

Don't Look in the Basement: Witches Brew of Advanced Employment Issues

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- Shareholder/Director
- Labor & Employment
- Litigation
- Trial Practice

*Subsequent information should not be understood as, or considered a substitute for, specific legal advice. For inquiries, please contact Madalene Witterholt or another licensed attorney.



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WHO KNOWS WHAT
EVIL LURKS IN THE
HEARTS OF MEN?



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Four things that have kept me up this past year

01

Wages

Overpayments, pay cards and final pay

02

Garnishment

Limits, job protection and always answering

03

I-9

The errors that just became substantive

04

Surveillance

Cameras, recording, GPS and biometrics



Each part ends with real scenarios. Be ready with your red and green responses.

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PART 1 OF 4

WAGES

Overpayment and getting your money back

40 O.S. §§ 165.2, 165.3, 165.3a · OAC 380:30-1-7, 380:30-1-11 · 60 O.S. § 651 et seq.

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WAGES · PAYROLL DEDUCTIONS

Help! I want my money back

Allowed with a signed agreement

- Repaying a loan, an advance or a payroll overpayment
- Paying for the employer's merchandise or uniforms the employee bought
- Breakage, lost merchandise, inventory or a cash shortage, when the employee was the only one responsible

THE RULE

- The deduction agreement must be in writing
- The employee signs it before the first deduction is taken
- No signed agreement, no deduction

OAC 380:30-1-7 · 40 O.S. § 165.2

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Pre-paid debit card/direct deposit shrinks the window to fix errors

The Oklahoma rules

- Direct deposit can be required; no bank account means a paper check
- Pay cards are allowed only with the employee's consent
- Card funds must be redeemable on demand at face value

Why overpayments get stuck

- An ACH reversal for a wrong amount must reach the bank within 5 banking days
- Money spent from a card or instant-pay account can't be pulled back
- Then recovery falls back to the written-agreement rules

Nacha Operating Rules, Reversals · OAC 380:30-1-11

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The Dearly Departed

Who gets paid

- A beneficiary the employee designated, if the employer offered that option
- Otherwise, the surviving spouse
- If no spouse, dependent children in equal shares

40 O.S. § 165.3a

Practical steps

- Stop direct deposit or card loads once notified
- Get a death certificate and proof of relationship
- Amounts over \$3,000 go to the estate's representative
- Collect any overpayment as a claim against the estate

Up to \$3,000 goes to family without probate

40 O.S. § 165.3a · federal tax reporting rules also apply

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SCENARIO · WHEN AN EMPLOYEE DIES

Final pay after a death

The situation

Vlad died unexpectedly and is owed \$4,200 in final wages. He never named a beneficiary. His wife and his adult daughter both call about his check, and his next direct deposit is set for Friday.

Who gets paid, and how much?

WHAT TO DO

- Stop Friday's direct deposit now
- With no beneficiary named, his wife comes first
- Pay her up to \$3,000 once you have a death certificate and proof of marriage
- The other \$1,200 goes to the estate's personal representative
- Check tax reporting for post-death wages with the payroll provider

40 O.S. § 165.3a · federal tax reporting rules also apply

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SCENARIO · WHEN AN EMPLOYEE IS INCARCERATED

Final pay after an arrest

The situation

Ray was arrested and hasn't been back to work. You process his separation, and he's owed \$1,100. His mother calls and asks to pick up his check so she can help with bail.

Do you hand it over?

WHAT TO DO

- Not without Ray's signed written authorization
- Pay him by the next regular payday after separation
- Use his usual method, or certified mail if he asks
- Unclaimed after a year: notify him within the 120 days before you report, then report to the State Treasurer by Nov. 1
- Paying late without a real dispute costs 2% a day

40 O.S. § 165.3 · 60 O.S. §§ 651 et seq., 661

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WHAT ABOUT THOSE EARLY PAY CARD\$?

HOW CAN THEY HURT YOU?

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SCENARIO · OVERPAYMENT RECOVERY

Wrong pay rate for 2 weeks

The situation

Morticia's raise was keyed as \$222.50 an hour instead of \$22.50. Nobody caught it for 2 weeks, and she was overpaid \$16,000. Her manager wants all of it taken out of her next paycheck.

What has to happen before payroll recovers a dollar?

