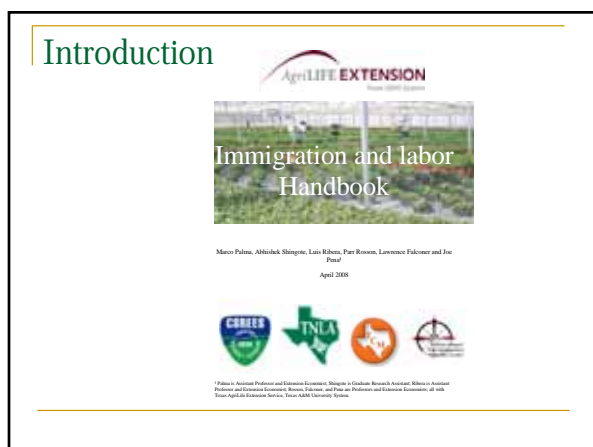




- ## Presentation Outline
- Introduction
 - Immigration Reform and Control Act 1986 (IRCA)
 - Verifying Employment Eligibility I-9
 - Social Security No-Match Letters
 - H2-A Program
 - What is in the Immigration and Labor Handbook



- ## IRCA 1986
- The Immigration Reform and Control Act of 1986 (IRCA) seeks to control illegal immigration by eliminating employment opportunity as an incentive for unauthorized persons to come to the United States
 - Prohibits the hiring or continued employment of aliens whom employers know are unauthorized to work in the United States.

- ## IRCA 1986 - Provisions
- Authorized legalization (i.e., temporary and then permanent resident status) for aliens who had resided in the United States in an unlawful status since January 1, 1982
 - Created sanctions prohibiting employers from knowingly hiring, recruiting, or referring for a fee aliens not authorized to work in the US
 - Increased enforcement at U.S. borders
 - Created a new classification of seasonal agricultural worker and provisions for the legalization of certain such workers
 - Others

- ## IRCA 1986
- To comply with the law, **all U.S. employers** must verify the employment eligibility and identity of all employees hired to work in the United States **after November 6, 1986** by completing Employment Eligibility Verification forms (Forms I-9) for all employees, including U.S. citizens.
 - Employers who hire or continue to employ individuals knowing that they are not authorized to be employed in the United States may face civil and criminal penalties.

Verify Employment Eligibility Form I-9

Why? – Purpose:

- Employment attracts individuals to reside in the US illegally
- The purpose is to remove this magnet, by requiring employers to hire legal workers:
 - Citizens and Nationals of the US
 - Lawful Permanent Residents
 - Aliens authorized to work

Verify Employment Eligibility Form I-9

To Comply with the law, you MUST:

- Verify the identity and employment eligibility of each person you hire
- Complete and retain a Form I-9 for each employee; and
- Refrain from discriminating against individuals on the basis of national origin or citizenship

Verify Employment Eligibility Form I-9

The law requires you as an employer to:

1. Ensure that your employees fill out Section 1 of the Form I-9 when they start to work
2. Review document (s) establishing each employee's identity and eligibility to work
3. Properly complete Section 2 of the Form I-9

Verify Employment Eligibility Form I-9

The law requires you as an employer to:

4. Retain the Form I-9 for 3 years after the date the person begins work or 1 year after the person's employment is terminated, whichever is later
5. Upon request, provide Form I-9 to authorized officers of the DHS, the USDOL, or the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) for inspection.

Verify Employment Eligibility Form I-9

This requirements apply to all employers, including:

- Agricultural associations, agricultural employers or farm labor contractors who employ, recruit or refer people for a fee; and
- Those who employ anyone for domestic work in their private home on a regular basis (such as every week).

Verify Employment Eligibility Form I-9

You DO NOT need to complete an I-9 for persons:

- Hired before November 7, 1986, who are continuing in their employment
- Employed for casual domestic work in a private home on a sporadic, irregular, or intermittent basis
- Independent contractors; or
- Providing labor to you who are employed by a contractor providing contract services (e.g., employee leasing or temporary agencies)

DO NOT

- Treat employees differently because they look or sound like foreigners
- Require specific documents for verification
- Refuse to accept a valid work authorization with a future expiration date
- Refuse to accept a document because you are unfamiliar with it
- Have a US citizens only policy
- Demand that applicant speak only English on the job

No Match Letters (NML)

- A letter issued by the SSA that notifies of a “No-Match” of the names or SSNs listed on an employer’s form W-2 and the SSA records
- In June 2006, DHS issued a regulation requiring employers to take certain actions upon receipt of a NML
- Final rule in August, 2007 – challenged in a Federal Court prior to taking place (Sep, 2007)
- New rule, March 2008

Employers who fail to comply with the new rule could be considered as knowingly hiring an illegal worker and could face fines up to \$10,000/worker&incident

No Match Letters (NML)

SSA sends 3 types of No-Match letters:

1. A letter sent directly to workers at their home address
2. A letter sent to an employer about an individual worker when SSA does not have the worker’s correct address; and
3. A letter to an employer about multiple employees when at least 10 employees during the year, or one half of one percent (1 out of 200) of the employer’s workforce are the subject of a no-match.

