Fairfield UNIVERSITY

North East Journal of Legal Studies

Volume 42 *2022* Article 2

Spring 2022

Avoiding the Legal Landmines Attendant to the U.S. Citizenship and Immigration Services (USCIS) Form I-9 Compliance

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AVOIDING THE LEGAL LANDMINES ATTENDANT TO THE U.S. CITIZENSHIP AND IMMIGRATION SERVICES (USCIS) FORM I-9 COMPLIANCE

by

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I. INTRODUCTION

The Immigration Reform and Control Act of 1986 (IRCA)[1] provided significant revisions to the Immigration and Nationality Act of 1965 (INA).[2] IRCA is best known for providing the means for most unauthorized aliens in the United States at the time who had not been convicted of serious crimes a process to become legal permanent residents. But it also, *inter alia*, made it illegal for employers to knowingly employ an unauthorized alien or to continue to employ a previously hired employee when it learns such an employee is unauthorized to work in the United States.[3] IRCA imposes an employment verification system that employers must follow when hiring employees in order to help ensure that they are authorized to work.[4] It is from this statutory framework that the current Employment Eligibility Verification Form I-9 that all employers are required to use when hiring new full or part time employees

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was developed by the Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS).

The three-page Form I-9 and its attendant instructions appear simple enough to complete.[5] The process, however, provides numerous potential legal landmines for the unwary that can result not only in significant fines and potential civil and criminal penalties attendant to the completion, editing and retention of the form and related documentation after USCIS audits, but also in potential law suits by prospective employees based on Title VII employment discrimination, as well as disparate treatment claims by other individuals protected under both federal and state anti-discrimination laws. This article will first examine the specific requirements for completing, correcting, handling and retaining Form I-9 paperwork and then take a close look at some effective strategies all employers can use to minimize their potential exposure to civil, criminal and employment discrimination related claims. Finally, the article will examine available resources that can help employers, especially small businesses without extensive resources to hire consultants or provide training and support to individuals responsible for completing the I-9 verification process, to avoid civil and criminal penalties.