WHAT TO DO

- Explain the error and the \$16,000 to Morticia in writing
- Morticia chooses, in writing: repay in a lump sum or by payroll deduction
- Get her signed deduction agreement before the first deduction
- Keep her pay above minimum wage and itemize each deduction on her pay statement

OAC 380:30-1-7, 380:30-1-11 · 40 O.S. § 165.2

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Duplicate run on pay cards

The situation

Friday's payroll file was sent twice. About 40 employees on pay cards got a second full paycheck loaded that morning. Payroll catches it on Tuesday, and several cards already show the money spent.

Can you pull the money back?

WHAT TO DO

- A duplicate can be reversed, but the reversal must reach the bank within 5 banking days
- Tell affected employees before you start one
- Money already spent from a card can't be pulled back
- For anything the reversal doesn't recover, use the written-agreement process

Nacha Reversals Rule · 40 O.S. § 165.2 · OAC 380:30-1-7(d)(1), 380:30-1-11

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Quitting mid-repayment

The situation

Jorge was overpaid \$1,800 over six months and signed an agreement to repay \$300 a month. After three deductions he resigns with \$900 still owed. His final check is \$1,400.

How much can you recover, and how?

WHAT TO DO

- The remaining \$900 offsets his final wages, so his final check is \$500
- Itemize the offset on his final pay statement
- Still pay by the next regular payday
- If final pay hadn't covered it, the rest becomes an ordinary civil debt, pursued outside payroll

OAC 380:30-1-11 · 40 O.S. §§ 165.2, 165.3

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PART 2 OF 4

Garnishment in Oklahoma

Primary authority: 12 O.S. §§ 1170-1196 · 31 O.S. § 1.1 · 14A O.S. §§ 5-105, 5-106 · 15 U.S.C. §§ 1671-1677

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JOB PROTECTION

CAN WE JUST FIRE THEM?

FEDERAL FLOOR

1 debt

An employer may not fire a worker because wages are garnished for any one indebtedness.

15 U.S.C. § 1674(a)

OKLAHOMA RULE

2 per year

For consumer credit sale, lease or loan judgments, no discharge unless the employer is served on more than two occasions within one year.

14A O.S. § 5-106

15 U.S.C. § 1674(a) · 14A O.S. § 5-106

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WHEN AN EMPLOYER IGNORES A GARNISHMENT SUMMONS THE EMPLOYER CAN OWE THE EMPLOYEE'S ENTIRE DEBT

12 OS. § 1179

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HABITS THAT *MINIMIZE* LIABILITY



Notify everyone

DESIGNATE WHO GETS THE SUMMONS payroll or counsel
DON'T FORGET EMPLOYEE Explain their 5 days to object you can't do it
for them

ALWAYS ANSWER

Even for former or unknown
employees.