No Match Letters (NML)

Purpose

- Gather information to enable SSA to reconcile inconsistencies between their records and information on W-2
- Alert workers that they are not receiving proper credit for their earnings
- Affect future retirement or disability benefits (SSA)
- Immigration control?

No Match Letters (NML)

Main Reasons for a No-Match Letter

- A typographical or clerical error on W-4 or W-2
- The worker’s name has changed due to marriage or divorce
- Information provided on W-2 or W-4 is incomplete
- Individuals present false SSNs, or use another person’s SSN

No Match Letters (NML)

To comply with the New Rule

- The rule does not create additional obligations to employers
- It outlines the steps an employers may take in response to receiving a NML from SSA
- If employers follow the guidelines and respond within 90 days of receiving the letter – Safe Harbor

No Match Letters (NML)

Upon receiving a letter, an employer **MUST**:

- Check its records **within 30 days**, to determine if the discrepancy is the result of a typographical or clerical error

If it is:

- The employer should correct the records
- Inform the relevant agencies
- Verify that the corrected information matches agency records
- Make a record of the manner, date, and time of the verification to be kept with the employee's I-9

No Match Letters (NML)

Upon receiving a letter, an employer **MUST**:

- If it is not an employer's error, then:
 - Employer must ask the employee to confirm records are correct;
 - If the employee is able to correct the records:
 - The employer should correct the records
 - Inform the relevant agencies
 - Verify that the corrected information matches agency records
 - Make a record of the manner, date, and time of the verification to be kept with the employee's I-9

No Match Letters (NML)

Upon receiving a letter, an employer **MUST**:

- If the discrepancy can not be resolved, then:
 - Employer must ask the employee to correct the situation by bringing the necessary documents to the appropriate agency
 - The discrepancy will only be resolved upon the employer's verification with the SSA that the employee's name matches the SSN records, or that DHS verifies the immigration status or employment authorization of that employee
 - The employer should make a record of the manner, date, and time of the verification to be kept with the employee's I-9

Remember: The discrepancy must be resolved within 90 days

No Match Letters (NML)

If the discrepancy cannot be resolved **within 90 days**:

- The employer must complete a new I-9 form by the 93rd day
- You may not accept any documents with the SSN that could not be reconciled or any other DHS-issued document in question
- The employer may not accept any identity document, unless it has a photograph

No Match Letters (NML)

If the discrepancy cannot be resolved:

- And the employer is unable to verify identity and eligibility on a new I-9 using different documents
- The employer **must terminate** the employee
- Failure to terminate at this point may lead to a finding by the DHS that the employer had **constructive knowledge** of the employees lack of employment authorization

Employment Verification Programs

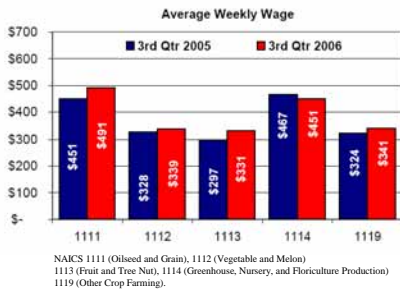
- In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which required **SSA** and **INS**, now **USCIS** to initiate employment verification pilot programs:
- Systematic Alien Verification for Entitlements (SAVE) program for government benefits
- Employment Eligibility Verification/Basic pilot program – "E-Verify" for employment authorization for all newly hired employees

E-Verify

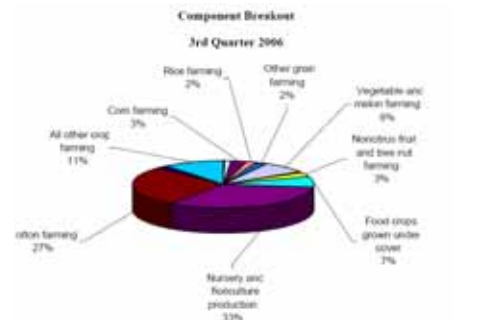
- Is a voluntary, free, internet based system operated by USCIS in partnership with SSA
- Electronically compares I-9 with SSA records and DHS databases to help employers verify identity and employment eligibility
- If you decide to participate in E-Verify:
 - Post the participation notice provided by DHS
 - Anti-discrimination notice

