



➤ December 8, 2022

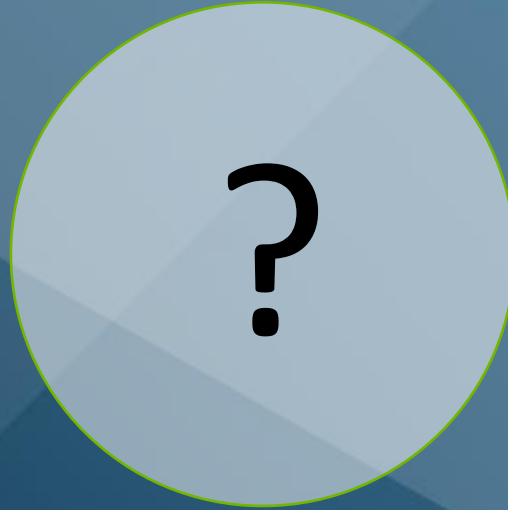
I-9 Compliance & Remote Workforce



Presentation By:
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➤ Presenter

Alejandro Pérez

Alejandro assists employers facing a variety of employment disputes, including employment discrimination, sexual harassment, wrongful termination, workplace torts, trade secret/anti-piracy, non-compete agreements and unfair competition litigation and arbitration. Alejandro's clients value his proactive and practical approach to identifying preemptive HR strategies that increase employee job satisfaction, minimize risk, and reduce overall litigation costs.



Presentation Overview

- **I-9 Compliance:**
 - **Government Agencies**
 - **I-9 Rules and Review**
 - I-9 Compliance Framework
 - I-9 Refresher Course
 - Types of Violations
 - **OSC Anti-Discrimination**
 - **Special I-9 Issues**
 - Receipt Rule
 - Photocopy Policy
 - COVID Policies

➤ The Agencies



Department of Homeland Security (DHS) – consolidated Customs and INS functions and divided immigration processing into three agencies

- *U.S. Citizenship and Immigration Services (USCIS)* – primary agency for the petitions/benefits processing
- *Customs and Border Protection (CBP)* – responsible for inspection and admission at the U.S. ports of entry
- *Immigration and Customs Enforcement (ICE)* – responsible for enforcing immigration laws (deportation, employer investigations/sanctions, alien smuggling, etc.)

➤ The Agencies (continued)



Department of Justice (DOJ) – Civil Rights Division enforces immigration-related discrimination provisions of IRCA

Employer Compliance Enforced By:

- **Immigration & Customs Enforcement (ICE)**
 - I-9 rules/E-Verify rules/illegal workers
- **DOJ's Office of Special Counsel (OSC)**
 - Discrimination in the I-9 verification process
- **State Agencies**
 - State immigration law compliance

➤ Why are we Doing This???



Penalties

Violations	Minimum (1st Offense)	Maximum (3rd or Subsequent Offense)
Knowingly hired, or to have knowingly recruited or referred for a fee, an unauthorized alien for employment in the U.S. or to have knowingly continued to employ an unauthorized alien in the U.S.	\$539 for each unauthorized alien	\$21,563 for each unauthorized alien
Failing to comply with Form I-9 employment verification requirements	\$216 per each form	\$2,156 for each form
Committing or participating in document fraud for satisfying a requirement or benefit of the employment verification process or the INA	\$445 for each document	\$8,908 for each document
Committing document abuse	\$178 per violation	\$1,782 per violation
Unlawful discrimination against an employment-authorized individual in hiring, firing, or recruitment or referral for a fee	\$445 per violation	\$17,816 per violation
Failing to notify DHS of a Final Nonconfirmation (FNC) of an employee's employment eligibility	\$751 per violation	\$1,502 per violation
Engaging in a pattern or practice of hiring, recruiting, or referring for a fee unauthorized aliens	<ul style="list-style-type: none"> •Up to \$3,000 for each unauthorized alien •Up to 6 months of prison for the entire pattern or practice 	

➤ Introduction to Federal I-9 Compliance

I-9 law imposes two requirements on employers:

- 1. Verification of the employment eligibility of all new employees at the time they are hired.
- 2. A prohibition on any discrimination based on national origin or citizenship status.

