COLORADO DIVISION OF LABOR

GUIDE TO STATE AND FEDERAL EMPLOYMENT VERIFICATION LAWS

The information contained herein is provided for general educational purposes only. This information is not intended to expand, narrow, or contradict current state or federal laws. Every attempt has been made to ensure the accuracy and utility of the information contained in this publication. The Colorado Division of Labor does not give legal advice. Please contact the Division if you have any questions, comments, or feedback.

I. COLORADO EMPLOYMENT VERIFICATION LAW (8-2-122, C.R.S.)

Contact the Colorado Division of Labor at 303-318-8441 for more information on the Colorado employment verification law.

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II. FEDERAL EMPLOYMENT VERIFICATION LAW (8 U.S.C. 1324a)

Contact USCIS (national service center: 1-800-375-5283; employer hotline: 1-800-357-2099) for information and questions on any of the following federal employment verification topics. Note that these requirements are distinct from the employment verification requirements under the Colorado State law described in Section I.

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I. COLORADO EMPLOYMENT VERIFICATION LAW OVERVIEW

A Colorado law concerning employment verification became effective on January 1, 2007, 8-2-122, C.R.S. Section I of this guide provides an overview of the law and its requirements.

Please note that this law is distinct from federal employment verification laws and requirements (for example, Form I-9 requirements). Section II of this guide provides information and resources on federal employment verification laws and requirements; contact the appropriate federal agency for questions on federal topics.

EMPLOYER COVERAGE (8-2-122(1)(C))

Employers are defined in a broad manner, and include both private and public employers. An employer is a person or entity that: transacts business in Colorado; at any time, employs another person to perform services of any nature; and has control of the payment of wages for such services or is the officer, agent, or employee of the person or entity having control of the payment of wages.

EMPLOYEE COVERAGE (8-2-122(2))

The law applies to Colorado employees hired on and after January 1, 2007.

EFFECTIVE DATE AND AFFIRMATION CONTENT

Effective on and after January 1, 2007, within 20 days after hiring a new employee, each employer in Colorado shall:

(1) Affirm that the employer has examined the legal work status of each newly-hired employee (hired on or after January 1, 2007);
(2) Affirm that the employer has retained file copies of the documents required by 8 U.S.C. Sec. 1324a (copies of the employee's Form I-9 identity and employment authorization documents);
(3) Affirm that the employer has not altered or falsified the employee's identification documents;
(4) Affirm that the employer has not knowingly hired an unauthorized alien.

The employer must keep a written or electronic copy of the affirmation for the term of employment of each employee. Visit www.colorado.gov/cdle/evr to obtain the mandatory affirmation form. Employers must use the form provided by the Division for all employees hired on and after October 1, 2012.

REQUIRED DOCUMENTS AND DOCUMENT RETENTION (8-2-122(2))

The employer must keep both of the following for the term of employment of each employee (newly-hired employees hired on or after January 1, 2007). These required documents do not need to be sent to the Division, unless specifically requested by the Division:

(1) a written or electronic copy of the affirmation.
(2) a written or electronic copy of the documents required by 8 U.S.C. Sec. 1324a; (copies of the employee's Form I-9 identity and employment authorization documents).

ENFORCEMENT (8-2-122(3))

The Colorado Division of Labor may conduct random audits of employers in Colorado to obtain the required documentation. When the Director of the Division has reason to believe that an employer has not complied with the employment verification and examination requirements, the Director shall request the employer to submit the documentation.

PENALTIES (8-2-122(4))

An employer who, (1) with reckless disregard, fails to submit the documentation required by this section, **or** who, (2) with reckless disregard, submits false or fraudulent documentation, shall be subject to a fine of not more than $5,000 for the first offense, and not more than $25,000 for the second and any subsequent offense.

STATEMENT OF NON-DISCRIMINATION (8-2-122(5))

This section shall be enforced without regard to race, religion, gender, ethnicity, national origin, or disability.

CONTACT INFORMATION AND FILING COMPLAINTS

The Colorado Division of Labor enforces the provisions of this law. For more information or to file a complaint, contact the Division of Labor at 303-318-8441 or go to www.colorado.gov/cdle/evr.

FACT SHEET ON 8-2-122, CRS

A 1-page fact sheet is located at www.colorado.gov/cdle/evr.

This form cannot be used for employees hired prior to September 6, 2012.

Revision Date: 09/06/12
Expiration Date: 10/01/14

Affirmation of Legal Work Status

Pursuant to § 8-2-122, Colorado Revised Statutes

Employee Name: _____ _____
Last First Middle Date of Birth

Social Security Number: _____-_____-_____ Date of Hire: _____(MM/DD/YYYY)

In accordance with § 8-2-122, C.R.S., within 20 days after hiring the new employee listed above,

I affirm all four of the following by signing this form:

1. I have examined the legal work status of the above named employee.
2. I have retained file copies of the documents required by 8 U.S.C. sec. 1324a.
3. I have not altered or falsified the employee's identification documents.
4. I have not knowingly hired an unauthorized alien.