E-Verify

- To prevent discrimination using E-Verify:
 - Employers may not use system to pre-screen applicants
 - Employee must be newly hired and I-9 completed
 - Not verify selectively
 - Perform verification queries within 3 business days of hiring date
 - Accept list B documents with photographs
 - System may not be used to re-verify employment
 - Give employees opportunity to challenge tentative non-confirmation responses
 - Company may not verify employees hired before the company signed the E-verify agreement



Source: Texas Workforce Commission



Source: Texas Workforce Commission

H2-A Program

- Certification for Temporary or seasonal agricultural work
- Means for agricultural employers who anticipate a shortage of domestic workers to bring nonimmigrant foreign workers to the U.S. to perform agricultural labor or services of a temporary or seasonal nature
- Employers must prove there are not sufficient workers who are able, willing, qualified, and available, and that the employment of aliens will not adversely affect the wages and working conditions of similarly employed U.S. workers

H2-A Program

Qualifying criteria:

- An agricultural employer who anticipates a shortage of U.S. workers needed to perform agricultural labor or services of a temporary or seasonal nature (less than 1 year)
- The employer may be an individual proprietorship, a partnership or a corporation.
- An authorized agent, whether an individual (e.g., and attorney) or an entity (e.g., an association), may file an application on behalf of an employer.

H2A- Conditions to Be Satisfied



H2A- POSITIVE RECRUITMENT

- Active effort, including newspaper and radio advertising in areas of expected labor supply. Such recruitment must be at least equivalent to that conducted by non-H-2A agricultural employers in the same or similar crops and area to secure U.S. workers

H2A - WAGES

The wages should be the highest of:

- Minimum Wage – in Texas \$6.55/hr effective July, 24, 2008
- Adverse Effect Wage Rate: Ranges from \$8.41/hr - \$10.86/hr; In Texas: **\$9.02/hr in 2008**
- Local Area prevailing wage rate

H2A - HOUSING

Employer Must Provide Free Housing to all employees



Housing must meet DOL's Occupational Safety and Health Administration Standards

H2A - MEALS

Employer Must Provide three meals per day to each worker, or furnish convenient cooking and kitchen facilities



H2A - Workers Compensation

Employer Must Provide Workers compensation Insurance where required by law; if not required, then equivalent insurance to all workers.



H2A – TOOLS & SUPPLIES

Employer Must Provide Workers at **no cost** all necessary tools and equipment.



H2A – ¾ Guarantee

Employer Must Guarantee each Worker employment for at least ¾ of the contract period or pay the equivalent in wages



H2A – 50% RULE

Employer Must hire any Qualified and eligible US worker who applies for the job until 50% of the work contract has elapsed

50%

H2A – TRANSPORTATION

- Provide Transportation from the place of recruitment to the place of work
- From housing to worksite
- Pay reasonable return transportation



H2A- For Additional Information

- For additional information or to inquire about the validity of a labor contractor, see Immigration & Labor handbook; or
- Contact the DOL

What is in the Handbook

- A brief History and Overview of US Immigration
- Government Agencies Principally responsible for Immigration
- Immigration Reform and Control Act 1986
- Social Security No Match Letters
- The Green Card process
- Non-Immigrant Visas
- H2A Program

What is in the Handbook

- Migrant and Seasonal Ag Worker protection Act
- Migrant Labor Housing Facility Act
- Farm labor Camps
- Standards for Sanitation at temporary places of employment
- Employment of Minors- Federal & Texas
- Work Opportunity Tax Credit
- Fair Labor Standards Act
- Texas Minimum Wage Law

What is in the Handbook

- Texas Payday Law
- Federal Income Tax Withholding
- Social Security
- Unemployment Compensation
- Texas Workers Compensation Law
- Advanced Earned Income Credit
- Worker Protection Standards Act
- Agricultural Hazard Communication Act of TX
- Occupational Safety and Health Act

What is in the Handbook

- Motor Carrier Regulations –Federal & Texas
- Equal employment Legislation

Responsible Agencies Sections

Name

Address

Phone Numbers

Website

Email addresses

Questions

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