



# Immigration Law for Employers and Businesses

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# Overview of Topics

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- Immigration Concepts and Terminology
- Visa Classifications for Employees
- Legal Arizona Workers Act
- I-9 forms and E-Verify: Employer Best Practices
- Proposed Arizona Immigration Legislation
- How does SB 1070 affect Employers?

# Immigration Terminology

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- **Visa:** A document issued by the Department of State (DOS) through a US Embassy or Consular post outside the US and placed in a foreign national's passport
- **Status:** An immigrant or non-immigrant classification given by the Department of Homeland Security (DHS) at the time of entry as evidenced by an I-94 card or similar document



# I-94 Card

Departure Number	OMB No. 1651-0111	
b2b633123 12		
<b>I-94 Departure Record</b>		
		
14. Family Name	SAMPLE	
15. First (Given) Name	16. Birth Date (Day/Mo/Yr)	
JANE	23 03 68	
17. Country of Citizenship	NEW ZEALAND	
See Other Side	CBP Form I-94 (10/04) <b>STAPLE HERE</b>	

# Immigration Classifications

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- **US Citizen:**
  - Native born
  - Naturalized
- **Immigrant:**
  - Legal Permanent Resident (“LPR” or “green card”)
- **Non-immigrant:**
  - Work status (e.g. H-1B, L-1, TN, etc)
  - Non-work status (e.g. B-1/B-2 visitor)

# “Immigrant” Work Authorization

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- **LPR:**

- Legal Permanent Resident (green card holder)
- Conditional Legal Permanent Resident

- Unlimited, unrestricted work authorization

- Card expires every 10 years, but LPR status does not expire



# Permanent Resident Card



# Common “Non-Immigrant” Employment Classifications

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- **H-1B:** specialty occupation (professional)
- **L-1:** intracompany transferee
- **TN:** specific occupations under NAFTA
- **OPT:** optional practical training for students
- **H-2A:** agricultural worker
- **H-2B:** non-agricultural essential worker

# Other Work Authorization Documents

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- Employment Authorization Document (EAD)
  - Issued while LPR case is pending
  - Sometimes used for cases other than pending LPR, such as OPT, or L-2 dependent, or applicant for relief from removal or deportation
- I-94 Card (e.g. refugee or asylee)
- I-797 Approval Notice (with attached I-94 card)

# Employment Authorization Card



# Permanent Residency Investment Visa

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- **EB-5 “Employment Creation” visa**
  - Invest \$1MM or \$500k in a Targeted Employment Area (TEA)
  - Create 10 jobs for US workers
  - Conditional status removed after 2 years
  
- **Regional Centers**
  - Pre-approved TEA for \$500k investment
  - Pooled investments and streamlined process
  - “Multiplier” economic study to demonstrate “indirect” and “induced” employment creation

# Legal Arizona Workers Act (HB 2779) “LAWA”

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- Effective January 1, 2008
- Penalties include suspension and permanent termination of license to do business in Arizona (business death penalty)
- Requires all Arizona employers to use E-Verify
- US Supreme Court is reviewing Ninth Circuit Court of Appeal’s decision upholding the District Court’s finding that LAWA is constitutional
- Incorporates the federal definition of a “knowing” hire of an undocumented worker, including “constructive knowledge”

# What is E-Verify?

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- A free, voluntary federal government internet-based program that employers use to confirm the legal status of newly hired employees
- Requires written Memorandum of Understanding (MOU) to which employer, DHS and SSA are parties
- Register for E-Verify at <https://www.vis-dhs.com/EmployerRegistration>

# Broad Definition of “License”

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- “License” includes articles of incorporation, transaction privilege tax license and other business-related licenses issued by any state or local governmental entity.
- “License” does not include professional licenses, i.e. medical or law, and does not include licenses issued to waste water treatment plants or certain environmental licenses.