_____ _____
Print Name of Employer (or Designated Representative) Official Title

_____ _____(MM/DD/YYYY)
Signature of Employer (or Designated Representative) Date Signed by Employer

_____ _____
Business or Organization Name Employer Phone Number

The provision of false or fraudulent information on this form may subject the employer to a significant fine and/or additional penalties.

This form and the documents required by 8 U.S.C. sec. 1324 (copies or electronic copies) will be retained for the duration of the above named individual's employment.

§ 8-2-122(2), C.R.S.: On and after January 1, 2007, within twenty days after hiring a new employee, each employer in Colorado shall affirm that the employer has examined the legal work status of such newly-hired employee and has retained file copies of the documents required by 8 U.S.C. sec. 1324a; that the employer has not altered or falsified the employee's identification documents; and that the employer has not knowingly hired an unauthorized alien. The employer shall keep a written or electronic copy of the affirmation, and of the documents required by 8 U.S.C. sec. 1324a, for the term of employment of each employee.

8-2-122. Employment verification requirements - audits - fine for fraudulent documents - cash fund created - definitions.

(1) As used in this section, unless the context otherwise requires:

(a) "Director" means the director of the division.

(b) "Division" means the division of labor in the department of labor and employment.

(c) "Employer" means a person or entity that:

(I) Transacts business in Colorado;

(II) At any time, employs another person to perform services of any nature; and

(III) Has control of the payment of wages for such services or is the officer, agent, or employee of the person or entity having control of the payment of wages.

(d) "Unauthorized alien" has the same meaning as set forth in 8 U.S.C. sec. 1324a (h) (3).

(2) On and after January 1, 2007, within twenty days after hiring a new employee, each employer in Colorado shall affirm that the employer has examined the legal work status of such newly-hired employee and has retained file copies of the documents required by 8 U.S.C. sec. 1324a; that the employer has not altered or falsified the employee's identification documents; and that the employer has not knowingly hired an unauthorized alien. The employer shall keep a written or electronic copy of the affirmation, and of the documents required by 8 U.S.C. sec. 1324a, for the term of employment of each employee.

(3) Upon the request of the director, an employer shall submit documentation to the director that demonstrates that the employer is in compliance with the employment verification requirements specified in 8 U.S.C. sec. 1324a (b) and documentation that the employer has complied with the requirements of subsection (2) of this section. The director or the director's designee may conduct random audits of employers in Colorado to obtain the documentation. When the director has reason to believe that an employer has not complied with the employment verification and examination requirements, the director shall request the employer to submit the documentation.

(4) An employer who, with reckless disregard, fails to submit the documentation required by this section, or who, with reckless disregard, submits false or fraudulent documentation, shall be subject to a fine of not more than five thousand dollars for the first offense and not more than twenty-five thousand dollars for the second and any subsequent offense. The moneys collected pursuant to this subsection (4) shall be deposited in the employment verification cash fund, which is hereby created in the state treasury. The moneys in the fund shall be appropriated to the department of labor and employment for the purpose of implementing, administering, and enforcing this section. The moneys in the fund shall remain in the fund and not revert to the general fund or any other fund at the end of any fiscal year.

(5) It is the public policy of Colorado that this section shall be enforced without regard to race, religion, gender, ethnicity, national origin, or disability.

Source: L. 2006, 1st Ex. Sess.: Entire section added, p. 37, § 1, effective July 31.

Editor's note: Section 3 of House Bill 06S-1017 provides that the act shall take effect upon passage and shall apply to employees hired on or after January 1, 2007.

II. FEDERAL EMPLOYMENT VERIFICATION LAW OVERVIEW AND RESOURCES

United States Citizenship and Immigration Services (USCIS) is a federal agency responsible for the administration of immigration and naturalization adjudication functions and establishing immigration services policies and priorities. USCIS is a component of the federal Department of Homeland Security (DHS).

The following public information is either reproduced or summarized from content provided in June 2010 on the USCIS website, and is subject to change. This information is independent from the requirements of the Colorado State employment verification law described in Section I.

Contact USCIS (national service center: 1-800-375-5283; employer hotline: 1-800-357-2099; TDD for the hearing impaired: 1-800-767-1833) for information and questions on any of the following federal topics.

ABOUT FORM I-9, EMPLOYMENT ELIGIBILITY VERIFICATION

The Immigration Reform and Control Act of 1986 (IRCA) seeks to control illegal immigration by eliminating employment opportunity as an incentive for unauthorized persons to come to the United States, by prohibiting the hiring or continued employment of aliens whom employers know are unauthorized to work in the United States. To comply with the law, all U.S. employers must verify the employment eligibility and identity of all employees hired to work in the United States after November 6, 1986 by completing Employment Eligibility Verification forms (Forms I-9) for all employees, including U.S. citizens. Employers who hire or continue to employ individuals knowing that they are not authorized to be employed in the United States may face civil and criminal penalties.

FOR WHOM MUST EMPLOYERS COMPLETE FORM I-9?

Form I-9, Employment Eligibility

Verification must be completed for each newly hired employee, including U.S. citizens, permanent residents, and temporary foreign workers, to demonstrate the employer's compliance with the law and the employee's work authorization. Through the Form I-9 verification process, employers ensure that employees possess proper authorization to work in the United States and that hiring practices do not unlawfully discriminate based on immigration status.