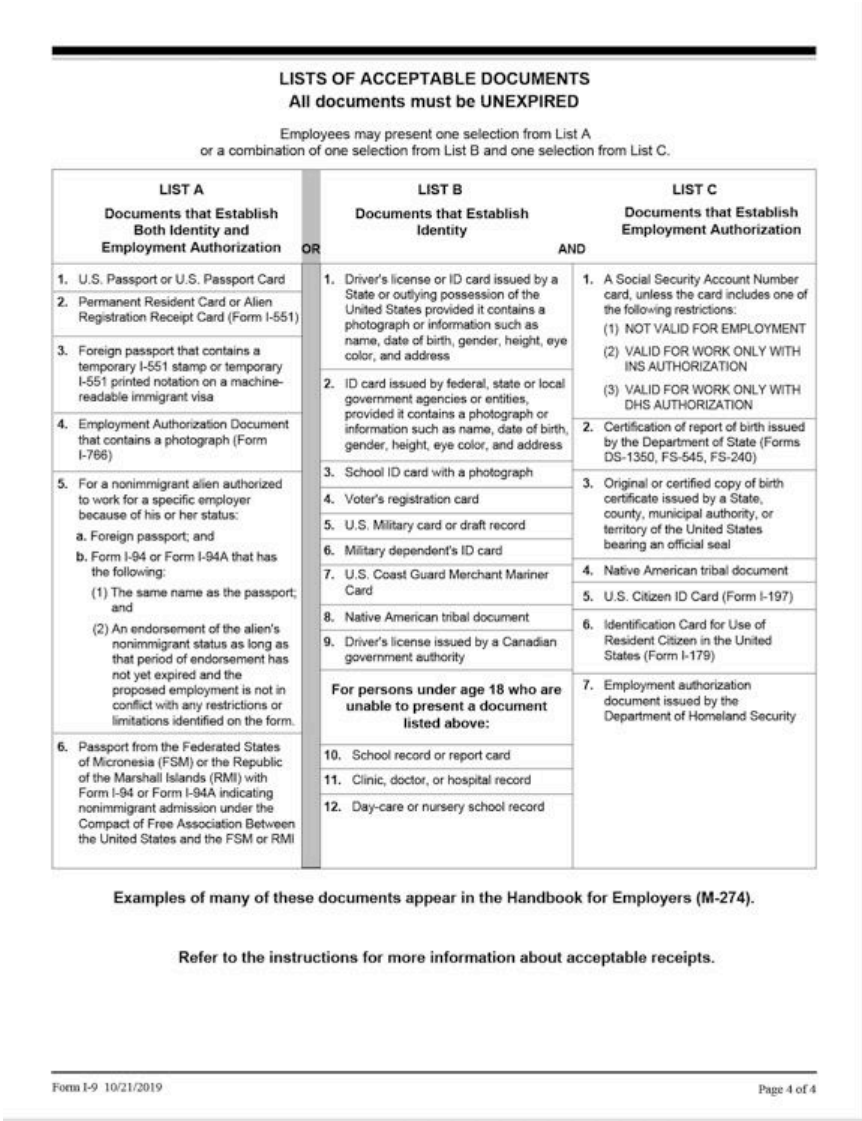
II. THE FORM I-9 EMPLOYMENT ELIGIBILITY VERIFICATION PROCESS

The specific requirements for employers and employees to complete Form I-9 are relatively straight forward. The first page of the four-page form must be filled out by the employee and submitted to the employer after accepting a job offer but no later than the first day of employment as is clearly noted in both the form itself and its attendant instructions.[6] The employee is required to fill out personally identifiable information that includes their full name, address, date of birth, social security

number, email and telephone number.[7] In addition, the employee must attest by checking off the appropriate box and providing additional information as required that they are either a citizen of the Unites States, a non-citizen national, a lawful permanent resident (if so must include alien registration/USCIS number), or an alien authorized to work in the United States (must also include the expiration date of such authorization if applicable). The form must then be signed and dated.[8] If the employee had someone translate or help fill out the form, the individual who translated or provided assistance must also sign and date the form and provide their full name and address, attesting that the information provided is to the best of their knowledge true and correct.[9]

When an employment offer is made, prospective employees should be given a copy of the first page of the form that they need to complete and submit by the first day of employment after they accept the position, as well as the fourth page of the form which lists documents that can be submitted to prove the employee's identity and their authorization to work in the United States. For reasons that will be discussed in Section III, infra, employers must not express a preference for what documents the employee can submit and should only tell the employee that they will be required to submit either one document from Column A or one document from column B and one document from Column C.[10]

Figure 1: List of Acceptable Documents (I-9 Form page 4)



LISTS OF ACCEPTABLE DOCUMENTS
All documents must be UNEXPIRED

Employees may present one selection from List A
or a combination of one selection from List B and one selection from List C.

LIST A Documents that Establish Both Identity and Employment Authorization	OR	LIST B Documents that Establish Identity	AND	LIST C Documents that Establish Employment Authorization
1. U.S. Passport or U.S. Passport Card		1. Driver's license or ID card issued by a State or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address		1. A Social Security Account Number card, unless the card includes one of the following restrictions: (1) NOT VALID FOR EMPLOYMENT (2) VALID FOR WORK ONLY WITH INS AUTHORIZATION (3) VALID FOR WORK ONLY WITH DHS AUTHORIZATION
2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)		2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address		2. Certification of report of birth issued by the Department of State (Forms DS-1350, FS-545, FS-240)
3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa		3. School ID card with a photograph		3. Original or certified copy of birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal
4. Employment Authorization Document that contains a photograph (Form I-766)		4. Voter's registration card		4. Native American tribal document
5. For a nonimmigrant alien authorized to work for a specific employer because of his or her status: a. Foreign passport; and b. Form I-94 or Form I-94A that has the following: (1) The same name as the passport; and (2) An endorsement of the alien's nonimmigrant status as long as that period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form.		5. U.S. Military card or draft record		5. U.S. Citizen ID Card (Form I-197)
		6. Military dependent's ID card		6. Identification Card for Use of Resident Citizen in the United States (Form I-179)
		7. U.S. Coast Guard Merchant Mariner Card		7. Employment authorization document issued by the Department of Homeland Security
		8. Native American tribal document		
		9. Driver's license issued by a Canadian government authority		
		For persons under age 18 who are unable to present a document listed above:		
		10. School record or report card		
		11. Clinic, doctor, or hospital record		
		12. Day-care or nursery school record		
6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI				

Examples of many of these documents appear in the Handbook for Employers (M-274).

Refer to the instructions for more information about acceptable receipts.