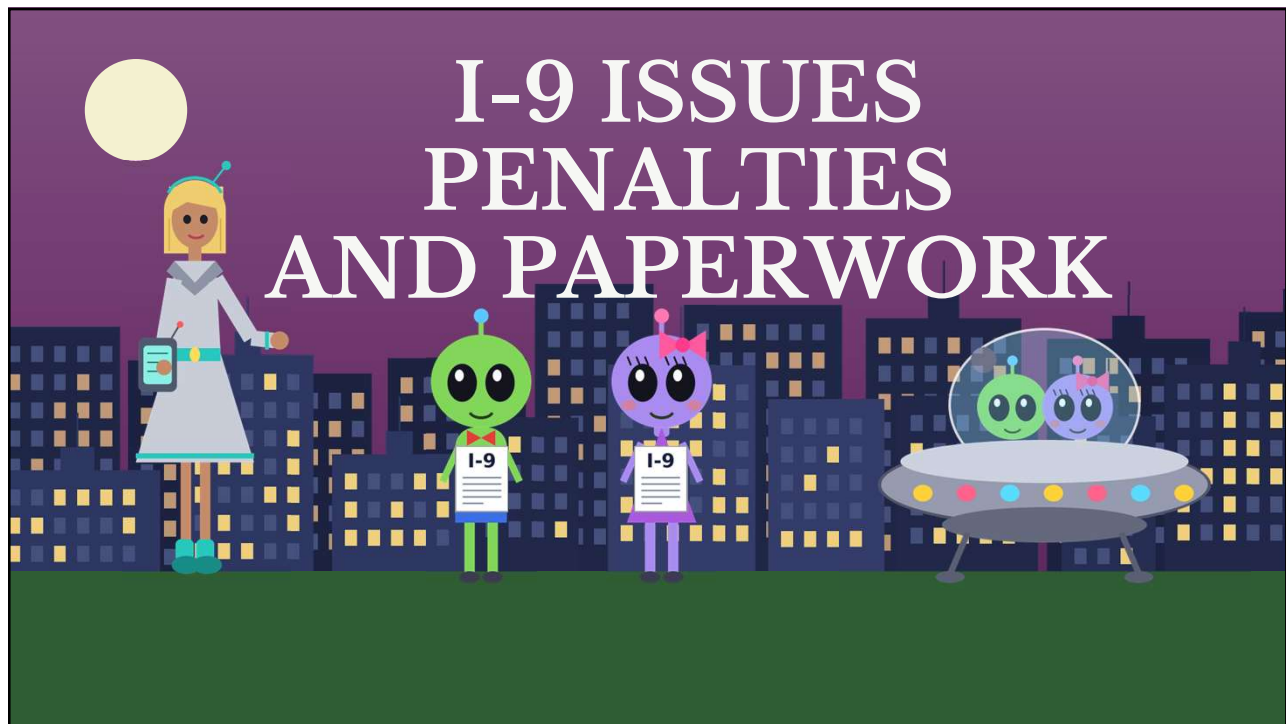
Trust No-ONE Calendar deadlines

Track each pay period for continuing
garnishments.

Yes you have to answer over and over for
the next 180 days.

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CHANGES EMPLOYERS SHOULD KNOW

Changes in characterization of violations

One Form I-9 accepted

The 01/20/25 edition (expires 05/31/2027) is required for new hires.

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A blank birth date

The situation

A quarterly self-audit finds a three-week-old I-9 where the employee left the date of birth blank. Henrietta the HR manager says, "That's a technical error. If ICE ever asks, we'll get 10 days to fix it."

Is Henrietta right?

WHAT TO DO

- No. Since March 2026, a missing date of birth is substantive, with no cure window
- Fix it now: the employee adds the birth date, then initials and dates the change with today's date
- Never backdate or fill it in for her
- Known errors left unfixed after an audit can look like bad faith

ICE I-9 inspection fact sheet (Mar. 16, 2026) · 8 U.S.C. § 1324a(b)(6)

		Employment Eligibility Verification Department of Homeland Security U.S. Citizenship and Immigration Services		USCIS Form I-9 OMB No. 1615-0047 Expires 05/31/2027	
START HERE: Employers must ensure the form instructions are available to employees when completing this form. Failing to comply with the requirements for completing this form. See below and the instructions .					
ANTI-DISCRIMINATION NOTICE: All employees can choose which acceptable documentation to present for Form I-9. Employers cannot ask employees for documentation to verify information in Section 1 , or specify which acceptable documentation employees must present for Section 2 or Supplement B, Reverification and Rehire. Treating employees differently based on their citizenship, immigration status, or national origin may be illegal.					
Section 1. Employee Information and Attestation: Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment , but not before accepting a job offer.					
Last Name (Family Name)		First Name (Given Name)		Middle Initial (if any)	Other Last Names Used (if any)
Address (Street Number and Name)		Apt. Number (if any)	City or Town		State ZIP Code
Date of Birth (mm/dd/yyyy)		U.S. Social Security Number		Employee's Email Address	Employee's Telephone Number
12/31/2000 FKS 10/20/26					

SCENARIO · REMOTE VERIFICATION

A video call for a remote hire

The situation

You're hiring a remote bookkeeper in Arkansas. HR plans to check her documents over a video call, as other companies do. Your company isn't enrolled in E-Verify, but HR figures it's okay.

Can HR check her documents by video?

WHAT TO DO

- No. The remote alternative procedure is only for employers in good standing in E-Verify
- Using it without E-Verify is now a substantive violation
- Instead, have an authorized representative near her check the documents in person
- E-Verify employers using it must check the alternative procedure box

8 CFR § 274a.2(b)(1)(iii)(C) · DHS alternative procedure notice (July 2023) · ICE fact sheet (Mar. 16, 2026)

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SCENARIO · TRANSLATION HELP

A Spanish-language form

The situation

At your Wewoka plant, a new hire reads Spanish better than English. A supervisor hands him the Spanish-language I-9 to fill out, then helps him with a few answers.

Any problems?

