

Employment & Immigration Law Update

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Topics to be Discussed

- Family and Medical Leave Act
 - General Overview
 - Recent Amendments
- Immigration Issues
 - I-9
 - E Verify
 - Worksite Enforcement - ICE
 - Current Legislation – State and Federal
- Pre-employment Background Checks

This presentation is designed to provide accurate and authoritative information in regard to the subject matter covered. It is presented with the understanding that the presenter is not engaged in rendering legal services because the facts of each case will differ.



Family and Medical Leave Act

- Became effective August 5, 1993.
- Wage and Hour Division of the U.S. Department of Labor's Employment Standards Administration administers and enforces the FMLA for all private, state and local government employees.
- FMLA applies to all employers who employ 50 or more employees for at least 20 workweeks in the current or preceding calendar year **and** who and engaged in commerce or in any industry or activity affecting commerce— including joint employers and successors of covered employers.



Employee Eligibility

- Work for a covered employer;
- Have worked for the employer for a total of 12 months;
 - 12 months do not have to be continuous or consecutive
 - All time worked for the employer is counted
- Have worked at least 1,250 hours over the previous 12 months; **and**
- Work at a location in the United States or in any territory or possession of the United States where at least 50 employees are employed by the employer within 75 miles.



Leave Entitlement

- A covered employer **must** grant an eligible employee up to a total of **12 workweeks of UNPAID leave** in a 12 month period for one or more of the following:
 - For the birth of a son or daughter, and to care for the newborn child (must conclude within 12 months after birth)
 - For the placement with the employee of a child for adoption or foster care, and to care for the newly placed child (must conclude within 12 months after placement)
 - To care for an immediate family member with a serious health condition
 - Spouse
 - child - under 18 unless incapable of self-care
 - parent – but not a parent “in-law”
 - When the employee is unable to work because of a serious health condition



12-month Period Calculation

- Employer may select one of four options for determining 12-month period:
 - The calendar year
 - Any fixed 12-month “leave year” such as a fiscal year, a year required by State law, or a year starting on the employee’s “anniversary” date
 - The 12-month period measured forward from the date any employee’s first FMLA leave begin, OR
 - A “rolling” 12-month period measured backward from the date an employee uses FMLA leave



Substitution of Paid Leave

- Employees may choose to use OR employers may require the employee to use, accrued paid leave to cover some or all of the FMLA leave taken.
- Employees may choose to use OR employers may require, the substitution of accrued paid vacation or personal leave for any of the situations covered by FMLA.
- The substitution of accrued sick or family leave is limited by the employer's policies governing the use of such leave.
- FMLA leave and workers' compensation leave can run together, provided the reason for the absence is due to a qualifying serious illness or injury and the employer properly notifies the employee in writing that the leave will be counted as FMLA leave.



Serious Health Condition

- Illness, injury, impairment, or physical or mental condition that involves:
 - Any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential care facility; or
 - A period of incapacity requiring absence of more than three calendar days from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider; or
 - Any period of incapacity due the pregnancy, or for prenatal care; or
 - Any period of incapacity (of treatment therefore) due to a chronic serious health condition (e.g., asthma, diabetes, epilepsy, etc.); or
 - A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, stroke, terminal disease, etc.); or,
 - Any absences to receive multiple treatments (including any period of recovery) by, or on referral by, a health care provider for a condition that likely would result in incapacity of more than three consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.).



Substance Abuse

- May be a serious health condition if above criteria are met.
 - However, FMLA leave may only be taken for treatment for substance abuse by a health care provider.
 - Absence because of the employee's use of the substance, rather than for treatment, does not qualify for FMLA leave.



Not

Serious Health Condition

- Cosmetic treatments are NOT “serious health conditions” unless inpatient hospital care is required or unless complications develop.
- Notwithstanding the development of complications, the following do not meet the definition of a serious health condition:
 - common cold
 - flu
 - ear aches
 - upset stomach
 - minor ulcers
 - headaches other than migraines
 - routine dental or orthodontia problems, periodontal disease



Maintenance of Benefits

- A covered employer is required to maintain group health insurance coverage, including family coverage, for an employee on FMLA leave as if the employee continued to work.
- Where appropriate, arrangements can be made for employee to pay their share of the health insurance premiums.
- Certain types of earned benefits, such as seniority or paid leave, need not continue to accrue during FMLA leave provided such benefits do not accrue during other types of unpaid leave.