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If employees provide more documentation than required, they should be told to select which of the acceptable document(s) they would like to submit rather than accepting them all. For example, both a U.S. passport and a permanent resident card or alien registration receipt in and of themselves serve as proof of identity and proof of authorization to work. If an employee provides both a U.S. passport and a permanent resident card, the employer should tell the employee that either is acceptable and let the employee choose which to submit rather than accepting both or asking the employee to submit one rather than the other. Likewise, if an employee offers a passport, a college I.D. with a photograph and an original or certified copy of a birth certificate, the employer should ask the employee which they would like to submit, passport alone (a Column A document) or both the College I.D. (a Column B document) and the birth certificate (a Column C document). All three forms should not be accepted nor should a preference be given by the employer as to which document(s) to submit for reasons that will likewise be discussed in Section III infra.

After the employee provides the completed first page of the form and submits the required documentation, the employer should make copies of the document(s) submitted as proof of identity and right to work and return the originals to the employee. The employer or its authorized representative has three business days from the employee's first day of employment to verify the acceptability of the documents provided by the employee.[11] The relevant information from the accepted document(s) must be noted on page two of the form and the employer or its authorized representative must the sign and date the form including an attestation to the effect that they examined the documents, that the documents appear to be genuine and relate to the employee in question, and that to the best of their knowledge the employee is authorized to work in the U.S. The third page of the form is for use for reverification

of an employee's right to work in some instances when an employee is rehired after a severance of employment.

Recertification is required when, for example, employees obtains an extension on the original expiration date of their work authorization due to a change of immigration status or other valid reason. Recertification must be completed before the original expiration date of the work authorization. The form must also be completed when an employee quits or is terminated and then is rehired within three years of their initial hire date. If more than three years from the original hire date have passed when an employee is rehired, then a new Form I-9 must be completed.[12] In cases where an employee is unable to present acceptable documentation of his/her authority to work in the United States within three days of the first date of employment, he/she must present a receipt for the application for the document within that three-day period and the actual document itself within 90 days of the date of employment.[13] IRCA also imposes on employers a duty to maintain Form I-9 for all employees and make them available for inspection upon three days' notice.[14] Employers must retain I-9 forms for every employee for three years from the original date of hire and for terminated employees at least one year from the date of termination, whichever is longer.[15]

III. LIABILITY EXPOSURE ATTENDANT TO THE I-9 VERIFICATION PROCESS

There are two primary sources of potential liability for employers that arise from the Form I-9 verification process. The first relates to potential criminal and civil penalties that can attach during an I-9 inspection by the U.S. Customs and Immigration Service (ICE). The second relates to potential claims by employees who allege discrimination in violation of federal or state employment or civil rights laws by the employer

through disparate treatment or otherwise during the I-9 process of verifying the employee's identity and/or authorization to work in the U.S. Both of these will be briefly addressed next.

A. Potential Liability for Non-Compliance

Any person or entity which engages in a pattern or practice of intentional, repeated violations of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986 can be fined up to $3,000 for each unauthorized alien hired, imprisoned for not more than six months, or both, notwithstanding the provisions of any other federal law relating to fine levels.[16] Knowingly hiring or recruiting for a fee an alien unauthorized to work in the U.S. can also result in cease and desist orders and civil penalties under IRCA of not less than $583 and not more than $4,667 for any unauthorized alien after November 2, 2015 for a first offense.[17] Second offenses are punishable after November 2, 2015 from not less than $4,667 and not more than $11,665 for each unauthorized alien with respect to whom the second offense occurred after November 2, 2015.[18] Third and subsequent offenses after November 2, 2015 are punishable by fines ranging from not less than $6,999 to $23,331.[19] Employers are also responsible for the proper completion of Form-I9 and can be subject to penalties for omissions in the employee's portion of the form and for failure to properly inspect and verify the document(s) submitted by the employee within the specified period of time (within three business days of the date of employment).[20] Such violations are subject to penalties of not less than $234 and not more than $2,332 for each individual with respect to whom such violation occurred after November 2, 2015.[21]

B. Potential Liability for Violation of Federal and/or State Anti-Discrimination Laws

In addition to the potential for criminal and civil fines for willful or negligent violations of IRCA in the I-9 verification process, employers can also run afoul of federal and state prohibitions against unlawful discrimination in employment based on sex, race, color, religion, national origin, sexual orientation, age, disability status and similar restrictions.