➤ Federal Compliance: Overview

IRCA (Immigration Reform and Control Act)

- Unlawful for an employer to hire or continue to employ an alien who the employer ***knows*** is unauthorized to work in the U.S.
- Unlawful for an employer with **more than three** employees to **discriminate on the basis of national origin or citizenship**
- Unlawful for an employer to commit “Document Abuse”
- Unlawful for an employer to **knowingly accept fraudulent documentation** to satisfy the verification requirements and falsely create an I-9 form based on such a document

➤ Federal Compliance: Form I-9

- Verify the employee's identity
- Verify the employee's work authorization

Now, record the information using Form I-9



➤ I-9 Verification Basics

The I-9 form should not be completed until you have made a job offer to the applicant

and

the applicant has expressly accepted that job offer.

***Are you using the correct version of the Form??
-Current version dated October 21, 2019.

➤ I-9 Record-Keeping Requirements

- An employer must keep I-9s for all current employees (unless grandfather clause applies).
- I-9s of former employees must be kept for three years from the date of hire or one year after termination of employment, whichever is later.
- I-9s should be stored in separate and secure files.
- Ensure that I-9s beyond the retention period are appropriately disposed of.

➤ Anti-Discrimination Laws

- Manager must not discriminate based on: citizenship, immigration status, or national origin in the hiring and firing, the I-9 employment eligibility or the re-verification process.
- Manager must not:
 - Specify documents a New Hire must present for I-9 purposes
 - Request more or different documents than required by law
 - Reject reasonable, genuine-looking documents, so long as they are unexpired, original documents appearing on the List of Acceptable Documents.

Verification of Documents

What Can't you Say?

Manager:
Can I see your
Driver's License
and Social
Security Card?



Instead, provide the New Hire with the List of Acceptable Documents. The New Hire must be free to choose the document(s) they will present for Form I-9. The Manager must **never** specify the document(s) that must be presented.

Verification of Documents

What CAN you Say?

Manager:
Here is the List of Acceptable Documents. Choose one document from List A, OR one document from List B AND one document from List C.



Instead, provide the New Hire with the List of Acceptable Documents. The New Hire must be free to choose the document(s) they will present for Form I-9. The Manager must never specify the document(s) that must be presented.

➤ I-9 Verification Basics

- **The I-9 form is divided into 3 sections:**
 - **Section 1** – to be filled out by the employee
 - **Section 2** – to be filled out by the company (you)
 - **Section 3** – used for name change, rehire, and re-verification

➤ Section 1 of the I-9 Form

- Every new hire *must* complete **SECTION 1** of the I-9 form no later than the close of business on his/her first day of work
- By signing Section 1, the employee confirms that the information provided in Section 1 is accurate

➤ Section 1 of the I-9 Form

- Make sure that the employee checks one of the four boxes in Section 1 to indicate citizenship or immigration status
 - **A citizen of the United States**
 - **A noncitizen national of the United States**
 - **A lawful permanent resident**
 - **An alien authorized to work**
- The employee **MUST** check one of the four boxes

➤ Section 2 of the I-9 Form

**SECTION 2 must be completed by the Company
on or before the 3rd day of employment!**

Note that the 1st day of employment does NOT
count towards the 3-day deadline

Example: 1st day of employment is Monday.

Section 2 must be completed by COB Thursday

➤ Section 2 of the I-9 Form

- The new hire must present unexpired original document(s) from the *List of Acceptable Documents* to prove identity and work authorization
- The new hire chooses which document(s) from the *List of Acceptable Documents* to present

➤ Section 2 of the I-9 Form

The employee may present one document from *List A* ;

-or-

One document from *List B*; plus

One document from *List C*.



