

## Employment Auditor's Notepad

### RESOLVING I-9 FORM CONFUSION

Employers are now required to use the new federal I-9 form to verify employment eligibility of all newly hired individuals. There are two major changes to the form. First, the list of acceptable documents to verify eligibility has been revised (Lists A and C of the form). Second, the new form requires the new employee to identify their status as a citizen, permanent resident, national of the United States, or alien temporarily authorized to work. The new form and new employer's I-9 handbook are available on the USCIS web site.

How to implement the change:

- Destroy all old blank I-9 forms so they are not accidentally used;
- Current employees do not need to complete the new I-9 form, just replace the form with the new one for all future use and re-verifications;
- Keep I-9 forms for employees for one year after termination or three years after hire, *whichever comes later*;
- Destroy I-9 forms after the time period for which you are required to keep them. In the event of an audit, you will be required to turn over any forms you retain.

*Fleming PC regularly conducts employment compliance audits for companies of all sizes. Is your company in compliance? Contact us...*

## The Employee Free Choice Act

YOUR COMPANY A UNION COMPANY?

Earlier this year President Obama told more than 100 top labor officials "We will pass the Employee Free Choice Act."

Under current law, in order for employees to organize, the union needs 30 percent of the employees to sign cards seeking an election. Then, the National Labor Relations Board sets a secret ballot election, typically approximately 40 days later. During that time period, both the union and the employer have an opportunity to make their case for or against union membership to the employees. If the union wins, the union and the company try to agree upon a collective bargaining agreement.

The EFCA contains fundamental changes to this procedure: (1) if the union gets 50% plus one of the employees to sign union cards, there is no need for an election; the company must recognize the union; (2) there are no secret ballots, making employees susceptible to union pressure; (3) if the employer and the union do not reach an agreement within 90 days, they are required to go to mediation and then binding arbitration. A third party, unfamiliar with the employer, then decides the terms and conditions of employment.

Protect your company: (1) include in your employee handbook a statement about the company's view of unions (i.e. the company views employee morale, compensation and grievances as a priority, making unions unnecessary); it may be your only opportunity; (2) promote people to management for their interpersonal skills; (3) conduct employment satisfaction surveys; (4) address the concerns of your employees; (5) pay a fair wage; (6) be aware of signs of union organization; and (7) develop a plan for arbitration if your employees form a union – you won't have time to do it after-the-fact.

## Employee Privacy and Social Networking Sites

NO REASONABLE EXPECTATION OF PRIVACY FOR INTERNET POSTINGS.

Some employers use MySpace and Facebook to investigate their applicants and employees. At least one California Court of Appeal has held that information posted on the internet is not protected by any reasonable expectation of privacy. *Moreno v. Hanford Sentinel, Inc.*, 172 Cal. App. 4th 1125 (2009). Once the information enters the public domain, i.e. the internet, it is no longer "private." Even if the plaintiff expected only a small number of people to read the information on her MySpace page, the potential audience was vast, available to anyone with an internet connection.

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