# PRIVATE EMPLOYERS AS IMMIGRATION ENFORCERS

*By Richard W. Hamlin*

While drafting a new immigration code for a small country, my office is confronted with the following challenge — "How may a government promote immigration compliance without increasing the administrative burdens placed upon its enforcement agencies?" Since 1986, the United States has responded to this question by placing some of the cost of document verification and record keeping upon the private sector. Much as employers function as tax collectors through the "withholding taxes" system, U.S. employers also act as immigration document inspectors through the Form I-9 record-keeping requirement.

Guam employers are not exempt from the I-9 record laws, or from the penalties for noncompliance. Every employer has the affirmative duty to investigate, verify and maintain records of an employee's immigration status at the time of hiring. This is accomplished by the employer's inspection of an approved document (or two complementary documents) demonstrating both the employee's identity and work authorization. A record of the employee's identifying information and produced document information must be entered into the single-page Form I-9, distributed by the Department of Homeland Security. Under penalty of perjury, both employer and employee must sign and date the form to certify its accuracy, with certain instances requiring the employer to update and recertify the form at a later date. I-9s need not be completed for independent contractors, including workers placed by temporary employment agencies.

Employers are not required to submit Form I-9 to any agency. Instead, employers must physically or electronically retain the form for a minimum of three years from the date of hire, or for one year beyond the employee's termination date, whichever period is longer. Immigration and Customs Enforcement may audit an employer's records at any time and can issue a separate violation for each inaccuracy or omission.

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In addition to possible criminal fraud charges (such as for back-dated forms), each I-9 violation carries a variable penalty ranging between $110 and $1,100. In setting the penalty, five factors are considered — the good faith of the employer, any history of violations, the size of the business, the seriousness of the violations and whether the employee was an unauthorized alien. Indeed, employers may be fined not just for hiring illegal aliens, but also for failing to maintain records of past U.S. citizen employees.

The I-9 regime attempts to mitigate work-motivated illegal immigration by reducing the number of attractive jobs available to the undocumented. Job seekers lacking work authorization can only hope to work "under the table" or for employers otherwise operating in disregard of the law. The United States thus relies on compliant employers to ensure that it is not a "land of opportunity" for undocumented immigrants. Guam employers with I-9 compliance concerns are recommended to seek the guidance of an experienced immigration attorney. Our office also welcomes comments as to the effectiveness and impact of the United States' I-9 policy on Guam.

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