➤ Section 2 of the I-9 Form

- **List A** documents establish both identity and work authorization.
- **List B** documents establish identity only
- **List C** documents establish work authorization only

LISTS OF ACCEPTABLE DOCUMENTS

All documents must be UNEXPIRED

Employees may present one selection from List A
or a combination of one selection from List B and one selection from List C.

LIST A Documents that Establish Both Identity and Employment Authorization	OR	LIST B Documents that Establish Identity	AND	LIST C Documents that Establish Employment Authorization
<ol style="list-style-type: none"> 1. U.S. Passport or U.S. Passport Card 2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551) 3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa 4. Employment Authorization Document that contains a photograph (Form I-766) 5. For a nonimmigrant alien authorized to work for a specific employer because of his or her status: <ol style="list-style-type: none"> a. Foreign passport; and b. Form I-94 or Form I-94A that has the following: <ol style="list-style-type: none"> (1) The same name as the passport, and (2) An endorsement of the alien's nonimmigrant status as long as that period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form. 6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI 		<ol style="list-style-type: none"> 1. Driver's license or ID card issued by a State or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address 2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address 3. School ID card with a photograph 4. Voter's registration card 5. U.S. Military card or draft record 6. Military dependent's ID card 7. U.S. Coast Guard Merchant Mariner Card 8. Native American tribal document 9. Driver's license issued by a Canadian government authority <p style="text-align: center;">For persons under age 18 who are unable to present a document listed above:</p> <ol style="list-style-type: none"> 10. School record or report card 11. Clinic, doctor, or hospital record 12. Day-care or nursery school record 		<ol style="list-style-type: none"> 1. A Social Security Account Number card, unless the card includes one of the following restrictions: <ol style="list-style-type: none"> (1) NOT VALID FOR EMPLOYMENT (2) VALID FOR WORK ONLY WITH INS AUTHORIZATION (3) VALID FOR WORK ONLY WITH DHS AUTHORIZATION 2. Certification of Birth Abroad issued by the Department of State (Form FS-546) 3. Certification of Report of Birth issued by the Department of State (Form DS-1350) 4. Original or certified copy of birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal 5. Native American tribal document 6. U.S. Citizen ID Card (Form I-197) 7. Identification Card for Use of Resident Citizen in the United States (Form I-179) 8. Employment authorization document issued by the Department of Homeland Security

Illustrations of many of these documents appear in Part 8 of the Handbook for Employers (M-274).

Refer to Section 2 of the instructions, titled "Employer or Authorized Representative Review and Verification," for more information about acceptable receipts.

➤ Section 2 of the I-9 Form

- Hiring personnel must record the data about the document(s) in Section 2
- All identifying information must be provided in full, including the:
 - **Document Title**
 - **Issuing Authority**
 - **Document Number**
 - **Expiration Date (if applicable)**

Most Common Section 2 Errors

Example:

1 Incorrect Issuing Authority

SECTION 2 - Employer Review and Verification
 To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number and expiration date, if any, of the document(s).

Document Type*

List A List B,C

I-551 (Perm Resident or Alien Reg Receipt Card) ▼




Document Title* I-551 (Perm Resident or Alien)

Issuing Authority* usdhs

Document #* SRC1234567890

Expiration Date* 02 / 14 / 2028 (mm/dd/yyyy)

Attachment: Choose File No file chosen

Document Type	Photo Example	Issuing Authority
U.S. Passport or Passport Card		U.S. Department of State
Permanent Resident Card (Form I-551)		USCIS or DOJ INS
Employment Authorization Document (Form I-766)		USCIS

Document Type	Photo Example	Issuing Authority
Local, State, or Federal ID		California
Social Security Card		<ul style="list-style-type: none"> Social Security Administration (SSA) U.S. Department of Health and Human Services <ul style="list-style-type: none"> Social Security Board Department of Health, Education and Wellness