# LAWA amendment provides **location-specific** license suspension and revocation

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- Prior to amendment, LAWA required suspension or revocation of all licenses regardless of the number of employer locations or worksites
- HB 2745 provides for the loss only of licenses “specific to the business location where the unauthorized alien performed work”
- However, if there is no license specific to the offending business location or worksite, “all licenses that are held by the employer at the employer’s primary place of business” are subject to suspension or revocation

# Arizona Government Contractors Must Use E-Verify

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After September 30, 2008, an Arizona government entity . . .

- Shall not award a contract to any contractor or subcontractor that fails to comply with E-Verify;
- Shall insure that every government entity contractor and subcontractor complies with federal immigration laws and regulations that relate to their employees; and
- Shall require that every government entity contract includes language attesting to such compliance.

# Contract Language

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Every government contract must include language warranting that the contractor and subcontractor are in compliance with E-Verify and with all federal immigration laws and regulations that relate to their employees and that a breach of that warranty shall be deemed a material breach of the contract subject to penalties up to and including termination of the contract.

# Government Inspection of Contractor Documents

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The LAWA amendments purport to give **each Arizona government entity** the legal right “to inspect the papers of **any contractor or subcontractor employee** who works on the contract to insure that the contractor or subcontractor is complying with [its] warranty . . .”

# Random Verification of Employment Records

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The LAWA amendments **require every government entity** that enters into a contract to establish procedures to conduct “**random verification of the employment records**” of that entity’s **contractors and subcontractors** to insure compliance with their warranties.

# Federal Contractors

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- All federal contractors must use E-Verify
- Federal contracts now require E-Verification of **ALL** employees who work on the contract, even if they were hired prior to the date the employer began using E-Verify
- This is a major change from the previous rule that E-Verify can only be used prospectively to verify new hires

# Good Faith Attempt to Comply

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The 2008 LAW A amendment adds an affirmative defense for a “good faith attempt to comply” with work authorization verification regulations, notwithstanding “an isolated, sporadic or accidental technical or procedural failure to meet the requirements.”

Employers should implement a **written Immigration Compliance Plan** and provide recurrent I-9 and E-Verify training to take advantage of this defense.

# Comprehensive Immigration Compliance Plan

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- Company guidelines for proper completion of I-9 forms
- Recurrent training of all employees who view eligibility documentation and complete I-9 forms
- Periodic I-9 internal audits
- Training of all foreman, supervisors, managers, and others in positions of authority with regard to “constructive knowledge” and “imputed knowledge”
- Establish and implement a proper “document retention” policy and procedure
- Develop and implement a re-verification procedure for I-9s that must be re-verified at some time after hire

# Contract Language and Monitoring of All Contractors

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- Contractor warrants that it fully complies with all federal and state statutes and regulations regarding employment eligibility verification and employment of work-authorized individuals.
- Contractor agrees to obtain from each of its employees all verification and other documentation of employment eligibility status required by federal and state statutes and regulations.
- Contractor agrees to retain all documentation for covered employees for the period prescribed by law.
- Contractor agrees to indemnify, defend and hold the company including its agents, officers and employees harmless from employer sanctions and any other liability which may be assessed against the contractor or the company or any of its clients or customers.
- The company reserves the right to terminate its agreement with any contractor failing to comply with these requirements.

# Form I-9 Compliance: Best Practices

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Make sure you have the most recent versions of the I-9 form and the Handbook for Employers

- I-9 Form dated August 7, 2009 is the most recent.
- Most recent revision of the form M-274 Handbook for Employers is January 5, 2011
- Both forms can be downloaded at [www.uscis.gov](http://www.uscis.gov)

# Be Careful if Your Employee is a Refugee or Asylee

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- Refugees and asylees no longer are required to produce an Employment Authorization Document (EAD)
- Refugees and asylees have automatic work authorization based upon their status and need only show proof of having been granted that status
- You should err on the side of accepting a Form I-94 for refugee or asylee, an approval letter from the Asylum Office, or written decision of an Immigration Judge

# Social Security Cards

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- A social security card bearing a legend that states “valid for work only with DHS authorization” or a similar legend does not constitute a proper and acceptable “List C” document
- Check the social security card to see whether it states that it is not valid if laminated