IRCA itself makes it an unfair immigration-related employment practice to discriminate against any individual (other than an unauthorized alien) with respect to the hiring, recruitment or referral for a fee of the individual for employment, or the discharging of the individual from employment because of the individual's national origin or citizenship.[22] This restriction does not apply to a person or entity that employs three or fewer employees, nor does it apply if the discrimination is otherwise covered under Section 703 of the 1964 Civil Rights Act[23] (e.g., prohibiting discrimination in employment on the basis of race, color, religion, sex or national origin for covered employers[24]). Employers who are engaged in an industry affecting commerce who hire 15 or more employees on a full- or part-time basis for each working day in 20 or more calendar weeks for the current of preceding year are "covered employees" under Title VII of the 1964 Civil Rights Act.[25] Allegations of discrimination based on race, color, religion, sex or national origin against employees of covered employers are investigated by the Equal Employment Opportunity Commission (EEOC).[26] Employers can find themselves on the receiving end of both sanctions for unlawful discrimination in the hiring, promotion and retention of employees under IRCA and under Title VII of the 1964 Civil Rights Act not only in instances of willful discrimination, but also through negligence in failing to observe the timelines dictated by the Form I-9

verification process, by failing to receive and verify the required proof of identity and work authorization of their employees and in failing to observe the requirements of I-9 handling, storage and retention. Moreover, subjecting protected employees to disparate treatment during the I-9 verification process can also result in unfair labor practices charges. In 2013, for example, the Justice Department announced an agreement with Centerplate Inc., one of the largest hospitality companies in the world, resolving allegations that the company violated the anti-discrimination provision of the Immigration and Nationality Act (INA) by engaging in a pattern or practice of treating work-eligible non-U.S. citizens differently than U.S. citizens in requesting from the former specific documents issued by the U.S. Department of Homeland Security that were not required of U.S. citizens.[27] The company agreed to pay a $250,000 fine as part of the settlement.[28]

IV. SIMPLE STRATEGIES FOR AVOIDING LIABILITY ATTENDANT TO THE I-9 VERIFICATION PROCESS

The criminal and civil penalties for employers who fail to comply with the Immigration and Nationality Act by either knowingly hiring unauthorized workers or negligently failing to comply with the Form I-9 verification process can prove very costly, especially for small businesses that may lack the resources to maintain a dedicated, expert human resources manager to handle the process or consult legal counsel when issues arise. The Form I-9 verification process can also result in unintentional violations of federal and state antidiscrimination laws during the hiring and termination of employees who fail to provide the required information on Form I-9 and/or acceptable documents to prove their identity and work authorization when employees or prospective employees claim that they were subjected to disparate treatment because of their age, sex, nationality, color, religion, age, disability or other protected

classification. While no single strategy can insulate any employer, large or small, from liability for mishandling the I-9 verification process or claims of unlawful employment discrimination, there are some simple strategies that all employers should employ to minimize the risk.

A. Use Handbook for Employers M-274

USCIS provides detailed instructions for completing Form I-9 online in a 15-page PDF file that provides line-by-line instructions.[29] In addition, all employers and their assignees responsible for completing, verifying and maintaining Form I-9 should be familiar with and refer to the Handbook for Employers M-274 that provides additional detailed guidance on completing the form and issues that may arise during the I-9 verification process.[30] The manual can be printed and/or accessed online.[31] Every employer should make available a printed copy of the manual to the person(s) responsible for handling the I-9 verification process as it is a very useful source of information that can help prevent problems that can arise during the verification process involving the completion of Form I-9 itself, data storage and retrieval and USCIS audits. If questions remain that cannot be clearly resolved by reference to the instructions for completing Form I-9 and the Handbook for Employers M-274, employers should seek guidance from USCIS and/or competent counsel.[32]

B. Avoid Document Abuse Charge

Form I-9 makes clear the types of documentation employees may submit as proof of identity and of authorization to work in the United States. An employer should never suggest what documentation it prefers employees to submit and should not accept more documentation than that required to satisfy Form I-9. The Immigration and Nationality Act specifically prohibits

employers requesting more or different documents than are required under section 1324a(b) or refusing to honor otherwise acceptable documents that on their face appear to be valid.[33]

For example, if an employee on the first day of employment submits a valid U.S. Passport, a driver's license issued by any state that contains a photograph and a social security card, the employer should not accept all three forms of identification. The employee should be told that either the U.S. Passport (a Column A document that satisfies both the requirements of proof of identity and authorization to work) or the driver's license (a document from column B that satisfies as proof of identity) and the Social Security Card (a document from Column C that satisfies as proof of work authorization) should be submitted and let the employee decide which to submit.[34] Logging in all three documents and/or making copies of the originals to keep in the Employee's I-9 file can lead to a potential future disparate treatment claim by the employee and/or a claim of document abuse for requiring more documentation than required by the I-9 verification process.

