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Florida Employment Law Update 2025
Bret Yaw
Board Certified Specialist, Labor & Employment Law
FordHarrison LLP
Orlando
September 16, 2025
www.fordharrison.com

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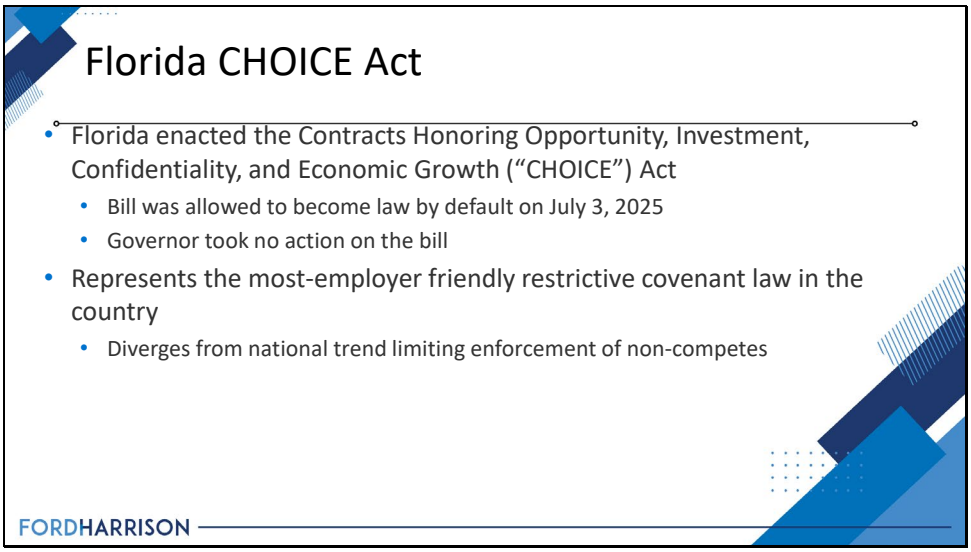
Florida CHOICE Act
Florida enacted the Contracts Honoring Opportunity, Investment, Confidentiality, and Economic Growth ("CHOICE") Act
Bill was allowed to become law by default on July 3, 2025
Governor took no action on the bill
Represents the most-employer friendly restrictive covenant law in the country
Diverges from national trend limiting enforcement of non-competes
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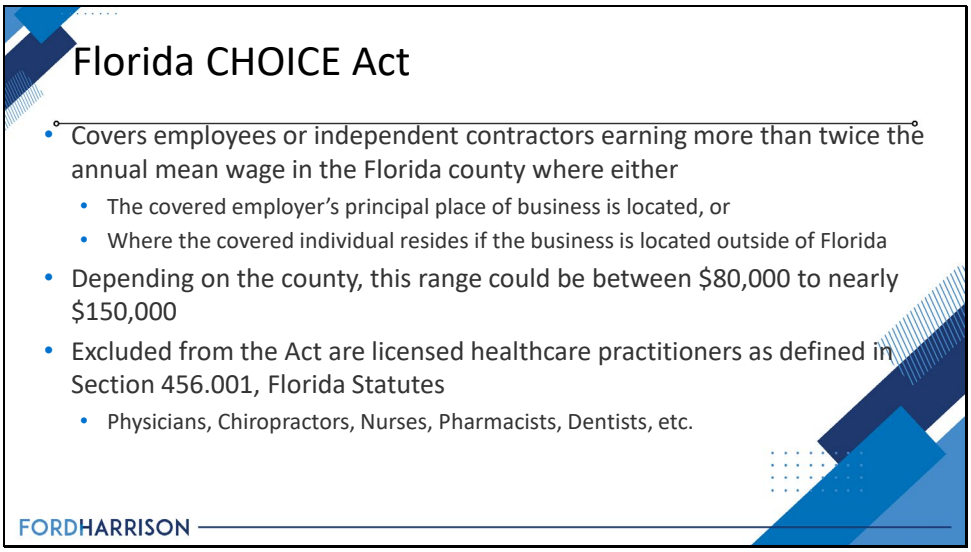
Florida CHOICE Act
Covers employees or independent contractors earning more than twice the annual mean wage in the Florida county where either
The covered employer's principal place of business is located, or
Where the covered individual resides if the business is located outside of Florida
Depending on the county, this range could be between $80,000 to nearly $150,000
Excluded from the Act are licensed healthcare practitioners as defined in Section 456.001, Florida Statutes
Physicians, Chiropractors, Nurses, Pharmacists, Dentists, etc.
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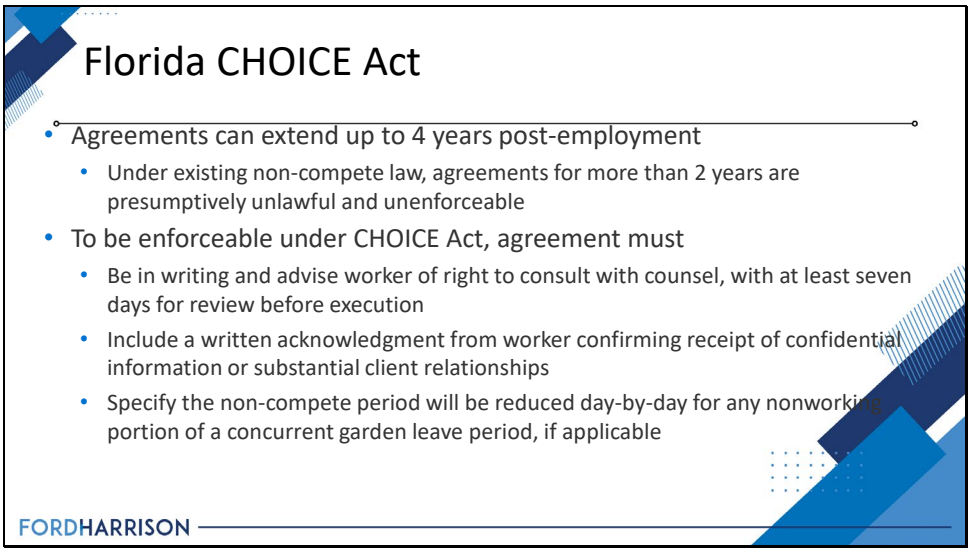
Florida CHOICE Act
Agreements can extend up to 4 years post-employment
Under existing non-compete law, agreements for more than 2 years are presumptively unlawful and unenforceable
To be enforceable under CHOICE Act, agreement must
Be in writing and advise worker of right to consult with counsel, with at least seven days for review before execution
Include a written acknowledgment from worker confirming receipt of confidential information or substantial client relationships
Specify the non-compete period will be reduced day-by-day for any nonworking portion of a concurrent garden leave period, if applicable
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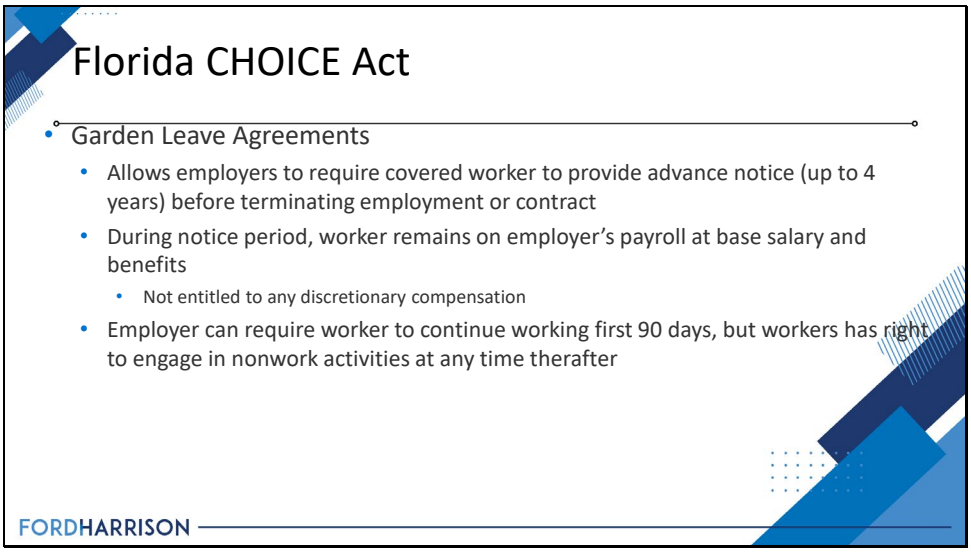
Florida CHOICE Act
Garden Leave Agreements
Allows employers to require covered worker to provide advance notice (up to 4 years) before terminating employment or contract
During notice period, worker remains on employer's payroll at base salary and benefits
