

## “What is the Big Deal?”

(By Douglas P. Currier, Verrill Dana, LLP)

You look at the Form I-9 - the form you complete for all new hires (regardless of citizenship) to confirm identity and work authorization. So you left out the date you signed the form. And you forgot to include the employee's alien registration number. What is the big deal about a few blanks on the form? In your mind you know you're not employing any undocumented workers.

Immigration and Customs Enforcement (ICE) views those omissions as a very big deal. The fine they may assess for the mistakes on each I-9 form will range between \$110 and \$1100. If you made similar mistakes on an additional 30 or 40 forms, you could be facing penalties exceeding \$30,000. And if there are problems with 200 forms, then you are facing fines that could exceed \$200,000; all just for having sloppy paperwork.

If you're faced with such high fines, you might ask yourself “Why did we not date the form or fill in the blank when we completed the form? Such an easy thing to do; this easily could have been avoided.” Once the problem is discovered, it is too late, even if the correction is made before ICE involvement. Any corrections to the forms after the fact need to be noted as a correction made later in time. Failure to do so may be considered a criminal violation.

ICE, which is a division of the Department of Homeland Security, has expanded its ranks with the addition of more investigators and auditors. This translates to more government audits of employer I-9 forms as the government attempts to crack down on undocumented immigrants and employers who hire them. With more audits come more fines. Factors relevant to the size of the fines include: percentage of your forms with errors; the kind of mistakes made on the forms (missing I-9 forms and missing signatures on the forms are among the more serious); the size of your business; your good faith efforts to comply with the law; your past history of compliance; and whether you have actually employed any unauthorized aliens.

### What are the lessons to be learned?

- 1) Take seriously your obligation to properly complete the I-9 forms. Train your recruiting staff on proper completion of the I-9 forms. Also, make sure your staff understand the potential consequences if they fail to do so.
- 2) Think about having a second person review the I-9 form. This should be done before the expiration of the three-day period allowed for completing the forms.
- 3) Conduct periodic audits of your I-9 forms. If you find any errors, correct the error or omission using a red pen and indicate the date the correction is being made and that it was corrected as part of a self audit. Never back date the forms.
- 4) Retain copies of any documentation that relates to your effort to comply with the law. By way of example, ICE will be favorably impressed if you can demonstrate that you had a formal training session for your staff - so keep records of that training.
- 5) Do not turn a blind eye when presented with documentation that appears invalid or fake. While you should not be the document police, ciphering out every potentially false document, you do have to use common sense. By way of example, a social security card that is written in pen or pencil is not a document you should accept.
- 6) If you determine that a new hire does not have proper documentation, do not allow that individual to continue to work unless and until he or she can provide the proper documentation.

Should you attach copies of the documents that the employee presents? You are not required to do so, but it may be a good idea, especially if you find that your recruiting staff tends to make mistakes completing the forms. If you make copies, you need to do so for all new hires, regardless of citizenship.