

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.

- a. [Overview](#)
- b. [Employer coverage](#)
- c. [Employee coverage](#)
- d. [Effective date and affirmation content](#)
- e. [Required documents and document retention](#)
- f. [Enforcement](#)
- g. [Penalties](#)
- h. [Non-discrimination](#)
- i. [Contact information and filing complaints](#)
- j. [Fact Sheet on 8-2-122, C.R.S.](#)
- k. [Sample Affirmation](#)
- l. [Actual text of 8-2-122, C.R.S.](#)

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.

- a. [Overview](#)
- b. [About Form I-9, employment eligibility verification](#)
- c. [For whom must employers complete Form I-9?](#)
- d. [Current version of Form I-9](#)
- e. [What should be done with Forms I-9 after they are completed?](#)
- f. [Discrimination](#)
- g. [Availability of Forms I-9 in foreign languages](#)
- h. [Employee's responsibility regarding Form I-9](#)
- i. [Employer's responsibility regarding Form I-9](#)
- j. [Questions about genuineness of documents](#)
- k. [Discovering unauthorized employees](#)
- l. [Discovering false documentation](#)
- m. [Photocopies of documents](#)
- n. [Green cards](#)
- o. [Social security card issues](#)
- p. [Retention of Forms I-9](#)
- q. [Form I-9 requirements of new owners of existing businesses](#)
- r. [Remote hires](#)
- s. [Service providers](#)
- t. [Frequently asked questions about employment eligibility](#)
- u. [Actual text of 8 U.S.C. 1324a](#)

I. COLORADO EMPLOYMENT VERIFICATION LAW OVERVIEW

A new 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.

Be aware 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 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. The Department has developed an [Affirmation of Legal Work Status](#) form that may be used by the person designated to make the affirmation required by state law. Other written or electronic affirmations may be acceptable, provided that they contain the elements and information required by law.

COLORADO LAW

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 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.

FACT SHEET FOR 8-2-122, CRS: A 1-page fact sheet is located at <http://www.coworkforce.com/LAB/FactSheet1017.pdf>.

COLORADO LAW



AFFIRMATION OF LEGAL WORK STATUS

Pursuant to Colorado Revised Statute 8-2-122

Employee Name: _____
Last First Middle Date of Birth

Social Security Number: _____ - _____ - _____ Date of Hire: _____

In accordance with Colorado Revised Statute 8-2-122, I have:

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

Employer Name / Designated Representative: _____

Signature Date

Official Title

CRS 8-2-122 (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.

This affirmation 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. 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.

COLORADO LAW

(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 March 2007 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) for information and questions on any of the following federal topics.

[ABOUT FORM I-9, EMPLOYMENT ELIGIBILITY VERIFICATION](#) (excerpt from USCIS publication)

The Immigration Reform and Control Act made all U.S. employers responsible to verify the employment eligibility and identity of all employees hired to work in the United States after November 6, 1986. To implement the law, employers are required to complete Employment Eligibility Verification forms (Form I-9) for all employees, including U.S. citizens.

FOR WHOM MUST EMPLOYERS COMPLETE FORM I-9?

Every U.S. employer must have a Form I-9 in its files for each new employee, unless:

- the employee was hired before November 7, 1986, and has been continuously employed by the same employer.
- Form I-9 need not be completed for those individuals:
- providing domestic services in a private household that are *sporadic, irregular, or intermittent*;
- providing services for the employer as an independent contractor (i.e. carry on independent business, contract to do a piece of work according to their own means and methods and are subject to control only as to results for whom the employer **does not** set work hours or provide necessary tools to do the job, or whom the employer does not have authority to hire and fire); and
- providing services for the employer, under a contract, subcontract, or exchange entered into after November 6, 1986. (In such cases, the contractor is the employer for I-9 purposes; for example, a temporary employment agency.)

[CURRENT VERSION OF FORM I-9](#) (link to external US DHS/CIS website)

The current version of the Form I-9 is "(Rev. 6/05/07)Y" and the Handbook for Employers is dated "(Rev. 11/1/07)N".

