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How to Make your Workforce Lawful – The Legal Analysis in the Face of Employer Sanctions

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- **What are employer sanctions?**
 - Employers' responsibility for ensuring workers authorized under US immigration law to work and/or be employed in the U.S. or face sanctions for violations.
 - All employers responsible for doing an I-9 just like doing the W IRS forms for employees and contractors
 - Some contractors must be verified based on frequency and regularity of work
 - Applies to Recruiters/Referrers for a fee into the agricultural industry
 - Recruiters/referrers should make their contracts clear to exclude placements in this industry, or be bound like an employer
 - Recruiters/referrers for a fee may appoint an agent to be responsible for the function of checking authorization to work in the I-9 process
 - Escaping liability with distance
 - Employers, Immigration and Customs Enforcement (ICE), of Dept. of Homeland Security (DHS) rely on validity of documents provided by new/those with expiring employment authorization or re-hired employees.
 - Employers who unreasonably/intentionally ignore the signs of unauthorized employment are exposed to risk of employer sanctions
- **Are I-9s in order?**
 - Audit I-9s for accuracy and completeness
 - Consistent employer policy on document retention or inspection only
 - Correct I-9s with red pen, don't erase; inspect documents later if not done before
 - Form is uncannily complex, though appears simple
 - A combination of certain identification and employability documents are acceptable
 - Be sure employer does not dictate which documents are acceptable

- **What to do if you discover an employee is not authorized to work in the U.S.**
 - Actual Knowledge/Constructive Knowledge of hiring or employing undocumented person(s)
 - Do not discuss with anyone at the workplace; seek counsel
 - Interests to be protected: business entity, executives and HR management
 - Provide time to employees to secure proof of authorization to work
 - Terminate those who don't

- **Is applying for immigration status even possible for those you must terminate**
 - Petition by qualifying employment and familial relationship required, plus admissibility
 - Admissibility depends on immigration history
 - Waivers to overcome inadmissibility may be necessary – some require extreme or extremely unusual hardship to US citizen/permanent resident parents, spouses, and in some instances, children
 - Some but not all employees likely may be helped at varying future times – each employee should seek counsel to determine their eligibility
 - Employer must determine its commitment to the alien