IRCA does not require copies of the documentation submitted by the employee to prove her/his identity and authorization to work to be kept—only that the information from said documents be entered in the Form I-9 as evidence that the employee provided the required information; If copies are made, however, then they must be attached to Form I-9.[35] Making copies of documentation provided by employees as proof of identity and eligibility to work in the United States can be useful during a USCIS audit if the information in the form proves to be invalid, such as in the case when an invalid but official-looking Social Security card is offered as evidence of authorization to work by the employee, as it will show that the employer accurately entered the information on Form I-9 and that the proffered document appeared to be genuine, thereby absolving

the employer of liability for hiring an unauthorized worker. But if an employer opts to make and retain copies of proffered documents from employees, it is critically important that it does so for every employee hired and not merely if it suspects that documentation submitted by a given employee may be fraudulent. Making copies of documents of some employees and not others can subject the employer to charges of unlawful discrimination/disparate treatment.

C. Maintain Form I-9 Files Separate from Employee Personnel Files

Employers should always store Form I-9 and its attendant documentation in a dedicated file for each employee separate from the employee's personnel file.[36] Doing so can avoid creating the appearance of making discriminatory employment decisions.[37] As with personnel files, these must be secured and made accessible only to persons who have a bona fide need to access the information. Issues of maintaining confidentiality aside, Form I-9 should be kept separate from personnel files for other legal and practical reasons. IRCA does not require Form I-9 to be kept separate from an employee's personnel file, but maintaining them separate will facilitate HR to more easily monitor compliance, control access, and respond to an audit by the U.S. Citizenship and Immigration Services (USCIS).[38]

D. Follow Appropriate Protocols for Correcting or Adding Information on Form I-9

If errors or omissions are discovered in any Form I-9 by the employer through an internal I-9 audit or otherwise, corrections must be made as follows:

- Corrections to Section 1 of the Form I-9 should be made by the employee and not the employer by

drawing a line through the incorrect information, entering the correct or missing information, and initialing and dating the correction.[39] A statement as to the reason for the correction should be attached to the form.[40] If the correction or addition cannot be made by the employee, the employer should leave the error or omission uncorrected and add a statement as to the reason the employee cannot make the change (e.g., no longer works for the employer).[41]

- Corrections or omissions entered by a preparer or translator who assisted the employee in filling out Section 1 of the form can be made either by the preparer/translator, and either the preparer/translator or the employee can then initial and sign the correction(s)/addition(s).[42]
- The employer/agent filling out Sections 2-3 of Form I-9 can make corrections or additions in a similar manner by entering a line through the incorrect information, entering the correct or missing information and initialing the change.[43] Missing dates should not be back dated; rather the date of the correction should be added and initialed.[44] Changes should never be concealed by erasure or otherwise. If multiple changes are needed in any given section, a new form I-9 can be used and that section corrected, dated, and attached to the original Form I-9 with the original information and prior corrections.[45]
- If the electronic version of Form I-9 is used, the audit trail must reflect the changes to Sections 1, 2 and 3 of the form.[46]

E. Internal Form I-9 Audits

Conducting internal Form I-9 audits can allow employers to discover and correct missing or incorrect information in employees' I-9 files to ensure they are correct and up to date should a USCIS audit occur. However, conducting internal audits can raise potential problems of its own for employers if care is not taken to ensure that these are not discriminatory or retaliatory in nature or perceived that way by employees. The U.S. Justice Department though the Office of Special Counsel for Immigration-Related Unfair Employment Practices has issued useful guidelines for employers to use when conducting Form I-9 audits.[47] The guidance includes an admonition against employers conducting Form I-9 internal audits that are discriminatory or retaliatory in nature.[48] If such audits are undertaken, therefore, employers must make certain that employees are not singled out for special scrutiny such as by reviewing only Forms I-9 for employees who are non-citizens, or for employees with whom the employer is displeased for any reason. If done at all, Form I-9 audits must be truly random or must be done for all employees. An exception can be made when an employer has a valid reason to believe that the employee may be unauthorized to work such as when the employer receives a tip that an employee is not work-authorized.[49] Employers may delegate the task of an internal Form I-9 audit to an outside auditor, but if it does so it will still remain liable for any violations committed by the third party with regard to the audit.[50]

