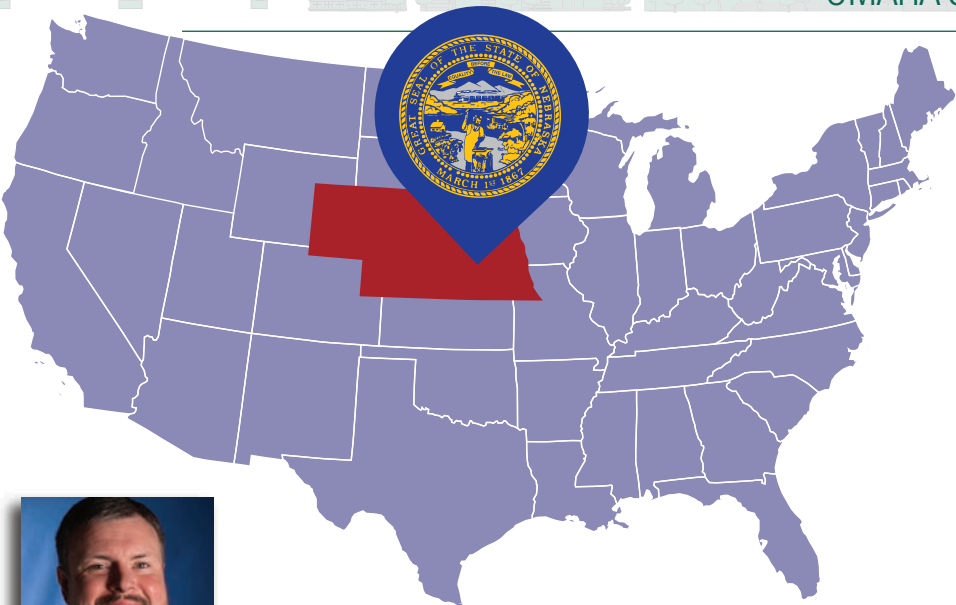


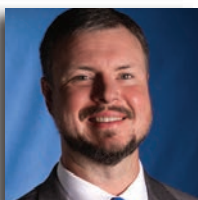
LEGAL

# Perspectives

OMAHA'S BUSINESS LAW FIRM SINCE 1944



## If my business is registered in Nebraska, can I service customers in Council Bluffs?



By Andrew Deaver

Even though Omaha and Council Bluffs are considered a Metropolitan Area, they are separated by more than the Missouri River. The cities are in different states. Therefore, to do business in both cities, you must register or license your company with the Secretary of State in **both** Nebraska and Iowa.

Licensing requirements can confuse service and trade businesses like plumbers, roofers, and other contractors who regularly cross state lines.

But it is important to know that if you plan to operate in multiple states, and those states require licensing for your type of business, you must undergo the registration process in every state where you are doing business, whether or not you have a brick-and-mortar location in that state.

### What can happen if you operate a business without a registration or a license?

If a company transacts business in a state without registering with the Secretary of State, the state can penalize the company. The penalty can include a fine and, under some state statutes, the people doing business on behalf of the non-complying company can also be fined.

In addition, the state can prevent the company from bringing a suit or proceeding in the state's courts until it qualifies and registers to do business. Being unable to use the court system is referred to as a "door-closing" provision. The state closes the courthouse doors because they don't think a foreign company should benefit from the aid of a state's courts in enforcing its rights when it is (a) violating state law and (b) not paying its fair share.

Being unable to file a lawsuit could impact your ability to collect payments or enforce other contract terms.

Another good reason to be licensed is if your business is working with a third-party payor, like an insurance company. The small

print in the contract may require the business to be licensed in the state where the work is being performed.

### What is the difference between domestic companies and foreign companies?

A company, whether doing business as a corporation, LLC (limited liability company), or other statutory business entity, is a "domestic" company only in the state in which it is formed. It is considered a "foreign" company or entity in all other states. States have the power to prohibit foreign entities from doing business within their borders unless they comply with certain conditions the states require. Every state has taken advantage of this power by enacting foreign qualification provisions in their state business entity laws.

Foreign qualification is the procedure by which a corporation, LLC, or other statutory business entity receives the authority to do business in a state other than its formation state. (It is also sometimes referred to as "registration"). The company pays a fee and files a document with the state business entity filing office, which is usually the Secretary of State. The document is generally known as an application for authority. Typically, it is a short form that asks for certain basic information about the company. Once qualified, the company will be subject to other compliance requirements, like maintaining a registered agent and filing an annual report.

