

IMMIGRATION REFORM & EMPLOYMENT: HOW WILL IT IMPACT YOUR BUSINESS?



With the current buzz surrounding immigration and the significant number of immigrant workers employed in the gaming and hospitality industries, it seemed an appropriate time to not only discuss the potential reforms, but also

review the current laws and requirements related to employing immigrants.

Let's begin with a quick re-cap of current requirements and standards. We all know it is against the law to knowingly employ anyone who is not eligible to work in the United States. While all employers are subject to fines for doing so, gaming establishments run an additional risk of losing their licenses. The simplest way to prevent violations is to ensure rigorous I-9 compliance. Here's a quick refresher:

- You must secure a signed Employment Eligibility Form (I-9) with all of Section 1 filled out properly and completely from every person you hire before he/she begins working.
 - As of April 28, 2005 when H.R. 4306 went into effect, employers have been able to collect and retain I-9 forms electronically using digital signatures and various electronic file formats for storage.
 - Paper forms are, of course, still acceptable as are forms stored on microfilm and microfiche.
- Employees must provide you with appropriate documentation of work eligibility within 72 hours of beginning work. Employers are strictly prohibited from requiring any additional documentation not listed on the I-9 in order to complete the form.

- An Immigration and Naturalization Service (INS) receipt for a timely filed extension application may be used as proof of continuing work authorization for a period of 240 days. An employer must accept such a receipt as proof of continuing work authorization.
- In the case of lost or stolen documentation, an employee may provide a receipt for the application for a replacement document within three business days of her or his hiring and continue working. The employee must present the required document within 90 days of her or his hiring. This rule does not apply to re-verification of work authorization for current employees.

It's a good idea to let potential employees know in advance that they will be required to complete an I-9 and produce the required documents. If you don't already, you might consider posting the following or a similar statement and the list of acceptable documentation wherever potential employees apply (online, computer kiosks, human resources or personnel departments, etc.): "We comply with U.S. immigration laws and do not employ persons unauthorized to work. If hired, you will be required to produce identification and work authorization documentation within 72 hours of beginning work." By letting potential hires know these requirements up front, you'll reduce the number of ineligible workers who apply as well as diminish your risk of hiring an undocumented worker.

Fortunately, Congress isn't disputing content or required documents for Form I-9. The reforms proposed in Congress would instead require employers to jump through additional hoops to ensure work eligibility after the completion of an I-9. Both bills also include higher fines and

criminal penalties for recruiting, hiring and referral violations.

In general, the House bill, H.R. 4437, focuses on border security and interior enforcement and the Senate bill, S. 2611, while it does include some similar provisions, also offers a guest worker program and employment-based "skilled worker" provisions. The following are primary elements of both bills of interest:

- **Electronic Verification System for Employment Purposes** – Both bills would require employers to check each new employee's identity and work eligibility within three working days of hire using a phone or web-based version of the current U.S. Citizenship and Immigration Service's (USCIS) Systematic Alien Verification for Entitlements (SAVE) Basic Pilot program. This program uses an automated system to conduct verification checks of the Social Security Administration (SSA) and Department of Homeland Security (DHS) databases. While it might seem to be just another step in an already lengthy process, the program, which is currently voluntary and free, does offer several benefits in the form of peace of mind: it removes guesswork from document review during the I-9 process, provides government verification of employment eligibility for all new hires, and improves accuracy for wage and tax reporting.
 - **House** – H.R. 4437 would require the system to respond within three days of the initial inquiry with either a verification or tentative non-verification of work eligibility.
 - **Senate** – S. 2611 would require the system to respond within ten days.

If you're interested in detailed information on the SAVE Program, visit www.uscis.gov and click on the SAVE link under Immigration Services and Benefits Programs. To register to participate in the current electronic verification program, go to: <https://www.vis-dhs.com/EmployerRegistration>.

