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10 Pitfalls Of Using Private Sector Immigration Compliance Tools

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Consistent with the anti-discrimination provision of the Immigration and Nationality Act (INA), employers are required to hire and manage employees in such a way that does not result in discrimination in hiring, firing, or recruitment or referral for a fee on the basis of citizenship or national origin, nor unfair documentary practices during the employment eligibility verification process. Employers also are prohibited from engaging in retaliation or intimidation.

To document employment eligibility, federal law requires employers to use [Form I-9](#) and retain the same for each person hired for employment in the U.S. after Nov. 6, 1986. While some employers still complete a paper copy of Form I-9, some also participate in E-Verify, a voluntary web-based system that compares information from a Form I-9 to government records to electronically confirm an employee's authorization to work in the United States. Both the Form I-9 and E-verify processes are protected under federal law, which prohibits employers from engaging in discrimination under either process.

To aid in the management for Forms I-9 and E-Verify completion, many employers leverage private sector systems. When using such online programs and tools, employers remain responsible for complying with the

anti-discrimination provisions of the INA. With a recent increase in enforcement, it is more important than ever for employers to remain focused on compliance.

The Civil Rights Division of the U.S. Department of Justice (DOJ) recently released a [fact sheet](#) to guide employers on how to avoid unlawful discrimination and other Form I-9 violations when using commercial or proprietary programs to electronically complete the Form I-9 or participate in E-Verify.

Per the DOJ, should an employer choose to use a Form I-9 software program to electronically complete and retain the Form I-9 or participate in E-Verify, it is necessary to ensure the program complies with the following:

- Form I-9 legal requirements enforced by U.S. Immigration and Customs Enforcement and Homeland Security Investigations (HSI)
- E-Verify requirements administered by U.S. Citizenship and Immigration Services
- Prohibitions against unfair employment practices enforced by the Immigrant and Employee Rights Section (IER) of the Department of Justice's Civil Rights Division

Further, employers should watch for the following 10 pitfalls when using third-party private sector Form I-9 software programs:

Pre-populating Form I-9 with employee information derived from information that the employer has accessed externally, such as importing information from an employee's job application.

1. Completing Form I-9 on an employee's behalf unless the employer is helping an employee complete Section 1 as a preparer or translator.
2. Removing any Form I-9 fields, or requesting more or different information than the Form I-9 requires.
3. Adding or removing steps in the E-Verify process if the employer uses E-Verify.
4. Preventing preparers or translators from assisting an employee with completing Section 1.
5. Auto-correcting, using predictive text, or post-dating a Form I-9.
6. Failing to document any changes made to a Form I-9 in an audit trail.
7. Changing or updating an employee's Section 1 citizenship or immigration status attestation.
8. Requesting unnecessary documentation (such as reverifying an employee's identity or impermissibly reverifying an employee's permission to work in the United States).
9. Creating new E-Verify cases due to corrections made to the Form I-9 if the employee already received an "employment authorized" result.

Finally, employers should be wary of Form I-9 online programs that claim government endorsement, certification, or approval or of any programs that impose unnecessary obstacles that make it harder for employees to start work or get paid, such as requiring a Social Security number to onboard or not paying an employee who can complete the Form I-9 and is waiting for a Social Security number. Online tools that do not provide technical assistance and support are also cause for concern.

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