➤ REVERIFY: Section 3 of the I-9 Form

- **When should the documents be re-verified?**
 - When work authorization expires.
 - When receipt expires.
- **All employers should set into place a tickler system:**
 - 120-day notice (recommended)
- **Only for work authorization documents**
 - Not necessary for identity documents.
 - Not necessary for I-551 cards (green cards).
- **Re-verification must take place by date of expiration!**

➤ Federal Compliance: Form I-9

Examining Documents

- Employee chooses the documents to present
- Employer physically inspects the documents presented
- Employer should treat all employees consistently
- Employer does NOT need to be a document expert – but do be reasonable
- Must examine an original document
- Must ensure that the document is on the List of Acceptable Documents
- Must ensure that the document appears genuine
- Must ensure that the document relates to the employee



➤ Federal Compliance: Form I-9

Ask THREE Questions:

(1) Does the document appear to be Genuine (i.e., does it look like what it is supposed to be)?

- Utilize the M-274 Handbook for Employers to understand common version of documents (available at www.uscis.gov/files/form/m-274.pdf)

(2) Does it Relate to the employee who gave it to me?

- Ensure that the information on the document matches the individual who provided it
- Compare the picture on the document to the individual, if applicable
- Cross-check all information on Section 1 of the I-9 with the information on the document provided

(3) Does it appear to be Tampered with or doctored?

- Not all fake documents are obvious
- Read the document front and back
- Look for misspellings and other data that does not add up
- Do not be overly zealous!

➤ Types of I-9 Violations

Employer compliance is enforced by:

- **Knowingly** hiring or continuing to employ unauthorized aliens
- Paperwork errors
- I-9 Discrimination: Citizenship-status discrimination, national origin discrimination, and “document abuse”

➤ “Knowingly” Hiring or Continuing to Employ Unauthorized Alien

“Knowingly” includes:

- (1) **Actual knowledge** that an employee lacks work authorization; and
- (2) **Constructive knowledge**, i.e., knowledge which may fairly **be inferred** through notice of certain facts and circumstances that would **lead a reasonable person to know** that an employee lacks work authorization

➤ Examples of “Constructive” Knowledge

- The company does not complete an I-9 form and the employee turns out to be unauthorized to work
- The employee does not properly complete Section 1 of the form (e.g., fails to check an attestation box)

➤ Examples of “Constructive” Knowledge

- The employee’s temporary work permit expired, but the company continues to employ the person without I-9 re-verification
- The company fails to address/resolve mismatch notices received from the SSA or the DHS

I-9 Paperwork Violations

- The I-9 form is a **technical** form – “almost” right can still subject you and the company to penalties.
- **The keys to proper I-9 compliance:**
 - Know the I-9 rules
 - Be thorough – make sure all required sections are completed, and avoid taking shortcuts
 - BUT – do not be overzealous – verify only what is required, and no more
 - Be consistent
- Remember – the I-9 form is signed under penalty of perjury

Certification

I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States.

The employee's first day of employment (mm/dd/yyyy): _____ (See instructions for exemptions.)

Signature of Employer or Authorized Representative		Date (mm/dd/yyyy)	Title of Employer or Authorized Representative	
Last Name (Family Name)		First Name (Given Name)	Employer's Business or Organization Name	
Employer's Business or Organization Address (Street Number and Name)		City or Town	State	Zip Code

➤ Discriminatory Document Practices

- Prohibited discriminatory conduct includes discriminatory documentation practices
- *...when employers request more or different documents than are required to verify employment eligibility and identity, reject reasonably genuine-looking documents or specify certain documents over others with the intent to discriminate on the basis of citizenship status or national origin*
- Protects: U.S. citizens, nationals, and legal workers

➤ Discriminatory Document Practices

Common document abuse situations:

- Request for a specific document
- Pre-screen potential hires
- Greater scrutiny/rejection of valid documents from immigrants
- Re-verify U.S. citizens or permanent residents
- Reject a document acceptable under I-9 rules
- Require immigrants, or those who appear foreign, to show specific work permit documents, but allow U.S. citizens to provide I-9 documentation of their choosing