Income taxes, sales taxes and licensing are also to be considered and complied with when doing business in states other than the entity's domestic state.

The benefits of conducting business activities across state lines are numerous. However, compliance obligations increase when companies expand their horizons. Be sure to comply with these obligations. If you have questions about whether your business complies, contact experienced business law attorney Andy Deaver at [adeaver@akclaw.com](mailto:adeaver@akclaw.com).

# FinCEN Releases Small Business Compliance Guide



By Alex Montoya and Payton Hostens

The Corporate Transparency Act (CTA) will go into effect January 1, 2024. This act will require new and existing

business entities to report certain **beneficial ownership information (BOI)** to the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN).

The CTA is wide-sweeping and is intended to apply to millions of small business across the country.

To assist small business owners in complying with the BOI reporting rule, FINCEN recently published a Small Entity Compliance Guide.

Starting in 2024, many entities created in or registered to do business in the United States will be required to report information about their beneficial owners—the individuals who ultimately own or control a company—to FinCEN. The Guide is intended to help businesses determine if they are required to report their beneficial ownership information to FinCEN.

“This guide is the latest in our ongoing efforts to educate the public about these important new requirements,” said Andrea Gacki, Director of FinCEN. “We are committed to making this process as simple as possible, particularly for small businesses.”

## Small Entity Compliance Guide



Financial Crimes Enforcement Network  
U.S. Department of the Treasury  
Version 1.0 September 2023

“This is also a critical step towards implementing the Corporate Transparency Act, which will help the Treasury Department and FinCEN expose bad actors abusing the U.S. financial system by hiding their identity behind opaque corporate structures,” said Under Secretary of the Treasury for Terrorism and Financial Intelligence Brian Nelson.

The Guide is now available to download on AKCLaw.com at <https://www.akclaw.com/an-introduction-to-beneficial-owners-hip-information/>.

Among other things, the Guide:

- Provides information on what companies need to report and outlines the 23 company exemptions;
- Helps identify who is a Beneficial Owner of a company;
- Describes each of the BOI reporting rule's provisions in simple, easy-to-read language;
- Answers key questions; and
- Provides interactive checklists, infographics, and other tools to assist businesses in complying with the BOI reporting rule.

The requirements become effective on January 1, 2024, and companies will be able to begin reporting beneficial ownership information to FinCEN at that time.

**Failure to comply with the CTA's reporting requirements can lead to civil and criminal penalties, including a fine of up to \$10,000, imprisonment for up to two years, or both.**

FinCEN will provide additional guidance on how to submit beneficial ownership information soon. Small businesses can continue to monitor FinCEN's website for more information, subscribe to FinCEN updates, or visit our website AKCLaw.com where we will continue to post updates as FinCEN releases them.

Abrahams Kaslow & Cassman LLP is committed to assisting you achieve your business goals and is ready and willing to help our clients navigate the new requirements of the CTA.

Please contact us at 402.392.1250 as soon as possible to discuss your entity's potential reporting requirements.

- 01 Does my company have to report its beneficial owners?**  
Click here to go to Chapter 1
- 02 Who is a beneficial owner of my company?**  
Click here to go to Chapter 2
- 03 Does my company have to report its company applicants?**  
Click here to go to Chapter 3
- 04 What specific information does my company need to report?**  
Click here to go to Chapter 4
- 05 When and how should my company file its initial report?**  
Click here to go to Chapter 5
- 06 What if there are changes to or inaccuracies in reported information?**  
Click here to go to Chapter 6

# UCIS Issues Revised I-9 Form



By Gregory Schreiber

The U.S. Citizenship and Immigration Services (UCIS) has published a revised version of Form I-9, Employment Eligibility Verification. The newly announced change incentivizes employers who are not otherwise required to use E-Verify to voluntarily enroll in E-Verify to take advantage of virtual inspection. **Starting November 1st, all employers must use the new Form I-9.**

The updated version of Form I-9 includes the following changes:

- Reduces Sections 1 and 2 to a single sheet;
- Is designed to be a fillable form on tablets and mobile devices;
- Moves the Section 1 Preparer/Translator Certification area to a separate, standalone supplement that employers can provide to employees when necessary;
- Moves Section 3, Reverification and Rehire, to a standalone supplement that employers can print if or when rehire occurs or re-verification is required;
- Revises the Lists of Acceptable Documents page to include some acceptable receipts as well as guidance and links to information on automatic extensions of employment authorization documentation;
- Reduces Form instructions from 15 pages to 8 pages; and
- Includes a checkbox allowing employers to indicate they examined Form I-9 documentation remotely under a DHS-authorized alternative procedure rather than via physical examination.

