



A New Form I-9 and Other Employment Hot Takes

A New Form I-9: Within the last month, U.S. Citizenship and Immigration Services issued a revised Form I-9 with minor changes. Employers must use the new form to confirm employees' authorization to work in the United States beginning on **April 30, 2020**. The new form, which is labeled version 10/21/2019, is currently available on the USCIS [website](#).

New Joint Employer Guidance: The United States Department of Labor (DOL) has published a new standard for determining whether two entities are "joint employers" of workers for purposes of liability under the Fair Labor Standards Act (FLSA). The new four-factor balancing test brings much needed clarity to employers in joint venture, subcontracting, and other potential joint employer situations. Under this test, the DOL will consider whether an entity (a) hires or fires the employee, (b) supervises and controls the employee's work schedule or conditions of employment to a substantial degree, (c) determines the employee's rate and method of payment, and (d) maintains the employee's employment records. None of these factors are dispositive as to the ultimate question.

Sleeping on the Job: In a recent decision from the Fifth Circuit, *Clark v. Champion National Security, Incorporated*, the Court of Appeals affirmed the common sense notion that staying awake while on duty is an essential job function for nearly all jobs. Even if an individual has a disability, such as sleep apnea or diabetes-induced amnesia, an individual is not a "qualified" individual for purposes of the Americans with Disabilities Act if the individual repeatedly falls asleep on the job and cannot perform his or her job duties as a result. If an employer is consistently enforcing a reasonable disciplinary rule regarding sleeping on the job, then that rule may be enforced against an employee who cannot stay awake on the job with or without a reasonable accommodation.

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