

§ 1274a.5

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§ 1274a.5 Use of labor through contract.

Any person or entity who uses a contract, subcontract, or exchange entered into, renegotiated, or extended after November 6, 1986, to obtain the labor or services of an alien in the United States knowing that the alien is an unauthorized alien with respect to performing such labor or services, shall be considered to have hired the alien for employment in the United States in violation of section 274A(a)(1)(A) of the Act.

[55 FR 25934, June 25, 1990]

§ 1274a.6 State employment agencies.

(a) *General.* Pursuant to sections 274A(a)(5) and 274A(b) of the Act, a state employment agency as defined in § 1274a.1(b) of this part may, but is not required to, verify identity and employment eligibility of individuals referred for employment by the agency. However, should a state employment agency choose to do so, it must:

(1) Complete the verification process in accordance with the requirements of § 1274a.2(b) of this part *provided* that the individual may not present receipts in lieu of documents in order to complete the verification process as otherwise permitted by § 1274a.2(b)(1)(vi) of this part; and

(2) Complete the verification process prior to referral for all individuals for whom a certification is required to be issued pursuant to paragraph (c) of this section.

(b) *Compliance with the provisions of section 274A of the Act.* A state employment agency which chooses to verify employment eligibility of individuals pursuant to § 1274a.2(b) of this part shall comply with all provisions of section 274A of the Act and the regulations issued thereunder.

(c) *State employment agency certification.* (1) A state employment agency which chooses to verify employment eligibility pursuant to paragraph (a) of this section shall issue to an employer who hires an individual referred for employment by the agency, a certification as set forth in paragraph (d) of this section. The certification shall be transmitted by the state employment agency directly to the employer, per-

sonally by an agency official, or by mail, so that it will be received by the employer within 21 business days of the date that the referred individual is hired. In no case shall the certification be transmitted to the employer from the state employment agency by the individual referred. During this period:

(i) The job order or other appropriate referral form issued by the state employment agency to the employer, on behalf of the individual who is referred and hired, shall serve as evidence, with respect to that individual, of the employer's compliance with the provisions of section 274A(a)(1)(B) of the Act and the regulations issued thereunder.

(ii) In the case of a telephonically authorized job referral by the state employment agency to the employer, an appropriate annotation by the employer shall be made and shall serve as evidence of the job order. The employer should retain the document containing the annotation where the employer retains Forms I-9.

(2) Job orders or other referrals, including telephonic authorizations, which are used as evidence of compliance pursuant to paragraph (c)(1)(i) of this section shall contain:

(i) The name of the referred individual;

(ii) The date of the referral;

(iii) The job order number or other applicable identifying number relating to the referral;

(iv) The name and title of the referring state employment agency official; and

(v) The telephone number and address of the state employment agency.

(3) A state employment agency shall not be required to verify employment eligibility or to issue a certification to an employer to whom the agency referred an individual if the individual is hired for a period of employment not to exceed 3 days in duration. Should a state employment agency choose to verify employment eligibility and to issue a certification to an employer relating to an individual who is hired for a period of employment not to exceed 3 days in duration, it must verify employment eligibility and issue certifications relating to *all* such individuals. Should a state employment agency choose not to verify employment eligibility or