Job Restoration

- Upon return from FMLA leave, an employee must be restored to his or her original job, or to an “**equivalent**” job.
 - “**Equivalent**” job means virtually identical to the original job in terms of:
 - Pay
 - Benefits
 - Other employment terms and conditions
- An employee’s use of FMLA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to before using FMLA leave.
- If an employee was eligible for a bonus before taking FMLA leave, the employee remains eligible upon returning to work.



Employee Notice

- 30-day advance notice of the need to take FMLA leave when the need is foreseeable.
- “As soon as practicable” when the need to take FMLA leave is not foreseeable.
- Sufficient information for the employer to understand that the employee needs leave for FMLA-qualifying reasons.
- Employees do not have to provide medical records, but employer can request a medical certification confirming that a serious health condition exists.



Employer Notice

- Post a notice explaining rights and responsibilities under FMLA
 - WH Publication 1420
 - Willful violations of this posting requirement may be subject to a fine up to \$100 for each separate offense.
- Include information about employee rights and obligations under FMLA in employee handbook
- If handbooks do not exist, provide general written guidance about employee rights and obligations under FMLA whenever an employee requests leave
 - Fact Sheet No. 28
- Provide a written notice designating the leave as FMLA leave
 - WH-381 – Employer Response to Employee Request for Family or Medical Leave

Your Rights under the Family and Medical Leave Act of 1993

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. Employees are eligible if they have worked for their employer for at least one year, and for 1,250 hours over

the previous 12 months, and if there are at least 50 employees within 75 miles. The FMLA permits employees to take leave on an intermittent basis or to work a reduced schedule under certain circumstances.

Reasons for Taking Leave:

Unpaid leave must be granted for *any* of the following reasons:

- to care for the employee's child after birth, or placement for adoption or foster care;
- to care for the employee's spouse, son or daughter, or parent who has a serious health condition; or
- for a serious health condition that makes the employee unable to perform the employee's job.

At the employee's or employer's option, certain kinds of *paid* leave may be substituted for unpaid leave.

Advance Notice and Medical Certification:

The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

- The employee ordinarily must provide 30 days advance notice when the leave is "foreseeable."
- An employer may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at the employer's expense) and a fitness for duty report to return to work.

Job Benefits and Protection:

- For the duration of FMLA leave, the employer must maintain the employee's health coverage under any "group health plan."



U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

- Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
- The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Unlawful Acts by Employers:

FMLA makes it unlawful for any employer to:

- interfere with, restrain, or deny the exercise of any right provided under FMLA;
- discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

Enforcement:

- The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.
- An eligible employee may bring a civil action against an employer for violations.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

For Additional Information:

If you have access to the Internet visit our FMLA website: <http://www.dol.gov/esa/whd/fmla>. To locate your nearest Wage-Hour Office, telephone our Wage-Hour toll-free information and help line at 1-866-4USWAGE (1-866-487-9243); a customer service representative is available to assist you with referral information from 8am to 5pm **in your time zone**; or log onto our Home Page at <http://www.wagehour.dol.gov>.

WH Publication 1420
Revised August 2001



(Family and Medical Leave Act of 1993)

Date:

OMB No: 1215-0181
Expires: 09-30-2010

To: _____
(Employee's Name)

From: _____
(Name of Appropriate Employer Representative)

Subject: REQUEST FOR FAMILY/MEDICAL LEAVE

On _____, you notified us of your need to take family/medical leave due to:
(Date)

- The birth of a child, or the placement of a child with you for adoption or foster care; or
- A serious health condition that makes you unable to perform the essential functions for your job; or
- A serious health condition affecting your spouse, child, parent, for which you are needed to provide care.

You notified us that you need this leave beginning on _____ and that you expect
(Date)
leave to continue until on or about _____.
(Date)

Except as explained below, you have a right under the FMLA for up to 12 weeks of unpaid leave in a 12-month period for the reasons listed above. Also, your health benefits must be maintained during any period of unpaid leave under the same conditions as if you continued to work, and you must be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from leave. If you do not return to work following FMLA leave for a reason other than: (1) the continuation, recurrence, or onset of a serious health condition which would entitle you to FMLA leave; or (2) other circumstances beyond your control, you may be required to reimburse us for our share of health insurance premiums paid on your behalf during your FMLA leave.

