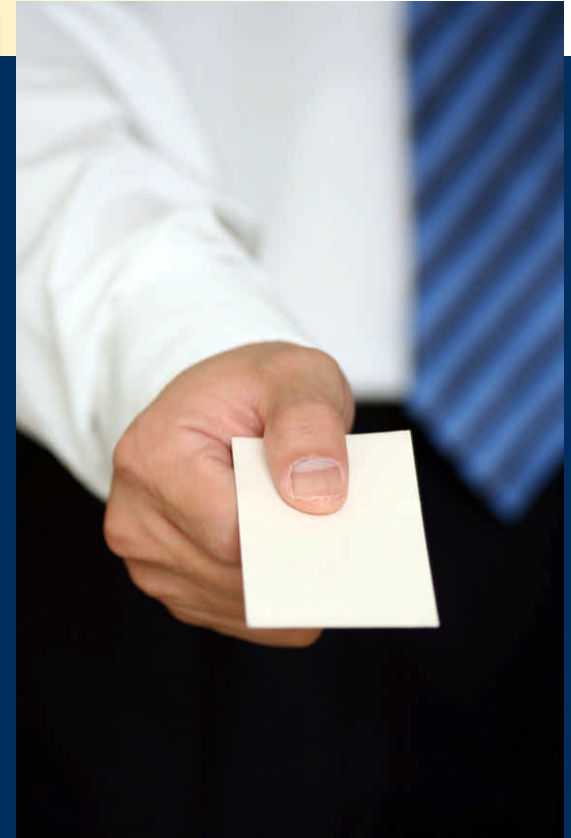
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Secure and Verifiable Identity Document

- Document issued by a state or federal jurisdiction or recognized by the US government.
- Excludes foreign consular documents.
- Document approved and posted by Attorney General.
- On or after Jan. 1, 2012 – only accept secure and verifiable document for official purpose.



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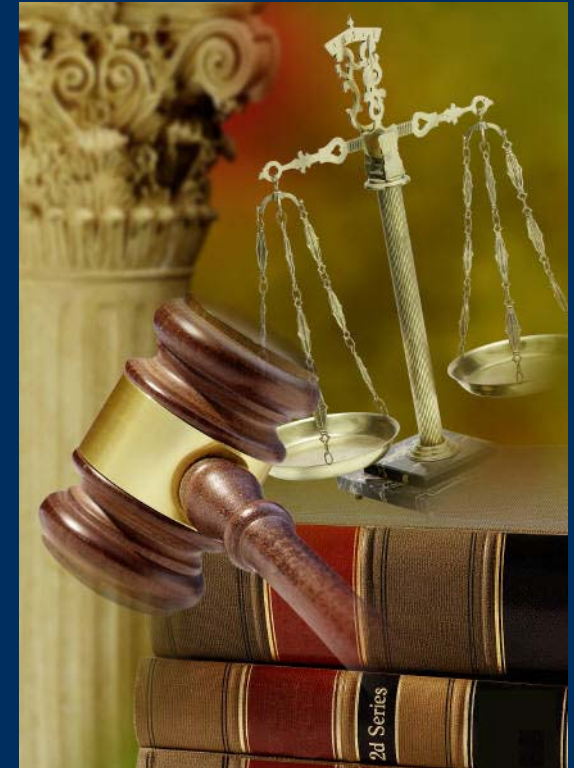
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Immigration Enforcement Review Board

- 7 members appointed by Governor, Speaker of House & Lt. Governor.
- Authority to review/investigate complaints against public agency or employee.
- Sanctions for knowing/willful violation:
 - revocation of qualified local government status, loss of state appropriated funds, and fine between \$1000 to \$5000.