Not entitled to any discretionary compensation
Employer can require worker to continue working first 90 days, but workers has right to engage in nonwork activities at any time therafter
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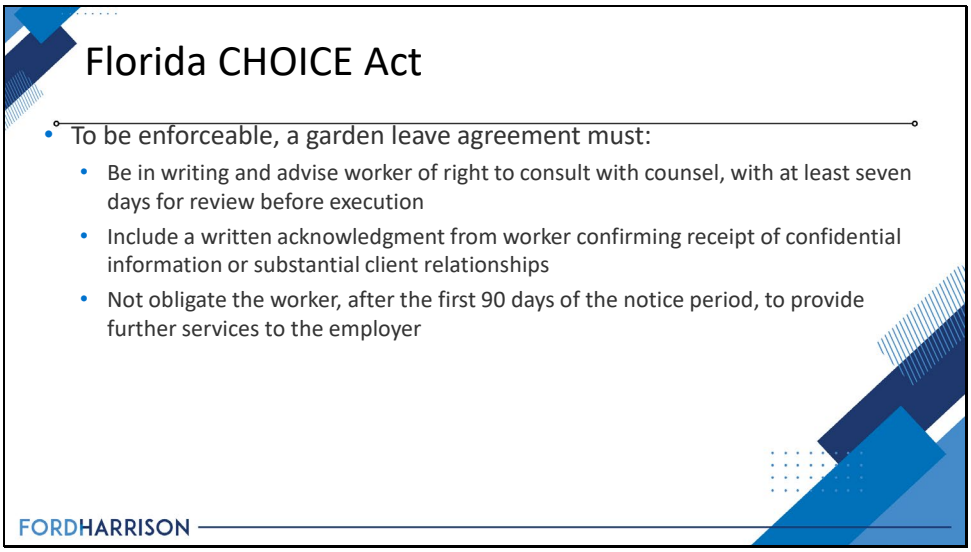
Florida CHOICE Act
To be enforceable, a garden leave agreement must:
Be in writing and advise worker of right to consult with counsel, with at least seven days for review before execution
Include a written acknowledgment from worker confirming receipt of confidential information or substantial client relationships
Not obligate the worker, after the first 90 days of the notice period, to provide further services to the employer
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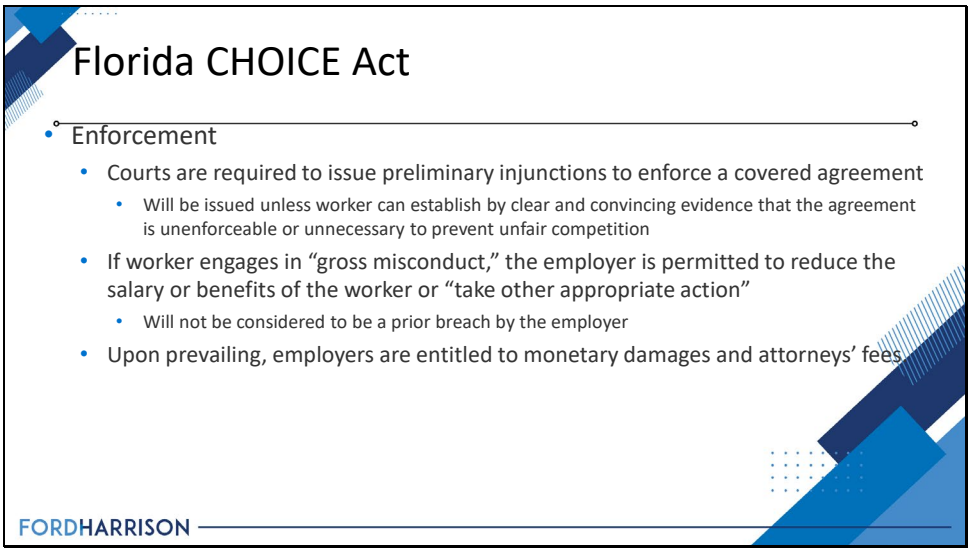
Florida CHOICE Act
Enforcement
Courts are required to issue preliminary injunctions to enforce a covered agreement
Will be issued unless worker can establish by clear and convincing evidence that the agreement is unenforceable or unnecessary to prevent unfair competition
If worker engages in "gross misconduct," the employer is permitted to reduce the salary or benefits of the worker or "take other appropriate action"
Will not be considered to be a prior breach by the employer
Upon prevailing, employers are entitled to monetary damages and attorneys' fees
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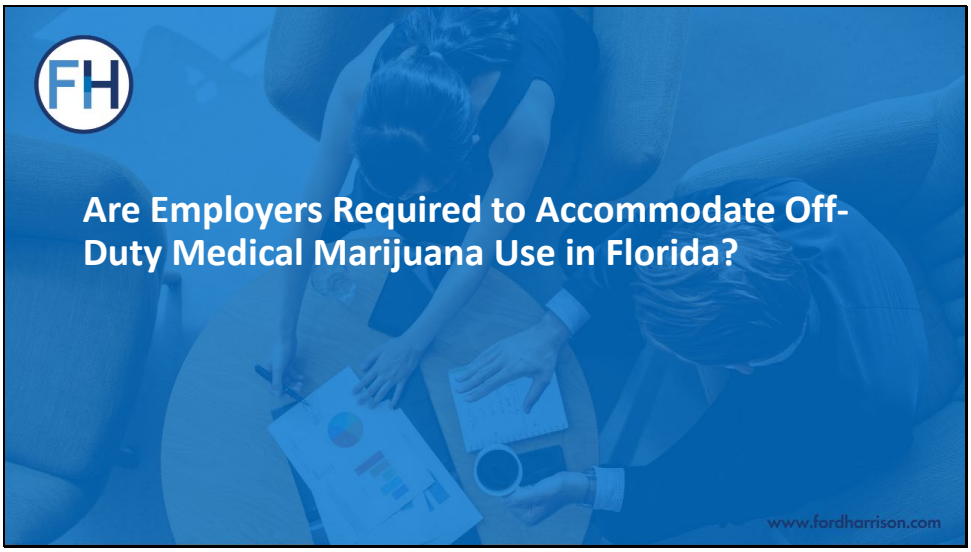
Are Employers Required to Accommodate Off-Duty Medical Marijuana Use in Florida?
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Giambrone v. Hillsborough County – Dec. 10, 2024

- Florida law requires employers to consider accommodations for off-duty use of medical marijuana.
- According to County Court Judge Melissa Polo, Hillsborough County was prohibited from discriminating against and must provide accommodations to employees with valid medical marijuana cards who test positive for the drug (random testing) — as long as there is no evidence the employee was using illegal substances at work, on county property, or in county vehicles, or reported to work under the influence.
- Employer violated FCRA by failing to consider an accommodation.
- County's policy is not clear that would be treated differently from other prescription drugs.