This is to inform you that: (check appropriate boxes; explain where indicated)

1. You are eligible not eligible for leave under the FMLA.
2. The requested leave will will not be counted against your annual FMLA leave entitlement.
3. You will will not be required to furnish medical certification of a serious health condition. If required, you must furnish certification by _____ (insert date) (must be at least 15 days after you are notified of this requirement), or we may delay the commencement of your leave until the certification is submitted.
4. You may elect to substitute accrued paid leave for unpaid FMLA leave. We will will not require that you substitute accrued paid leave for unpaid FMLA leave. If paid leave will be used, the following conditions will apply: (Explain)



Unlawful Acts

- Unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by FMLA.
- Unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to FMLA.
- Cannot use the taking of FMLA leave as a negative factor in employment actions, such a hiring, promotion, of disciplinary actions.



Enforcement

- FMLA enforced by Wage and Hour Division of the U.S. Department of Labor's Employment Standards Administration.
- An eligible employee may bring a private civil action against an employer for violations.
 - Damages available include:
 - Wages denied or lost to the employee
 - Actual monetary losses sustained by the employee - up to a sum equal to 12 week of wages
 - Interest
 - Attorneys' fees and costs



National Defense Authorization Act of FY 2008

- On January 28, 2008, President Bush signed into law H.R. 4986, the National Defense Authorization Act for FY 2008.
- Provisions are effective as of the date of the President's signing.
- Still awaiting more comprehensive guidance from Department of Labor.
- In the interim, Wage & Hour Division will require employers to act in good faith in providing leave.



NDAA Amends FMLA

- Permits a “spouse, son, daughter, parent or next of kin” to take up to 26 workweeks of leave to care for a “member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.”
 - “**Next of Kin**” is defined as the nearest blood relative.
 - “**Serious injury or illness**” is defined as an injury or illness that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating.
 - This leave shall only be available during a single 12-month period.



NDAA Amends FMLA

(continued)

- Permits an employee to take FMLA leave for “**any qualifying exigency** arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.
 - Not effective until the Secretary of Labor issues final defining regulations defining “any qualifying exigency”



IMMIGRATION UPDATE

- I-9 : Employment Eligibility Verification
- E-Verify
- Worksite Enforcement
- Current Legislation – State and Federal



Immigration Terms

- DHS – Department of Homeland Security
- USCIS – U.S. Citizenship and Immigration Services
- CBP – U.S. Customs and Border Protection
- ICE – U.S. Immigration and Customs Enforcement



Federal Immigration Laws

- Immigration and Nationality Act (1952) amended by the
- Immigration Reform and Control Act of 1986 (IRCA)
 - Purpose of IRCA: Decrease influx of undocumented immigrants
 - Requires employers to verify the employment eligibility of persons working in the US
 - Employer are not to discriminate against individuals on the basis of national origin or citizenship status.



Definitions

- Alien: Any person who is not a citizen or national of the U.S. Only Aliens are subject to the immigration laws. Even a person who is a LPR is an alien until he or she becomes a U.S. citizen, and is still subject to immigration laws – including all grounds for removal.
- Visa: An official endorsement, obtained from a U.S. consul (abroad), certifying that the bearer has been examined and is permitted to proceed to purposes of seeking admission to the U.S. at a designated port of entry. There are both immigrant and nonimmigrant visas. A visas does not grant the bearer the right to enter the U.S.; it merely allows one to seek admission at a port of entry. **Visa validity is not the same an authorized period of temporary stay in U.S. – I-94 determines period of temporary stay in U.S.**



Employment Eligibility Verification

- All U.S. employers are responsible for completion and retention of Form I-9 for each individual they hire for employment.
- Includes citizens and noncitizens.
- Employer must verify the employment eligibility and identity documents presented by the employee and record the document information on the I-9.
- Employers must make offer of employment **before** I-9 completion.
- Do not file I-9 with ICE or USCIS.
- Spanish Version of I-9 is available, but may only be filled out by employers and employees in Puerto Rico.

