What to do if you learn an employee provided false information to you when completing the I-9 form

All new hires are required to complete an I-9 form at the commencement of employment. Section 1 of the I-9 form is to be completed on the day an employee begins work. Unless a new hire will be working for less than three days, Section 2 of the I-9 form must be completed within three days of the day of hire.

Section 2 of the I-9 form requires the employee to present to the employer original documents that establish identity and employment authorization. Some documents establish identity and employment authorization (List A documents); other documents establish identity only (List B documents); and other documents establish only employment authorization (List C documents). In certain instances, an employee may use receipts in lieu of original documents. For example, if an individual’s document has been lost, stolen or damaged, he or she can present a receipt for the application for a replacement document. The replacement document must be presented to the employer within 90 days of hire.

Employers are obligated to examine the document or documents provided by employees to establish identity and employment authorization. The law requires employers to accept the documents presented if the documents appear reasonably genuine on their face, the documents relate to the person presenting them and the documents are included in the lists of acceptable documents on the I-9 form. An employer who rejects acceptable documents produced by that appear reasonably genuine on their face and relate to the person providing them commits an

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unfair immigration-related employment practice.

A document produced by an employee to establish identity, work authorization or both may appear to the employer as reasonably genuine on its face and related to the person presenting it even though the document is false. The law is clear that employers are not required to be document experts, and employers are not required to know with absolute certainty whether a document is genuine or false. It may happen that an employer will accept a document that is not in fact genuine or the employer later learns the document does not belong to the person who presented it. Employers who accept false documents will not be held responsible or be subjected to penalties if the documents reasonably appeared to be genuine and related to the person presenting it. However, if after employment commences, the employer learns the documents produced by an employee during the I-9 process were false, the employer should question the employee and provide another opportunity for the employee to produce proper documentation. If the employee is unable under such circumstances to provide satisfactory documentation, employment should be terminated. If satisfactory documentation is produced, the relevant information should be promptly corrected on the I-9 form.

The situation does not change if the employer learns from the employee that the documents originally presented when completing the I-9 form were false. Often, particularly in the roofing industry, an employee will present false documents at the commencement of employment while, at the same time, they are in the process of obtaining legitimate employment authorization documents. Only when the legitimate employment authorization documents are obtained does the employee report back to the employer to advise that, while the original documents were false, legitimate documents have since been obtained. In this instance, U.S.

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immigration law does not require the employer to terminate the employee’s services. Indeed, if the new documents being presented by the employee appear reasonably genuine on their face and relate to the employee presenting them, the employer must accept the documents. The I-9 form should be corrected to reflect the correct information. Any corrections should be initialed and dated.

Simply because the immigration laws require employers to accept the new documentation does not mean employers are left without recourse when dealing with an employee who knowingly presented false information. An employer’s personnel policies regarding providing false information to the company may provide the basis for disciplining the employee including but not limited to termination. If an employer does not have a written policy addressing false information provided to the company and the employer proceeds to discipline or terminate an employee for providing false information, the employer runs the risk of being the subject of a discrimination claim. If a company does have a written policy, be it should be followed when administering disciplinary action against the employee.

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