

## SMALL BUSINESS FINED “BIG BUCKS” FOR I-9 MISTAKES

Recently, the Circuit Court of Appeals for the Ninth Circuit upheld the imposition of a \$173,250.00 fine against a small drywall installation company for failure to maintain complete and accurate Employment Eligibility Verification Forms (“I-9 Form”). You can find the court’s decision at the following link: [\*Ketchikan Drywall Services, Inc. v. Immigration and Customs Enforcement\*](#).

The court found that the employer violated its legal obligation under the Immigration and Nationality Act (the “Act”) to verify that its employees were legally authorized to work in the United States through the following actions:

1. Failure to provide any I-9 form at all for certain employees;
2. Failure to complete certain sections of the I-9 form; and
3. Omitting necessary information from the I-9 form.

The employer argued that although some information was missing from its I-9 forms, it had substantially complied with the law by copying and retaining employees’ verification documents and attaching them to the I-9 Forms, and that any omissions were either minor or could be filled in by reference to those documents. The court made it very clear, however, that failing to complete entire sections of the form despite maintaining the necessary information in a separate document was not sufficient to meet the statutory requirements and resulted in a violation of the Act.

Although the employer argued that transcribing the necessary information onto the I-9 forms was a “waste of time” when the information was already available on the attached copies of the relevant document, the court emphasized that “requiring that the parties take the time to copy information onto the I-9 Form helps to ensure that they actually review the verification documents closely enough to ascertain that they are facially valid and authorize the individual to work in the United States” and that the I-9 Form itself “provides concrete evidence that such review took place.”

The Court also provided other specific examples of what it would consider I-9 deficiencies that could result in significant fines:

1. Failure by the employee to attest to one of the three specific categories of eligibility and

instead attesting that he or she is authorized to work generally.

2. When relying on an employee's driver's license to verify eligibility, failing to provide the issuing authority on the I-9 Form, regardless of whether the issuing authority could be inferred from the format of the driver's license number.
3. When re-hiring a former employee, failing to ensure that the employee again attests to his or her eligibility to work in the United States and instead simply relying on the employee's former attestation.

This decision serves as an important reminder for all employers to make sure they are strictly complying with all I-9 requirements and paying careful attention that all I-9 Forms are complete and accurate. Failing to maintain complete and accurate I-9 Forms could result in significant and unnecessary fines. Employers who have questions regarding I-9 compliance should contact us at (414) 276-5000.