Please read instructions carefully before completing this form. The instructions must be available during completion of this form.

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work eligible individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents have a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification. To be completed and signed by employee at the time employment begins.

| | | | |
|----------------------------------|-------|----------------|--------------------------------|
| Print Name: Last | First | Middle Initial | Maiden Name |
| Address (Street Name and Number) | | Apt. # | Date of Birth (month/day/year) |
| City | State | Zip Code | Social Security # |

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

- A citizen or national of the United States
 A lawful permanent resident (Alien #) A _____
 An alien authorized to work until _____
(Alien # or Admission #) _____

| | |
|----------------------|-----------------------|
| Employee's Signature | Date (month/day/year) |
|----------------------|-----------------------|

Preparer and/or Translator Certification. (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

| | |
|---|-----------------------|
| Preparer's/Translator's Signature | Print Name |
| Address (Street Name and Number, City, State, Zip Code) | Date (month/day/year) |

Section 2. Employer Review and Verification. To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number and expiration date, if any, of the document(s).

| List A | OR | List B | AND | List C |
|---------------------------------|----|--------|-----|--------|
| Document title: _____ | | _____ | | _____ |
| Issuing authority: _____ | | _____ | | _____ |
| Document #: _____ | | _____ | | _____ |
| Expiration Date (if any): _____ | | _____ | | _____ |
| Document #: _____ | | _____ | | _____ |
| Expiration Date (if any): _____ | | _____ | | _____ |

CERTIFICATION - I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) _____ and that to the best of my knowledge the employee is eligible to work in the United States. (State employment agencies may omit the date the employee began employment.)

| | | |
|---|------------|-----------------------|
| Signature of Employer or Authorized Representative | Print Name | Title |
| Business or Organization Name and Address (Street Name and Number, City, State, Zip Code) | | Date (month/day/year) |

Section 3. Updating and Reverification. To be completed and signed by employer.

| | | |
|--|--|---------------------------------|
| A. New Name (if applicable) | B. Date of Rehire (month/day/year) (if applicable) | |
| C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment eligibility. | | |
| Document Title: _____ | Document #: _____ | Expiration Date (if any): _____ |

I attest, under penalty of perjury, that to the best of my knowledge, this employee is eligible to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

| | |
|--|-----------------------|
| Signature of Employer or Authorized Representative | Date (month/day/year) |
|--|-----------------------|



Which I-9 Version?

- Amended as of June 5, 2007.
- No previous editions are accepted.
- Revision date printed in lower right corner:

(Rev. 06/05/07)N

- Handbook for Employers
 - M-274(Rev. 11/01/2007)N



Completing the I-9

Section 1

- Employee completes – using ink
- Be sure employee signs and dates Section 1.
- Employee must attest that he or she is a U.S. citizen or national, a lawful permanent resident or is otherwise authorized to work in U.S.
- Completed no later than the first day of employment regardless of immigration status

Section 2

- Employer completes
- Employee presents documentation to employer establishing identity and employment authorization based on current list of acceptable documents.
- Employer obligated to physically examine documents before completing Section 2.
- Must complete and sign within **3 business day** of the employee's first day of employment.



Completing the I-9

Section 3

- Re-verify employment eligibility of employees on or before the expiration date recorded in Section 1 of the I-9.
 - Rehired within three years of initial I-9 form completion, and the employee is still eligible to be employed on the same basis, a re-verification of the I-9 may be fulfilled by completing Section 3 of the I-9 form.
- If the original I-9 is more than three years old, a new I-9 must be completed.
- Original I-9 should only be re-verified once, do not keep making a copy of the original I-9 and reverifying. Use a new form.



