



## **I-9 EMPLOYMENT ELIGIBILITY VERIFICATION COMPLIANCE: Avoiding the Violation of Employee Rights and IRCA Penalties**

Marina Grabchuk

### **Background:**

- In 1986 Congress passed Immigration Reform and Control Act.
- Enforced verification process and sanctions programs against employers who “willingly and knowingly employed individuals who were ineligible to work.”
- IRCA is still the law of the land today (only few modifications).
- The Act requires every “employer” to verify the employment eligibility and identity of every new “employee” hired after November 6, 1986.
- Employee definition is the same as for tax purposes (question of fact).
- I-9 Employment Verification Form is used to measure employer’s compliance.

### **Form I-9:**

- Two pages, three sections, and lots of room for error!
- Must complete after hire – cannot use as a screening tool pre-hire.
- Section 1: completed by employee on or before first day of work, at “offer and acceptance” but employer is responsible for completion and timeliness.
- Section 2: completed by employer within 3 days of hire. Employer must examine acceptable original documents from federally identified lists to verify identity and work eligibility.
- Section 3: only for re-verification purposes or re-hire.
- Employers must retain original I-9 for 3 years after date of hire or 1 year after employment ends, whichever is later.
- Common errors: leaving blanks, wrong boxes checked, unsigned sections, accepting expired documents.

### **Compliance:**

- Employers must keep up with legal updates and are encouraged to do I-9 compliance trainings for HR and hiring managers.
- Employers should establish fair and consistent hiring practices and worksite compliance policies.
- The goal of compliance is for employers to develop a plan to address all hiring and any immigration related issues throughout the organization.
- E-Verify - online-based system employers may use after completing I-9. NOT mandatory in Iowa.
- If employers are not in compliance, they may face penalties!

### **Avoiding Unlawful Discrimination:**

- Must not pre-screen and ask to see an employment authorization document in advance.
- Must not demand to see a certain document or require to present a specific document.
- Must treat all employees the same.
- Must have a reason for rejecting a document that employee presents.
- May not refuse to hire an individual because a document will expire in the future.

### **Penalties:**

- Employers may face civil fines and criminal charges if audited for: hiring unauthorized workers, improperly filed I-9 forms, missing information and documents, knowingly committing or participating in document fraud.