F. Using E-Verify During the Form I-9 Verification Process

E-Verify is a free, web-based system provided by the U.S. Department of Homeland Security and USCIS that allows enrolled employers to confirm the eligibility of newly hired employees to work in the United States.[51] "E-Verify employers

verify the identity and employment eligibility of newly hired employees by electronically matching information provided by employees on the Form I-9, Employment Eligibility Verification, against records available to the Social Security Administration (SSA) and the Department of Homeland Security (DHS)."[52] Participation in the program is voluntary for employers other than for "employers with contracts that contain the Federal Acquisition Regulation (FAR)" for whom enrollment in the E-Verify program is required.[53] States can also require the use of E-Verify for some or all employers.[54] E-Verify is available in all 50 states, the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, and Commonwealth of Northern Mariana Islands, is currently the best means available to electronically confirm employment eligibility."[55]

The U.S. Supreme Court ruled in *Chamber of Commerce of the United States v. Whiting*, 131 S.Ct. 1968 (2011) that a state requirement that all employers use of E-Verify in the I-9 verification process for newly hired employees is not preempted by federal law. [56] According to the National Conference of State legislatures, at present 20 states require the use of E-Verify some form as follows:

- Nine states—Alabama, Arizona, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Utah—require E-Verify for all employers (Some states have exemptions for small businesses);

- Eleven states—Colorado, Florida, Idaho, Indiana, Michigan, Missouri, Nebraska, Oklahoma, Texas, Virginia and West Virginia—require E-Verify for most public employers; and

- Minnesota and Pennsylvania require E-Verify for some public contractors and subcontractors.[57]

For employers, use of the free E-Verify system can simplify I-9 verification and limit the risk of fines or criminal liability for failing to verify new hires' authorization to work. Reliance of government-provided data about new hires through E-Verify would satisfy the employer's due diligence requirement in the I-9 verification process since the government itself in its amicus brief to the *U.S. Supreme Court in Chamber of Commerce of the United States V. Whiting* is quoted by Chief Justice Roberts in the Court's opinion as stating that "E–Verify's successful track record ... is borne out by findings documenting the system's accuracy and participants' satisfaction."[58]

One major cautionary note for employers who voluntarily opt to use the E-Verify system is that they must use it for all newly hired employees in order to avoid charges of disparate treatment. Using it in only some selective cases can lead to charges of employment discrimination.[59]

V. CONCLUSION

The Immigration Reform and Control Act of 1986 (IRCA) places the burden of verifying employees' authorization to work in the United States squarely on the shoulders of employers. At first glance, implementation of the Form I-9 verification process may seem relatively straight-forward. Upon closer examination, however, the potential risk of civil and criminal liability for employers when implementing Form I-9 document verification, form completion, record correction and record retention requirements comes into sharp focus. As noted in Section III supra, liability exposure for employers goes far beyond the potential for criminal and civil liability for the willful or negligent failure to comply with the Form I-9 verification process. Employers can also incur liability for violating federal and state anti-discrimination laws if they willfully or negligently subject protected classes of individuals to disparate treatment in

the Form I-9 verification or re-verification process. This is an especially onerous burden for small businesses that lack the resources to hire experienced professionals to handle the Form I-9 verification and record keeping process. Small business owners can find themselves in a no-win scenario when faced with the quandary of either accepting documentation as proof of identity and authorization to work that may not prove to be acceptable in an official I-9 audit (e.g., fraudulent documentation that should have raised a question by the employer), or asking for additional documentation from an employee in such circumstances and thereby subjecting itself to a potential civil suit for disparate treatment by the employee.

If Congress were truly interested in preventing unauthorized workers from joining the U.S. workforce, it could require the use of E-Verify for all employers who meet a minimum threshold in the number of employees they hire or the amount of business they do in a given year that can satisfy its Commerce Clause authority.[60] This would greatly decrease the risk of noncompliance by employers who rely on information contained in the E-Verify system that is provided by the federal government and can be presumed to be valid.[61] In the absence of such a mandate, however, all employers can still voluntarily choose to use the E-Verify system in the Form I-9 verification process. As previously noted, however, it is critically important that employers that choose to avail themselves of E-Verify must consistently use it for every new employee hired in order to avoid the potential of disparate treatment claims.[62]

In the absence of federal regulations requiring the use of E-Verify, states should consider following the lead of Alabama, Arizona, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Utah and require E-Verify be used by all employers in the hiring process with the possible exception of some small businesses.[63] This would help ensure both that

only authorized workers are hired, which is after all the purpose of the Form I-9 verification process, while at the same time insulating employers from claims of disparate treatment when E-Verify flags potential issues with an employee's identity or authorization to work.