- Currently being appealed to the Second DCA

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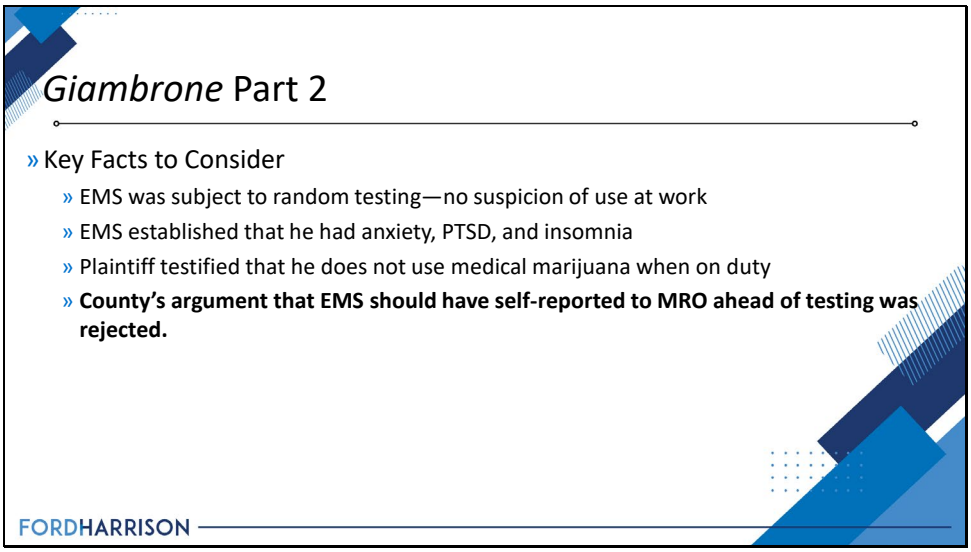
Giambrone Part 2
» Key Facts to Consider
» EMS was subject to random testing—no suspicion of use at work
» EMS established that he had anxiety, PTSD, and insomnia
» Plaintiff testified that he does not use medical marijuana when on duty
» **County's argument that EMS should have self-reported to MRO ahead of testing was rejected.**
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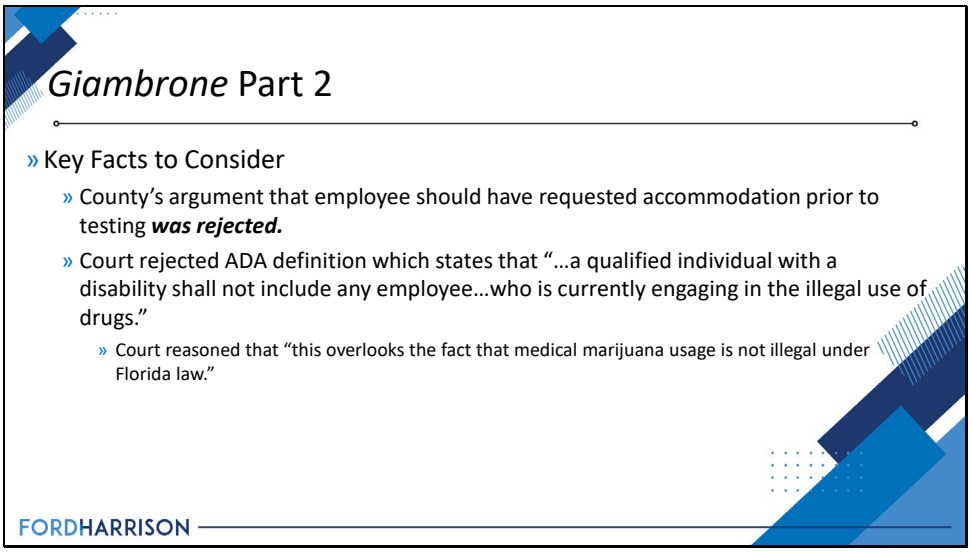
Giambrone Part 2
» Key Facts to Consider
» County's argument that employee should have requested accommodation prior to testing was rejected.
» Court rejected ADA definition which states that "…a qualified individual with a disability shall not include any employee…who is currently engaging in the illegal use of drugs."
» Court reasoned that "this overlooks the fact that medical marijuana usage is not illegal under Florida law."
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No Recreational Legal Weed Coming to Florida?
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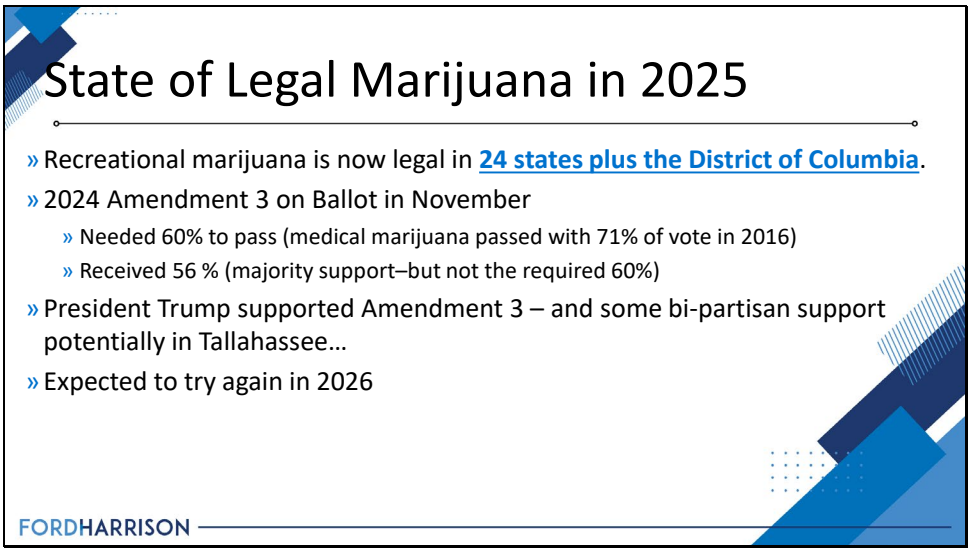
State of Legal Marijuana in 2025
» Recreational marijuana is now legal in 24 states plus the District of Columbia.
» 2024 Amendment 3 on Ballot in November
» Needed 60% to pass (medical marijuana passed with 71% of vote in 2016)
» Received 56 % (majority support–but not the required 60%)
» President Trump supported Amendment 3 – and some bi-partisan support potentially in Tallahassee…
» Expected to try again in 2026
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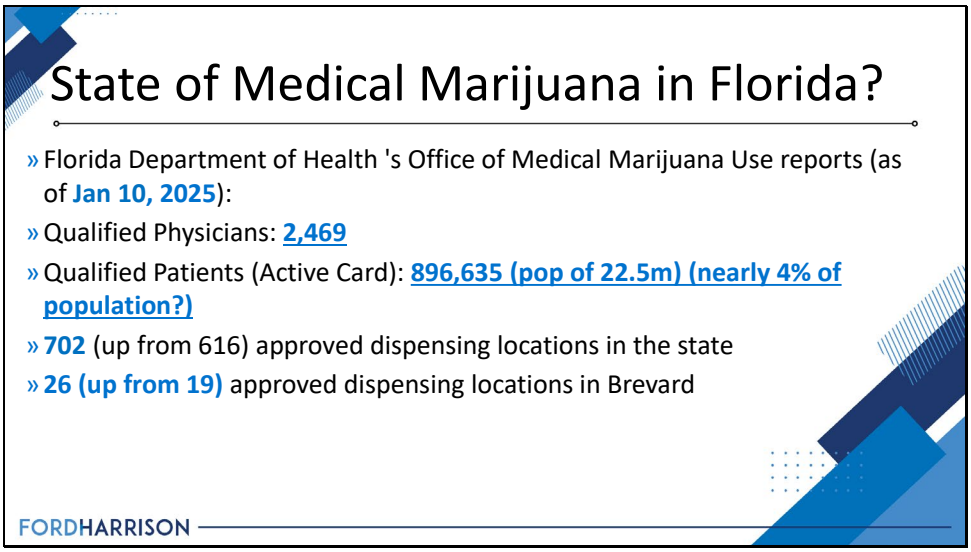
State of Medical Marijuana in Florida?
» Florida Department of Health 's Office of Medical Marijuana Use reports (as of Jan 10, 2025):
» Qualified Physicians: 2,469
» Qualified Patients (Active Card): 896,635 (pop of 22.5m) (nearly 4% of population?)