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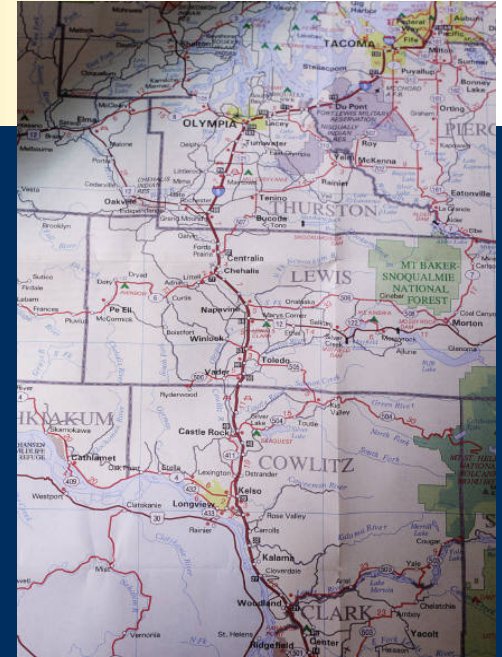
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County/Municipal Corporation Requirements

- Beginning Dec. 31, 2012, and each year after, any county or municipal corporation issuing documents to operate a business must provide compliance report to Department of Audits and Accounts (DAA):
 - Identifying each license or certificate issued within preceding 12 months; and
 - Name of person/business & E-Verify #.
- DAA to audit 20% of reporting agencies, subject to funding.



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Public Officers and Employees - Penalties

- Any agency head, public official or employee who violates the SAVE, E-Verify, or other requirements for public employers and for state contracts shall:
 - be fined up to \$10,000,
 - pay restitution to the state or local government; and
 - be removed from office.



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Legal Challenge - Status

- Lawsuit filed in Federal Court on June 2 seeking declaratory and injunctive relief.
- Judge Thrash heard arguments from both sides on June 20.
- Judge issued preliminary injunction on June 27, 2011.
- Injunction blocks implementation of criminal provisions.



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E-VERIFY - Rules

- Cannot use to re-verify employment authorization of current/existing employees (unless Federal Contract)
- Must allow employees to contest a mismatch (Tentative Nonconfirmation) and take no adverse action against employee while case is being resolved
- Cannot use to discriminate



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Implementation – Notifying Prospective Employees

This Employer Participates in E-Verify



This employer will provide the Social Security Administration (SSA) and, if necessary, the Department of Homeland Security (DHS), with information from each new employee's Form I-9 to confirm work authorization.

IMPORTANT! If the Government cannot confirm that you are authorized to work, this employer is required to provide you written instructions and an opportunity to contact SSA and/or DHS before taking adverse action against you, including terminating your employment.

Employers may not use E-Verify to pressure job applicants or to reverify current employees and may not limit or influence the choice of documents presented for use on the Form I-9.

Employment Verification  **Done.**

For more information on E-Verify, please contact DHS at:
1-888-464-4218


 

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- Participating employers are required to post the English and Spanish notice provided by DHS

Implementation – Notifying Prospective Employees

**IF YOU HAVE THE RIGHT TO WORK,
Don't let anyone take it away.**



If you have a legal right to work in the United States, there are laws to protect you against discrimination in the workplace.

You should know that –
No employer can deny you a job or fire you because of your national origin or citizenship status.

In most cases employers cannot require you to be a U.S. citizen or permanent resident or refuse any legally acceptable documents.


If any of these things have happened to you, you may have a valid charge of discrimination that can be filed with the OSC. Contact the OSC for assistance in your own language.

Call 1-800-255-7688. TDD for the hearing impaired is 1-800-237-2515.

