Immigration Law in Foodservice

Five Steps to Immigration Compliance

by Becki L. Young

Last month's column highlighted some of the immigration enforcement actions impacting the local foodservice industry that took place over the past summer. This month, we will look at five steps employers can take to ensure immigration compliance, and avoid problems with federal immigration authorities.

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1: Establish an internal training program on I-9 compliance; permit the I-9 process to be conducted only by individuals who have received this training.

Employers must complete Form I-9 (www.uscis.gov/I-9) every time they hire a new employee. To complete the form, employers must verify the employee's employment eligibility and identity documents and record this information on Form I-9. If an employee has temporary work authorization the employer must note the expiration date and re-verify employment eligibility on that date.

Employers are advised to review USCIS' "Handbook for Employers" at www.uscis.gov/files/nativedocuments/m-274.pdf, which provides detailed instructions on I-9 compliance.

2: Arrange for annual I-9 audits by an external auditing firm or a trained employee not otherwise involved in the I-9 process.

A properly conducted internal audit enables the employer to avoid costly penalties and demonstrates good faith compliance with the immigration laws. It will also alert the employer to any problems with

its immigration compliance system, and enable the employer to correct these deficiencies.

As a general rule of thumb, employers should conduct a private I-9 audit at least once a year, as follows: First, the auditor should obtain a list of all current employees, as well as those employees who were terminated in the past 3 years. Second, the auditor should compile the I-9 records for all applicable employees.

The auditor should make a list of any missing I-9s, as well as any I-9s for which the auditor has reason to doubt the legitimacy of the documents presented or the identity of the individual presenting the documents. If such issues arise, employers should consult with an immigration attorney.

The auditor should destroy or remove I-9s for terminated employees (records must be kept until three years after the date the person begins work or one year after the person's employment is terminated, whichever is later).

3: Establish a protocol for responding to no-match letters received from the Social Security Administration.

Every year the Social Security Administration informs thousands of employers via a letter entitled "Employer Correction Request," commonly known as a "No-Match" letter, that the Social Security numbers employers provided on W-2 Forms for certain employees do not match SSA's records.

Employers who receive no-match letters should take the following steps:

1) Check their records to ensure that the mismatch was not the result of a record-keeping error on the employer's part. Employers should not assume that workers on the no-match list are undocumented or have provided false information.
2) Ask the employee to confirm the accuracy of the employer's records. Employers should not fire, suspend, intimidate, or threaten any employee whose name is on the no-match list with termination or any other adverse action; doing so may place the employer in violation of anti-discrimination laws.
3) Ask the employee to resolve the issue directly with SSA.

Employers unable to confirm employment eligibility through these procedures should consult an immigration attorney.

4: Establish and maintain safeguards against use of the employment eligibility verification process for unlawful discrimination.

In implementing immigration compliance procedures, employers must be vigilant not to run afoul of employment discrimination laws.

When interviewing candidates for employment, employers may not inquire about an applicant's immigration status or work authorization, but may ask the following questions:

- "Are you legally authorized to work in the United States?"
- "Will you now or in the future require sponsorship for employment visa status?"

Employers should take care to treat all individuals equally when recruiting and hiring, and when verifying employment eligibility and completing the Form I-9. See USCIS' "Handbook for Employers" for pointers on how employers can avoid discrimination during the immigration compliance process.

5: Consider using the E-Verify employment eligibility verification program.

The E-Verify program is jointly administered by the Department of Homeland Security and the Social Security Administration. This program allows participating employers to verify whether newly hired employees are authorized to work in the United States by checking the information provided by the employees on their Form I-9 against both DHS and SSA databases. Participation in E-Verify is currently free to employers. To register go to www.visdhs.com/EmployerRegistration.

As always, employers should consult an immigration attorney if specific questions arise.

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Becki L. Young has been working in the field of immigration law since 1995. Ms. Young's practice focuses on employment-based immigration law. She has represented employers in a variety of industries, including investment banking and securities, information technology, health care, and hospitality, providing advice on work permits and related immigration issues. Contact her to learn more or to schedule a personal consultation by calling 202-232-0983 or e-mailing becki.young@blylaw.com.