



## OFFICE OF BUSINESS LIAISON

<p><b>Employer Information Bulletin 111</b></p> <p><b>Penalties for Prohibited Practices</b></p> <p><b>December 7, 2004</b></p>	<p><b>EBISS: (800) 357-2099</b>  <b>NCSC: (800) 375-5283</b>  <b>TDD: (800) 767-1833</b>  <b>Fax: (202) 272-1864</b>  <b>Order Forms: (800) 870-3676</b>  <b>Website: <a href="http://www.uscis.gov">www.uscis.gov</a></b></p>
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The following is not intended to be legal advice pertaining to your situation and should not be construed as such. The information provided is intended merely as a general overview with regard to the subject matter covered.

## EMPLOYER SANCTIONS

### CIVIL MONEY PENALTIES<sup>1</sup>

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE) is authorized to conduct investigations to determine whether employers have violated the prohibitions against knowingly employing unauthorized aliens and failing to properly complete, present or retain the Employment Eligibility Verification form (Form I-9) for newly hired individuals. If ICE believes that violations have occurred, ICE may issue a Warning Notice, a Technical or Procedural Failures Letter notifying the employer of technical or procedural failures in need of correction, or a Notice of Intent to Fine (NIF). In cases where a NIF is issued, employers may request a hearing within 30 days of service of the NIF to contest the NIF before an Administrative Law Judge of the Office of the Chief Administrative Hearing Officer (OCAHO), Executive Office for Immigration Review, U.S. Department of Justice. Hearing requests must be in writing and filed with the ICE office designated in the NIF. If a hearing is not requested within the 30-day period, ICE will issue a Final Order to cease and desist and to pay a civil money penalty. Once a Final Order is issued, the penalty is unappealable. If a hearing is requested, ICE will file a complaint with OCAHO to begin the administrative hearing process which may end in settlement, dismissal, or a Final Order for civil money penalties.

### Hiring or Continuing to Employ Unauthorized Alien(s)

An employer found to have knowingly hired, recruited or referred for a fee, or continued to employ, an unauthorized alien for employment in the United States shall be subject to an order to cease and desist from the unlawful behavior and to pay a civil fine. An employer can be fined \$250 - \$2,000 per unauthorized alien with respect to whom the **First offense<sup>2</sup>** occurred before September 29, 1999, and not less than \$275 and not exceeding \$2,200, for each unauthorized alien with respect to whom the offense occurred on or after September 29, 1999. An employer can be fined from \$2,000 - \$5,000 per unauthorized alien for a **Second offense** that occurred before September 29, 1999, and between \$2,200 - \$5,500 if occurred on or after September 29, 1999. An employer can be fined from \$3,000 - \$10,000 per unauthorized alien for each **Third or Subsequent offense** that occurred before September 29, 1999, and between \$3,300 - \$11,000 if occurred on or after September 29, 1999.

These penalties are not limited to employees for whom employers complete and retain I-9 files, but also cover employers' use of contract personnel known to them to be unauthorized to work in the United States. If an employer can demonstrate compliance with Form I-9 requirements, a **good faith defense** with respect to a charge of knowingly hiring an unauthorized alien will have been established unless the government can prove otherwise.

<sup>1</sup> The penalties described in this bulletin cover offenses occurring on or after September 29, 1999.

<sup>2</sup> In determining the level of the money penalties that will be imposed, a finding of more than one violation in the course of a single proceeding or determination will be counted as a single offense. However, a single offense will include penalties for each unauthorized alien who is determined to have been knowingly hired, recruited, or referred for a fee.

### **Failure to Comply with Form I-9 Requirements**

Employers who fail to properly complete, retain, and/or present Forms I-9 for inspection as required by law may be subject to a civil penalty for violations occurring on or after September 29, 1999 from \$110 - \$1,100 per employee whose Form I-9 is not properly completed, retained, and/or presented. For violations occurring before September 29, 1999, civil penalties range from \$100 to \$1,000. In determining the amount of the civil penalty, the following factors are considered: size of the business of the employer being charged; the good faith of the employer; the seriousness of the violation; whether or not the individual was an unauthorized alien; and the history of previous violations of the employer.

### **Requiring Indemnification**

Employers found to have required a bond or indemnity from an employee against liability under the employer sanctions laws may be fined \$1,000 for each violation before September 29, 1999, and \$1,100 per violation on or after September 29, 1999, and ordered to make restitution to the person required to pay the indemnity. If that person cannot be located, payment is made to the U.S. Treasury.