You DO NOT need to complete a Form I-9 for persons who are:

1. Hired before November 7, 1986, who are continuing in their employment and have a reasonable expectation of employment at all times;
2. Employed for casual domestic work in a private home on a sporadic, irregular, or intermittent basis;
3. Independent contractors; or

4. Providing labor to you who are employed by a contractor providing contract services (e.g., employee leasing or temporary agencies).
5. Not physically working on U.S. soil.

CURRENT VERSION OF FORM I-9

The current Form I-9 was revised on 8/7/09 and the Handbook for Employers was revised on 6/1/11.

WHAT SHOULD BE DONE WITH FORMS I-9 AFTER THEY ARE COMPLETED?

Employers must retain completed Forms I-9 for all employees for 3 years after the date they hire an employee, or 1 year after the date employment is terminated, whichever is later. These forms can be retained in paper, microfilm, microfiche, or electronically. To store Forms I-9 electronically, you may use any electronic recordkeeping, attestation, and retention system that complies with DHS standards, which includes most commercially available off-the-shelf computer programs and commercial automated data processing systems. However, the system must not be subject to any agreement that would restrict access to and use of it by an agency of the United States.

DISCRIMINATION

The Office of Special Counsel for Immigration-Related Unfair Employment Practices, Civil Rights Division, Department of Justice (OSC), enforces the anti-discrimination provision of the INA. Title VII of the Civil Rights Act of 1964 (Title VII), as amended, also prohibits national origin discrimination, among other types of conduct. The U.S. Equal Employment Opportunity Commission (EEOC) enforces Title VII.

OSC and EEOC share jurisdiction over national origin discrimination charges. Generally, the EEOC has jurisdiction over larger employers with 15 or more employees, whereas OSC has jurisdiction over smaller employers with between 4 and 14 employees. OSC's jurisdiction over national origin discrimination claims is limited to intentional acts of discrimination with respect to hiring, firing, and recruitment or referral for a fee, but the EEOC's jurisdiction is broader. Title VII covers both intentional and unintentional acts of discrimination in the workplace, including discrimination in hiring, firing, recruitment, promotion, assignment, compensation, and other terms and conditions of employment. OSC has exclusive jurisdiction over citizenship or immigration status discrimination claims against all employers with four or more employees. Similarly, OSC has exclusive jurisdiction over all document abuse claims against employers with four or more employees.

AVAILABILITY OF FORMS I-9 IN FOREIGN LANGUAGES

Form I-9 is available in English and Spanish. However, only employers in Puerto Rico may use the Spanish version to meet the verification and retention requirements of the law. Employers in the United States and other U.S. territories may use the Spanish version as a translation guide for Spanish-speaking employees, but the English version must be completed and retained in the employer's records. Employees may also use or ask for a preparer/translator to assist them in completing the form.

http://www.uscis.gov/files/form/i-9_spanish.pdf

EMPLOYEE'S RESPONSIBILITY REGARDING FORM I-9

Ensure that the employee fully completes Section 1 of Form I-9 at the time of hire — when the employee begins work. Review the employee's document(s) and fully complete Section 2 of Form I-9 within 3 business days of the first day of work. If you hire a person for less than 3 business days, Sections 1 and 2 of Form I-9 must be fully completed when the employee begins work.

EMPLOYER'S RESPONSIBILITY REGARDING FORM I-9

The employee must present to you an original document or documents that establish identity and employment authorization within 3 business days of the date employment begins. Some documents establish both identity and employment authorization (List A). Other documents establish identity only (List B) or employment authorization only (List C). The employee can choose which document(s) he or she wants to present from the Lists of Acceptable Documents. This list appears in Part Eight and on the last page of Form I-9. Examine the original document or documents the employee presents and then fully complete Section 2 of Form I-9. You must examine one document from List A, or one from List B **and** one from List C. Record the title, issuing authority, number, and expiration date (if any) of the document(s); fill in the date of hire and correct information in the certification block; and sign and date Form I-9. You must accept any document(s) from the Lists of Acceptable Documents presented by the individual that reasonably appear on their face to be genuine and to relate to the person presenting them. You may not specify which document(s) an employee must present.

QUESTIONS ABOUT GENUINENESS OF DOCUMENTS

You must examine the document(s), and if they reasonably appear on their face to be genuine and to relate to the person presenting them, you must accept them. To do otherwise could be an unfair immigration-related employment practice. If the document(s) do not reasonably appear on their face to be genuine or to relate to the person presenting them, you must not accept them.

You must accept any document(s) from the Lists of Acceptable Documents presented by the individual that reasonably appear on their face to be genuine and to relate to the person presenting them. You may not specify which document(s) an employee must present.

NOTE: If you participate in the E-Verify Program, you may only accept List B documents that bear a photograph.

