

## Department of Justice (DOJ) Tells Employers Not To Use Forensics to Complete/Audit I-9s

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The Office of the Special Counsel (OSC) for **Immigration-Related Unfair Employment Practices** is warning employers not to use forensic tools or techniques to assess the validity of any document presented for identification and employment authorization, or apply a different level of scrutiny based on the type of document presented by the employee or the citizenship status or national origin of the employee when completing the Form I-9 or in the course of an internal compliance audit of I-9s.

The warning appeared in a general guidance letter, dated December 30, 2013, from Alberto Ruisanchez, Acting Deputy Special Counsel, OSC, Civil Rights Division of the United States Department of Justice, answering an inquiry whether an employer conducting an internal I-9 audit may ask an employee to produce employment eligibility documentation at the time the Form I-9 was completed where copies of the documentation are “unclear and prevent forensic evaluation of their genuineness.”

OSC stated that voluntary internal audits should not be conducted because of lingering doubts concerning employees’ true citizenship status or national origin, or in retaliation for employees’ exercising their rights under the Unfair Immigration-Related Employment Practices provision of the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1324b. Prohibited practices include unfair documentary practices commonly referred to as “document abuse.”

OSC advised employers that the standard for reviewing Form I-9 documentation in an internal audit should be the same as in reviewing documentation during the initial employment eligibility verification process. An employer is required to accept Form I-9 documentation that reasonably appears to be genuine and to relate to the individual presenting them.

As to the specific question presented by the employer, Mr. Ruisanchez stated that an employer should not request to see I-9 documents originally presented or alternative documents solely because the photocopies that were previously made were unclear or because documents originally presented were not photocopied. Likewise, an employer should not conclude, based solely upon the illegibility of the photocopies that such documentation was not genuine or did not relate to the individual.

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