

RECRUITMENT: OPTIONS & REQUIREMENTS FOR HIRING NON-U.S. CITIZENS

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Introduction

- ▣ Presentation has a narrow focus – provide the tools to identify issues so you can ask the right questions when it comes to recruitment of non-U.S. citizens
- ▣ 2 goals:
 - Keep the company out of trouble
 - Be able to recruit and retain the best possible candidate, regardless of whether he or she is a non-U.S. citizen

Most common types of immigration status HR personnel will encounter



Employment-based immigration alternatives that require company sponsorship

- ▣ Provide ability to work, but each have some limitations
- ▣ **H-1B**
 - May cost several thousand dollars
 - Initial 3 year approval, extend up to 6 years
- ▣ **L-1**
 - May cost several thousand dollars
 - Initial 3 year approval, extend up to 5 or 7 years
- ▣ **Permanent residency (“green card”)**
 - Lengthy process
 - May cost several thousand dollars

Employment-based immigration alternatives that do not require company sponsorship

- ▣ May be preferred because company does not need to sponsor immediately, but still has some limitations
- ▣ F-1 / Optional Practice Training (“OPT”)
 - Recent graduate from U.S. university
 - Employment authorization limited to either 1 year or 3 years depending on the field
- ▣ Employment Authorization Document (“EAD”)
 - Pending application for permanent residency
 - Status dependent on spouse (H-4; L-2)
 - Lose status if spouse’s employment terminates or gets divorced

Best practices

- ▣ Have a basic knowledge of the different types of immigration alternatives
 - Be able to converse with non-U.S. citizen applicants and understand their limitations
 - Be able to explain possible options to department heads who may want to hire non-U.S. citizen
- ▣ Develop a “docketing” or “tickler” system for any non-U.S. citizen
 - List of all non-U.S. citizen employees – important for merger/acquisition
 - Track expiration dates and renewal deadlines

Obligations to verify identity and employment authorization of each worker upon hiring



General obligations

- ▣ Worker verification requirements apply equally to all employees, whether they are U.S. citizens or not
- ▣ Shift of responsibility to prevent unauthorized employment from government to private employers
- ▣ Overall goal of worker verification scheme was to discourage illegal immigration to the U.S. by making it more difficult to secure employment
- ▣ At same time, government wanted to prevent companies from discriminating based on national origin

I-9 Requirements

- ▣ Complete Form I-9 within 3 days of hire
- ▣ Employer must review original documents
 - Does photo identification reasonably appear to be of the person?
 - Does employment authorization document reasonably appear to be valid?
 - Follow company policy for maintaining copies of supporting documents
- ▣ Maintain I-9 form for specified period of time

Potential penalties for worker verification violations

- ▣ Technical Violations
 - “Paperwork” violations
 - “Timeliness” violations
- ▣ Procedural Violations
 - Failing to complete or maintain form
 - Failing to review correct supporting documents
 - Employing workers who are not authorized to work in the U.S.

Civil Penalties

	First Offense (min./max.) - per worker	Second Offense (min./max.) - per worker	Third Offense (min./max.) - per worker
Hiring or continuing to employ a person knowing that the person is not authorized to work	\$375 / \$3,200	\$3,200 / \$6,500	\$4,300 / \$16,000
Failing to comply with I-9 requirements	\$110 / \$1,100	\$110 / \$1,100	\$110 / \$1,100
Participating in document fraud	\$375 / \$3,200	\$3,200 / \$6,500	\$3,200 / \$6,500
Committing document abuse	\$110 / \$1,100	\$110 / \$1,100	\$110 / \$1,100
Committing unlawful discrimination against an individual who is employment authorized	\$375 / \$3,200	\$3,200 / \$6,500	\$4,300 / \$16,000
Requiring an indemnity bond to employ a worker (to guarantee worker is employment authorized)	Full refund + \$1,100	Full refund + \$1,100	Full refund + \$1,100

Criminal Penalties

- ▣ For engaging in a “pattern or practice” of employing unauthorized workers
- ▣ Up to \$3,000 per worker
- ▣ Up to 6 months in prison
- ▣ Applies to anyone at the company involved in the practice, including HR personnel



Best practices

- ▣ Dedicated employee who receives regular training to complete verification
- ▣ Centralized records
- ▣ Consistent policy on maintaining documentation
- ▣ Regular self-audits
 - Internal
 - Hire outside counsel

Self-Audit

- ▣ What are you looking for?
 - Are forms completed and maintained for all workers?
 - Is any information missing or recorded incorrectly?
 - Is policy for whether to maintain copies of supporting documents applied consistently?
 - Are any workers “overdocumented”?
- ▣ Take corrective action, if possible
 - Correct forms
 - Terminate workers, if necessary

Anti-discrimination provisions of worker verification requirements



Employer's obligations

- ▣ Must be sure all employers are authorized to work in U.S., but may not discriminate against someone who is work authorized
- ▣ May have policy against sponsoring workers for immigration status, so long as applied across the board
- ▣ HR must understand policy, and when exceptions can be made

Common violations of anti-discrimination provisions

- ▣ Requiring or maintaining copies of I-9 supporting documents only if non-U.S. citizen
- ▣ Requiring or maintaining copies of I-9 supporting documents only if “look” or “sound” like a non-U.S. citizen
- ▣ Requiring worker to present specific documents for identity or employment authorization
- ▣ Requiring documents to be presented prior to job offer

Acceptable documents

- ▣ Must allow worker to select which documents to present
- ▣ Must appear valid on its face – do not need to be immigration or document experts
 - If appear valid, must accept it
 - Cannot request additional or different documents be presented instead
- ▣ 1 document from “List A” or 1 document from “List B” + 1 document from “List C”
- ▣ See M-274, Handbook for Employers (www.uscis.gov)

Why do companies hire non-U.S. citizens?



Benefits to foreign workforce

- Increasing global economy and increasing access to other countries through e-commerce
- If want to compete, must have competitive edge in outside markets
- Need to understand other cultures and other business environments
- Foreign workers bring different perspective and thought process
- U.S. universities have increasing enrollment by foreign students
- Companies looking for the best workers should not limit themselves

Conclusion

HR professionals wear multiple hats:

- ▣ Find the best candidates and comply with all legal requirements with respect to recruiting and hiring
- ▣ Understand and have working knowledge of the opportunities and restrictions associated with recruiting and employing non-U.S. citizens – in case they are the best candidate
- ▣ With the tools provided today, hope we helped you accomplish both goals



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