GREEN CARDS

You may be eligible to apply for a green card (permanent residence) through your family, a job offer or employment, refugee or asylum status, or a number of other special provisions. In some cases, you may even be able to self petition or have a record created for permanent residence on your behalf. In general, to meet the requirements for permanent residence in the United States, you must:

- Be eligible for one of the immigrant categories established in the Immigration and Nationality Act (INA)
- Have a qualifying immigrant petition filed and approved for you (with a few exceptions)
- Have an immigrant visa immediately available
- Be admissible to the United States

SOCIAL SECURITY CARD ISSUES

During both initial verification and reverification, an employee must be allowed to choose what documentation to present from Form I-9 lists of acceptable documents. If an employee presents an unrestricted Social Security card upon reverification, the employee does not also need to present a current DHS document. However, if an employee presents a restricted Social Security card upon reverification, you must reject the restricted Social Security card, since it is not an acceptable Form I-9 document, and ask the employee to choose different documentation from List A or List C of Form I-9.

RETENTION OF FORMS I-9

Forms I-9 must be stored for 3 years after the date you hire an employee, or 1 year after the date you or the employee terminates employment, whichever is later. For example, if an employee retires from your company after 15 years, you will need to store his or her Form I-9 for a total of 16 years.

FORM I-9 REQUIREMENTS OF NEW OWNERS OF EXISTING BUSINESSES

If you acquire a business and its employees, you may choose to keep the previous owner’s Forms I-9 for each acquired employee, but you are responsible for any errors or omissions in them. To avoid this liability, you may choose to complete a new Form I-9 for each acquired employee. If you do so, you must do so uniformly for all of your acquired employees, without regard to actual or perceived citizenship status or national origin.

FREQUENTLY ASKED QUESTIONS ABOUT EMPLOYMENT ELIGIBILITY (excerpt from USCIS publication, M-274)

Q. Do citizens and noncitizen nationals of the United States need to prove they are eligible to work?

A. Yes. While citizens and noncitizen nationals of the United States are automatically eligible for employment, they too must present the required documents and complete a Form I-9. U.S.citizens include persons born in the United States, Puerto Rico, Guam, the U.S. Virgin Islands, and the Northern Mariana Islands. U.S. noncitizen nationals are persons who owe permanent allegiance to the United States, which include those born in American Samoa, including Swains Island.

Q. Do I need to complete a Form I-9 for everyone who applies for a job with my company?

A. No. You should not complete Forms I-9 for job applicants. You only need to complete Form I-9 for individuals you actually hire. For purposes of this law, a person is “hired” when he or she begins to work for you.

Q. I understand that I must complete a Form I-9 for anyone I hire to perform labor or services in return for wages or other remuneration. What is "remuneration"?

A. Remuneration is anything of value given in exchange for labor or services rendered by an employee, including food and lodging.

Q. May I fire an employee who fails to produce the required documents within 3 business days?

A. Yes. You may terminate an employee who fails to produce the required document or documents, or a receipt for a document, within three business days of the date employment begins. However, you must apply these practices uniformly to all employees.

Q. What happens if I properly complete and retain a Form I-9 and DHS discovers that my employee is not actually authorized to work?

A. You cannot be charged with a verification violation. You will also have a good faith defense against the imposition of employer sanctions penalties for knowingly hiring an unauthorized alien, unless the government can show you had knowledge of the unauthorized status of the employee.

Q. What is my responsibility concerning the authenticity of document(s) presented to me?

A. You must examine the document(s), and if they reasonably appear on their face to be genuine and to relate to the person presenting them, you must accept them. To do otherwise could be an unfair immigration-related employment practice. If the document(s) do not reasonably appear on their face to be genuine or to relate to the person presenting them, you must not accept them.

Q. May I accept a photocopy of a document presented by an employee?

A. No. Employees must present original documents. The only exception is an employee may present a certified copy of a birth certificate.

INA: ACT 274A - UNLAWFUL EMPLOYMENT OF ALIENS

Sec. 274A. [8 U.S.C. 1324a]

(a) Making Employment of Unauthorized Aliens Unlawful.-

(1) In general.-It is unlawful for a person or other entity-

(A) to hire, or to recruit or refer for a fee, for employment in the United States an alien knowing the alien is an unauthorized alien (as defined in subsection (h)(3)) with respect to such employment, or

(B) (i) to hire for employment in the United States an individual without complying with the requirements of subsection (b) or (ii) if the person or entity is an agricultural association, agricultural employer, or farm labor contractor (as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act), to hire, or to recruit or refer for a fee, for employment in the United States an individual without complying with the requirements of subsection (b).

(2) Continuing employment.-It is unlawful for a person or other entity, after hiring an alien for employment in accordance with paragraph (1), to continue to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment.

(3) Defense.-A person or entity that establishes that it has complied in good faith with the requirements of subsection (b) with respect to the hiring, recruiting, or referral for employment of an alien in the United States has established an affirmative defense that the person or entity has not violated paragraph (1)(A) with respect to such hiring, recruiting, or referral.

(4) Use of labor through contract.-For purposes of this section, a person or other entity who uses a contract, subcontract, or exchange, entered into, renegotiated, or extended after the date of the enactment of this section, to obtain the labor of an alien in the United States knowing that the alien is an unauthorized alien (as defined in subsection (h)(3)) with respect to performing such labor, shall be considered to have hired the alien for employment in the United States in violation of paragraph (1)(A).

