
Information contained in Form I-9s used to verify employees' work authorization may now be used in state criminal prosecutions for identity theft.

Analysis:

- This ruling does not change an employer’s legal obligations, but may indirectly affect employers in construction, hospitality and agriculture, especially in states where local officials share information with federal immigration authorities (such as Arizona).
- I-9 audits have increased significantly.
- Implication for Employers: Potential increase in government requests to employers for worker records, so ensure your records are in order; know when to provide employee records and when not to provide them.

Compliance:

- Responding to Record Requests: Have policies in place for responding to requests for workers’ documents, including those from ICE or other government agencies.
  - Informal request (via email or telephone) - significant risk of violating privacy protections.
  - Formal notice or subpoena.
- Avoiding Discrimination Fines/Penalties: Employers may only use I-9s to verify an employee’s identity and work authorization.
  - Employers’ cannot ask for additional documents other than those required by law.