

Business Immigration Weekly for the Week of 6-19-13

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Sharing of I-9s with third-parties

On May 30, 2013, Seema Nanda, Deputy Special Counsel, Office of Special Counsel (OSC), issued a Technical Assistance Letter advising against employer practices that share I-9 forms with outside vendors that perform payroll services and verify identity of employees.

Pursuant to 8 U.S.C. § 1324a(b)(5) and immigration regulations, Forms 1-9 "may not be used for purposes other than for enforcement of [the Immigration and Nationality Act and certain provisions of federal criminal law]." According to the OSC, providing the Form 1-9 to a third-party in order to have that entity verify the employee's identity for payroll purposes is not a use related to enforcement of the INA, or one of the specified criminal laws, as set forth in the statute and accompanying regulations. The OSC warned that this practice may result in the third party vendor questioning the sufficiency of documents presented to the employer, which documents the vendor would have not seen in their original form. To the extent the employer requests additional or different documents from an employee based on the vendor's scrutiny of Forms 1-9, the request could be perceived by the employee to constitute document abuse in violation of the antidiscrimination provision of the Immigration and Nationality Act (INA).

Furthermore, E-Verify employers that may be printing the E-Verify results screen and attaching the print-out to its employees' Forms 1-9, have additional considerations. Under the E-Verify Memorandum of Understanding (MOU), an employer must use the information it receives from SSA or DHS pursuant to E-Verify and the MOU only to confirm the employment eligibility of employees as authorized by the MOU. An employer is required to ensure that the information is not disseminated to any person other than authorized employees. Additionally, the E-Verify MOU states that information which the employer receives from the SSA is governed by both the Privacy Act and the Social Security Act, and that misuse of the information may result in criminal penalties.