FEDERAL LAW

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

Unlike tax forms, for example, I-9 forms are not filed with the U.S. government. The requirement is for employers to maintain I-9 records in its own files for 3 years after the date of hire or 1 year after the date the employee's employment is terminated, whichever is later. This means that Form I-9 needs to be retained for all current employees, as well as terminated employees whose records remain within the retention period. Form I-9 records may be stored at the worksite to which they relate or at a company headquarters (or other) location, but the storage choice must make it possible for the documents to be transmitted to the worksite within 3 days of an official request for production of the documents for inspection. *Note:* U.S. immigration law does not prescribe or proscribe storage of a private employer's I-9 records in employee personnel files. As a practical matter, however, particularly if a large number of employees are involved, it may be difficult to extract records from individual personnel files in time to meet a 3-day deadline for production of I-9 records for official inspection.

DISCRIMINATION

The law protects certain individuals from unfair immigration-related employment practices of a U.S. employer, including refusal to employ based on a future expiration date of a current employment authorization document. The U.S. government entity charged with oversight of the laws protecting against unfair immigration-related employment practices is the [Office of Special Counsel for Immigration Related Unfair Employment Practices](#), which is part of the Civil Rights Division of the U.S. Department of Justice.

AVAILABILITY OF FORMS I-9 IN FOREIGN LANGUAGES

The Form I-9 and most other USCIS forms are published in English **only**.

EMPLOYEE'S RESPONSIBILITY REGARDING FORM I-9

A new employee must complete Section 1 of a Form I-9 no later than close of business on his/her first day of work. The employee's signature holds him/her responsible for the accuracy of the information provided. The employer is responsible for ensuring that the employee completes Section 1 in full. No documentation from the employee is required to substantiate Section 1 information provided by the employee.

EMPLOYER'S RESPONSIBILITY REGARDING FORM I-9

The employer is responsible ensuring completion of the entire form. No later than close of business on the employee's third day of employment services, the employer must complete section 2 of the Form I-9. The employer must review documentation presented by the employee and record document information on the form. Proper documentation establishes both that the employee is authorized to work in the U.S. and that the employee who presents the employment authorization document is the person to whom it was issued. The employer should supply to the employee the official list of acceptable documents for establishing identity and work eligibility. The employer may accept any List A document, establishing both identity and work eligibility, or combination of a List B document (establishing identity) and List C document (establishing work eligibility), that the employee chooses from the list to present (the documentation presented is not required to substantiate information provided in Section 1). The employer must examine the document(s) and accept them if they reasonably appear to be genuine and to relate to the employee who presents them. Requesting more or different documentation than the minimum necessary to meet this requirement may constitute an unfair immigration-related employment practice. If the documentation presented by an employee does not reasonably appear to be genuine or relate to the employee who presents them, employers must refuse acceptance and ask for other documentation from the list of acceptable documents that meets the requirements. An employer should not continue to employ an employee who cannot present documentation that meets the requirements.

QUESTIONS ABOUT GENUINENESS OF DOCUMENTS

Employers are not required to be document experts. In reviewing the genuineness of the documents presented by employees, employers are held to a reasonableness standard. Since no employer which is not participating in one of the employment verification pilots has access to receive confirmation of information contained in a document presented by an employee to demonstrate employment eligibility, it may happen that an employer will accept a document that is not in fact genuine – or is genuine but does not belong to the person who presented it. Such an employer will not be held responsible if the document reasonably appeared to be genuine or to relate to the person presenting it. An employer who receives a document that appears not to be genuine may request assistance from the nearest Immigration field office or contact the [Office of Business Liaison](#).

DISCOVERING UNAUTHORIZED EMPLOYEES

It occasionally happens that an employer learns that an employee whose documentation appeared to be in order for Form I-9 purposes is not actually authorized to work. In such case, the employer should question the employee and provide another opportunity for review of proper Form I-9 documentation. If the employee is unable under such circumstances to provide satisfactory documentation, employment should be discontinued (alien employees who question the employer's determination may be referred to an Immigration field office for assistance).