- Secondary Verification System – Both bills include a process for a secondary verification in the event of a tentative non-verification.
 - **House** – Under H.R. 4437, the employer must inform the individual of the tentative non-verification. The individual then has the right to contest the tentative non-verification within a time frame to be determined by DHS. If the individual contests, he/she is responsible for following whatever process the DHS and SSA develop for secondary verification. The secondary verification must respond to an employer within ten working days of the initial non-confirmation. If the individual does not contest within the specified time frame the non-verification becomes final.
 - **Senate** – S. 2611 would require employers to inform the individual in writing on a specific DHS form within three days of receiving a tentative non-verification. The individual must acknowledge receipt of the notice in writing on the specified form and has ten days to contest and submit appropriate information. Employers must receive a response from the system within 30 days after the individual contests the non-verification. If the individual makes no contest within the ten day period, the non-verification becomes final.
- **Re-verification of Existing Employees**
 - **House** – H.R. 4437 would require all employers to re-verify the identity and employment eligibility of ALL previously hired employees using the electronic verification system.
 - **Senate** – S. 2611 would enforce the re-verification provisions for all critical infrastructure employers and employers with prior violations of the employer sanctions provisions.
- **Employer Attestation of Verification Process** Both bills would require employers to continue examining employment and identification documents and attesting to their authenticity on Form I-9 and recording new hire Social Security numbers, as well as to begin recording the electronic verification

code. Employers would also be required to keep work authorization documents, either electronically or on paper, for a specified period of time.

- **House** – H.R. 4437 would require employers to retain verification documentation for up to three years after the date of hire or one year after the termination date.
- **Senate** – S. 2611 would require document retention for up to five years from the date of hire or one year after the termination date.
- **Relationship with Subcontractors**
 - **House** – Employers would not incur liability associated with a subcontractor hiring or continuing to employ an unauthorized alien unless the employer had actual knowledge that the subcontractor was continuing to employ unauthorized aliens under H.R. 4437.
 - **Senate** – S. 2611 would require employers to include language prohibiting the hiring of unauthorized aliens in all contracts with subcontractors. Subcontractors would be required to provide employers with their IRS employer ID number which the employer would have to provide to DHS.
- **Civil Penalties**
 - **House** – H.R. 4437 would impose fines ranging from \$5,000-\$7,500 for a first offense, \$10,000-\$15,000 for a second offense and \$25,000-\$40,000 for multiple offenses of knowingly hiring unauthorized workers by failing to use the verification system or submitting information the employer “reasonably believes” to be false. Paperwork violations would be subject to fines ranging from \$1,000-\$25,000.
 - **Senate** – An employer who “knowingly hires” or hires with “reckless disregard” would be subject to fines up to \$4,000 for the first offense and a minimum of \$4,000 up to a maximum of \$20,000 for multiple offenses under S. 2611. It calls for a maximum fine of \$2,000 for first-time paperwork violations and \$400-\$6,000 per violation for employers that have been fined in the previous twenty-four months.
- **Criminal Penalties**
 - **House** – Employers who engage in a “pattern of practice” of violating the Immigration and Naturalization Act (INA) would be subject to a fine of up to \$50,000 for each unauthorized worker and up to one year in jail under H.R. 4437.
 - **Senate** – S. 2611 would increase fines to up to \$20,000 for each unauthorized worker

and tack on up to three years in jail for employers who engage in a “pattern or practice” of “knowing” violations.

While Congress resolves the differences between the two bills, it is up to employers to discuss the ramifications of this legislation with their representatives. The goal should not be to add even more hefty regulations to your hiring process and potentially extend waiting periods, but to improve the process of ensuring the eligibility of those who work for you.

With the government supporting reform and automation, and the vast number of immigrant workers employed by the gaming and hospitality industries, you have a unique opportunity to be a strong voice in this debate and possibly influence the outcome to your benefit. Consider the following questions:

- Will you be able to integrate the electronic verification system with your current/planned applicant tracking system (i.e., send relevant candidate information to the government with a single click)?
- If you have not implemented an automated applicant tracking system, how much time is required to submit information for each candidate over the phone line?
- How will the system response time affect the gaming licensing process?

These questions and concerns are just the tip of the iceberg, but the answers could have enormous potential to either significantly improve or wreak havoc on recruiting and hiring. The ultimate impact will depend on the composition of the final reform package. I would encourage you to investigate the details of these two bills as thoroughly as possible and provide input to help shape the final legislation.

Sources

1. www.uscis.gov
2. H.R. 4437, Title VII, Sec.701. – Sec. 703., Sec. 706.
3. S. 2611, Title III, Sec. 301., ‘Sec. 274A.
4. SHRM Washington, DC Insider, June 2006

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