Completing the I-9 (continued)

- Employee may provide the documents they choose from those listed on the most recent “Lists of Acceptable Documents.”
- **Employer CANNOT tell an employee what documents to present for I-9.**
- Employee must present original documents – photocopies not acceptable.
- Employer must physically examine the documentation.
- **Failure to complete I-9 correctly can lead to fines of \$110-\$1,100 per deficient I-9, plus additional fines if there is finding of “pattern and practice” of deficient I-9s.**



I-9 Acceptable Documents

- Employee **must** present either:
 - List A
 - One document from List A establishes both identity and employment eligibility


OR

- List B and C
 - One document from each list
 - List B document establishes identity
 - List C document establishes employment eligibility

LISTS OF ACCEPTABLE DOCUMENTS

| LIST A Documents that Establish Both Identity and Employment Eligibility | OR | LIST B Documents that Establish Identity | AND | LIST C Documents that Establish Employment Eligibility |
|--|---|--|-----|--|
| 1. U.S. Passport (unexpired or expired) | | 1. Driver's license or ID card issued by a state or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address | | 1. U.S. Social Security card issued by the Social Security Administration <i>(other than a card stating it is not valid for employment)</i> |
| 2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551) | | 2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address | | 2. Certification of Birth Abroad issued by the Department of State <i>(Form FS-545 or Form DS-1350)</i> |
| 3. An unexpired foreign passport with a temporary I-551 stamp | | 3. School ID card with a photograph | | 3. Original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal |
| 4. An unexpired Employment Authorization Document that contains a photograph (Form I-766, I-688, I-688A, I-688B) | | 4. Voter's registration card | | 4. Native American tribal document |
| | | 5. U.S. Military card or draft record | | 5. U.S. Citizen ID Card <i>(Form I-197)</i> |
| 5. An unexpired foreign passport with an unexpired Arrival-Departure Record, Form I-94, bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, if that status authorizes the alien to work for the employer | | 6. Military dependent's ID card | | 6. ID Card for use of Resident Citizen in the United States <i>(Form I-179)</i> |
| | | 7. U.S. Coast Guard Merchant Mariner Card | | |
| | | 8. Native American tribal document | | 7. Unexpired employment authorization document issued by DHS <i>(other than those listed under List A)</i> |
| | 9. Driver's license issued by a Canadian government authority | | | |
| | | For persons under age 18 who are unable to present a document listed above: | | |
| | | 10. School record or report card | | |
| | | 11. Clinic, doctor or hospital record | | |
| | | 12. Day-care or nursery school record | | |

Illustrations of many of these documents appear in Part 8 of the Handbook for Employers (M-274)



How do I know if a document is genuine or false?

- An employer is **NOT** required to know with absolute certainty whether a document is genuine or false.
- The law requires that an employer examine the original document (not a photocopy) and make a **good-faith** determination that the document:
 - Appears to relate to the employee;
 - Appears to be genuine;
 - Is included in the Lists of Acceptable Document on I-9
- Rejecting a document that later proves to be genuine could result in a violation of the anti-discrimination provisions of immigration law.



Revisions to I-9

- Reduced the number of documents employer may accept.
 - Five documents have been removed from List A
 - One document added to List A
- Employee is not obligated to provide his or her Social Security Number in Section 1 unless employer participates in E-Verify.
- Employers may now sign and retain I-9 electronically.
- Employers only need to complete new version of I-9 for new employees or for re-verification.



I-9 Employer Restrictions

- Employers CANNOT request more of different documents.
- Employers CANNOT specify which documents they will accept.
- Employers CANNOT refuse to honor documents that reasonably appear genuine on their face.
- Employers CANNOT refuse to accept a document or hire an individual because a document has a future expiration date.
- **TREAT ALL EMPLOYEES THE SAME WHEN COMPLETING THE I-9.**



Common I-9 Mistakes

- Incomplete
- Not dated
- Not timely (3-day violation)
- Not signed
- Not re-verified
- Tracking issues



I-9 Form Retention

- Keep I-9 for all current employees
- Keep I-9 for all terminated employees
 - the greater of:
 - 3 years after the date of hire OR
 - 1 year after the date employment ends, whichever is later.