FEDERAL LAW

DISCOVERING FALSE DOCUMENTATION

False documentation includes documents that are counterfeit or those that belong to someone other than the employee who presented them. It occasionally happens that an employee who initially presented false documentation to gain employment subsequently obtains proper work authorization and presents documentation of this work authorization. In such a case, U.S. immigration law does not require the employer to terminate the employee's services. However, an employer's personnel policies regarding provision of false information to the employer may apply. The employer should correct the relevant information on the Form I-9.

PHOTOCOPIES OF DOCUMENTS (*[note that Colorado law requires the photocopying and retention of identity documents under 8-2-122](#); the information below refers to federal law)

There are two separate and unrelated photocopy issues in the employment eligibility verification process. First is whether an employer may accept photocopies of identity or employment eligibility documents to fulfill I-9 requirements. The answer is that only original documents (not necessarily the first document of its kind ever issued to the employee, but an actual document issued by the issuing authority) are satisfactory, with the single exception of a certified photocopy of a birth certificate. Second is whether the employer may or must attach photocopies of documentation submitted to satisfy Form I-9 requirements to the employee's Form I-9. The answer is that this is permissible, but not required. Where this practice is undertaken by an employer, it must be consistently applied to every employee, without regard to citizenship or national origin.

GREEN CARDS

The terms *Resident Alien Card*, *Permanent Resident Card*, *Alien Registration Receipt Card*, and *Form I-551* all refer to documentation issued to an alien who has been granted permanent residence in the U.S.. Once granted, this status is permanent. However, the document that an alien carries as proof of this status may expire. Starting with the "pink" version of the Resident Alien Card (the "white" version does not bear an expiration date), and including the new technology Permanent Resident Cards, these documents are valid for either two years (conditional residents) or ten years (permanent residents). When these cards expire, the alien cardholders must obtain new cards. An expired card cannot be used to satisfy Form I-9 requirements for new employment. Expiration dates do not affect current employment, since employers are neither required nor permitted to re-verify the employment authorization of aliens who have presented one of these cards to satisfy I-9 requirements (this is true for conditional residents as well as permanent residents). **Note:** Even if unexpired, "green cards" must appear genuine and establish identity of the cardholder.

FEDERAL LAW

SOCIAL SECURITY CARD ISSUES

The Social Security Administration (SSA) currently issues SSA numbers and cards to aliens only if they can present documentation of current employment authorization in the U.S. Aliens such as lawful permanent residents, refugees, and asylees are issued unrestricted SSA cards that are undistinguishable from those issued to U.S. citizens.

Note on restricted SSA and other cards:

SSA “Valid only with INS (or DHS) Authorization” card – issued to aliens who present proof of temporary work authorization; these cards do not satisfy the Form I-9 requirements.

SSA “Not Valid for Employment” card – issued to aliens who have a valid non-work reason for needing a social security number (e.g., federal benefits, State public assistance benefits), but are not authorized to work in the U.S.

Internal Revenue Service (IRS) Individual Taxpayer Identification Numbers (ITINs) – issued to aliens dealing with tax issues (e.g., reporting unearned income such as savings account interest, investment income, royalties, scholarships, etc.). An Individual Taxpayer Identification Number card is **NOT** employment eligibility verification.

Aliens who satisfy I-9 requirements have been known to present a restricted SSA card for payroll administration purposes (consistent with advice from SSA and IRS). In cases like this, the employer needs to encourage the individual to report the change in status to SSA immediately.

RETENTION OF FORMS I-9

All of an employer’s current employees (unless exempt) must have Forms I-9 on file. A retention date can only be determined at the time an employee is terminated. It is determined by calculating and comparing two dates. To calculate date A, the employer should add three years to the hire date. To calculate date B, the employer should add one year to the termination date. Whichever of the two dates is later in time is the date until which that employee’s form I-9 must remain in the employer’s employment eligibility verification files.

FORM I-9 REQUIREMENTS OF NEW OWNERS OF EXISTING BUSINESSES

In a case where a new owner of a business is a *successor in interest*, having acquired an existing business, the new employer may keep the acquired employer’s I-9 records rather than complete new Forms I-9 on employees who were also employees of the acquired employer. However, since the new employer would be responsible for any errors, omissions or deficiencies in the acquired records, it may choose to protect itself by having a new Form I-9 completed for each acquired non-exempt employee and attached to that employee’s original Form I-9.

