Section 2 Documents Must Be Examined In Person

A January 20, 2015 decision by the Office of the Chief Administrative Hearing Officer, (OCAHO), serves notice to any employers using a “service center” arrangement to complete I-9s. More specifically, OCAHO once again reinforced—by upholding a fine of nearly $228,000—the necessity of employers to review Section 2 documentation at the time of attestation, and to ensure such review is done in person by the party signing Section 2.

The decision by OCAHO hinged on an employer’s ability to use a third party agent to complete Section 2 of the I-9. While this is a fairly common occurrence, the manner in which Section 2 was completed was deemed unacceptable. The process involved having an employee complete Section 1, bring the I-9 to the place of employment on or before the first day of work, and present the I-9 to a company representative with their documentation. If the documents appeared to be valid and related to the person presenting them, the representative would make copies, attach them to the I-9 and forward them to an entirely separate location where a third party would complete and sign Section 2.

The Immigration and Customs Enforcement, (ICE) auditor found that the employer had completed 242 I-9s in such a manner—that is without having the Section 2 signer view the original employee documentation prior to signing the attestation. The employer appealed and OCAHO upheld the fine, stating that:

The I-9 form does not say that the certifier examined copies of the employees’ documents; it says that the certifier examined the documents presented by the above-named employee. It is simply impossible, moreover, for a payroll administrator in Edina, Minnesota to determine whether a document reasonably appears to relate to an individual when the administrator never saw the individual and the individual only presented original documents to a different person more than a thousand miles away in El Paso, Texas.

The full text of the OCAHO decision can be found at:

Given this latest decision with regard to Section 2, employers should revisit their I-9 processes to ensure compliance with that outlined by ICE and OCAHO. It is important to note that this fine is levied on an employer who otherwise appeared to have their I-9s in order—no mention is made of timeliness or other substantive issues. The nearly $228,000 fine was based entirely on the improper attestation of Section 2 being done by those who had not reviewed the original documentation. Centralized processes are only as effective as the foundation they are based on, and use of third party agents can be a key part of that, but the employer must work with the agent to ensure all applicable laws and regulations are being followed. ICE remains very active in I-9 enforcement, and employers need to stay abreast of all information that could have an impact on them.

Bottom line

Employers should continuously monitor the compliance landscape to keep abreast of regulations and enforcement positions that could affect their I-9 processes. Equifax Workforce Solutions can help simplify your best practices approach through an easily-managed technology platform that helps you manage compliance across the jurisdictions in which you do business. To receive more information on how Equifax Workforce Solutions can assist your company in creating a strong culture of compliance with your I-9 processes, please contact Pete Krieshok at pete.krieshok@equifax.com, with the subject line of “I-9 Compliance Bulletin.”

Visit www.equifaxworkforce.com/i9anywhere to learn about a new, comprehensive remote I-9 solution.