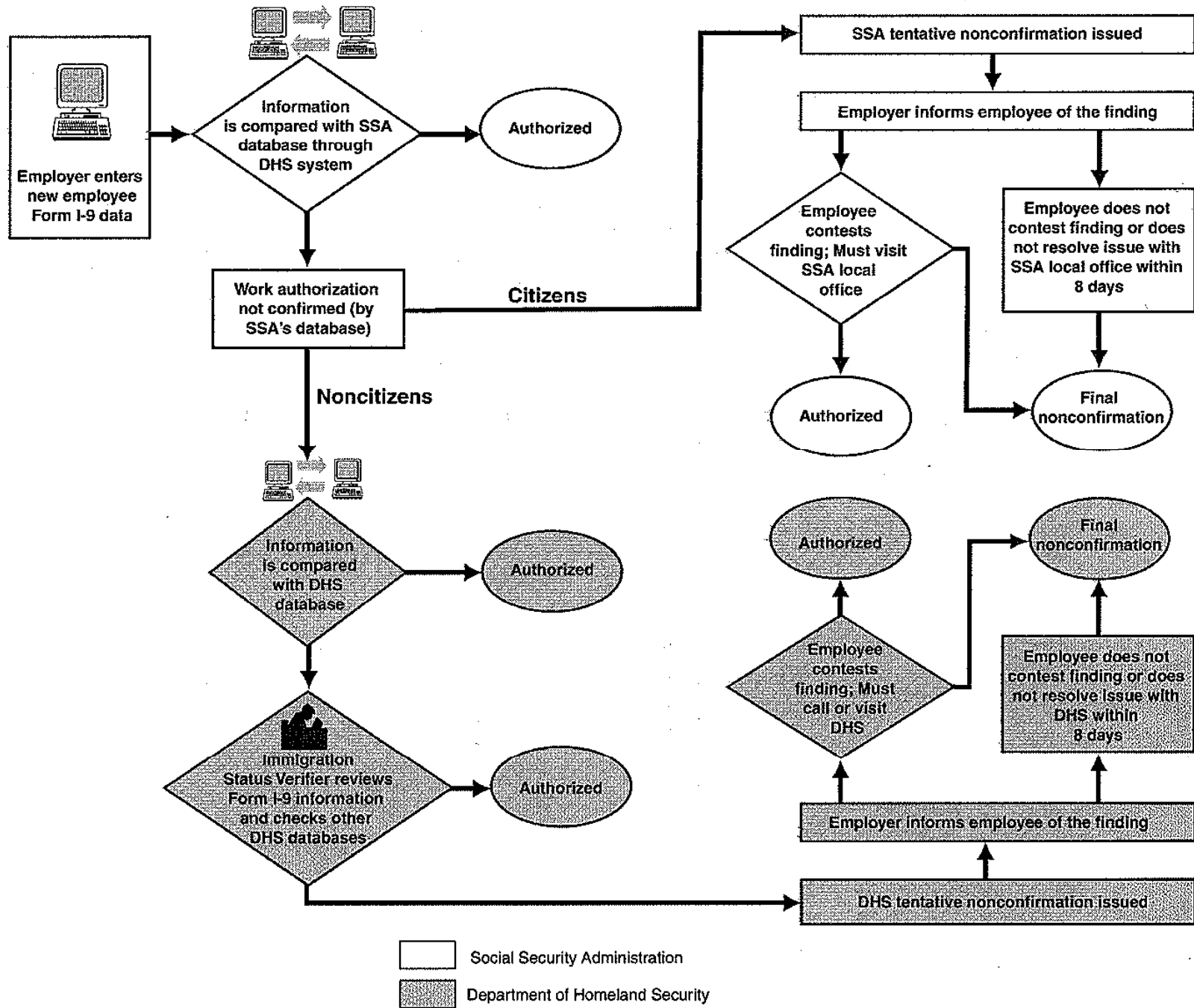
Storage of I-9s

- Paper or Electronic
- Should I put the I-9 in the employee's personnel file?
 - **NO!**



E-Verify

- Internet based system operated by DHS in partnership with the Social Security Administration.
- Allows participating employers to electronically verify the employment eligibility of their newly hired employees.
- Free and voluntary for private employers.
- As of June 9, 2008 – President Bush signed Executive Order 12989 - requires all federal contractors to use E-Verify.



Source: GAO analysis based on USCIS information.



E-Verify Process

- Employer fills out online form with new employee's name, date of birth and Social Security Number.
- Information checked against SSA database.
- If work authorization cannot be determined by SSA database, then data checked against DHS databases.
- If eligibility cannot be confirmed, E-Verify sends a “tentative nonconfirmation” status of the employer.
- A “final nonconfirmation” means the employee must be fired.
- Problems with “False Negatives” – workers eligible for employment were deemed ineligible.



