





III Employment Law

2008 National Biodiesel Conference

Nancy Flury

Lindquist & Vennum, P.L.L.P.

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NEW Form I-9

- Although the forms were actually published by the Department of Homeland Security on November 7, 2007, the regulations permitted a 30-day transition period before it seeks sanctions against employers using the previous versions. After the transition period ends, (December 26, 2007) employers are subject to penalties for using outdated versions.
- **Employers may download and copy this form at no charge from <http://www.uscis.gov/files/form/i-9.pdf>. A free version also may be obtained by calling 1-800-870-3676**
- Form I-9 is available in English and Spanish; however, only employers in Puerto Rico may have employees complete the Spanish version. In the 50 U.S. states and other territories, the Spanish version may be used as a translation guide, but employees must complete the English version kept in the employer's records. An employee also may use a translator to assist in completing the form.

Changes to Form I-9

- Unexpired Reentry Permit (Form I-327); and
- Unexpired Refugee Travel Document (Form I-571)
- In addition, an unexpired Employment Authorization Document, Form I-766, has been added to “List A” acceptable documents.
- The instructions to the new Form I-9 also clarify that an employee is not obliged to provide his or her Social Security Number in Section 1, unless the employer participates in E-Verify. E-Verify, formerly known as the Basic Pilot Program, allows employers to electronically check workers’ Social Security numbers against a government database. Information about this voluntary program may be obtained at www.dhs.gov/ximgtn/programs/gc_1185221678150.shtm.
- Employers are not required to “re-do” earlier versions of the form, but must use the new Form I-9 for re-verification of employees.

Document Retention

This form is not filed with USCIS or any government agency.

- Maintain separate I-9 files.
- Follow document retention requirements for current and past employees
 - One year after termination OR
 - Three years after date of hire, whichever is longer





Wage & Hour Issues

Fair Labor Standards Act

Basic Protections Under FLSA

businesses

- Agriculture exemptions

General Rule for Overtime Pay

hour laws, hours worked in excess of 40 in any workweek are overtime and must be compensated at a rate of not less than 1½ times the employee's regular rate of pay

General Rule for Overtime Pay (cont.)

excess of eight per day or solely because they occurred on Saturday, Sunday, a holiday or a regular day of rest

Calculating Hours Worked

barred or permitted to work

Calculating Hours Worked (cont.)

- Meal periods: Excluded from hours worked only
 - If meal period is at least 30 minutes *and*
 - Employee is completely relieved of all duties *and*
 - Employee is free to leave the duty location

Calculating Hours Worked (cont.)

- If for employer's benefit, time spent is compensable
- If for employee's benefit, time spent is not compensable

Coverage Of Employees

coverage

- New rules adopted for “white collar” exemptions
- Agriculture exemption – “engaged in farming”
 - Wenigar v. Johnson 712 NW2d 190 (2006)

Child Labor Protections

employment

- State laws may differ





Discrimination Issues

Family Medical Leave Act

- Employers with 50 or more employees
- Leave may run concurrently with other paid leave
- Workers compensation absence included within 12 weeks of leave
- 12 weeks **unpaid** leave for birth or adoption of a child or the serious health condition of employee, spouse or child

Harassment

and severe or pervasive

- Most often needs to be a pattern of conduct, but one egregious act can suffice
- Be aware that harassment can be the result of acts by co-workers, managers, or third parties such as vendors, customers or consultants.

Harassment

- Monitor workplace, employees' behaviors, own behavior
- Open-door policy
- Anti-harassment policy in handbook

Drug and Alcohol Testing

- Copy of policy should be posted and given to employees
- Notice of drug testing requirement should be given to applicants
- Retest of same sample
- Notification of results

USERRA Issues

(Uniformed Service Employment and Reemployment Rights Act)

may not refuse to hire because of participation in
guard or reserve

- Absolute right to reemployment
- Eligibility for continued benefits
- No loss of seniority
- Resource: www.esgr.org

Contact Information

Nancy Flury

Lindquist & Vennum

4200 IDS Center

80 South Eighth Street

Minneapolis, MN 55402

612-371-3934

nflury@lindquist.com