(5) Use of state employment agency documentation.-For purposes of paragraphs (1)(B) and (3), a person or entity shall be deemed to have complied with the requirements of subsection (b) with respect to the hiring of an individual who was referred for such employment by a State employment agency (as defined by the Attorney General), if the person or entity has and retains (for the period and in the manner described in subsection (b)(3)) appropriate documentation of such referral by that agency, which documentation certifies that the agency has complied with the procedures specified in subsection (b) with respect to the individual's referral.

(6) Treatment of documentation for certain employees.-

(A) In general. - For purposes of this section, if-

(i) an individual is a member of a collective-bargaining unit and is employed, under a collective bargaining agreement entered into between one or more employee organizations and an association of two or more employers, by an employer that is a member of such association, and

(ii) within the period specified in subparagraph (B), another employer that is a member of the association (or an agent of such association on behalf of the employer) has complied with the requirements of subsection (b) with respect to the employment of the individual, the subsequent employer shall be deemed to have complied with the requirements of subsection (b) with respect to the hiring of the employee and shall not be liable for civil penalties described in subsection (e)(5).

(B) Period.-The period described in this subparagraph is 3 years, or, if less, the period of time that the individual is authorized to be employed in the United States.

(C) Liability.-

(i) In general.-If any employer that is a member of an association hires for employment in the United States an individual and relies upon the provisions of subparagraph (A) to comply with the requirements of subsection (b) and the individual is an alien not authorized to work in the United States, then for the purposes of paragraph (1)(A), subject to clause (ii), the employer shall be presumed to have known at the time of hiring or afterward that the individual was an alien not authorized to work in the United States.

(ii) Rebuttal of presumption.-The presumption established by clause (i) may be rebutted by the employer only through the presentation of clear and convincing evidence that the employer did not know (and could not reasonably have known) that the individual at the time of hiring or afterward was an alien not authorized to work in the United States.

(iii) Exception.-Clause (i) shall not apply in any prosecution under subsection (f)(1).

(7) Application to Federal Government._ For purposes of this section, the term "entity" includes an entity in any branch of the Federal Government.

(b) Employment Verification System.-The requirements referred to in paragraphs (1)(B) and (3) of subsection (a) are, in the case of a person or other entity hiring, recruiting, or referring an individual for employment in the United States, the requirements specified in the following three paragraphs:

(1) Attestation after examination of documentation.-

(A) In general.-The person or entity must attest, under penalty of perjury and on a form designated or established by the Attorney General by regulation, that it has verified that the individual is not an unauthorized alien by examining-

(i) a document described in subparagraph (B), or

(ii) a document described in subparagraph (C) and a document described in subparagraph (D).

Such attestation may be manifested by either a hand-written or an electronic signature. A person or entity has complied with the requirement of this paragraph with respect to examination of a document if the document reasonably appears on its face to be genuine. If an individual provides a document or combination of documents that reasonably appears on its face to be genuine and that is sufficient to meet the requirements of the first sentence of this paragraph, nothing in this paragraph shall be construed as requiring the person or entity to solicit the production of any other document or as requiring the individual to produce such another document.

(B) Documents establishing both employment authorization and identity.-A document described in this subparagraph is an individual's-

(i) United States passport;

(ii) resident alien card, alien registration card, or other document designated by the Attorney General, if the document-

(I) contains a photograph of the individual and such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this subsection,

(II) is evidence of authorization of employment in the United States, and

(III) contains security features to make it resistant to tampering, counterfeiting, and fraudulent use.

(C) Documents evidencing employment authorization.-A document described in this subparagraph is an individual's-

(i) social security account number card (other than such a card which specifies on the face that the issuance of the card does not authorize employment in the United States); or

(ii) other documentation evidencing authorization of employment in the United States which the Attorney General finds, by regulation, to be acceptable for purposes of this section.

(D) Documents establishing identity of individual.-A document described in this subparagraph is an individual's-

(i) driver's license or similar document issued for the purpose of identification by a State, if it contains a photograph of the individual or such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this section; or

(ii) in the case of individuals under 16 years of age or in a State which does not provide for issuance of an identification document (other than a driver's license) referred to in clause (i), documentation of personal identity of such other type as the Attorney General finds, by regulation, provides a reliable means of identification.

(E) Authority to prohibit use of certain documents.- If the Attorney General finds, by regulation, that any document described in subparagraph (B), (C), or (D) as establishing employment authorization or identity does not reliably establish such authorization or identity or is being used fraudulently to an unacceptable degree, the Attorney General may prohibit or place conditions on its use for purposes of this subsection.

(2) Individual attestation of employment authorization.-The individual must attest, under penalty of perjury on the form designated or established for purposes of paragraph (1), that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this Act or by the Attorney General to be hired, recruited, or referred for such employment. Such attestation may be manifested by either a hand-written or an electronic signature.

