Work Authorization

Federal immigration law requires employers to verify that their employees are lawfully authorized to work in the U.S. Many bargaining unit members are immigrants, who are employed pursuant to various forms of work authorization, e.g. permanent resident card ("green cards"), or temporary work visa. The following provisions are designed to protect jobs to the maximum extent permitted by law.

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(a) Work Authorization and Reverification

The employer shall not impose work authorization verification or reverification requirements greater than those required by law.

A worker going through the verification or reverification process shall be entitled to be represented by a Union representative or a personal attorney.

The Employer shall provide to the employee written notification when it contends that her work authorization documents or I-9 Form are deficient, or that the employee must reverify her work authorization, specifying: (a) the specific document or documents that are deemed to be deficient and why the document or documents are deemed deficient; (b) what steps the worker must take to correct the matter; (c) the employee's right to have a union representative present during the verification or reverification process and; (d) any rights which the worker may have in connection with the verification or reverification process under this Agreement. The notice must be provided to the Union no less than 14 days before it is sent to the employee so that the Union may comment on the communication.

Upon request, the Employer agrees to meet and discuss with the Union the implementation of a particular verification or reverification process.

The employee shall have the right to choose which work authorization documents to present to the Employer during the verification or reverification process.

The Employer shall grant up to four (4) months leave to the employee in order to correct any work authorization issue. Upon return from leave and remediation of the issue, the employee shall return to his or her former position, without loss of seniority. If the employee does not remedy the issue within four (4) months, the employee may be discharged for cause.

Note: This provision affords employees an opportunity to correct any immigration problems, e.g., an expired work visa, without losing their jobs or seniority. Note that a social-security no-match is treated under subsection (b). This is because, under our view of current law, an employee is not required to fix a no-match. Hence, an employee faced with a no-match does not need the leave of absence, because there is no "problem" to be fixed.

(b) SSA No-Match Letters or Other No-Matches

Except as required by law, neither an Social Security Administration "no-match" letter, nor a phone or computer verification of a no-match, shall constitute a basis for taking any adverse employment action against an employee, for requiring an employee to correct the no-match, or for re-verifying the employee's work authorization. Upon receipt of a no-match letter, the Employer shall notify the employee and provide the employee and Union with a copy of the letter.

Note: An SSA "no-match" letter is issued by the SSA to employers and employees stating that the name and social security number of an employee submitted to SSA by the employer do not match. Employers may also use the SSA's phone verification system to determine if the employee's name and number match. The SSA's purpose in ensuring the name and social security number match is to fully credit the worker with all of her earnings for determining social security benefits. SSA is not an immigration agency and at this time does not share no-match letters with ICE, the federal immigration agency. There are several reasons why a no-match could occur, e.g., a spelling error by the employer, discrepancies when employees have more than one last name, and it does not mean that an employee is not authorized to work in the U.S. Accordingly, we take the position that employees may not be fired for failing to fix the no-match.

(c) Change in Social Security Number or Name

Except as prohibited by law, when an employee presents evidence of a name or social security number change, or updated work authorization documents, the Employer shall modify its records to reflect such change and the employee's seniority will not be affected. Such change shall not constitute a basis for adverse employment action, notwithstanding any information or documents provided at the time of hire. The employer may not question an employee about work authorization unless a union representative has been given the opportunity to be present.

Note: Employees change their name and social security number for a variety of reasons, e.g,. to reflect a name change due to marriage, or to reflect that they have corrected their work authorization status. In either case, the Union believes that employees should not be penalized for providing the employer corrected information. In the case of work authorization, employees should be encouraged. Accordingly, this provision is designed to make sure employers do not discipline workers who make these corrections. Otherwise employers may be able to fire workers, claiming they committed application fraud. An employer may object, claiming that continuing to employ such employees violates federal immigration law. However, it is our view that once an employee has corrected her status, there is no potential liability. To alleviate the employer's concern, however, we can include the proviso "except as prohibited by law."

(d) Participation in E-verify and Similar Programs

The employer shall not participate in E-verify or other similar state or local program unless required by law. If participation is required by law, the Employer shall:

1. *Provide the Union a copy of its E-verify of other Memorandum of Agreement with the relevant government agency;*
2. *Shall not use E-verify except for new hires, unless required by law. For purposes of federal E-verify, an employee shall not be considered a new hire as provided in 8 CFR § 274a.2(b)(1)(viii);*
3. *Provide any affected employee 4 months leave to correct a final nonconfirmation or similar determination of lack of work authorization; and*
4. *In the event an employee is terminated as a result of the lawful application of E-verify or similar program, the Employer shall pay the replacement employee the same wage rate as the terminated employee.*

Note: E-verify is a federal program whereby Employers, utilizing ICE and SSA databases, verify the work authorization of its employees. For federal contractors, participation in E-verify is mandatory; for other employer's, it's voluntary. Some states have starting adopting similar programs.

(f) Notification of Immigration-Related Audits and Detentions

The employer shall notify the Union as soon as it has knowledge of an immigration audit, and upon request, provide the Union copies of any documents concerning the work authorization of any employee.

The employer shall notify the Union as soon as it has knowledge of any employees detained for immigration-related reasons and provide the Union the name, contact information, and detention location of any detained employee.

Note: In the past, we have experienced ICE raids at some of our work sites. The most critical assistance we can provide our members who are detained is to link them with an attorney as soon as possible. In order to do this, we need to have the most up-to-date information about an employee, since our records aren't always accurate.

(g) Contractor Transition

An employer who takes over the account of another signatory employer must hire the incumbent employees and may not require them to complete I-9 Forms or be verified through E-verify unless required by law. An employer who loses an account to another signatory employer shall provide the successor with copies of the Form I-9 file for each bargaining unit member employed at the account.

The immigration law, regulations and USCIS I-9 Handbook provides that an employee is not considered a new hire where she was employed by one member of a multiemployer association, and then is hired by another member of the multiemployer association under the same collective bargaining agreement, and where the predecessor has provided copies of the I-9 Forms to the successor employer.

(h) Legal Services Fund

Establish a fund that requires the employer to contribute on behalf of its employees that provides no or low-cost immigration legal services.

(i) Employment Records

Within 10 business days of the request, the employer shall provide employees with documents demonstrating the employees' employment history with the employer and/or at the location.