# Receipt Rule

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- A receipt notice is an acceptable document for up to 90 days if it is for replacement of a lost, stolen or mutilated document
- A receipt for an application for extension of an EAD card is not an acceptable receipt
- There is a special regulatory receipt rule for H-1B and L-1 extensions

# Document Retention Rule

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- Form I-9 must be completed for all new hires including temporary and part-time employees
- Employer must maintain I-9 for three years from the date of hire or one year from the date of termination, whichever is later
- Employer must have an I-9 Form for each employee hired on or after November 6, 1986

# Reverification Rule

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- Employer should reverify only those employees who check the last box in Section 1 of the I-9 Form for “work authorization”
- Do not reverify legal permanent residents or “green card” holders

# Form I-9 Corrections

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- Only the employee may make corrections or additions to Section 1 of the I-9 Form
- Only the employer may make corrections or additions to Section 2 of the I-9 Form
- All corrections must be initialed and dated
- Do not use white-out

# Proposed Arizona Immigration Legislation Not Passed into Law

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- SB 1405:

- Would require hospitals to check the legal status of an uninsured patient, and notify law enforcement if patient cannot prove status

- SB 1611:

- Would require K-12 public and private schools to check legal status and notify law enforcement if student cannot prove status
- Bans undocumented persons from public housing

# HB 2102: Licensing Eligibility

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- To obtain any state or local license, individual must first provide documentation of US citizenship or authorized presence
- Applies all types of licenses including:
  - Real estate agents
  - Cosmetologists
  - Teachers
  - Restaurant employees (food handlers)

# HB 2102: Licensing Eligibility

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- Takes effect July 20, 2011
- Business community says:
  - Solution in search of a problem
  - Prevents online licensing, e.g. food service card
  - Duplicates E-Verify

# Arizona's SB 1070 Immigration Law

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- SB 1070, amended by SB 2162
- Part of SB 1070 took effect on July 29, 2010; Judge Bolton issued a preliminary injunction blocking the most contentious provisions and Ninth Circuit Court of Appeals affirmed Judge Bolton's decision
- A number of states are considering or have adopted similar legislation

# Preliminary Injunction blocks four provisions of SB 1070

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- Requiring an officer with reasonable suspicion of unlawful status to verify immigration status of a person stopped, detained or arrested prior to release
- Creating a crime for failure to apply for or carry alien registration papers
- Creating a crime for an unauthorized alien to solicit, apply for, or perform work
- Authorizing warrantless arrest if probable cause to believe person committed a public offense that makes the person removable from US

# Special Circumstances

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- Non-citizens whose B-1/B-2, H-1B, L-1A, or TN non-immigrant status has expired, but who have timely-filed extensions pending, are “lawfully present.”
- Such persons should carry the expired status document, a letter from an immigration attorney citing the relevant extension statute, and a receipt notice or other proof of timely filing of the extension request.

# E-Verify Confirmation Retention

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- Arizona employers “shall keep a record of the [E-Verify] verification for the duration of the employee’s employment or at least three years, whichever is longer.”
- Language appears to be an attempt to mirror the federal rule regarding I-9 retention.
- Best practice to insure compliance with both state and federal rules: Retain a copy of the E-Verify confirmation with the I-9 form until such time as the I-9 form may be destroyed under the federal rule.
- Federal rule permits destruction of I-9 and supporting documents three years from the date of hire or one year from the date of termination, whichever occurs later.

# Employer Criminal Liability

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- Class 1 misdemeanor for any person who transports, conceals, harbors, shields or attempts any of these actions with regard to an unauthorized alien, if the person “knows or recklessly disregards” the fact that the alien is unauthorized
- Increases to Class 6 felony if ten or more unauthorized aliens
- Statute expressly states that scope includes “any building” or “any means of transportation”

# Employer Risk Management

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- Employers should protect from “knowledge or reckless disregard” of employees’ unauthorized status by:
  - Periodic I-9 audits by immigration law firm
  - E-Verify compliance reviews by immigration law firm
  - Recurrent I-9 compliance training by immigration law firm



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