



New Hiring Hassles

by Jeffrey G. Gilmore and Karen E. Harrison

The Immigration Reform and Control Act of 1986 has implications for all employers. The Act was signed by President Reagan on November 6, 1986, as a result of Congress's ongoing effort to address the problem of illegal aliens in the United States. At first glance, many people will consider the Act a legal matter that concerns only the southwestern U.S. However, the Act has nationwide implications and applies to all employers, whether or not they employ aliens.

Traditionally, it was illegal only for the *alien*, legal or illegal, to seek or obtain unauthorized employment while in the U.S. The new act subjects the *employer* to penalties as well.

It is now illegal to hire or recruit individuals known to be unauthorized aliens. Furthermore, all employers must comply with certain verification requirements. An unauthorized alien is generally defined as an alien who

employment in the U.S.

Employment authorization alone can be established by a social-security card, a U.S. birth certificate, or other documentation that the Attorney General finds acceptable. Identity alone can be established with a state driver's license or other state identification document that the Attorney General finds acceptable.

Failure to Comply

Employers who knowingly hire or recruit unauthorized aliens are subject to a variety of penalties. These include fines ranging from \$250 for a first offense to \$10,000 for a third offense. Furthermore, employers who consistently violate the law are subject to criminal penalties including fines and imprisonment. Compliance is gauged on whether the employer has followed the examination requirements of the Act—if the employer, in other words, has determined that, on their face, the

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has not been lawfully admitted to this country for permanent residence, or authorized by the Immigration and Nationality Act to both enter and work in the U.S.

Verification Requirements

Under the Act, all employers hiring or recruiting individuals for employment in the U.S. must attest, under penalty of perjury, that certain verification procedures have been followed. This requirement applies not only to alien employment applications, but to all other individuals—including U.S. citizens. Although the regulations are not final, the Act does prescribe that every job applicant hired after November 6, 1986, is subject to verification. The employer must complete and retain Form I-9, entitled "Employment Eligibility Certification."

Employers will be required to retain the Form I-9 and make it available for inspection by the Immigration and Naturalization Service or the Department of Labor for a period of three years, or one year after the date the employee leaves, whichever is later.

The Act prescribes the documents that can be used to verify employment authorization and identity, including a U.S. passport, a certificate of citizenship or naturalization, or certain resident-alien or registration cards. An unexpired foreign passport may be used if the Attorney General or the Immigration and Naturalization Service authorized the individual's

verification documents appear to be genuine.

Although the effective date of the Act was November 6, 1986, the legislation allows a period of "public education and adjustment." Until May 31, 1987, no action will be taken for violating the Act. From that date through May 31 of 1988, citations can be issued by the Attorney General. After May 31, 1988, the full range of employer sanctions will become fully effective—and will be enforced.

Obviously, the requirements of the Act will create new personnel procedures for all employers. These will no doubt add paperwork for contractors and other employers engaged in labor-intensive industries. Nonetheless, failure to comply—whether you employ aliens or U.S. citizens—will make you potentially liable for serious penalties.

Current hiring practices should be reviewed and modified to include (a) completion of the Employment Eligibility Certification form; (b) procedures to verify employment authorization; (c) procedures to verify identity; and (d) a system for maintaining records for the period prescribed by the Act. ■

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