I–9 Employment Eligibility
History of Employment Eligibility
IRCA, IMMMACT, AND IIRIRA

- The employer sanctions provision, found in Section 274A of the I&NA, were added by the Immigration Reform and Control Act of 1986. These provisions further changed with the passage of IMMMACT 1990 and IIRIRA of 1996.

- Employment is often the magnet that attracts individuals to reside in the U.S. illegally.

- Must complete I–9 for all new employees hired after 11/16/1986.

- Retain I–9 for 3 years after hire or 1 year after termination, whichever is later.
Completing an I–9

Section 1: Have employee complete Section 1 at the time of hire (Providing SSN on I–9 is voluntary unless participating in E–Verify).

Section 2: Employee must present original document(s) that establish identity/employment eligibility within 3 business days of the date employment begins.
Reverification

- Protected: USC, LPR, Temp res, Asylees & Refugees
- When an employee’s work authorization expires employers must reverify. If Section 3 of I-9 is used up, employer must execute new I-9.
- As of 4/3/2009, all employment eligibility documents must be unexpired.
- When you rehire an employee, you must ensure that employee is still authorized to work. Employees can either complete a new I-9 or reverify the original I-9. Employers can reverify if employee is rehired within 3 years of original hire date and employee’s previous work authorization has expired, but is currently eligible on a different basis under a new authorization.
Retention of I–9

1. Paper Form Retention: Employers must retain completed I–9 for all employees for three (3) years after the date of hire or one (1) year after employee termination, which ever is later. Retention can involve on or off–site storage, as long as I–9’s are producible within 3 days of audit request. Cannot be contained in personnel file.

2. Microform: Film stock that will preserve images for up to 20 years. Use well–maintained equipment capable of producing readable paper copies.
3. Employers may use an electronic generation/storage system that:
   a) Controls integrity, accuracy, and reliability.
   b) Detects unauthorized or accidental alteration or deletion.
   c) Contains quality assurance program that allows for regular inspection.
   d) Contains retrieval system that searches index by any data element.
   e) Allows for legible hardcopy reproductions.
4. Inspection/Audits

- DHS, OSC, and DOL give employers three (3) days notice prior to inspection.
- Employers must make I–9 available at location where DHS, OSC, or DOL request to see them.
- Reproduce only I–9 and supporting documents specifically requested.
- Provide appropriate hardware, software.
- Provide spreadsheets if requested.
Unlawful Discrimination Under the INA

- **Unlawful Hiring Practices:**
  - Setting different standards
  - Allowing employees to choose ???
  - Requesting documents before hiring
  - Refusing to accept a (?) document
  - Limiting jobs to U.S. citizens unless required for position by law

- **Unlawful Employment /Employer Sanctions**
  - Different treatment based on citizenship or immigration status
  - Different treatment based on national origin
  - Unfair documentation practices:
    - Asking for a particular document
    - Rejecting document
    - Requesting more documents than required
Unlawful Employment / Employer Sanctions

Four Types of Unlawful Conduct:

1. Different treatment based on citizenship or immigration status
2. Different treatment based on national origin
3. Unfair documentation practices:
   - Asking for a particular document
   - Rejecting document
   - Requesting more documents than required
4. Retaliation
   - Taking adverse action against employee because employee filed a discrimination complaint
CIVIL

- Penalties for Prohibited Practices:
  - DHS may impose penalties if investigation reveals an employer knowingly hired or knowingly continued to employ an unauthorized alien.
  - Notice of Intent to Fine (NIF)
    - Employers can request a hearing before (?)
  - Penalties
    - 1st Offense – no less than $275 or no more than $2,200 per alien.
    - 2nd Offense – $2,200 to $5,500
    - 3rd Offense – $3,300 to $11,000
  - Failing to Comply with I-9
    - No less than $110 or no more than $1,100
CRIMINAL

A. Engaging in a pattern or practice of knowingly hiring or continuing to employ unauthorized aliens. Persons or entities who are convicted of having engaged in a pattern or practice of knowingly hiring unauthorized aliens (or continuing to employ aliens knowing that they are or have become unauthorized to work in the U.S.) may face fines of up to $3,000 per employee and/or six months imprisonment.

B. Engaging in fraud or false statements or otherwise misusing visas, immigration permits and identity documents. Persons who use fraudulent identification or employment eligibility documents or documents that were lawfully issued to another person or who make a false statement or attestation for purposes of satisfying the employment eligibility verification requirements, may be fined, or imprisoned for up to 5 years, or both.
E-Verify and I-9 Compliance

- E-Verify provides an automated (internet) link to SSA and DHS database for employers to determine employment eligibility of new hires.
- Under a June 6, 2008 Executive Order, any federal contractor – including colleges and universities – must use E-Verify to verify the employment eligibility for:
  - All new hires on a federal contract;
  - All existing employees assigned on a federal contract.
- By May 21, 2009, all federal contracts will include language requiring contractors to use E-Verify.
- There will be more information concerning E-Verify forthcoming. Human Resources and General Counsel will be administering the program.