In the Washington, D.C., area, please call 202-616-5594. TDD 202-616-5525

Or write to:
The Office of Special Counsel
Civil Rights Division
U.S. Department of Justice
P.O. Box 27725
Washington, DC 20038-7728

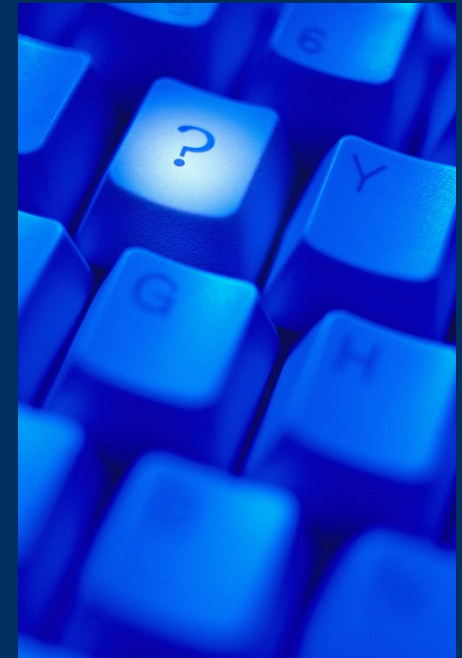
U.S. Department of Justice
Civil Rights Division
Office of Special Counsel for
Immigration-Related Unfair
Employment Practices



- Participating employers are also required to post the Right to Work Poster

Submitting E-Verify Query

- With electronic I-9 system, information from Sections 1 and 2 of I-9 Form automatically submitted to E-Verify system
- Information submitted includes: citizenship status checked, employee's name, Social Security number, date of birth, hire date and document expiration dates



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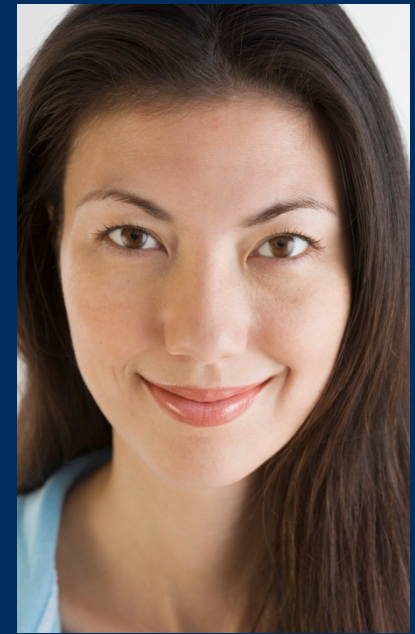
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Photo Match

- Occurs when you create a case for an employee who presents one of following for I-9 Form:
 - U.S. Passport or Passport Card
 - Permanent Resident Card (I-551)
 - Employment Authorization Document (I-766)
- Must make a copy of the Employee's I-9 form photo document and retain with I-9 form



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Photo Match – Follow-Up

- Compare photo displayed by E-Verify to photo on the actual document or a copy
- Reasonably identical?
- Do not compare photo displayed by E-Verify to the employee directly
- Take into account minor variations in shading/detail



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Initial Cases Results

- **Employment Authorized – Employment eligibility verified – information matches SSA and/or DHS records**
- **SSA Tentative Nonconfirmation (SSA TNC) – Social Security information could not be verified**
- **DHS Tentative Nonconfirmation (DHS TNC) – Information matches SSA records but not DHS records**
- **DHS Verification In Process – case referred to DHS**



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Tentative Nonconfirmation (TNC)

- Promptly notify employee of TNC – discuss in private setting
- Print Notice to Employee of TNC
- Employee may contest or not contest case result - checks box on Notice
- Contest : Initiate referral to SSA/DHS
- Not Contest – acknowledges employer may terminate employment
- Employee and HR sign original Notice – keep original & give employee copy



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Referral to SSA or DHS

- Employee Contests - initiate referral
- Print referral - review information, sign and provide copy to employee
- Employee has 8 federal government workdays to visit SSA or contact DHS
- May not terminate, suspend, delay training or take any other adverse action against employee while case is pending with SSA or DHS



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Final Case Resolution

- Employment Authorized
- SSA or DHS Final Nonconfirmation
 - E-Verify cannot verify information
 - Close case
 - May terminate employee
- DHS No Show
 - Employee did not contact DHS
 - Considered Final Nonconfirmation
- Error: Close Case and Resubmit
 - Expiration date on document incorrect
 - Submit new query for employee