(3) Retention of verification form.-After completion of such form in accordance with paragraphs (1) and (2), the person or entity must retain a paper, microfiche, microfilm, or electronic version of the form and make it available for inspection by officers of the Service, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor during a period beginning on the date of the hiring, recruiting, or referral of the individual and ending-

(A) in the case of the recruiting or referral for a fee (without hiring) of an individual, three years after the date of the recruiting or referral, and

(B) in the case of the hiring of an individual-

(i) three years after the date of such hiring, or

(ii) one year after the date the individual's employment is terminated, whichever is later.

(4) Copying of documentation permitted.- Notwithstanding any other provision of law, the person or entity may copy a document presented by an individual pursuant to this subsection and may retain the copy, but only (except as otherwise permitted under law) for the purpose of complying with the requirements of this subsection.

(5) Limitation on use of attestation form.-A form designated or established by the Attorney General under this subsection and any information contained in or appended to such form, may not be used for purposes other than for enforcement of this Act and sections 1001, 1028, 1546, and 1621 of title 18, United States Code.

(6) Good faith compliance.-

(A) In general.-Except as provided in subparagraphs (B) and (C), a person or entity is considered to have complied with a requirement of this subsection notwithstanding a technical or procedural failure to meet such requirement if there was a good faith attempt to comply with the requirement.

(B) Exception if failure to correct after notice.- Subparagraph (A) shall not apply if-

(i) the Service (or another enforcement agency) has explained to the person or entity the basis for the failure,

(ii) the person or entity has been provided a period of not less than 10 business days (beginning after the date of the explanation) within which to correct the failure, and

(iii) the person or entity has not corrected the failure voluntarily within such period.

(C) Exception for pattern or practice violators.- Subparagraph (A) shall not apply to a person or entity that has or is engaging in a pattern or practice of violations of subsection (a)(1)(A) or (a)(2).

(c) No Authorization of National Identification Cards.-Nothing in this section shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

(d) Evaluation and Changes in Employment Verification System.-

(1) Presidential monitoring and improvements in system.-

(A) Monitoring.-The President shall provide for the monitoring and evaluation of the degree to which the employment verification system established under subsection (b) provides a secure system to determine employment eligibility in the United States and shall examine the suitability of existing Federal and State identification systems for use for this purpose.

(B) Improvements to establish secure system.-To the extent that the system established under subsection (b) is found not to be a secure system to determine employment eligibility in the United States, the President shall, subject to paragraph (3) and taking into account the results of any demonstration projects conducted under paragraph (4), implement such changes in (including additions to) the requirements of subsection (b) as may be necessary to establish a secure system to determine employment eligibility in the United States. Such changes in the system may be implemented only if the changes conform to the requirements of paragraph (2).

(2) Restrictions on changes in system.-Any change the President proposes to implement under paragraph (1) in the verification system must be designed in a manner so the verification system, as so changed, meets the following requirements:

(A) Reliable determination of identity.-The system must be capable of reliably determining whether-

(i) a person with the identity claimed by an employee or prospective employee is eligible to work, and

(ii) the employee or prospective employee is claiming the identity of another individual.

(B) Using of counterfeit-resistant documents.-If the system requires that a document be presented to or examined by an employer, the document must be in a form which is resistant to counterfeiting and tampering.

(C) Limited use of system.-Any personal information utilized by the system may not be made available to Government agencies, employers, and other persons except to the extent necessary to verify that an individual is not an unauthorized alien.

(D) Privacy of information.-The system must protect the privacy and security of personal information and identifiers utilized in the system.

(E) Limited denial of verification.-A verification that an employee or prospective employee is eligible to be employed in the United States may not be withheld or revoked under the system for any reason other than that the employee or prospective employee is an unauthorized alien.

(F) Limited use for law enforcement purposes.-The system may not be used for law enforcement purposes, other than for enforcement of this Act or sections 1001, 1028, 1546, and 1621 of title 18, United States Code.

(G) Restriction on use of new documents.-If the system requires individuals to present a new card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral, then such document may not be required to be presented for any purpose other than under this Act (or enforcement of sections 1001, 1028, 1546, and 1621 of title 18, United States Code) nor to be carried on one's person.

(3) Notice to congress before implementing changes.-

(A) In general.-The President may not implement any change under paragraph (1) unless at least-

(i) 60 days,

(ii) one year, in the case of a major change described in subparagraph (D)(iii), or

(iii) two years, in the case of a major change described in clause (i) or (ii) of subparagraph (D), before the date of implementation of the change, the President has prepared and transmitted to the Committee on the Judiciary of the House of Representatives and to the Committee on the

Judiciary of the Senate a written report setting forth the proposed change. If the President proposes to make any change regarding social security account number cards, the President shall transmit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate a written report setting forth the proposed change. The President promptly shall cause to have printed in the Federal Register the substance of any major change (described in subparagraph (D)) proposed and reported to Congress.

(B) Contents of report.-In any report under subparagraph (A) the President shall include recommendations for the establishment of civil and criminal sanctions for unauthorized use or disclosure of the information or identifiers contained in such system.

(C) Congressional review of major changes.-

(i) Hearings and review.-The Committees on the Judiciary of the House of Representatives and of the Senate shall cause to have printed in the Congressional Record the substance of any major change described in subparagraph (D), shall hold hearings respecting the feasibility and desirability of implementing such a change, and, within the two year period before implementation, shall report to their respective Houses findings on whether or not such a change should be implemented.