## **CRIMINAL PENALTIES**

### ***Engaging in a Pattern or Practice of Knowingly Hiring or Continuing to Employ Unauthorized Aliens***

Employers convicted of having engaged in a pattern or practice of knowingly hiring unauthorized aliens or continuing to employ aliens knowing that they are or have become unauthorized to work in the United States, after November 6, 1986, (e.g. expiration of work authorization), may be fined up to \$3,000 per unauthorized employee and/or face up to 6 months of imprisonment.

### ***Engaging in Fraud or False Statements, or Otherwise Misusing Visas, Immigration Permits, and Identity Documents***

Persons who knowingly use fraudulent identification documents, identity documents that were issued to persons other than themselves, or false attestations for the purpose of satisfying the employment eligibility verification requirements, may be fined and/or imprisoned for up to 5 years.

## **CIVIL DOCUMENT FRAUD**

**It is unlawful for any person or entity knowingly to engage in any of the following activities:**

- Forge, counterfeit, alter, or falsely make any document for the purpose of satisfying a requirement of the Immigration and Nationality Act (INA) or to obtain a benefit under the INA;
- Use, attempt to use, possess, obtain, accept, or receive or to provide any forged, counterfeit, altered or falsely made document for the purpose of satisfying a requirement of the INA or to obtain a benefit under the INA;
- Use or attempt to use or to provide or attempt to provide any document lawfully issued to a person other than the possessor, including a deceased individual for the purpose of satisfying a requirement of the INA or to obtain a benefit under the INA;
- Accept or receive or to provide any document lawfully issued to or with respect to a person other than the possessor for the purpose of complying with the employment eligibility verification requirements or obtaining a benefit under the INA;
- Prepare, file, or assist another in preparing or filing, any application for benefits under the INA, or any document required under the INA, or any document submitted in connection with such application or document, with knowledge or in reckless disregard of the fact that such application or document was falsely made or, in whole or in part, does not relate to the person on whose behalf it was or is being submitted; or
- Present before boarding a common carrier for the purpose of coming to the United States a document which relates to the alien's eligibility to enter the United States, and to fail to present such document to an immigration officer upon arrival at a United States port of entry.

If an investigation reveals that an individual has committed or participated in any of the acts listed above, **the U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement** may issue a Notice of Intent to Fine (NIF). Within 60 days of the NIF, the person or entity that receives the NIF may make a written request for a hearing submitted to the appropriate ICE office or face an unappealable Final Order to pay a civil penalty, **per fraudulent document or proscribed activity**, in the amount of: \$250 - \$2,000 or, if on or after September 29, 1999, \$275 - \$2,200, for the first offense; and \$2,000 - \$5,000, or, if on or after September 29, 1999, \$2,200 - \$5,500, for each subsequent offense. For an individual who is not a U.S. citizen, waiver of a 274C hearing will result in the issuance of a final order and removal from the United States.

### **UNLAWFUL DISCRIMINATION**

If an Office of Special Counsel for Unfair Employment-Related Discrimination (OSC) or Equal Employment Opportunity Commission (EEOC) investigation reveals employment discrimination covered by the Immigration and Nationality Act, the employer will be ordered to cease the prohibited practice and may be ordered to take one or more of the following steps:

- Hire or reinstate, with or without back pay, individuals directly injured by the discrimination;
- Lift any restrictions on an employee's assignments, work shifts, or movements;
- Post notices to employees about their rights and about employers' obligations;
- Educate all personnel involved in hiring and in complying with the employer sanctions and anti-discrimination laws;
- Remove a false performance review or false warning from an employee's personnel file.

Employers may also be ordered to pay civil monetary penalties of \$250 - \$2,000 per individual discriminated against for the **first offense**, \$2,000 - \$5,000 per individual discriminated against for the **second offense**, \$3,000 - \$10,000 per individual discriminated against for **subsequent offenses**.

### **DOCUMENT ABUSE**

Where employers are found to have requested more or different documents than an employee has chosen to present from List A or Lists B and C, they may be fined \$100 - \$1,000 for each individual determined to have suffered such **document abuse**.

The Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration-Related Unfair Employment Practices can be reached on an employer hotline at (800) 255-8155 and on an employee hotline at (800) 255-7688 or via web at <http://www.usdoj.gov/crt/osc>.