➤ Special I-9 Issues

Special Issues:

- Receipt Rule
- Retaining photocopies of presented documents
- TPS status
- COVID relaxed policies

➤ Special I-9 Issues – Receipt Rule

- You may only accept receipts for a replacement document (that is listed on the List of Acceptable Documents) in lieu of the required original document **if the original document was lost, stolen, or damaged.**
- The employee must then present the replacement document within 90 days of the hire.
- Receipts showing that the employee has applied for an extension of an expired Employment Authorization Card are typically **NOT** an acceptable document – but there are exceptions, if the document is eligible for “auto-extension.” Consult with immigration counsel to determine if a receipt is acceptable, as this may be case-specific.

➤ I-9 Special Issues – TPS Status

The TPS program is a temporary humanitarian program administered by USCIS (United States Citizenship and Immigration Services), part of the Department of Homeland Security.

- TPS is a temporary immigration benefit allowing qualified individuals from designated countries who are in the U.S. to stay here for a limited time period, due to certain conditions, such as on-going armed conflict, environmental disaster, or other extraordinary and temporary conditions in the designated country.
- TPS time period may be extended multiple times.

➤ I-9 Special Issues – TPS Status

If a current or new employee presents an EAD that has been automatically extended, an employer may not ask for additional documentation to prove work authorization, country of origin or registration for program extensions.

- Requesting more or different documents than are required by the I-9 process may violate the antidiscrimination provision of the Immigration and Nationality Act (INA).

➤ Special I-9 Issues - COVID-19

- DHS has relaxed the in-person verification requirement.
- Flexibility rules permit remote verification (i.e., through Zoom/FaceTime or other electronic means).
- Only applies to employers operating remotely.
- This temporary guidance was set to expire on October 31, 2022. Because of ongoing precautions related to COVID-19, DHS has extended the Form I-9 flexibilities until July 31, 2023.

➤ Special I-9 Issues - COVID-19, continued

- How to remote verify:
 - Employers must inspect the Sec. 2 documents remotely (e.g., over video link, fax or email, etc.).
 - Obtain, inspect, and retain copies of the documents, **within 3 business** days for purposes of completing Section 2.

➤ Special I-9 Issues - COVID-19, continued

- E-Verify requirements NOT suspended – still must complete within 3 days of hire.
- Once normal operations resume, within **3 business days**:
 - **Employees must report** for in-person verification.
 - Employer must physically inspect documents.
 - Add to Sec. 2 (or Sec. 3 if re-verifying):
 - “Documents physically examined”
 - Date of inspection

➤ Special I-9 Issues

Receipt Rule under Normal Circumstances

- You may only accept receipts for a replacement document (that is listed on the List of Acceptable Documents) in lieu of the required original document **if the original document was lost, stolen, or damaged.**
- The employee must then present the replacement document within 90 days of the hire.

➤ Special I-9 Issues Receipt Rule and COVID-19

- Applies only to List B identity documents.
- Some issuing authorities have extended expiration dates, some have not, for documents like driver's licenses, voter ID cards, etc.

➤ Special I-9 Issues Receipt Rule and COVID-19

- When issuing authority HAS NOT extended expiration dates:
 - Record the document info in If expired on or after March 1, 2020, treat like a valid receipt (as discussed above).
 - Sec. 2 under List B
 - Enter “COVID-19” in the Additional Information Field in Sec. 2.
 - Within 90 days of termination of DHS’s temporary policies, employee must present unexpired List B document.

➤ Special I-9 Issues

Retaining Photocopies of Documents

- Best practice is TO RETAIN photocopies of the documents presented by new hires for employment verification purposes.
- E-Verify carries its own document retention requirements – must retain copies of EAD, U.S. passports and green cards if used in I-9 process.
- Some states carry specific retention requirements.