(ii) Congressional action.-No major change may be implemented unless the Congress specifically provides, in an appropriations or other Act, for funds for implementation of the change.

(D) Major changes defined.-As used in this paragraph, the term "major change" means a change which would-

(i) require an individual to present a new card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral,

(ii) provide for a telephone verification system under which an employer, recruiter, or referrer must transmit to a Federal official information concerning the immigration status of prospective employees and the official transmits to the person, and the person must record, a verification code, or
(iii) require any change in any card used for accounting purposes under the Social Security Act, including any change requiring that the only social security account number cards which may be presented in order to comply with subsection (b)(1)(C)(i) are such cards as are in a counterfeit-resistant form consistent with the second sentence of section 205(c)(2)(D) of the Social Security Act.

(E) General revenue funding of social security card changes.-Any costs incurred in developing and implementing any change described in subparagraph (D)(iii) for purposes of this subsection shall not be paid for out of any trust fund established under the Social Security Act.

(4) Demonstration projects.-

(A) Authority.-The President may undertake demonstration projects (consistent with paragraph (2)) of different changes in the requirements of subsection (b). No such project may extend over a period of longer than five years.

(B) Reports on projects.-The President shall report to the Congress on the results of demonstration projects conducted under this paragraph.

(e) Compliance.-

(1) Complaints and investigations.-The Attorney General shall establish procedures-

(A) for individuals and entities to file written, signed complaints respecting potential violations of subsection (a) or (g)(1),

(B) for the investigation of those complaints which, on their face, have a substantial probability of validity,

(C) for the investigation of such other violations of subsection (a) or (g)(1) as the Attorney General determines to be appropriate, and

(D) for the designation in the Service of a unit which has, as its primary duty, the prosecution of cases of violations of subsection (a) or (g)(1) under this subsection.

(2) Authority in investigations.-In conducting investigations and hearings under this subsection-

(A) immigration officers and administrative law judges shall have reasonable access to examine evidence of any person or entity being investigated,

(B) administrative law judges, may, if necessary, compel by subpoena the attendance of witnesses and the production of evidence at any designated place or hearing, and

(C) immigration officers designated by the Commissioner may compel by subpoena the attendance of witnesses and the production of evidence at any designated place prior to the filing of a complaint in a case under paragraph (2).

In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the Attorney General, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.

(3) Hearing.-

(A) In general.-Before imposing an order described in paragraph (4), (5), or (6) against a person or entity under this subsection for a violation of subsection (a) or (g)(1), the Attorney General shall provide the person or entity with notice and, upon request made within a reasonable time

(of not less than 30 days, as established by the Attorney General) of the date of the notice, a hearing respecting the violation.

(B) Conduct of hearing.-Any hearing so requested shall be conducted before an administrative law judge. The hearing shall be conducted in accordance with the requirements of section 554 of title 5, United States Code. The hearing shall be held at the nearest practicable place to the place where the person or entity resides or of the place where the alleged violation occurred. If no hearing is so requested, the Attorney General's imposition of the order shall constitute a final and unappealable order.

(C) Issuance of orders.-If the administrative law judge determines, upon the preponderance of the evidence received, that a person or entity named in the complaint has violated subsection (a) or (g)(1), the administrative law judge shall state his findings of fact and issue and cause to be served on such person or entity an order described in paragraph (4), (5), or (6).

(4) Cease and desist order with civil money penalty for hiring, recruiting, and referral violations.- With respect to a violation of subsection (a)(1)(A) or (a)(2), the order under this subsection-

(A) shall require the person or entity to cease and desist from such violations and to pay a civil penalty in an amount of-

(i) not less than $250 and not more than $2,000 for each unauthorized alien with respect to whom a violation of either such subsection occurred,

(ii) not less than $2,000 and not more than $5,000 for each such alien in the case of a person or entity previously subject to one order under this paragraph, or

(iii) not less than $3,000 and not more than $10,000 for each such alien in the case of a person or entity previously subject to more than one order under this paragraph; and

(B) may require the person or entity-

(i) to comply with the requirements of subsection (b) (or subsection (d) if applicable) with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years, and

(ii) to take such other remedial action as is appropriate.

In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(5) Order for civil money penalty for paperwork violations.- With respect to a violation of subsection (a)(1)(B), the order under this subsection shall require the person or entity to pay a

civil penalty in an amount of not less than $100 and not more than $1,000 for each individual with respect to whom such violation occurred. In determining the amount of the penalty, due consideration shall be given to the size of the business of the employer being charged, the good faith of the employer, the seriousness of the violation, whether or not the individual was an unauthorized alien, and the history of previous violations.

(6) Order for prohibited indemnity bonds.-With respect to a violation of subsection (g)(1), the order under this subsection may provide for the remedy described in subsection (g)(2).