The mandatory use of E-Verify as part of the Form I-9 verification process would ensure that every new employee is treated fairly while at the same time lessen the potential for willful or unintentional instances of disparate treatment by employers with its attendant potential liability. It would make it much harder for unscrupulous employers to discriminate against prospective employees by requiring more or different documentation than that required by Form I-9, or to willfully hire unauthorized workers by "relying" on documentation they should suspect or know to be fraudulent. And it would prevent unauthorized workers from obtaining employment through the use of fraudulent documentation that E-Verify would flag as suspect or invalid. These are, after all, the whole purpose that underlie the Form I-9 verification process. Since Congress has opted to shift the burden for verifying employees' identities and authorization to work to employers as part of the hiring process, is it too much to ask that the best, most reliable and free tool available for employers to fairly and consistently fulfill the verification process while reducing their exposure to civil and criminal liability be required to be used?

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[1] PL 99–603 (1986), 100 Stat. 3359.
[2] PL 89-236 (1965), 79 Stat. 911.
[3] PL 99-603 (1986) Sec. 274A (a)(1)-(2), 100 Stat. 3360.
[4] See PL 99-603 (1986) Sec. 274A (b), 100 Stat. 3361 *et. seq.*
[5] The form and instructions are available online at https://www.uscis.gov/i-9 (last accessed October 19, 2020).
[6] See https://www.uscis.gov/i-9 (last accessed October 19, 2020).

[7] *Id*. See also Instructions for Form I-9, Department of Homeland Security, U.S. Citizenship and Immigration Services at 2-4. (Available online at https://www.uscis.gov/sites/default/files/document/forms/i-9instr.pdf (last accessed October 19, 2020).
[8] *Id* at 4.
[9] *Id*.
[10] *Id*. at 8-11.
[11] *Id*. at 6.
[12] *Id*. at 12-14.
[13] 8 C.F.R. § 274a.2(b)(vi).
[14] 8 C.F.R. § 274a.2(b)(2)(ii)
[15] See Handbook for Employers M-274, U.S. Citizenship and Immigration Services, 9.0 Retaining Form I-9, available online at https://www.uscis.gov/i-9-central/handbook-for-employers-m-274/90-retaining-form-i-9 (last accessed October 20, 2020).
[16] 8 CFR § 274a.10(a).
[17] 8 CFR § 274a.10(b)(1) (i)-(ii)(A). (Fines range in this section from $275-$2,200 for each unauthorized alien with respect to whom the offense occurred before March 27, 2008 and $375-$3,200 for each unauthorized alien with respect to whom the offense occurred occurring on or after March 27, 2008 and on or before November 2, 2015.)
[18] 8 CFR § 274a.10(b)(1) (i)-(ii)(B). (Fines range in this section from $2,200-$5,500 for each unauthorized alien with respect to whom the offense occurred before March 27, 2008 and $3,200-$6,500 for each unauthorized alien with respect to whom the offense occurred occurring on or after March 27, 2008 and on or before November 2, 2015.)
[19] 8 CFR § 274a.10(b)(1) (i)-(ii)(C). (Fines range in this section from $3,300-$11,000 for each unauthorized alien with respect to whom the offense occurred before March 27, 2008 and $4,300-$16,000 for each unauthorized alien with respect to whom the offense occurred occurring on or after March 27, 2008 and on or before November 2, 2015.)
[20] See 8 CFR § 274a.2(b).
[21] 8 CFR § 274a.10(b)(2). (Fines range from $100- $1,000 for each individual with respect to whom such violation occurred before September 29, 1999 and $110-$1,100 for each individual with respect to whom such violation occurred on or after September 29, 1999 and on or before November 2, 2015.)
[22] 8 U.S.C.A. § 1324b (a) (1) (A)-(B). See also Handbook for Employers M-274, U.S. Citizenship and Immigration Services, 10.6 Penalties for Unlawful Discrimination available online at https://www.uscis.gov/i-9-central/handbook-for-employers-m-274/100-unlawful-discrimination-and-

