



## Virginia Workplace Law

### Disparate I-9 Documentation Process Can Result in Civil Penalties

**By: Phyllis Katz. *This was posted Wednesday, November 10th, 2010***

A recent six-figure settlement by an employer with the federal government serves as a reminder of the care employers must take when complying with the federal immigration laws.

[Catholic Healthcare West](#) and its subsidiaries [Northridge Hospital Medical Center](#) and [St. Rose Dominican Hospital](#) (“CHW”) recently [paid](#) \$257,000 in civil penalties for requiring more documentation during the I-9 verification process of employees it deemed “high risk” for being unauthorized. After a required audit, they may have to pay more, as well.

An employee accused CHW of imposing illegal documentation requirements on non-U.S. citizen employees. As required by law, native born U.S. citizens can choose which allowed documentation they would submit for I-9 purposes. The charge accused CHW of requiring naturalized citizens or non-citizens to provide supplemental documents in addition to those that were allowed and chosen by the employee.

In addition to the penalty payment, plus a payment of \$1,000 to the employee who brought the charges, the government ordered the hospital system to be sure to comply in the future. An independent facility level review team was also ordered to audit the I-9 review process for all non-U.S. citizens and naturalized citizens in order to (1) identify each instance of over documentation or requests for specific documentation; (2) identify any employees who suffered lost wages due to documentation abuse; and (3) calculate the amount of lost wages.

A similar corporate level review team was established and required to make a report to the U.S. Department of Justice no later than December 10, 2010. Those identified as suffering harm will be made whole.

Employers are not [permitted](#) to tell employees what documentation out of the approved I-9 documents they must provide to comply with the I-9 process. Employees must be able to make their own choice among the selection of approved documents as provided in the I-9 [instructions](#). Directing the documentation or requiring more documentation than required is unlawful and leaves the employer open to charges of discrimination and violation of the I-9 process.

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The law requires that an employer (1) honor documentation that on its face reasonably appears to be genuine, relates to the person, and otherwise satisfies the requirements of 8 U.S. C. § 1324a (b); (2) not request more or different documents than are required by law; and (3) permit employees no matter what their citizenship status may be, to present any documentation or combination of documents acceptable by law.

Should you have any questions about this subject or post, please contact the [labor and employment attorneys](#) at [Sands Anderson PC](#).

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