

Hospitality Immigration Compliance: Making Sure You Aren't Stuck Between a Rock and a Hard Place

Presenters



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- Immigration and I-9 Compliance
- Boutique Hotels
- Restaurants & Bars

Immigration I-9 Compliance E-Verify

Helping you to increase your talent pool
and develop your business: efficiently,
legally and cost effectively

Why Does My Company Need This Information?

- Even companies which do not sponsor persons for visas need to be I-9 compliant
- Remain competitive
- Being ready for expansion
- If your company already has, or in the future will have an International presence

Topics

- Visa and legal permanent residence applications
- Visa compliance
- I-9 and worksite compliance

Immigration Terms

- H-1B: Specialty Occupation visa (requires a BA), allows employee to work for 3-6 years
- J-1: Training Visa
- H-3: Management Training Visa
- Green Card: Permanent Residency
- E-1: Treaty trader visa
- E-2: Treaty investor visa

Common Concerns

- Legal Fees
- USCIS Filing Fees
- Interruptions in ability to work
- Release of company information

I-9

- **It is unlawful to hire, recruit, or refer for a fee, a person who is not authorized to work in the U.S. INA**
- **Companies must verify all new hires under Form I-9**

Internal Audits

- Reviewing I-9 documents
- Helping to identify correct documents
- Paring down unnecessary documents
- Advice and training on document intake

Governmental Audits

- Raids vs audits or investigations
- Focus is on employers rather than individual employees
- Criminal prosecution of employers
- E-verify

We can help prepare or respond to audits from the Department of Labor, ICE, etc.

Prevention

- Establish policies as evidence of compliance
- How to deal with Workforce Changes:
 - Reduction in salary or hours
 - Layoffs and furloughs
- IRCA: Beyond Title VII (important for smaller employers)

Prevention cont.

- Avoiding IRCA National Origin Discrimination
- Avoiding IRCA Citizenship discrimination
- Avoiding IRCA document abuse
 - Requesting less is better
 - Separate I-9 and W-4

Applicability

- Subject: all employees hired after Nov 6, 1986 and still employed on June 1, 1987
- Not subject: Casual hires, independent contractors, B-1 domestic workers, pre-enactment employees
- Number of employees

Documentation

- Documentation must only be requested after job offer is made
- Employer cannot request specific documentation
- If new hire provides more documentation than required, new hire should select only the necessary documents. Employer may only assist

Documents Evidencing Employment and Identity

- U.S. passport
- Resident Alien Card, alien registration stamp (I-551)
- Unexpired foreign passport with an I-551 stamp
- Unexpired EAD with photo
- Unexpired foreign passport with an unexpired I-94 stamp bearing the same name and containing an NIV endorsement authorizing the holder to work
- Other documents: Designated by the AG with a photo/evidence of employment authorization

Documents Evidencing Employment Authorization

- Social Security card;
- Certification of Birth Abroad (DOS);
- Birth Certificate;
- Native American Tribal document;
- US Citizen ID card (I-197);
- ID Card for Resident citizen of the US (I-179);
- Unexpired EAD issued by DHS; and,
- Other authorization documents which the AG finds acceptable.

Forms

- Completing I-9 form
- Employee information and verification
- Employer review and verification
- Updating and reverification

E-Verify

- Essentially an electronic I-9
- Can either register directly with ICE and create a “MOU” Memorandum of Understanding or
- Use a corporate screening company, which is a commercial vendor

Tentative Non-confirmation

- Have 2 choices:
 - Contest
 - Abandon
- Employee's choice

Typical Problems

- Hyphenated names or double-barrel names
- Married names
- Change of name

Non-Typical Problems

- Entry by land or air identical I-94 issues
- Identical names
- 14 Databases
- Some agencies do not automatically communicate, e.g. SSA and USCIS

Actions to Take

1. Ask for information
 - Check for typos
 - Look at misspelling issues
2. Give employee 8 days to cure
3. Employee could go:
 - Social Security Administration
 - Call E-Verify number with employee and HR, and will be asked biographical data

Factors to Consider

- Size of company
- Best Practices
- Due Diligence
- Good faith
- Protects employee and gives employee the power to defend
- Gives employer protection if used correctly
- Protects lawsuits and discrimination claims
- Paperwork reduction