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SSA or DHS Final Nonconfirmation

- E-Verify cannot verify an employee's employment eligibility after employee visited SSA or contacted DHS
- Once you receive Final Nonconfirmation message, close case
- May terminate employee with no liability



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Close Case



- All cases created must be closed
- Respond to question “Is the employee currently employed with this company?”
 - Yes – continue employment
 - No – terminate employment
- Select a closure statement:
 - Examples:
 - The employee continues to work for the employer after receiving a Final Nonconfirmation result;
 - The employee was terminated by the employer for receiving a Final Nonconfirmation result;
 - The employee voluntarily quit working for the employer.

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Work Authorization Documents Expiring

- Just notification that employee's Employment Authorization Document (I-766) or an I-94 Card document is expiring
- Only a reminder to re-verify/update Form I-9
- Do not re-E-Verify!
- Alert only appears first time the document expires



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E-VERIFY – PROS & CONS

- Most Accurate Check of Employment Authorized Status.
- Reduced Fines During ICE I-9 Audit?
- Garbage In – Garbage Out.
- Does not catch identity fraud.



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Current Version of I-9 Form

- Must use new form starting April 3, 2009. Both 2/2/09 and 8/7/09 versions acceptable.
- Employers who do not use the new form may be subject to civil money penalties.
- The new form must be used for new hires and employees who need re-verification/updating.
- I-9 Form can be downloaded at www.uscis.gov.



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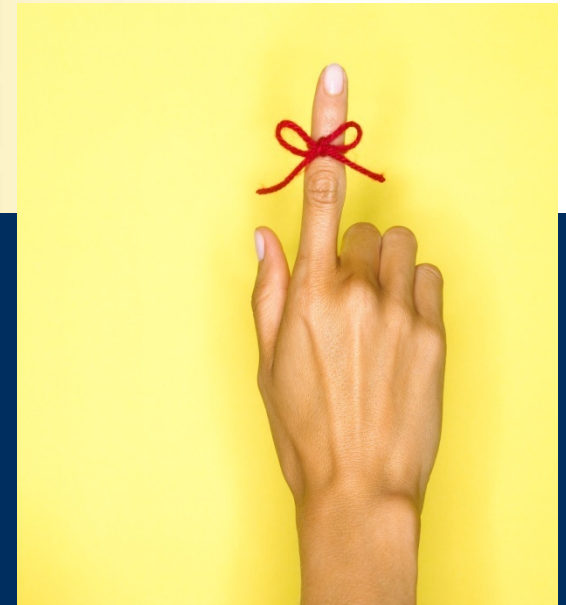
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Things to Remember

- DO NOT reverify expired U.S. passports or passport cards, Permanent Resident Cards, or List B Identity documents.
- As of April 3, 2009, expired documents may not be accepted (with some exceptions).
- Social Security card marked “Not Valid for Employment” or “Only Valid with DHS Authorization” is not acceptable List C document.



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I-9 Basic Requirements

All employees hired after Nov. 6, 1986 must have a current I-9 form on file.

- Section 1 - completed by employee prior to starting work.
- Section 2 - completed by employer by end of third business day after employee starts work.
- Terminated Employees – Retention Requirements.



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Monetary Penalties



- I-9 substantive/uncorrected technical violations (e.g., missing I-9) range from \$110 to \$1,100 per violation.
- Knowing hire/continuing to employ violations range from:
 - \$375-\$3,200 (1st violation)
 - \$3,200-\$6,500 (2nd violation)
 - \$4,300-\$16,000 (Subsequent)

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I-9 Electronic Storage

- Replace paper I-9 forms by creating and storing I-9s electronically
- DHS allows electronic I-9 storage.
- For new hires and current employees
- Some electronic I-9 products allow for E-Verify synchronization and automatic expiring documents notification.



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Thank You

Presented by:

Jessica T. Cook, Esq.

Fisher & Phillips LLP

Phone: (404) 240-4151

Email: jcook@laborlawyers.com

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