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Counting the Days – Required Timelines for I-9 and E-Verify Completion

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U.S. Citizenship and Immigration Services (“USCIS”) has thrown a wrench into the works of the seemingly simple task of counting three days. In connection with the requirement for enrolled employers to submit a new hire’s information into the E-Verify system within three days of hire, USCIS states that this must be completed by the third business day after the employee started work for pay. For an employee who starts work on a Monday, the employer would have to submit the information in [E-Verify](#) by that Thursday. For related E-Verify Advisories and information, [click here](#).

However, this conflicts with the long-standing interpretation of the three-day rule as it applies to completion of Form I-9 for new hires. In connection with Form I-9, Section 1 (employee data) must be completed on the first day of hire and Section 2 (employer’s verification) must be completed within three business days of hire. U.S. Immigration and Customs Enforcement (“ICE”), the agency that conducts audits of I-9 records and has the authority to fine employers, has repeatedly stated that this means the third day of employment – counting the first day of employment as day one – and not three days after the first day of employment. This means that, for an employee hired on a Monday, the employer would have to complete Section 2 of Form I-9 by that Wednesday.

After being informed of the new USCIS interpretation of the three-day rule, ICE indicated through informal liaison that it would follow this interpretation. However, ICE has yet to put this change of policy in writing, leaving employers who wish to rely on the informal agreement in a tenuous position.

Mass Modification of Federal Supply Service (FSS) Contracts to Include E-Verify

The General Services Administration has announced that, effective June 24, 2010, a mandatory mass modification requires all FSS contracts to include the requirement for contracting companies to enroll in E-Verify pursuant to the FAR E-Verify Rule, unless the contract falls under an exception to the rule. Since the implementation of the FAR E-Verify Rule in September 2009, agencies have been incorporating the E-Verify requirement into contracts on an ad-hoc basis. This mass modification will result in a large increase in the number of companies who are required to enroll in E-Verify, within a short period of time. E-Verify implicates a number of compliance issues for employers. Enrollment in and implementation of E-Verify should be carefully planned in advance.

If you have any questions about these issues, please contact any attorney in the Immigration Group.

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