Worksite Enforcement

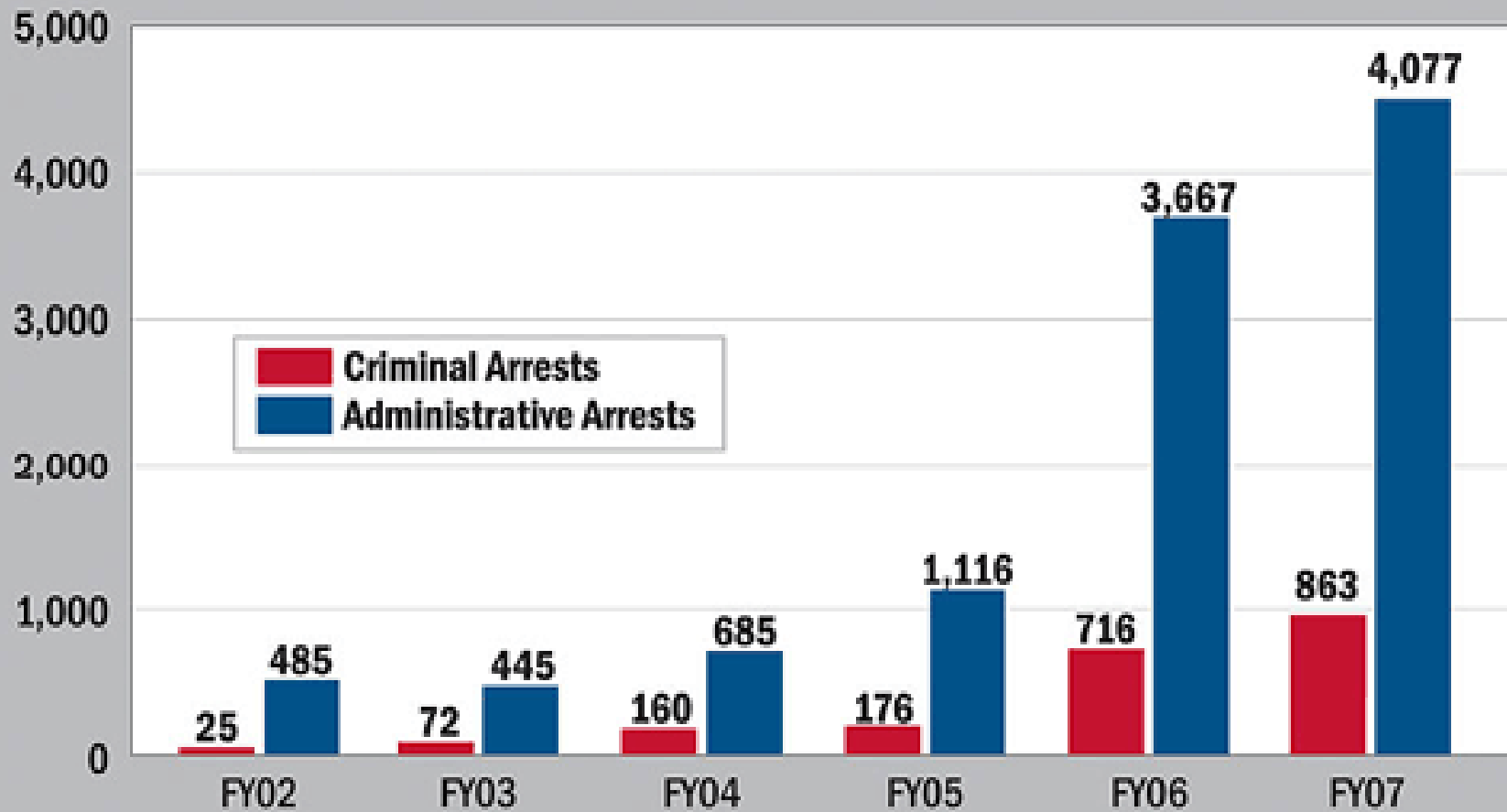
POLICE
ICE



U.S. Immigration and Customs Enforcement (ICE)

- Established in March of 2003.
- ICE is the largest investigative arm of DHS.
- ICE comprised of 5 integrated divisions.
- Since its creation in 2003, the agency has dramatically enhanced its efforts to combat illegal aliens unlawfully working in the U.S.
- ICE's efforts also prohibit employers from taking advantage of illegal workers.

