



U.S. Department of Justice

Civil Rights Division

*Office of Special Counsel for Immigration-Related
Unfair Employment Practices - NYA
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Washington, DC 20530
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BY EMAIL AND FIRST CLASS MAIL

DEC 22 2010

Karl Buesgen Jr.
Safety Director
Diefenderfer Electrical Contractors, Inc.
P.O. Box. 88
116 South Second St.
Allentown, PA 18105

Re: Technical Assistance Request Pertaining to general contractor's request for subcontractor's I-9s and attachments.

Dear Mr. Buesgen:

This is in response to your email of November 10, 2010 to the Office of Special Counsel for Immigration Related Unfair Employment Practices ("OSC"). We apologize for the delay in responding to your request while we researched the issues you raised. Specifically, you seek guidance for subcontractors who are asked by their general contractor to provide I-9 documentation for the subcontractors' employees.

You pose the following questions: (1) whether it is legal for a subcontractor to furnish its I-9 forms and their attachments to a general contractor; (2) if it is legal, whether a subcontractor is legally obligated to furnish its I-9 forms and their attachments to a general contractor; and (3) if legally obligated, what attachments or back-up information the subcontractor would furnish if the subcontractor did not photocopy the documents that it verified in the I-9 process.

As you know, OSC investigates allegations of national origin and citizenship status discrimination in the workplace, as well as over-documentation in the employment eligibility verification process ("document abuse") and retaliation under the anti-discrimination provision of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1324b. An employer engages in document abuse where it requests more or different documents from employees, or refuses to honor documents that reasonably appear to be genuine, with the intent to discriminate on the basis of national origin or immigration status. While we cannot give you an advisory opinion on any particular case or set of facts, we can direct you to information that the Department of Homeland Security ("DHS") has provided and share general information on the INA's anti-discrimination provisions.

Section 274a(b)(5) of the Immigration and Nationality Act (INA) limits the use of Form I-9 and any information contained in or appended to the form to purposes of enforcement of the INA and other very limited circumstances: “[The Form I-9] and any information contained in or appended to such form, may not be used for purposes other than for enforcement of this chapter and sections 1001, 1028, 1546, and 1621 of Title 18.” 8 U.S.C. §1324a(b)(5). DHS regulations also provide that the Form I-9 information may be used only by federal officials for the enforcement of the INA or sections 1001, 1028, 1546, or 1621 of title 18 of the United States Code, and may not be used for any other purpose:

(4) Limitation on use of Form I-9. Any information contained in or appended to the Form I-9, including copies or electronic images of documents listed in paragraph (c) of this section used to verify an individual’s identity or employment eligibility, may be used only for enforcement of the Act and sections 1001, 1028, 1546, or 1621 of title 18, United States Code.

8 C.F.R. § 274a.2(b)(4).

DHS’s Office of U.S. Citizenship and Immigration Services (USCIS) oversees the Form I-9 process. USCIS’ website (www.uscis.gov) has information regarding enforcement and privacy of the employment eligibility verification requirements of 8 U.S.C. § 1324a. For further information on disclosure of Form I-9 documents, we suggest that you contact the Verification Division of USCIS at (888) 464-4218.

We hope this information is of assistance to you. If you have further questions, do not hesitate to contact OSC on our toll-free hotline (1-800-255-8155) or to visit OSC’s website. We hope you find this information helpful, and thank you for contacting OSC.

Sincerely,



Katherine Baldwin
Deputy Special Counsel