FEDERAL LAW

REMOTE HIRES

It is not unusual for a U.S. employer to hire a new employee who doesn't physically come to that employer's offices to complete paperwork. In such cases, employers may designate agents to carry out their I-9 responsibilities. Agents may include notaries public, accountants, attorneys, personnel officers, foremen, etc. An employer should choose an agent cautiously, since it will be held responsible for the actions of that agent. *Note:* Employers should not carry out I-9 responsibilities by means of documents faxed by a new employee or through identifying numbers appearing on acceptable documents. The employer must review original documents. Likewise, Forms I-9 should not be mailed to a new employee to complete Section 2 himself or herself.

SERVICE PROVIDERS

Some business entities contract with professional employer organizations (PEOs) to handle the personnel and benefits aspects of the business. This may include completion and retention of Forms I-9. Where the business entity and the PEO are "co employers," one Form I-9 need be completed between the co-employers for each employee who was simultaneously hired by the co-employers. A business entity and PEO will be deemed a "co-employer" if, among other things, an employer/employee relationship is said to exist between the business entity and PEO on the one hand, and the individual on the other, even though the employee is only performing one set of services for both co-employers. Therefore, the authority to hire or terminate employment would have to be in the hands of both the business entity and the PEO. Since both entities are employing the individual, however, both entities remain equally responsible for meeting the Form I-9 requirements and equally liable for any failures to meet those requirements. Accordingly, the employer is fully responsible for errors, omissions, and deficiencies in the PEO's processing.

FREQUENTLY ASKED QUESTIONS ABOUT EMPLOYMENT ELIGIBILITY (excerpt from USCIS publication)

Do citizens and nationals of the U. S. need to prove, to their employers, they are eligible to work?

Yes. While citizens and nationals of the U.S. are automatically eligible for employment, they too must present proof of employment eligibility and identity and complete an Employment Eligibility Verification form (Form I-9). Citizens of the U.S. include persons born in Puerto Rico, Guam, the U.S. Virgin Islands, and the Northern Mariana Islands. Nationals of the U.S. include persons born in American Samoa, including Swains Island.

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

No. You need to complete Form I-9 only for people you actually hire. For purposes of the I-9 rules, a person is "hired" when he or she begins to work for you for wages or other compensation.

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"?

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

Can I fire an employee who fails to produce the required document(s) within three (3) business days?

Yes. You can terminate an employee who fails to produce the required document(s), or a receipt for a replacement document(s) (in the case of lost, stolen or destroyed documents), within three (3) business days of the date employment begins. However, you must apply these practices uniformly to all employees. If an employee has presented a receipt for a replacement document(s), he or she must produce the actual document(s) within 90 days of the date employment begins.

What happens if I properly complete a Form I-9 and the ICE discovers that my employee is not actually authorized to work?

You cannot be charged with a verification violation; however, you cannot knowingly continue to employ this individual. You will have a good faith defense against the imposition of employer sanctions penalties for knowingly hiring an unauthorized alien unless the government can prove you had actual knowledge of the unauthorized status of the employee.

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

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 a document does not reasonably appear on its face to be genuine and to relate to the person presenting it, you must not accept it. You may contact your local ICE office for assistance.

FEDERAL LAW

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

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) 1/ Treatment of documentation for certain employees.-

FEDERAL LAW

(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) 2/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-

FEDERAL LAW

- (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. 2a/ 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) 3/ 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;

FEDERAL LAW

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) 4/ 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 . 2a/

(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 2a/ 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.

FEDERAL LAW

(6) 5/ 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:

FEDERAL LAW

(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

FEDERAL LAW

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.-

FEDERAL LAW

(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) 6/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

FEDERAL LAW

(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

FEDERAL LAW

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, 7/ in which case the decision and order of the Attorney General shall become the final agency decision and order 8/ 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.-

FEDERAL LAW

(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.

(i)-(n) [9/](#)

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

FEDERAL LAW

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](#).