» 702 (up from 616) approved dispensing locations in the state
» 26 (up from 19) approved dispensing locations in Brevard
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Federal Law on Marijuana has NOT Changed

Federal Controlled Substances Act (CSA):

- Marijuana still categorized as a Schedule I controlled substance
- Treated the same as heroin, LSD, ecstasy, and other illegal/illicit drugs

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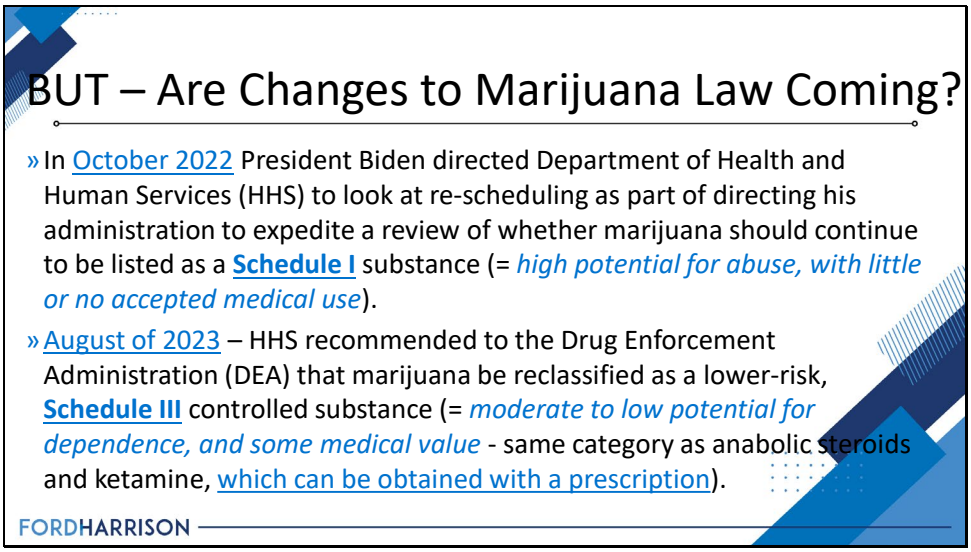
BUT – Are Changes to Marijuana Law Coming?
» In October 2022 President Biden directed Department of Health and Human Services (HHS) to look at re-scheduling as part of directing his administration to expedite a review of whether marijuana should continue to be listed as a Schedule I substance (= high potential for abuse, with little or no accepted medical use).
» August of 2023 – HHS recommended to the Drug Enforcement Administration (DEA) that marijuana be reclassified as a lower-risk, Schedule III controlled substance (= moderate to low potential for dependence, and some medical value - same category as anabolic steroids and ketamine, which can be obtained with a prescription).
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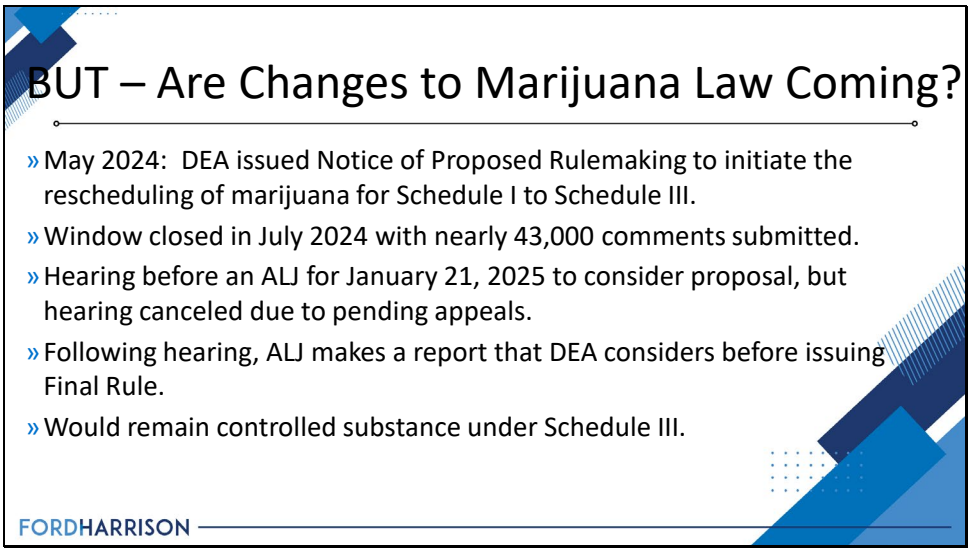
BUT – Are Changes to Marijuana Law Coming?
» May 2024: DEA issued Notice of Proposed Rulemaking to initiate the rescheduling of marijuana for Schedule I to Schedule III.
» Window closed in July 2024 with nearly 43,000 comments submitted.
» Hearing before an ALJ for January 21, 2025 to consider proposal, but hearing canceled due to pending appeals.
» Following hearing, ALJ makes a report that DEA considers before issuing Final Rule.
» Would remain controlled substance under Schedule III.
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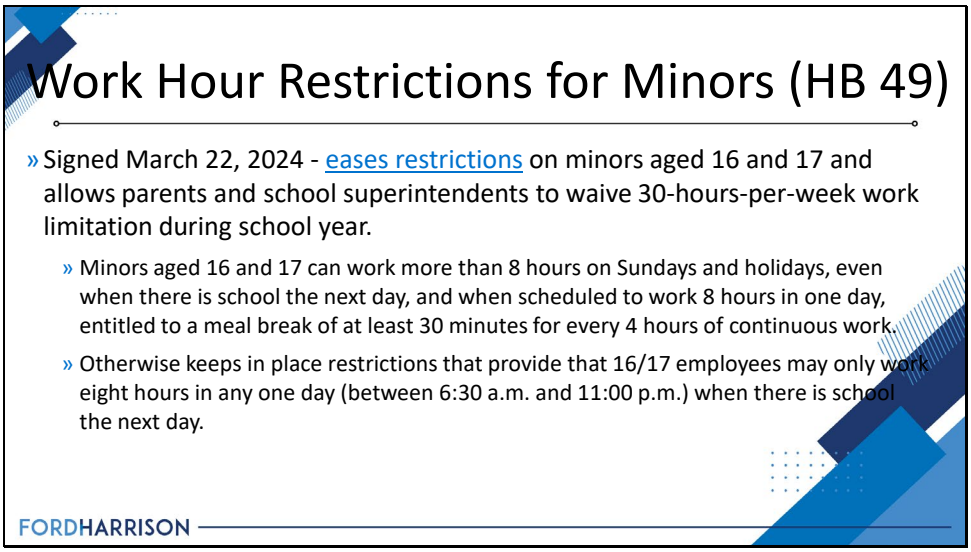
Work Hour Restrictions for Minors (HB 49)
» Signed March 22, 2024 - eases restrictions on minors aged 16 and 17 and allows parents and school superintendents to waive 30-hours-per-week work limitation during school year.
» Minors aged 16 and 17 can work more than 8 hours on Sundays and holidays, even when there is school the next day, and when scheduled to work 8 hours in one day, entitled to a meal break of at least 30 minutes for every 4 hours of continuous work.
» Otherwise keeps in place restrictions that provide that 16/17 employees may only work eight hours in any one day (between 6:30 a.m. and 11:00 p.m.) when there is school the next day.
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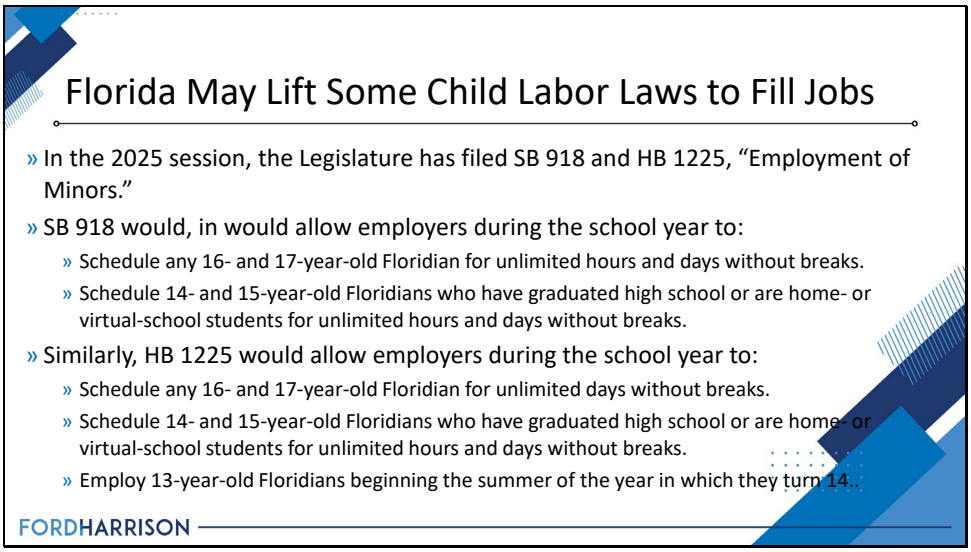
Florida May Lift Some Child Labor Laws to Fill Jobs
» In the 2025 session, the Legislature has filed SB 918 and HB 1225, “Employment of Minors.”
» SB 918 would, in would allow employers during the school year to:
» Schedule any 16- and 17-year-old Floridian for unlimited hours and days without breaks.
» Schedule 14- and 15-year-old Floridians who have graduated high school or are home- or virtual-school students for unlimited hours and days without breaks.