## Overview – What is Form I-9 and E-Verify?

Form I-9, Employment Eligibility Verification, is used to verify the identity and employment authorization of individuals hired to work in the United States. Federal law requires employers to have their new hires complete Section 1 of the Form I-9 no later than their first day of employment. Thereafter, employers must examine the identity and work authorization documents presented by their new hires and complete Section 2 of the Form I-9 within three business days of their first day of employment. If employees present temporary work authorization, employers must reverify their employment authorization via Section 3 of Form I-9.

E-Verify is a free online tool that electronically compares information the employer enters from the Form I-9 to records available to the Social Security Administration and the U.S. Department of Homeland Security. This verification confirms an employee's eligibility to work in the United States. The purpose of E-Verify is to improve the accuracy and integrity of the employment verification process. Similar to Form I-9 requirements, employers who use E-Verify must do so within three business days of the employee's first day of employment.

### E-Verify Top 5 Compliance Tips:

1. Participation in E-Verify Is Sometimes Required: At a federal level, E-Verify is a voluntary program, except for employers with federal contracts or subcontracts that contain the FAR E-Verify clause requiring them to enroll in and use E-Verify as a condition of

federal contracting. Some states and localities also have passed legislation requiring participation in E-Verify by public agencies, state contractors, private employers, or some combination thereof. By way of example, the State of Nebraska requires both public agencies and state contractors to be enrolled in E-Verify, as well as certain private employers seeking certain tax incentives under state law.

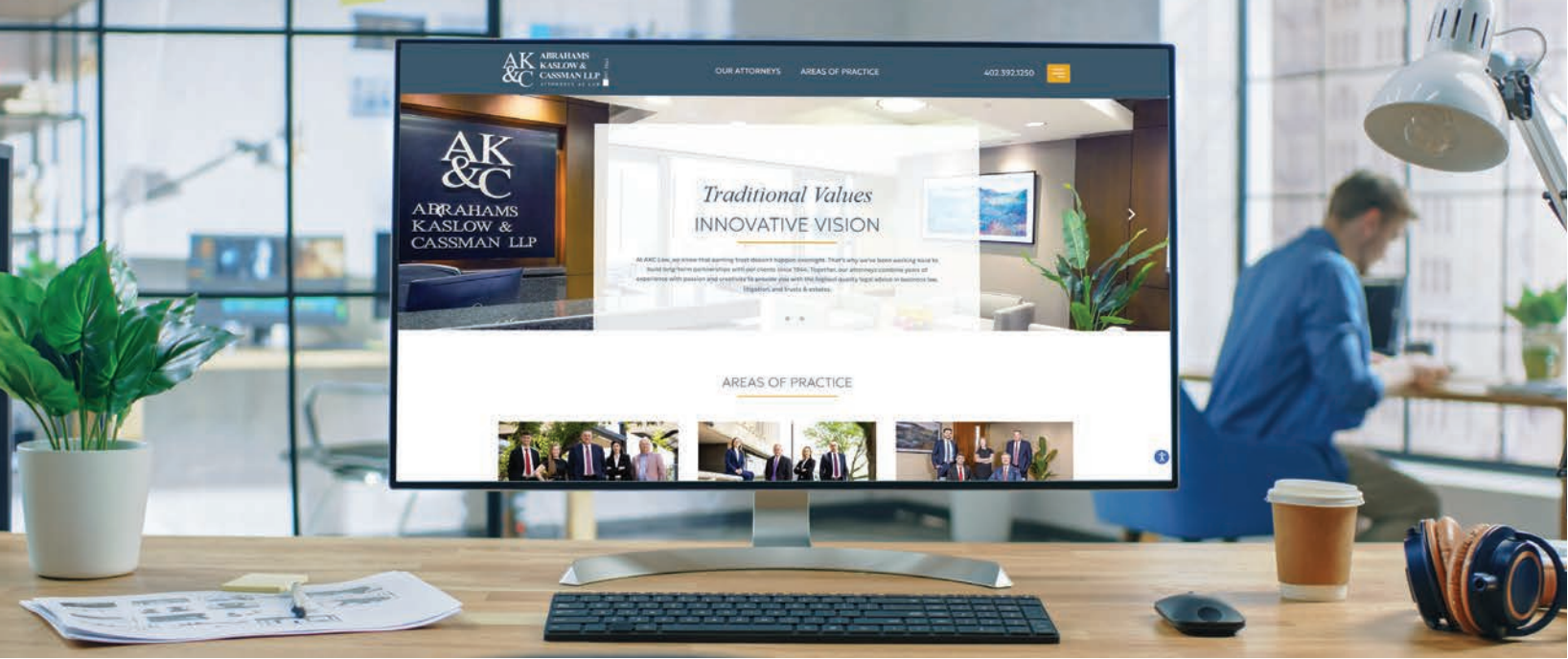
2. E-Verify for New Hires vs. Current Employees: Employers who enroll in E-Verify should use E-Verify for all new hires as of their enrollment date and must be applied consistently to all employees at the worksite to avoid violations of anti-discrimination laws. Moreover, those employers with federal contracts or subcontracts that contain the FAR E-Verify clause must verify existing employees assigned to a covered contract; these employers also have the option of verifying their entire workforce. Employers without federal contracts or subcontracts that contain the FAR E-Verify clause may never verify existing employees. Employers who wish to stop using E-Verify should officially terminate their participation in the program.

