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**SEPTEMBER 2009**

## **Updated I-9 Form**

The I-9 form, issued on February 2, 2009, listed an expiration date of June 30, 2009. The United States Citizenship and Immigration Service (USCIS) issued an update when the form expired indicating that they planned to continue using the existing form past its expiration date while waiting on approval from the Office of Management and Budget (OMB) to effectively change the expiration date on the existing form.

On August 27, 2009 the USCIS received the approval from the OMB to officially change the expiration date on the current I-9 form. The revised form now carries an expiration date of August 31, 2012. Otherwise, it is the same form. In fact, the USCIS indicates it is still permissible to use the form which expired on June 30, 2009.

## **Rampant Sex Harassment Costs Lowe's \$1.7 Million in Settlement of EEOC Lawsuit**

*Home Improvement Giant Subjected Young Workers to Physical and  
Verbal Abuse, Retaliation*

The U.S. Equal Employment Opportunity Commission (EEOC) recently announced a major settlement of a discrimination lawsuit under Title VII of the Civil Rights Act against Lowe's Home Improvement Warehouse, Inc. for \$1.72 million and significant remedial relief on behalf of three employees in their twenties who were subjected to a pervasive sexually hostile work environment and retaliated against for complaining about it.

The former employees, two young men and one woman, were subjected to widespread and repeated sexual harassment by male and female managers and coworkers at a Lowe's store in Longview, Wash., according to the EEOC. The sexually hostile workplace, which endured for more than six months, included physical and verbal abuse which culminated in one instance of sexual assault.

Among the many allegations in the litigation, the EEOC said the female employee, age 21 at the time, was sexually assaulted by the 44-year-old male store manager in his office. Prior to the alleged assault, the EEOC said she was implicitly propositioned for sex by the manager related to a recent promotion she received. EEOC asserted that Lowe's not only failed to take prompt remedial action to stop the sexual harassment, but also fired the three victims in the case.

In addition to the \$1,720,000 in monetary relief for the three victims, the three-year consent decree resolving the case requires Lowe's to provide comprehensive training to management, non-management, and human resources employees in all Washington and Oregon stores. Employees will be trained on what constitutes harassment and retaliation, and on their obligation not to harass or retaliate against any individual.

Managers and supervisors will be trained on what constitutes harassment and retaliation, their obligation to provide a discrimination-free work environment, and their responsibilities if an employee complains about harassment or retaliation, or if they observe it. Human resources personnel will be trained on what constitutes harassment and retaliation, how to institute policies and practices to correct past discrimination and prevent future occurrences, informing complainants about the outcome of internal investigations, and the steps Lowe's will take to assure a discrimination-free workplace in the future.

In addition to the comprehensive training and monetary relief, the consent decree requires Lowe's to revise its sexual harassment and anti-retaliation policies, issue an anti-harassment statement to all employees in Washington and Oregon, revise its method for tracking employee complaints of harassment, and report regularly to the EEOC on harassment and retaliation complaints which arise in Washington and Oregon stores during the term of the decree.

With headquarters in Mooresville, N.C., Lowe's, a Fortune 500 company, is the second largest home improvement retailer worldwide, operating 1,525 stores throughout the United States and Canada, according to company information.

## **Employment Discrimination and the 2009 H1N1 Flu Virus (Swine Flu)**

Many employers are justifiably concerned regarding the potential for outbreak of the H1N1 Virus commonly referred to as the Swine Flu. Employers are in the delicate position of balancing the rights of individual employees under various Federal and State labor laws and the potential business interruption that could be caused by an outbreak. There are, however, things an employer may and may not do to prevent such an outbreak.

### **An employer may:**

- Encourage employees to stay home if they are sick. This may require added flexibility on the part of the employer in regards to standard sick and vacation time policies.
- Encourage employees to be vaccinated for the H1N1 virus if they are in a high risk group.
- Train employees on preventive measures such as using hand sanitizers and proper sneezing etiquette.

### **An employer may not:**

- Require employees to be vaccinated or disclose their vaccination status.
- Send employees home if they appear to be sick or there is concern that they may have been exposed to the virus.
- Conduct medical inquiries regarding the nature or severity of an employee's illness when they have missed work.
- Discriminate against groups of employees because they are perceived to be at a higher risk of infection.

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**If you have questions or need assistance, please contact [jdunn@stoweassociates.com](mailto:jdunn@stoweassociates.com).**

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