» Similarly, HB 1225 would allow employers during the school year to:
» Schedule any 16- and 17-year-old Floridian for unlimited days without breaks.
» Schedule 14- and 15-year-old Floridians who have graduated high school or are home- or virtual-school students for unlimited hours and days without breaks.
» Employ 13-year-old Floridians beginning the summer of the year in which they turn 14..
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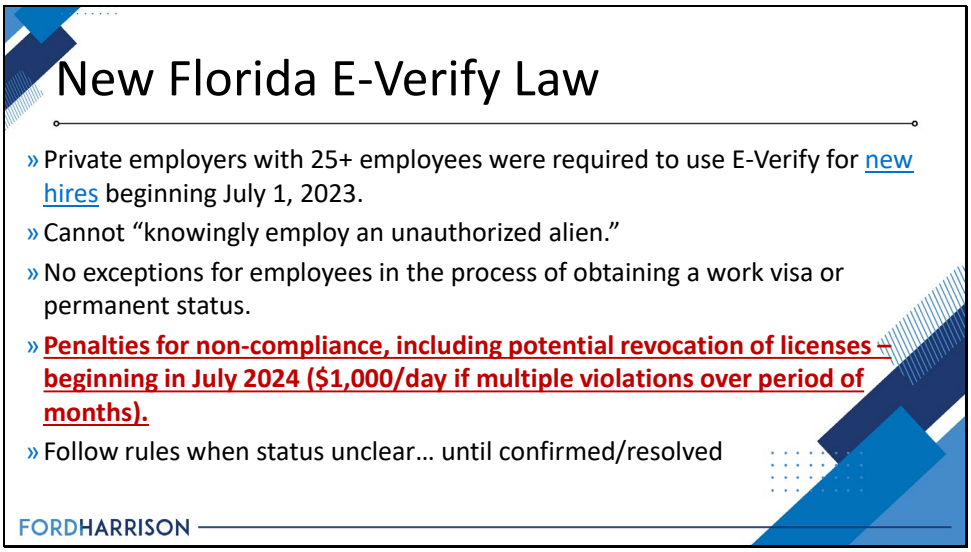
New Florida E-Verify Law
» Private employers with 25+ employees were required to use E-Verify for new hires beginning July 1, 2023.
» Cannot "knowingly employ an unauthorized alien."
» No exceptions for employees in the process of obtaining a work visa or permanent status.
» Penalties for non-compliance, including potential revocation of licenses – beginning in July 2024 ($1,000/day if multiple violations over period of months).
» Follow rules when status unclear… until confirmed/resolved
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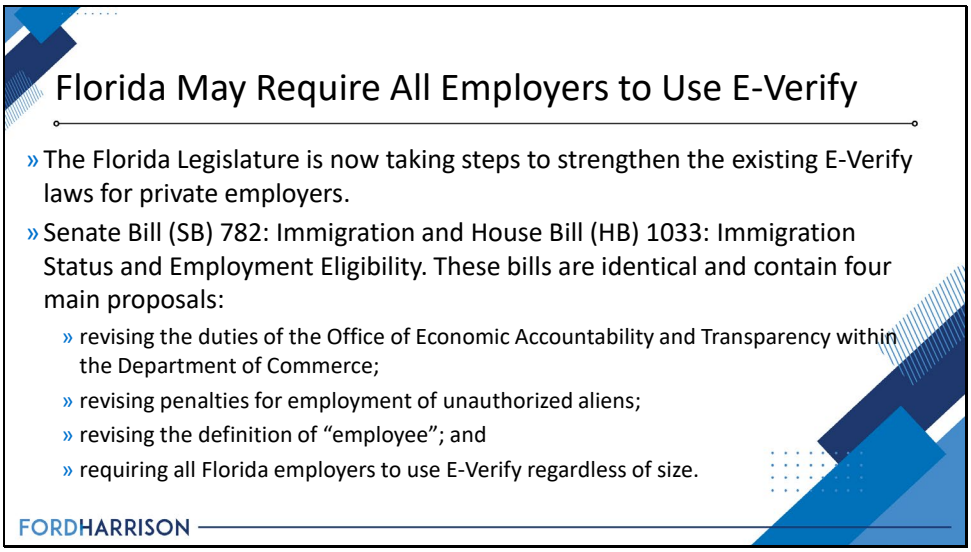
Florida May Require All Employers to Use E-Verify
» The Florida Legislature is now taking steps to strengthen the existing E-Verify laws for private employers.
» Senate Bill (SB) 782: Immigration and House Bill (HB) 1033: Immigration Status and Employment Eligibility. These bills are identical and contain four main proposals:
» revising the duties of the Office of Economic Accountability and Transparency within the Department of Commerce;
» revising penalties for employment of unauthorized aliens;
» revising the definition of "employee"; and
» requiring all Florida employers to use E-Verify regardless of size.
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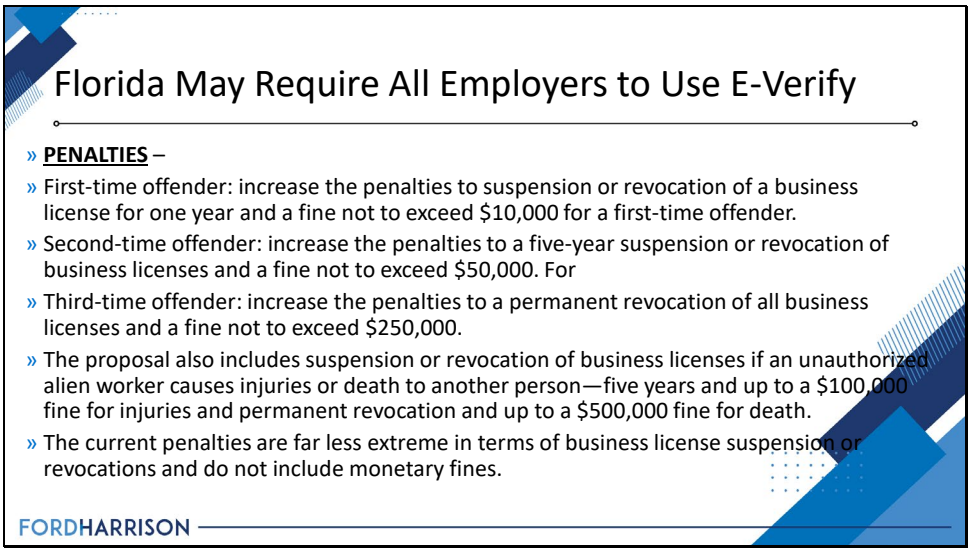
Florida May Require All Employers to Use E-Verify
» PENALTIES –
» First-time offender: increase the penalties to suspension or revocation of a business license for one year and a fine not to exceed $10,000 for a first-time offender.
» Second-time offender: increase the penalties to a five-year suspension or revocation of business licenses and a fine not to exceed $50,000. For
» Third-time offender: increase the penalties to a permanent revocation of all business licenses and a fine not to exceed $250,000.
» The proposal also includes suspension or revocation of business licenses if an unauthorized alien worker causes injuries or death to another person—five years and up to a $100,000 fine for injuries and permanent revocation and up to a $500,000 fine for death.
» The current penalties are far less extreme in terms of business license suspension or revocations and do not include monetary fines.
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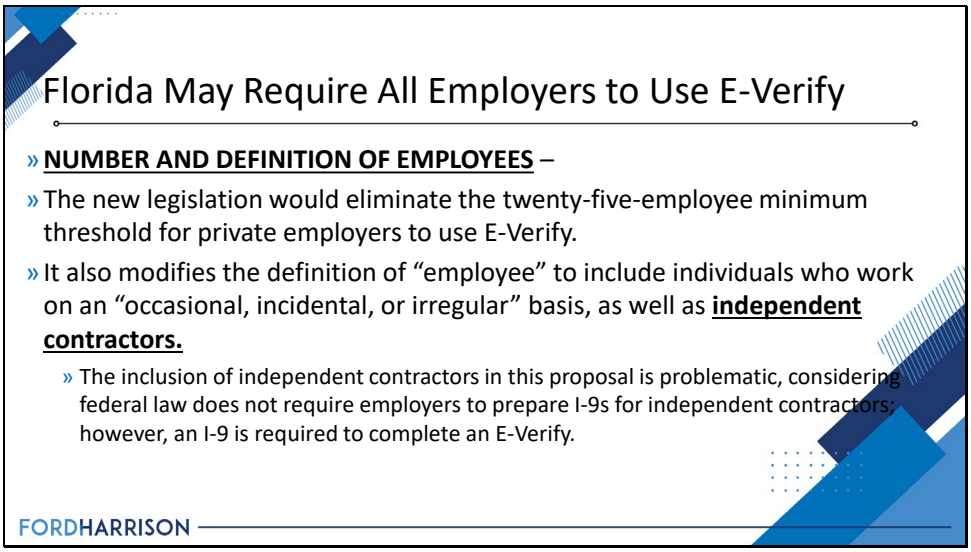
Florida May Require All Employers to Use E-Verify
» NUMBER AND DEFINITION OF EMPLOYEES –
» The new legislation would eliminate the twenty-five-employee minimum threshold for private employers to use E-Verify.
