

TITLE 8 OF CODE OF FEDERAL REGULATIONS (8 CFR) \ 8 CFR PART 274a -- CONTROL OF EMPLOYMENT OF ALIENS \ § Sec. 274a.1 Definitions.

§ Sec. 274a.1 Definitions.

For the purpose of this part--

(a) The term unauthorized alien means, with respect to employment of an alien at a particular time, that the alien is not at that time either:

(1) Lawfully admitted for permanent residence, or

(2) authorized to be so employed by this Act or by the Attorney General;

(b) The term entity means any legal entity, including but not limited to, a corporation, partnership, joint venture, governmental body, agency, proprietorship, or association;

(c) The term hire means the actual commencement of employment of an employee for wages or other remuneration. For purposes of section **274A(a)(4)** of the Act and **8 CFR 274a.5** , a hire occurs when a person or entity uses a contract, subcontract, or exchange entered into, renegotiated, or extended after November 6, 1986 (or, with respect to the Commonwealth of the Northern Mariana Islands, after the transition program effective date as defined in **8 CFR 1.1**), to obtain the labor of an alien in the United States, knowing that the alien is an unauthorized alien; (Revised effective 11/28/09; **74 FR 55725**)

(d) The term refer for a fee means the act of sending or directing a person or transmitting documentation or information to another, directly or indirectly, with the intent of obtaining employment in the United States for such person, for remuneration whether on a retainer or contingency basis; however, this term does not include union hiring halls that refer union members or non-union individuals who pay union membership dues;

(e) The term recruit for a fee means the act of soliciting a person, directly or indirectly, and referring that person to another with the intent of obtaining employment for that person, for remuneration whether on a retainer or contingency basis; however, this term does not include union hiring halls that refer union members or non-union individuals who pay union membership dues;

(f) The term employee means an individual who provides services or labor for an employer for wages or other remuneration but does not mean independent contractors as defined in paragraph (j) of this section or those engaged in casual domestic employment as stated in paragraph (h) of this section;

(g) The term employer means a person or entity, including an agent or anyone acting directly or indirectly in the interest thereof, who engages the services or labor of an employee to be performed in the United States for wages or other remuneration. In the case of an independent contractor or contract labor or services, the term employer shall mean the independent contractor or contractor and not the person or entity using the contract labor;

(h) The term employment means any service or labor performed by an employee for an employer within the United States, including service or labor performed on a vessel or aircraft that has arrived in the United States and has been inspected, or otherwise included within the provisions of the Anti-Reflagging Act codified at 46 U.S.C. 8704, but not including duties performed by nonimmigrant crewmen defined in sections **101(a)(10)** and **(a)(15)(D)** of the Act. However, employment does not include casual employment by individuals who provide domestic service in a private home that is sporadic, irregular or intermittent;

(i) The term State employment agency means any State government unit designated to cooperate with the United States Employment Service in the operation of the public employment service system;

(j) The term independent contractor includes individuals or entities who carry on independent business, contract to do a piece of work according to their own means and methods, and are subject to control only as to results. Whether an individual or entity is an independent contractor, regardless of what the individual or entity calls itself, will be determined on a case-by-case basis. Factors to be considered in that determination include, but are not limited to, whether the individual or entity: supplies the tools or materials; makes services available to the general public; works for a number of clients at the same time; has an opportunity for profit or loss as a result of labor or services provided; invests in the facilities for work; directs the order or sequence in which the work is to be done and determines the hours during which the work is to be done. The use of labor or services of an independent contractor are subject to the restrictions in section **274A(a)(4)** of the Act and Sec. 274a.5 of this part;

(k) The term pattern or practice means regular, repeated, and intentional activities, but does not include isolated, sporadic, or accidental acts;

(l)(1) The term knowing includes not only actual knowledge but also knowledge which may fairly be inferred through notice of certain facts and circumstances which would lead a person, through the exercise of reasonable care, to know about a certain condition. Constructive knowledge may include, but is not limited to, situations where an employer: (Paragraph (l) revised effective 11/6/09; [74 FR 51447](#)) (Paragraph (l) amended 10/28/08; [73 FR 63843](#)) (Paragraph (l) revised effective 9/14/07; [72 FR 45611](#))

(i) Fails to complete or improperly completes the Employment Eligibility Verification Form, I-9;

(ii) Has information available to it that would indicate that the alien is not authorized to work, such as Labor Certification and/or an Application for Prospective Employer; or

(iii) Acts with reckless and wanton disregard for the legal consequences of permitting another individual to introduce an unauthorized alien into its work force or to act on its behalf.

(2) Knowledge that an employee is unauthorized may not be inferred from an employee's foreign appearance or accent. Nothing in this definition should be interpreted as permitting an employer to request more or different documents than are required under section [274\(b\)](#) of the Act or to refuse to honor documents tendered that on their face reasonably appear to be genuine and to relate to the individual.