

Form I-9: Penalizing Overzealous Employers

Employers can be confronted with severe penalties for discrimination by requiring employees to produce certain documents or more than are required by law. The media is full of stories about employers being fined and even sentenced to prison for mishandling or ignoring the I-9 process. Prudent employees Since these problems are totally avoidable, The civil penalties for being overzealous when it comes to the form I-9 are equally harmful to employers, though they lack the criminal component.

The U.S. Department of Justice recently announced two settlements with employers who required too much documentation. In the matter involving Garland Sales, Inc., a rug manufacturer in Georgia. The settlement stems from a complaint by a single individual that Garland was requiring too much documentation from employees when completing the Form I-9. The employee, a U.S. Citizen of Hispanic descent applied for a job and was hired. At the time he started work, he presented an unexpired driver's license and unrestricted social security card to complete the Form I-9. The employer, however, demanded a copy of the employee's green card. Being a U.S. Citizen, the employee did not have a green card to present. Garland then rescinded the job offer.

Similarly, BAE Systems Ship Repair, Inc. was charged with requiring that employees present green cards as a condition of employment. This additional requirement was over and above the requirements for completion of the Form I-9. A single employee of BAE was suspended when the employee failed to provide a green card, even though the employee could properly complete the Form I-9 with other documentation.

The employee contacted the Department of Justice, which investigates these claims. Specifically, the Office of Special Counsel for Immigration Related Unfair Employment Practices is responsible for enforcing the anti-discrimination provisions of the Immigration and Nationality Act (INA). The INA protects work authorized individuals from employment discrimination on the basis of citizenship status or national origin discrimination, including discrimination in hiring and the Form I-9 process.

As a result of the complaint, Garland settled with that single employee for \$10,000 in back pay and civil penalties. BAE settled with the single employee for more than \$53,000 plus undisclosed amount of backpay. Both employers agreed to undergo training on proper Form I-9 processes.

There are ways to properly screen candidates for work authorization and sponsorship issues. Before employers unilaterally introduce Form I-9 procedures, they should consult an experienced attorney to eliminate any potential risk in being overzealous in immigration matters.