HRCI/SHRM
certificate is in
the handout
section



Receive an email
tomorrow with
the certificate &
recording



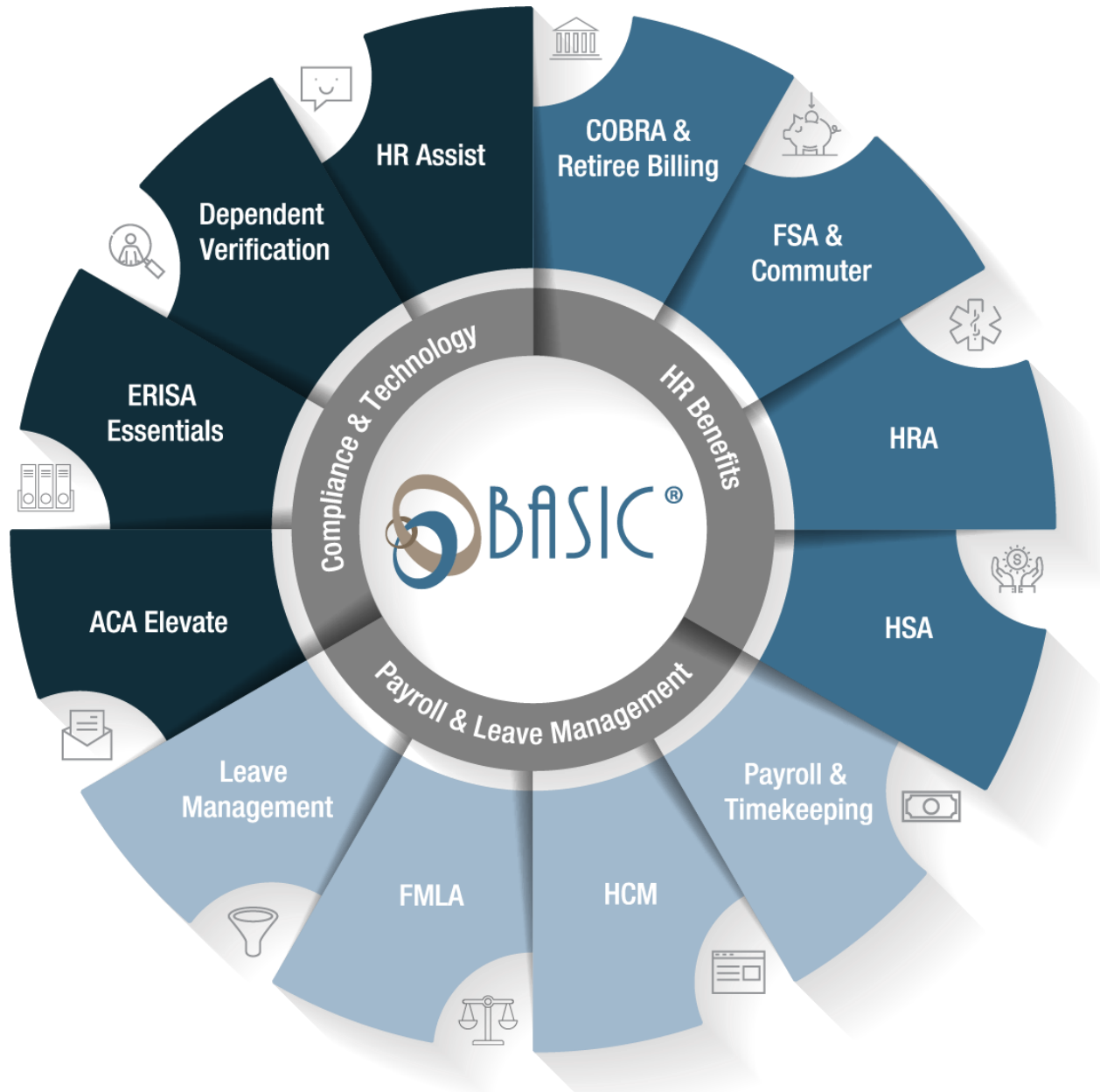
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