



SCWA Legislative Update

September 12, 2022



Proposed I-9 Rule Opens Door for Virtual Inspection

The U.S. Department of Homeland Security (DHS) announced its first proposed rule on the Optional Alternatives to the Physical Document Examination Associated with Employment Eligibility Verification (Form I-9). The proposed rule does not include a detailed plan for virtual inspection of Form I-9.

Instead, the proposed rule would “formalize the authority for the Secretary to extend flexibilities, provide alternative options or conduct a pilot program to further evaluate an alternative procedure.”

This is significant as it signals the administration’s openness to formalize COVID-19-era flexibilities and permit permanent remote inspection of employee identification and employment authorization documentation.



Ensuring Your Employment Application Is Lawful

The days of the “one size fits all” employment application have come to an end. As federal, state, and local governments increasingly heighten employer hiring process requirements, national employers must be diligent to avoid getting tripped up by the varying rules across different locations.

Specifically, two areas, based on state law, may expose employers to liability if asked about on employment applications: “ban the box” laws and salary/compensation history bans.



Employers Pay \$667K for FLSA Violations

The U.S. Department of Labor Wage and Hour Division (WHD) has separately announced its recovery of a total of \$667,909 in back wages and damages for 1,510 employees working for various heating and air conditioning contractors, a chain of chicken wing restaurants, a home healthcare provider, a farm, and a group of

commonly owned construction firms, for violations of the Fair Labor Standards Act (FLSA).

The violations related to bonuses and commissions being excluded from rates of pay, awarding compensatory time instead of overtime, hourly rate falling below minimum wage after deductions were made, paying straight time when overtime was due, and misclassification of employees as independent



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