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Duff on Hospitality Law

The I-9 Liability Hiding in Your Filing Cabinet

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By now, most hoteliers and restaurateurs know that all employers are required to prepare and maintain the Form I-9 for all of their employees. But did you realize that those forms can be a basis for financial liability if they were improperly prepared? This post will identify your risks and strategies to reduce a fine if you are ever audited by the government.

Legal Employment/Improperly Completed Form

You can be fined even if all of your employees are legally authorized to work. The government can fine an employer between $110 and $1,100 for first-time violations for each improperly completed Form. Fines go up for violations identified in a subsequent government audit.

Important Lesson: Train the personnel who are responsible for Form I-9 compliance so they know how to properly complete a Form I-9 before it gets put into your filing cabinet. The government's webinars are a good place to start training, but you might consider in-person training by your regular labor and employment law advisor or one of the GSB Labor, Employment & Immigration Team Members.

Illegal Employment/Properly Completed or Nonexistent Form

It happens. Either fake documents are presented without you realizing it, or worse, someone in your organization knowingly hired someone who had no legal authority to work. A government audit will identify both situations, but you will likely be fined in the second situation only, between $375 and $3,200 for each unauthorized employee for a first audit. You might not be fined at all if you did everything correctly.

Important Lesson: Make sure that personnel responsible for Form I-9 compliance know which document can be used and that they understand their responsibilities, including:

1. The document presented relates to person presented
2. The document appears to be genuine
3. Do not entrust Form I-9 compliance to just one person
4. Link payroll to Form I-9 compliance as a double-check to be sure that all personnel on the payroll have properly completed forms; don't add anyone to payroll unless it's been confirmed that a properly completed Form I-9 exists.

No matter how good your protocols are, you will invariably find mistakes. An annual internal audit, by a fully-trained person or team, can identify errors and trends, many of which can be corrected to reduce or eliminate liability.

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Great Policy/Lack of Follow-Through

Mistakes, changes in personnel, and lack of training are just some reasons even the best of policies can't protect you from liability. And if you don't regularly conduct your own internal audits and take action to fix things, your cabinet will still have liability.

Important Lessons:

- Include regular (preferably annual) internal audits of the Forms I-9 prepared in the previous year.
- Follow the government protocol to "correct" the mistakes on documents that you can, and memorialize why you can't for the others.

Conclusion

No employer does it all right. Mistakes happen and rogue employees exist. But by facing up to these realities and proactively addressing them, you can reduce and possibly even eliminate liability for the Forms I-9 you are required to complete and retain.

Please contact Greg Duff if you have any questions regarding your Form I-9s.

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