» It also modifies the definition of "employee" to include individuals who work on an "occasional, incidental, or irregular" basis, as well as independent contractors.
» The inclusion of independent contractors in this proposal is problematic, considering federal law does not require employers to prepare I-9s for independent contractors; however, an I-9 is required to complete an E-Verify.
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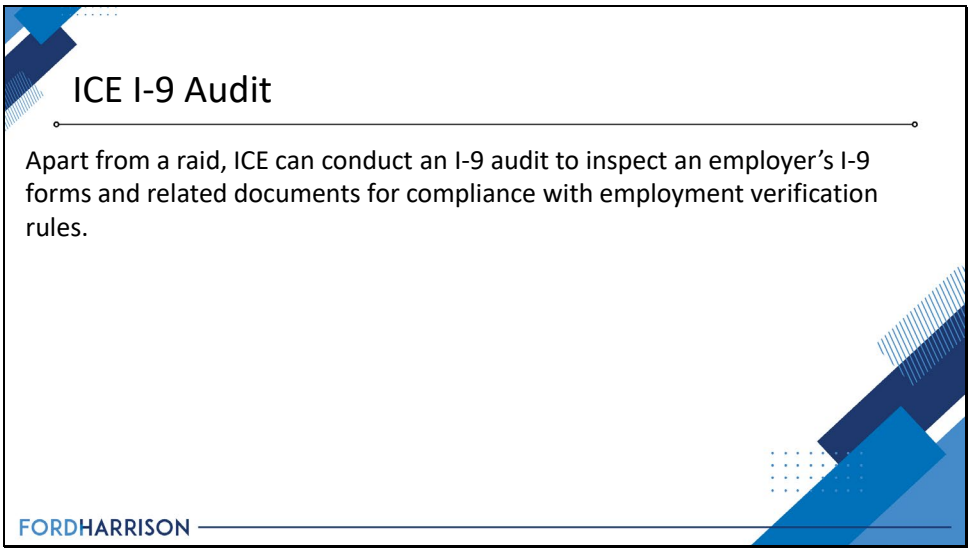
ICE I-9 Audit
Apart from a raid, ICE can conduct an I-9 audit to inspect an employer's I-9 forms and related documents for compliance with employment verification rules.
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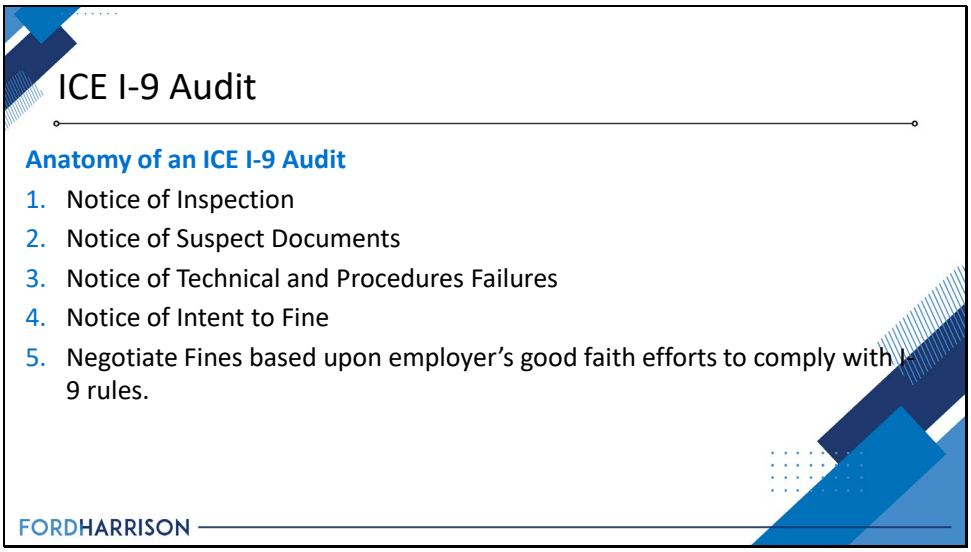
ICE I-9 Audit
Anatomy of an ICE I-9 Audit
1. Notice of Inspection
2. Notice of Suspect Documents
3. Notice of Technical and Procedures Failures
4. Notice of Intent to Fine
5. Negotiate Fines based upon employer's good faith efforts to comply with I-9 rules.
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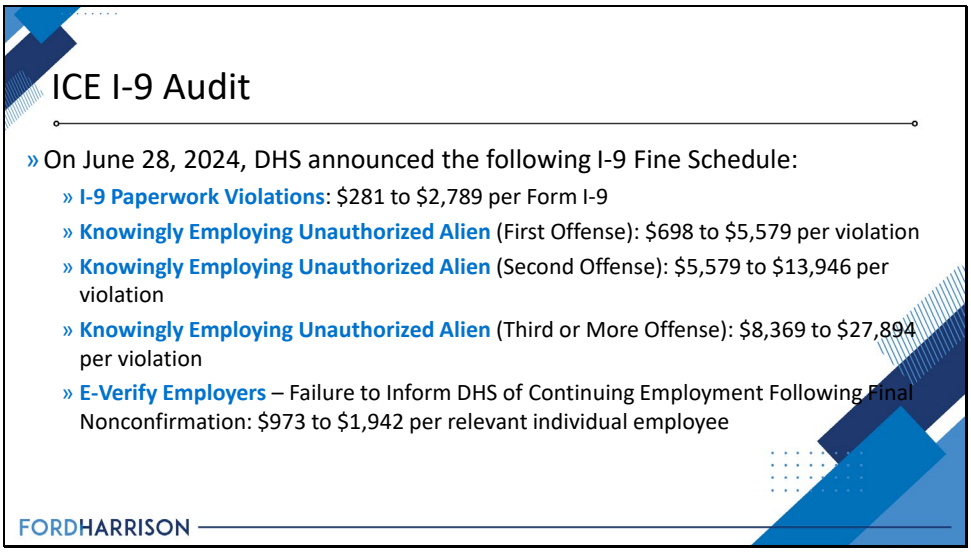
ICE I-9 Audit
» On June 28, 2024, DHS announced the following I-9 Fine Schedule:
» I-9 Paperwork Violations: $281 to $2,789 per Form I-9
» Knowingly Employing Unauthorized Alien (First Offense): $698 to $5,579 per violation
» Knowingly Employing Unauthorized Alien (Second Offense): $5,579 to $13,946 per violation
» Knowingly Employing Unauthorized Alien (Third or More Offense): $8,369 to $27,894 per violation
» E-Verify Employers – Failure to Inform DHS of Continuing Employment Following Final Nonconfirmation: $973 to $1,942 per relevant individual employee
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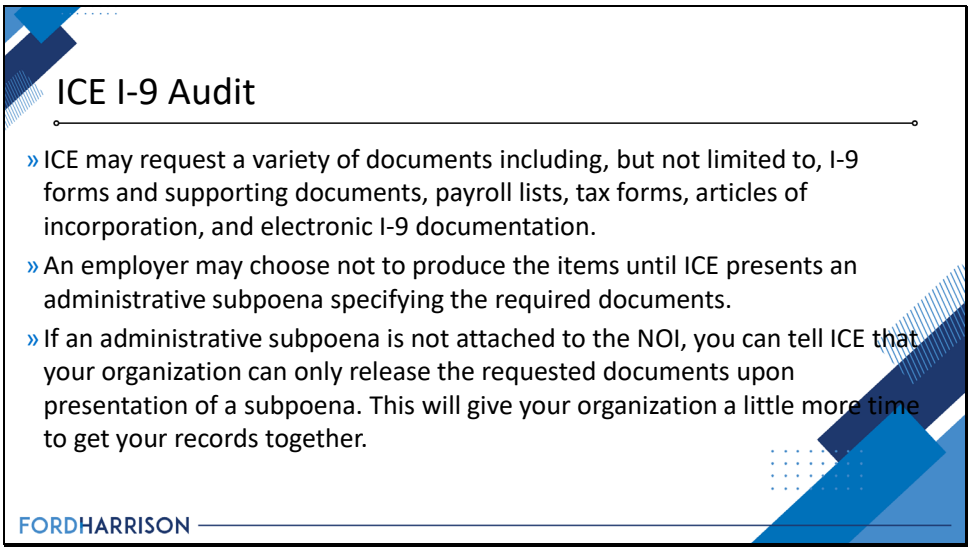
ICE I-9 Audit
» ICE may request a variety of documents including, but not limited to, I-9 forms and supporting documents, payroll lists, tax forms, articles of incorporation, and electronic I-9 documentation.
