



American Council on International Personnel  
1212 New York Avenue, NW, Suite 800  
Washington, DC 20005

• 202-371-6789 • Fax 202-371-5524 • [www.acip.com](http://www.acip.com)

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October 26, 2006

Via Federal Express and Email

Mr. Drew Durham  
Inspector General  
Department of Labor and Employment  
633 17th Street, Suite 201  
Denver, CO 80202-3660

Dear Mr. Durham:

I would like to thank you for taking the time to discuss concerns with implementation of the new employer verification laws with me and our counsel, Howard Gordon. As I noted the American Council on International Personnel (ACIP) represents the in-house immigration professionals at over 200 of America's largest corporations, universities and research institutions. Our members are often the ones charged with ensuring compliance with the Immigration Reform and Control Act of 1986 (IRCA). Each of our members employs at least 1,000 employees worldwide, and, in total, ACIP members employ millions of United States citizens and foreign nationals in all industries throughout the United States. ACIP trains these professionals on IRCA compliance. We have received grants from the Office of Special Counsel to develop instructional books and CD-Rom training programs to educate employers both on completing the I-9 verification process and ensuring they do not violate the Unfair Immigration-Related Employment Practices. ACIP has been in close contact with the Department of Homeland Security (and its predecessor the Immigration and Naturalization Service) since the implementation of the Basic Pilot program in 1996.

As we discussed, the Colorado laws pertaining to work authorization have raised a number of questions and concerns for our members. Let me provide some examples of the situations employers have brought to my attention:

- An IT services firm has operations in multiple states, including Colorado. Employees within Colorado and outside Colorado perform work on Colorado contracts.
- An accounting firm with employees scattered throughout the Washington, DC metropolitan region has several contracts for business services and consulting advice with Colorado state entities. The firm has no employees located in Colorado but has a variety of employees who travel to Colorado from time to time in relation to the contracts. Most of the contracts are less than six months in duration and most of the employees work on both Colorado and non-Colorado projects simultaneously.

- A computer services firm with worldwide operations has contracts to perform database management and other IT-related services for Colorado. Except for the managers who negotiate the contracts, employees of this organization do not travel to Colorado. Some of the employees are not located within the United States.
- A financial services firm has a contract with a political subdivision to manage brokerage accounts. The firm has no offices nor employees in Colorado. All business related to this contract is conducted electronically.

From our discussions with the bill sponsors, it appears that some situations encountered by large, multi-jurisdictional employers may not have been contemplated when the laws were passed. As we discussed it is a very time and resource intensive effort for large employers to implement the Basic Pilot program at potentially hundreds of worksites across the United States. While they want to comply with Colorado law, they must deal with the practical realities of implementing a corporate-wide worksite verification program that is consistent with both Federal and State law. As such, we have questions pertaining to the specifics of the bills and seek your guidance on the following issues:

1. **Retaining Copies of Documents Presented.** HB 1017 requires employers to retain file copies of the documents used to verify legal status for all new hires in Colorado on or after January 1, 2007. (HB 06S-1017, Sec. 2). IRCA does not require employers to maintain copies of the documents. It is our reading of the bill that employers would not be required to re-verify the status of employees who were initially hired in another state, in compliance with IRCA, and who are subsequently transferred to Colorado, even where the employer does not have a file copy of the documents examined at the time of hire. Is this correct? [Before I respond to your question, I would like to point out one clarification. IRCA does not require employers to maintain copies of the identification documents, nor does it prohibit such copies. In fact, most businesses have copied identification documents as a business practice for a number of years.](#)

[In response to your question: We assume that your question applies to the reverification of the status of \*existing\* employees. If our assumption is correct, then the following answer applies: No, insofar as the fact situation applies to HB 1017. However, if pursuant to HB 1343, the employer executes a public contract for services, the employer must verify legal status of all newly hired employees on or after January 1, 2007.](#)

2. **Attestation of Proper Verification.** Sec. 2 of HB 1017 further requires the employer to keep a written or electronic copy of an affirmation that it has examined the work status of employees, retained copies of the documents, not altered or falsified the documents or knowingly hired unauthorized aliens. It is our understanding that the attestation in Section 2 of the current Form I-9 will suffice for the affirmation required under HB 1017 and that no additional affirmation is required. Is this correct? [No. We recommend that you visit our website at: \[www.coworkforce.com/ICE\]\(http://www.coworkforce.com/ICE\) and click the FAQ link. Within the link will be an additional link to the Affirmation Form. The FAQs should be responsive to your question.](#)
3. **Contracts with the State of Colorado.** It is our understanding that HB 1343 requires companies that sign a new contract or renew an existing contract, on or after August 9,

2006, to perform services for a Colorado state agency or political subdivision to certify that neither they nor any subcontractors knowingly employ an illegal alien to perform work under the contract and that the contractor has participated or attempted to participate in the federal Basic Pilot program. We seek your guidance on the following particular issues:

- a. **Definition of “Services”.** HB 1343 defines “services” to mean “the furnishing of labor, time or effort by a contractor or a subcontractor *not involving the delivery of a specific end product other than reports that are merely incidental to the required performance.*” (Section 1, paragraph 6, emphasis added). FAQ 16 further provides some examples of activities that are and are not considered services. As this list is not comprehensive, we respectfully request clarification of how it will be determined which other activities will be considered a contract for services subject to this law. We desire to avoid a situation where political subdivisions take different positions on an activity. [We interpret FAQ 16 \(prepared by the State Controller’s Office\) to be examples of what \*may be\* a “service” and what \*may not be\* a “service.” You are advised to follow the statutory language.](#)
- b. **Definition of “New Employees”.** FAQ 18 explains that the Basic Pilot only covers new employees working on state contracts. We assume this means only employees hired on or after the date the contract is signed and not all employees hired on or after the effective date of the bill. Please confirm. [Correct. The new law applies to new employees hired on or after the effective date of the Act \(on or after August 9, 2006\). This is our interpretation as well.](#)
- c. **Registration for Basic Pilot.** Since HB 1343 only applies to employees hired after the employer enters into the contract, an employer is not required to sign up for the Basic Pilot Program if only current employees will be performing work on the Colorado contract. Please confirm this is correct. [Your assertion is correct; however, you will have to sign up for Basic Pilot for new employees hired on or after the effective date and who work on the public contract, or any renewal thereof.](#)
- d. **Alternatives to Basic Pilot.** Are there any alternatives for demonstrating that a contractor's new hires performing work on the contract are authorized to work in the United States other than signing up for the Basic Pilot program? [The law mandates that employers have “verified or attempted to verify through participation in Basic Pilot.” These references exclusively to Basic Pilot indicate a legislative directive that Basic Pilot is the exclusive solution.](#)
- e. **Employees Outside Colorado.** It is our understanding that HB 1343 does not cover services performed by employees working outside of Colorado. Employees must perform services within Colorado for HB 1343 to apply, even if their company has a contract with a Colorado agency or political subdivision. Please confirm this. [While HB 1343 does not contain exemption language for services performed outside of Colorado, we interpret the statute to apply to services performed within the State of Colorado.](#)

- f. **Registration of Subset of Business Units.** USCIS has stated that employers may choose to register only facilities in a particular state with Basic Pilot and to use Basic Pilot only for new hires within that state. We assume that a contractor could register only its Colorado facilities for the Basic Pilot and remain in compliance with HB 1343. Please confirm. [As long as the Colorado facilities exclusively perform Basic Pilot inquiries on all newly hired employees assigned to a public contract for services, the answer is yes.](#) Similarly, if USCIS allowed an employer with multiple business units to sign up only a particular business unit for the Basic Pilot program, would the contractor be in compliance with Colorado law if the single business unit that was signed up for the program was the only unit performing work on a Colorado state contract? Please advise. [Yes.](#)
  
4. **Economic Development Incentives.** Finally, H.B. 1001 requires employers receiving economic development incentives to *provide proof* to the commission that *each employee employed by the employer within the United States* is a United States Citizen or, if not a United States Citizen, is lawfully present in the state and authorized to work. (H.B. 06S-1001, Sec. 1(2), emphasis added). What type of *proof* must be presented? We posit that it should be sufficient for the employer to present the Form I-9 for each employee. We do not read this to require verification through the Basic Pilot nor to require file copies or affirmations required in HB 1017 for employees who are not in Colorado or who were hired prior to January 1, 2007. Please confirm. [This agency does not enforce the provisions of HB 1001. Please refer this question to the Colorado Economic Development Commission. They may be reached at \(303\) 892-3840 and are located at 1625 Broadway, Suite 2700, Denver CO 80202.](#)

5. **Enforcement.** We appreciate the work of your department on employee verification and understand the challenges in implementing a new enforcement structure. Any insight into your enforcement plans and priorities would be helpful, particularly in terms of what the anticipated divisions of responsibility might be between state, local and federal authorities. We are regularly in touch with DHS, and would be delighted to facilitate a dialogue to ensure that federal and state programs are in sync so that your program can run as smoothly as possible, with the goals that education of the employer community is maximized and potential confusion is minimized. **Our enforcement plans will be carried out according to the provisions of HB 1017 and HB 1343.**

We appreciate your attention to our concerns and would be happy to work with you to develop regulations that take into consideration the special concerns of large, reputable employers who are already diligent in their IRCA compliance. Please feel free to contact me at [lynn\\_shotwell@acip.com](mailto:lynn_shotwell@acip.com) or 202-371-6789.

Sincerely,



Lynn Shotwell  
Executive Director