(7) Administrative appellate review.-The decision and order of an administrative law judge shall become the final agency decision and order of the Attorney General unless either (A) within 30 days, an official delegated by regulation to exercise review authority over the decision and order modifies or vacates the decision and order, or (B) within 30 days of the date of such a modification or vacation (or within 60 days of the date of decision and order of an administrative law judge if not so modified or vacated) the decision and order is referred to the Attorney General pursuant to regulations, in which case the decision and order of the Attorney General shall become the final agency decision and order under this subsection. The Attorney General may not delegate the Attorney General's authority under this paragraph to any entity which has review authority over immigration-related matters.

(8) Judicial review.-A person or entity adversely affected by a final order respecting an assessment may, within 45 days after the date the final order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order.

(9) Enforcement of orders.-If a person or entity fails to comply with a final order issued under this subsection against the person or entity, the Attorney General shall file a suit to seek compliance with the order in any appropriate district court of the United States. In any such suit, the validity and appropriateness of the final order shall not be subject to review.

(f) Criminal Penalties and Injunctions for Pattern or Practice Violations.-

(1) Criminal penalty.-Any person or entity which engages in a pattern or practice of violations of subsection (a)(1)(A) or (a)(2) shall be fined not more than $3,000 for each unauthorized alien with respect to whom such a violation occurs, imprisoned for not more than six months for the entire pattern or practice, or both, notwithstanding the provisions of any other Federal law relating to fine levels.

(2) Enjoining of pattern or practice violations.-Whenever the Attorney General has reasonable cause to believe that a person or entity is engaged in a pattern or practice of employment, recruitment, or referral in violation of paragraph (1)(A) or (2) of subsection (a), the Attorney General may bring a civil action in the appropriate district court of the United States requesting such relief, including a permanent or temporary injunction, restraining order, or other order against the person or entity, as the Attorney General deems necessary.

(g) Prohibition of Indemnity Bonds.-

(1) Prohibition.-It is unlawful for a person or other entity, in the hiring, recruiting, or referring for employment of any individual, to require the individual to post a bond or security, to pay or agree to pay an amount, or otherwise to provide a financial guarantee or indemnity, against any potential liability arising under this section relating to such hiring, recruiting, or referring of the individual.

(2) Civil penalty.-Any person or entity which is determined, after notice and opportunity for an administrative hearing under subsection (e), to have violated paragraph (1) shall be subject to a civil penalty of $1,000 for each violation and to an administrative order requiring the return of any amounts received in violation of such paragraph to the employee or, if the employee cannot be located, to the general fund of the Treasury.

(h) Miscellaneous Provisions.-

(1) Documentation.-In providing documentation or endorsement of authorization of aliens (other than aliens lawfully admitted for permanent residence) authorized to be employed in the United States, the Attorney General shall provide that any limitations with respect to the period or type of employment or employer shall be conspicuously stated on the documentation or endorsement.

(2) Preemption.-The provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.

(3) Definition of unauthorized alien.-As used in this section, the term "unauthorized alien" means, with respect to the employment of an alien at a particular time, that the alien is not at that time either (A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this Act or by the Attorney General.

FOOTNOTES FOR SECTION 274A

INA: ACT 274A FN 1

FN 1 Added by **§ 412(b) of IIRIRA**, effective as "to individuals hired on or after 60 days after the date of enactment of this Act."

INA: ACT 274A FN 2

FN 2 Paragraph (7) added by **§ 412(d) of IIRIRA**, effective for "hiring occurring before, on, or after the date of the enactment of [IIRIRA], but no penalty shall be imposed under subsection (e) or (f) of section 274A of the Immigration and Nationality Act for such hiring occurring before such date."

INA: ACT 274A FN 2a

FN 2a Section 274A(b)(1)(A), (2) and (3) were amended by **Section 1 of Public Law 108-390** dated October 30, 2004.

EFFECTIVE DATE.--The amendments of Public Law 108-390 shall take effect on the earlier of--

(1) the date on which final regulations implementing such amendments take effect; or

(2) 180 days after the date of the enactment of this Act.

INA: ACT 274A FN 3

FN 3 Added by **§ 412(a) of IIRIRA**, effective "with respect to hiring (or recruitment or referral) occurring on or after such date (not later than 12 months after the date of enactment of [IIRIRA]) as the Attorney shall designate."

INA: ACT274A FN 4

FN 4 Added by **§ 412(a) of IIRIRA**, effective "with respect to hiring (or recruitment or referral) occurring on or after such date (not later than 12 months after the date of enactment of [IIRIRA]) as the Attorney shall designate."

INA: ACT274A FN 5

FN 5 Added by **§ 411 of IIRIRA**, effective for "failures occurring on or after the date of the enactment of [IIRIRA]."

INA: ACT274A FN 6

FN 6 Added by **§ 416 of IIRIRA**.

INA: ACT274A FN 7

FN 7 Amended by **§ 379(a)(1) of IIRIRA**, effective for "orders issued on or after the date of the enactment of this Act."

INA: ACT274A FN 8

FN 8 Amended by **§ 379(a)(2) of IIRIRA**, effective for "orders issued on or after the date of the enactment of this Act."

INA: ACT274A FN 9

FN 9 Subsections (i) through (n) were struck as "dated provisions" by **§ 412(c) of IIRIRA**.