penalties-for-prohibited-practices/106-penalties-for-unlawful-discrimination (last accessed October 28, 2020).
[23] 8 U.S.C.A. § 1324b (a) (2).
[24] See 42 USC 2000e-2(a).
[25] See 42 USC 2000e (b).
[26] See 42 USC 2000e-5.
[27] See Justice Department Reaches Settlement with South Carolina Food Service Provider to Resolve Immigration-Related Unfair Employment Practices, Justice News, U.S. Department of Justice (January 7, 2013) available online at https://www.justice.gov/opa/pr/justice-department-reaches-settlement-south-carolina-food-service-provider-resolve (last visited October 24, 2020).
[28] *Id*.
[29] Available online at https://www.uscis.gov/sites/default/files/document/forms/i-9instr.pdf (last accessed October 26, 2020).
[30] Available online at https://www.uscis.gov/i-9-central/handbook-for-employers-m-274 (last accessed October 24, 2020).
[31] *Id*.
[32] USCIS ca be contacted by employers with questions about the I-9 verification process by phone at 888-464-4218 (877-875-6028 TTY - For hearing and speech impaired users) and by email at I-9Central@uscis.dhs.gov . See also https://www.uscis.gov/i-9-central/contact-us (last accessed October 24, 2020).
[33] 8 U.S.C.A. § 1324b (a) (6).
[34] See Figure 1 Supra.
[35] See Handbook for Employers M-274 9.2: Retaining Copies of Form I-9 Documents, U.S. Citizenship and Immigration Services available online at https://www.uscis.gov/i-9-central/handbook-for-employers-m-274/90-retaining-form-i-9/92-retaining-copies-of-form-i-9-documents (last accessed October 27, 2020). See also Austin T. Fragomen, Jr., Careen Shannon, and Daniel Montalvo, Immigration Employment Compliance Handbook § 4:118 (August 2020 Update).
[36] See Barbara S. Magill, Esq. and Worklaw Network, Workplace Privacy: Real Answers and Practical Solutions, 2nd Edition, Chapter 17: Personnel Files, Thompson Information Services (2007 Supplement). See also Creating and Maintaining Employee Personnel Files Checklist, Hiring Documents Segregated from Personnel Files, Practical Law Labor & Employment.
[37] *Id*.
[38] HR Series Policies and Practices, 1 Policies and Practices § 7:14 (September 2020 Update).

[39] U.S. Citizenship and Immigration Services, Handbook for Employers M-274, Section 8.0 Correcting Errors or Missing Information on Form I-9, available online at https://www.uscis.gov/i-9-central/handbook-for-employers-m-274/80-correcting-errors-or-missing-information-on-form-i-9 (last accessed October 27, 2020).
[40] *Id*.
[41] *Id*.
[42] *Id*.
[43] *Id*.
[44] *Id*.
[45] *Id*.
[46] *Id*.
[47] Guidance for Employers Conducting Internal Employment Eligibility Verification Form I-9 Audits, U.S. Justice Department, Office of Special Counsel for Immigration-Related Unfair Employment Practices available online at https://www.justice.gov/crt/file/798276/download (last accessed October 28, 2020).
[48] *Id*. at 1.
[49] *Id*. at 5.
[50] *Id*.
[51] About E-Verify, U.S. Department of Homeland Security and USCIS available online at https://www.e-verify.gov/ (last accessed November 13, 2020).
[52] *Id*.
[53] *Id*.
[54] *Id*.
[55] *Id*.
[56] *Chamber of Commerce of the United States v. Whiting*, 131 S.Ct. 1968, 1987 (2011) [Arizona law required all employers to use E-Verify to verify new employee's authorization to work in the U.S. and penalized employers who failed to do so with suspension or revocation. Of their business license. JJ. Breyer and Ginsburg dissenting; J. Sotomayor took no part in the decision]
[57] National Conference of State Legislatures, State E-Verify Action, available online at https://www.ncsl.org/research/immigration/state-e-verify-action.aspx#:~:text=Eleven%20states%E2%80%94Colorado%2C%20Florida%2C,some%20public%20contractors%20and%20subcontractors (last accessed November 13, 2020)
[58] *Chamber of Commerce of the United States v. Whiting*, 131 S.Ct. 1968, 1986 (2011)
[59] See Section III *supra*.

[60] U.S. Const., art. I, § 8, cl. 3.
[61] See note 51 *supra*.
[62] See Section IV(F) *supra*.
[63] *Id*.