3. Tentative Nonconfirmations (Mismatch) Employers may not terminate, suspend, delay training, withhold or lower pay, or take any other adverse action against an employee because the employee received a Tentative Nonconfirmation ("TNC") until the mismatch becomes a Final Nonconfirmation. A TNC occurs when information entered in E-Verify does not match DHS or SSA records but does not necessarily mean that the employee is unauthorized to work. Indeed, a TNC could mean that there is a record error on an identification document, the employee's status has changed, or the employer did not enter information correctly into E-Verify. When a TNC is received, the employer should present the employee with the Further Action Notice generated regarding the mismatch. The employee decides whether to take action to resolve the mismatch. Only if/when a Final Nonconfirmation is generated in E-Verify may the employer terminate the employee.

4. Reverification: While the Form I-9 must be completed for new hires as well as existing employees whose temporary work authorization has expired, the E-Verify process is used only for new hires. Employees with temporary work authorization who are subject to the Form I-9 re-verification process should not be reverified in E-Verify.

5. Retention: As part of the E-Verify process, upon receiving an "Employment Authorized" case result, the employer should record the case number on the employee's Form I-9 or print out the Case Details page and attach it to the Form I-9. Moreover, if the employee presents a document used as part of Photo Matching (currently the U.S. passport and passport card, Form I-551 Permanent Resident Card, and Form I-766 Employment Authorization Document), the employer must retain a photocopy of the document presented. (Other documents may be added to Photo Matching in the future.)

If you have questions, please contact [gschreiber@akclaw.com](mailto:gschreiber@akclaw.com).



# AKC LAW LAUNCHES NEW WEBSITE

We are excited to announce the launch of our newly designed website AKCLaw.com. When we chose to update the site we wanted to showcase our firms long standing values and commitment to client service.

We also wanted to share our attorney's expertise in the areas of

- Corporate & Business Law
- Employment Law
- Energy Law
- Franchise Law
- Real Estate Law
- Medical Malpractice Defense
- Insurance Defense
- Probate & Trust Litigation
- Civil Litigation
- Personal Injury
- Appellate
- Estate Planning
- Special Needs Planning
- Probate & Trust Administration

Months of planning, writing, and designing went into the creation of our new site which is faster and easier to navigate. We also took extra steps to ensure our site meets the 2023 WCAG and ADA website compliance requirements to make our site accessible to people with disabilities.

Another new feature is our Make a Payment page. We have partnered with TABS3Pay to provide easy and convenient electronic processing of credit card and eCheck transactions. We are also able to accept client retainer deposits.

If you have any questions or comments, please use our handy contact forms and we will promptly reply.



Click here to pay your outstanding statement charges with a credit card or echeck. A 3% surcharge will be added for credit card payments.

Click here to pay your retainer or advance deposit for future fees and costs with a credit card or echeck. A 3% surcharge will be added for credit card payments.



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