Worksite Enforcement Arrests



Source: ICE Website



Recent Enforcement Actions

Action Rags USA

- Owner, managers and employees arrested.
- Charged with pattern and practice of hiring illegal aliens and knowingly accepting false documents as proof of citizenship.
- Employer did not complete I-9.
- Hired undocumented aliens and paid them in cash until they were able to purchase fraudulent identity and social security cards from local flea markets.
- Ice conducted undercover operation – person posing as a fraudulent documented alien told the employer she purchased her identification documents at a local flea market.
- The documents were accepted and the employer did not prepare an I-9 or W-4 form for tax withholding.



Recent Enforcement Actions

Aerospace Manufacturing Technologies, Inc.

- 32 employees arrested.
- Enforcement action began when ICE agents audited the employment records of employer.
- Audit revealed discrepancies leading agents to believe that a small percentage of the company's employees used counterfeit documents to secure their jobs.
- No evidence employer was aware arrested workers had used false credentials to secure their employment.



Immigration Legislation

- More and more states are tackling immigration related issues in the face of failed comprehensive federal immigration reform.
- More than 1,100 bills have been considered in 44 states as of March 31, 2008.
- State legislation addresses both enforcement and integration issues.
- Top 3 areas of interest:
 - Law enforcement
 - Employment
 - Identification Document

Source NCSL Immigrant Policy Project



Alabama Legislation

- Alabama considered a High Activity State – more than 21 pieces of legislation introduced in 2008 – including employment bill
- The Alabama Taxpayer and Citizen Protection Act of 2008 was introduced during the last session – **did not pass**
 - sponsored by Sen. Scott Beason, R-Gardendale, co-sponsored by 25 senators
 - Modeled after the Oklahoma Taxpayer and Citizen Protection Act of 2007 – passed in April of 2007
 - Would prohibit employers from hiring anyone who does not produce one of three state-issued IDs
 - Create an Alabama Verified Employee Identification Card
 - Alabama Driver's License
 - Non-Drive Alabama Identification Card
 - For every employee lacking one of the forms of identification, employers would be fined \$500 on the first charge, \$5,000 on the second and employer would have business license revoked on third violation in one year



Other State Legislation

- Georgia – April of 2006
- Oklahoma – April of 2007
- Mississippi – March of 2008
- South Carolina – June 4, 2008
- Require use of the E-Verify system
- Also may be interpreted as creating a private cause of action for discrimination, by which an employee can sue his employer if he believes he was discharged while the employer retained an unauthorized worker in a job category involving similar skill, responsibility, and working conditions.



Employment Background Checks

- Common term used to describe any one of a combination of reports collected about individuals for employment purposes.
- Can be completed on:
 - New hire
 - Current Employee
 - Independent Contractor
- Credit history
- Past employment
- Professional licenses
- Criminal Records
- Education
- Workers' comp
- Driving Records
- References
- Medical History



Laws Covering Background Checks

- Federal Fair Credit Reporting Act
- Family Education Rights and Privacy Act
- Americans with Disabilities Act
- Title VII of the Civil Rights Act of 1964
- Age Discrimination in Employment Act of 1965



Employer Obligations

- Get written permission from the individual for the background check.
- Get permission on a separate document.
- Get special permission if medical information is requested.
- Give notice and copy of the report before an adverse employment decision is made.
 - If credit report is even one of the factors used to make an employment decision
- Employee has right to access to screening company's records.
- Properly dispose of background check information derived from consumer reports.
 - Can't just throw into trash
 - Must Shred or otherwise destroy so that information cannot be reconstructed.



Why Hire an Employment Screening Company

- Guide you through the background check process
- Meet legal obligations
- Completeness



Other Background Sources

- Public Records
- Google
- MSN
- Yahoo
- MySpace
- Facebook



Websites of Interest

- US Dept. of Labor (FMLA): www.dol.gov
- USCIS: www.uscis.gov
- ICE: www.ice.gov
- DHS: www.dhs.gov
- Federal Trade Commission: www.ftc.gov
- Alabama State Legislature: www.legislature.state.al.us
- Alabama Dept. of Labor: www.alalabor.state.al.us