» An employer may choose not to produce the items until ICE presents an administrative subpoena specifying the required documents.
» If an administrative subpoena is not attached to the NOI, you can tell ICE that your organization can only release the requested documents upon presentation of a subpoena. This will give your organization a little more time to get your records together.
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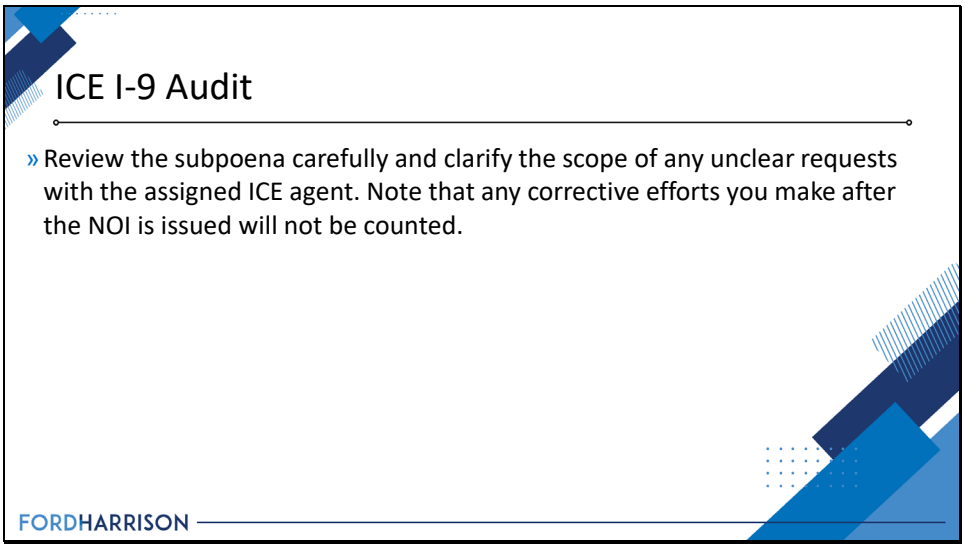
ICE I-9 Audit
» Review the subpoena carefully and clarify the scope of any unclear requests with the assigned ICE agent. Note that any corrective efforts you make after the NOI is issued will not be counted.
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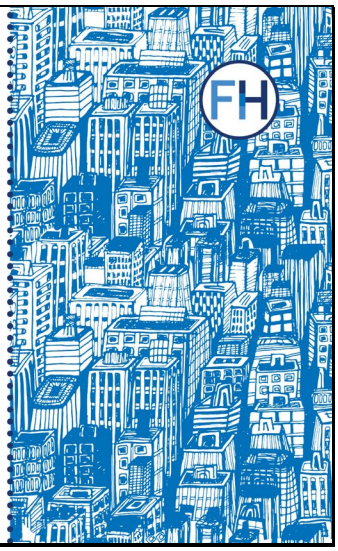
I-9 COMPLIANCE
BEST PRACTICES

During this era of heavy immigration-related enforcement, I-9 compliance should also be top of mind. Noncompliance and I-9 errors can result in hefty fines, so time is of the essence to get your I-9 house in order. What can an employer do?



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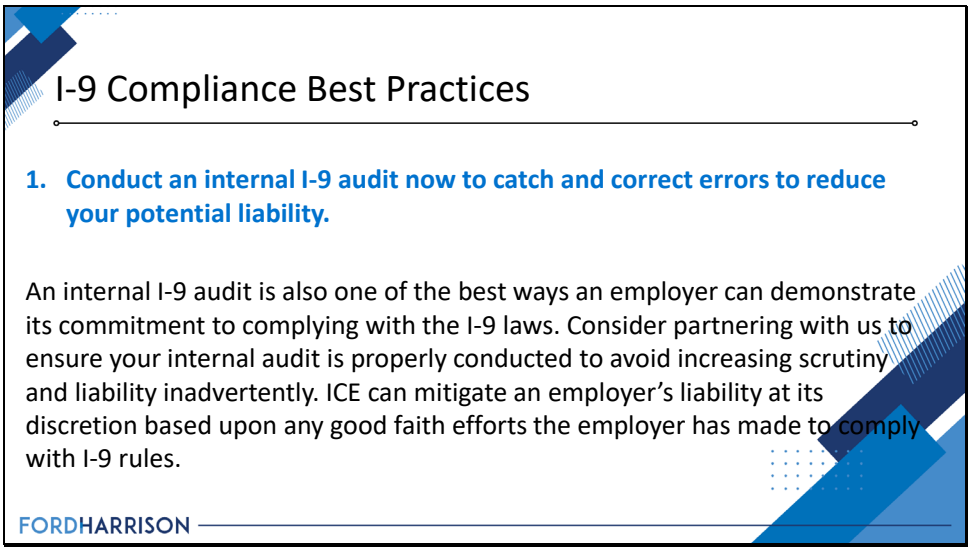
I-9 Compliance Best Practices
1. Conduct an internal I-9 audit now to catch and correct errors to reduce your potential liability.
An internal I-9 audit is also one of the best ways an employer can demonstrate its commitment to complying with the I-9 laws. Consider partnering with us to ensure your internal audit is properly conducted to avoid increasing scrutiny and liability inadvertently. ICE can mitigate an employer's liability at its discretion based upon any good faith efforts the employer has made to comply with I-9 rules.
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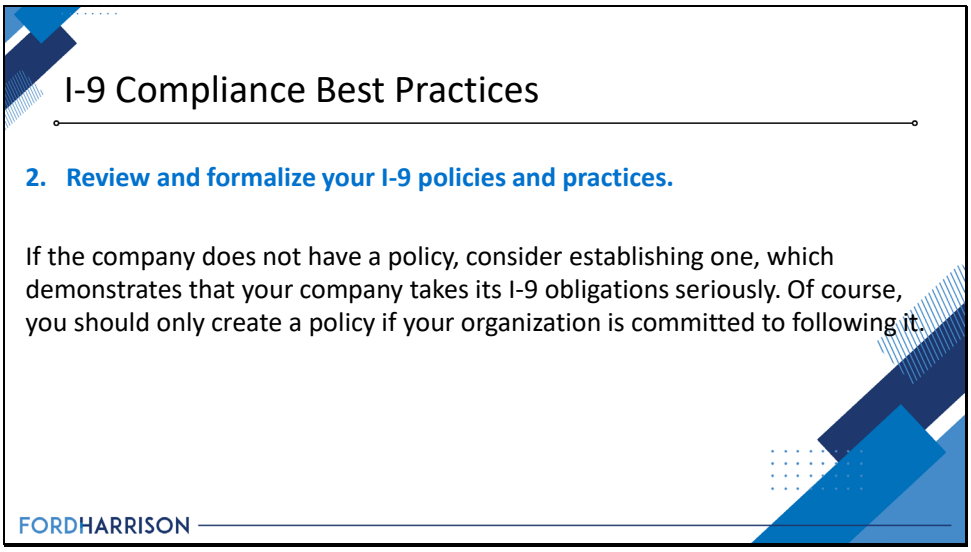
I-9 Compliance Best Practices
2. Review and formalize your I-9 policies and practices.
If the company does not have a policy, consider establishing one, which demonstrates that your company takes its I-9 obligations seriously. Of course, you should only create a policy if your organization is committed to following it.
