

# Employment Eligibility

## *Understanding the Risk*

*May/June 2008*

*By Chris DiGiorgio, Esq. and Charles Y. Hoff, Esq., Taylor, Busch, Slipakoff&Duma LLP*

### **THE GOVERNMENT WILL NEVER CHECK ME**

With so many restaurants in Georgia it would seem Immigration and Customs Enforcement could never visit every restaurant to verify hiring compliance. If you are not in compliance, the issue is not that you may get caught, the issue is what are the penalties and risk if you do.

Under the Immigration and Nationality Act employers may hire only persons who are authorized to work in the United States, i.e., citizens and nationals of the United States, legal permanent residents and aliens. The employer must verify the identity and employment eligibility of anyone to be hired and complete the Employment Eligibility Verification Form (I-9) within 3 business days of the employee starting work. The law requires that the employer view the original documents presented and complete the I-9 form. The I-9 form is to be kept by the employer the entire time the employee is employed and then for a certain period of time after termination.

### **AVOIDING LIABILITY**

Completing the I-9 correctly could protect the employer from liability if an employee has presented false documents. Completing the I-9 with actual or constructive knowledge the documents presented are false does not protect the employer. The failure to complete I-9's could be constructive knowledge that the employee is not authorized to work in the United States.

### **RE-VERIFICATION**

Any employee that gives you a time limited work authorization document must have their employment verification reverified at the time the work authorization expires. It is critical that the employer create a system for reminding employees about their expiration date and that you obtain the new documentation.

### **PENALTIES**

Restaurants are a favorite target as evidenced by the following sampling:

- A Chinese restaurant was indicted on federal charges of harboring illegal aliens, and could face up to 10 years in prison, \$250,000 fine and forfeiture of property.
- The owner of local restaurant was sentenced to 18 months in federal prison for harboring illegal aliens.
- Fifteen illegal alien restaurant workers were arrested as part of an ongoing criminal worksite enforcement investigation.

*The following is a partial list of fines and penalties:*

- For employers who fail to properly complete, retain, or make I-9 Forms available for inspection, fines range from \$100 to \$1,100 per individual I-9.
- For employers who knowingly hire or knowingly continue to employ unauthorized workers, civil penalties range from \$250 to \$11,000 per violation.
- For employers engaging in a pattern or practice of knowingly hiring or continuing to employ unauthorized workers, criminal penalties can be as much as \$3,000 per unauthorized employee and/or 6 months of imprisonment.