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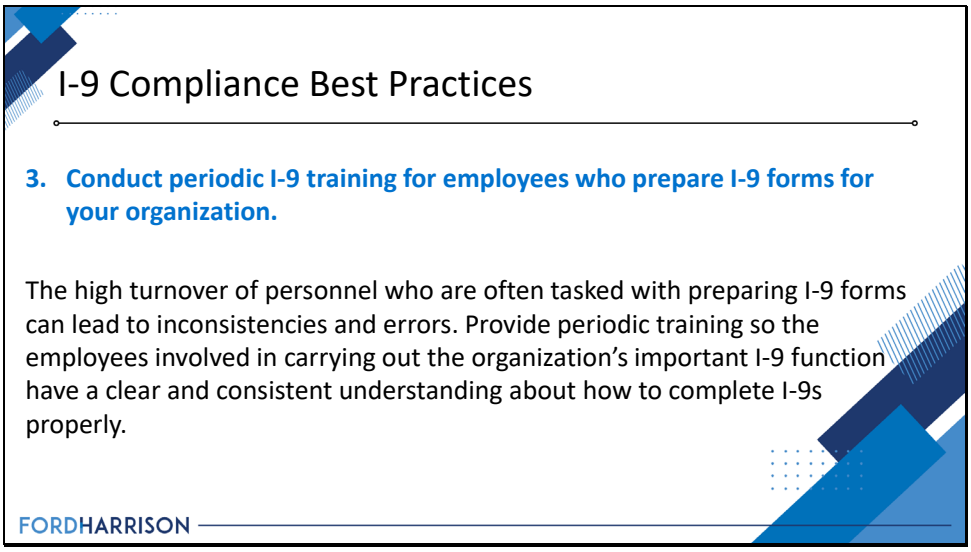
I-9 Compliance Best Practices
3. Conduct periodic I-9 training for employees who prepare I-9 forms for your organization.
The high turnover of personnel who are often tasked with preparing I-9 forms can lead to inconsistencies and errors. Provide periodic training so the employees involved in carrying out the organization's important I-9 function have a clear and consistent understanding about how to complete I-9s properly.
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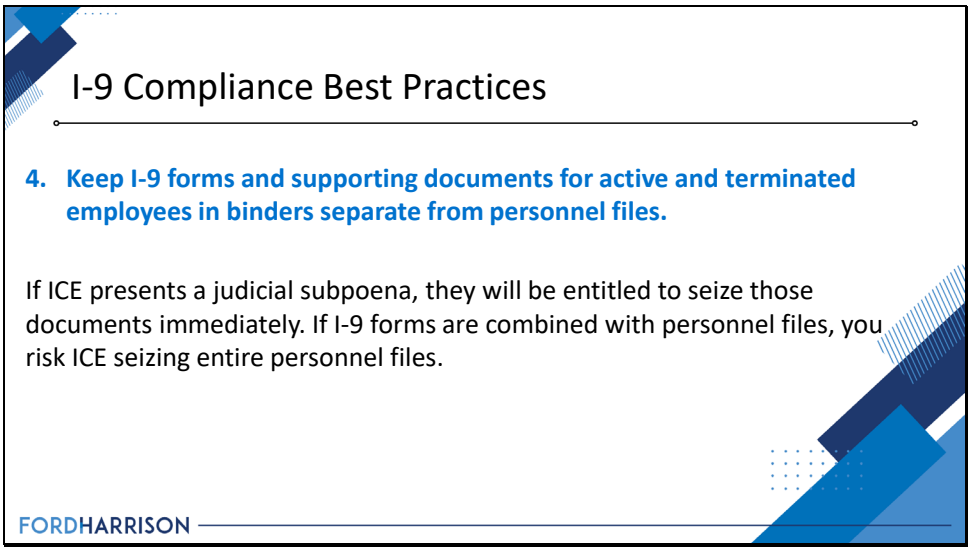
I-9 Compliance Best Practices
4. Keep I-9 forms and supporting documents for active and terminated employees in binders separate from personnel files.
If ICE presents a judicial subpoena, they will be entitled to seize those documents immediately. If I-9 forms are combined with personnel files, you risk ICE seizing entire personnel files.
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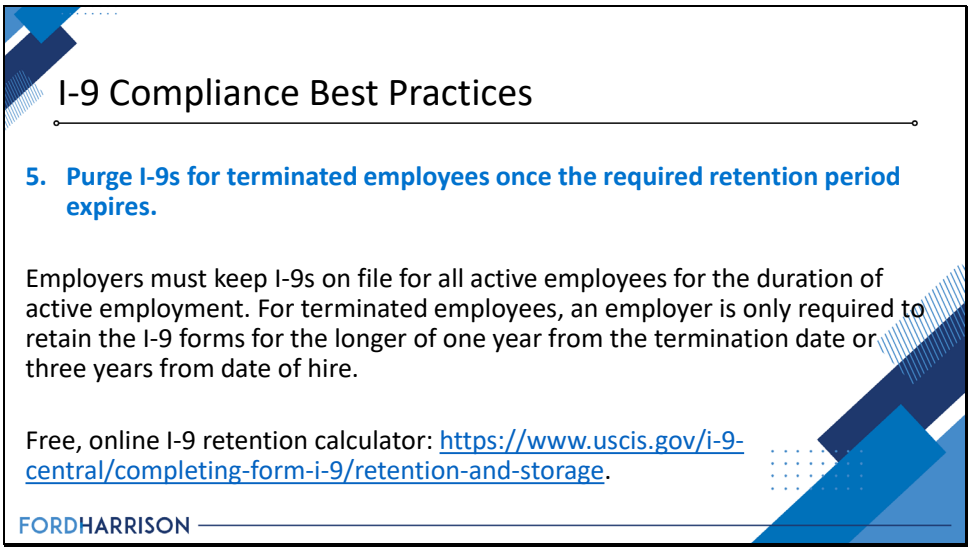
I-9 Compliance Best Practices
5. Purge I-9s for terminated employees once the required retention period expires.
Employers must keep I-9s on file for all active employees for the duration of active employment. For terminated employees, an employer is only required to retain the I-9 forms for the longer of one year from the termination date or three years from date of hire.
Free, online I-9 retention calculator: https://www.uscis.gov/i-9-central/completing-form-i-9/retention-and-storage.
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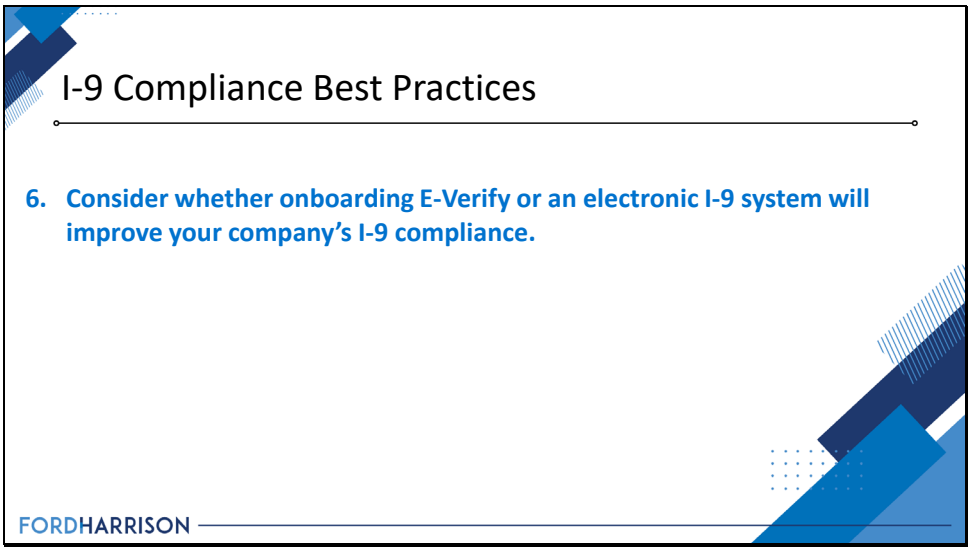
I-9 Compliance Best Practices
6. Consider whether onboarding E-Verify or an electronic I-9 system will improve your company's I-9 compliance.
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Thank you!
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