ICE I-9 inspection fact sheet (Mar. 16, 2026) · Form I-9 instructions



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WHAT TO DO

- The Spanish form is valid only in Puerto Rico; using it elsewhere is substantive
- Complete the English form; the Spanish version can be a reading aid
- Anyone who helps must complete Supplement A, the preparer and translator section
- An incomplete Supplement A is also substantive

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SCENARIO · DOCUMENT REQUESTS

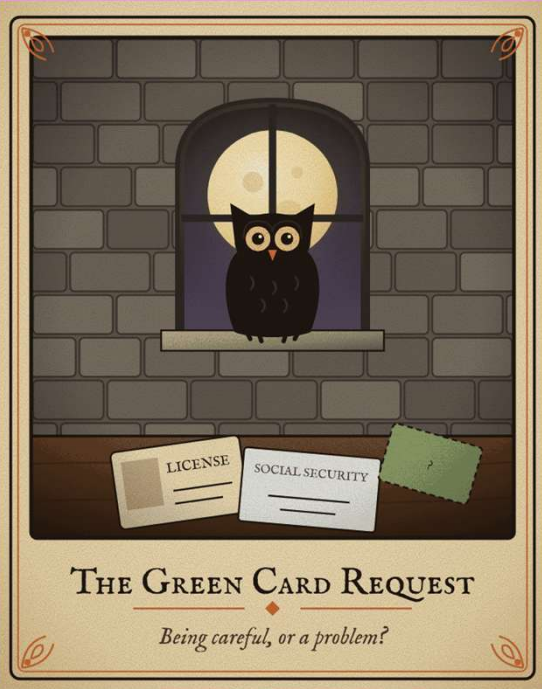
A green card request

The situation

A new hire with a strong accent brings a driver's license and a Social Security card. Worried about the stricter rules, the hiring manager asks to see his green card "to be safe."

Is that being careful, or a problem?

8 U.S.C. § 1324b(a)(6) · 28 CFR § 85.5



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WHAT TO DO

- A problem. The employee chooses which acceptable documents to show
- A List B plus a List C document is enough; accept them if they look genuine
- Demanding specific documents is an unfair documentary practice
- Penalties run \$236 to \$2,364 per person, on top of any I-9 fines

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		Supplement A, Preparer and/or Translator Certification for Section 1		USCIS Form I-9 Supplement A	
Department of Homeland Security		U.S. Citizenship and Immigration Services		OMB No. 1615-0047 Expires 05/31/2027	
Last Name (Family Name) from Section 1.		First Name (Given Name) from Section 1.		Middle initial (if any) from Section 1.	
Instructions: This supplement must be completed by any preparer and/or translator who assists an employee in completing Section 1 of Form I-9. The preparer and/or translator must enter the employee's name in the spaces provided above. Each preparer or translator must complete, sign, and date a separate certification area. Employers must retain completed supplement sheets with the employee's completed Form I-9.					
I attest, under penalty of perjury, that I have assisted in the completion of Section 1 of this form and that to the best of my knowledge the information is true and correct.					
Signature of Preparer or Translator				Date (mm/dd/yyyy)	
Last Name (Family Name)		First Name (Given Name)		Middle Initial (if any)	
Address (Street Number and Name)		City or Town		State	ZIP Code

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Common clerical errors become \$ubstantive

Now substantive, fined on inspection

- Missing date of birth, A-Number or I-94 number
- Missing document title, number or expiration in Section 2, even with copies on file
- Missing first day of employment or undated certifications
- Remote verification and electronic I-9 audit-trail gaps
- Spanish-language form used outside Puerto Rico
- <https://www.uscis.gov/sites/default/files/document/forms/i-9.pdf>

ICE fact sheet update, Mar. 16, 2026 · 8 U.S.C. § 1324a(b)(6) · 8 CFR § 274a.2 · supersedes 1997 Virtue Memorandum

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PART 4 OF 4

SOMEONE'S WATCHING YOU SURVEILLANCE AT WORK



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RIGHTS OF PRIVACY

That Pesky 4th Amendment

WHO, WHAT, WHERE AND
WHY

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WHO

ANY EMPLOYEE OR
MEMBER OF THE
PUBLIC THAT COMES
INTO CONTACT WITH
YOUR BUSINESS

WHERE

ANY PLACE THERE IS NO
REASONABLE
EXPECTATION OF
PRIVACY

WHY

WHY NOT?
PROTECT PROPERTY
PROTECT WORKERS FROM HARM
PROTECT YOU FROM EMPLOYEES

WHAT

VISUAL ONLY
NO AUDIO

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BEST PRACTICES



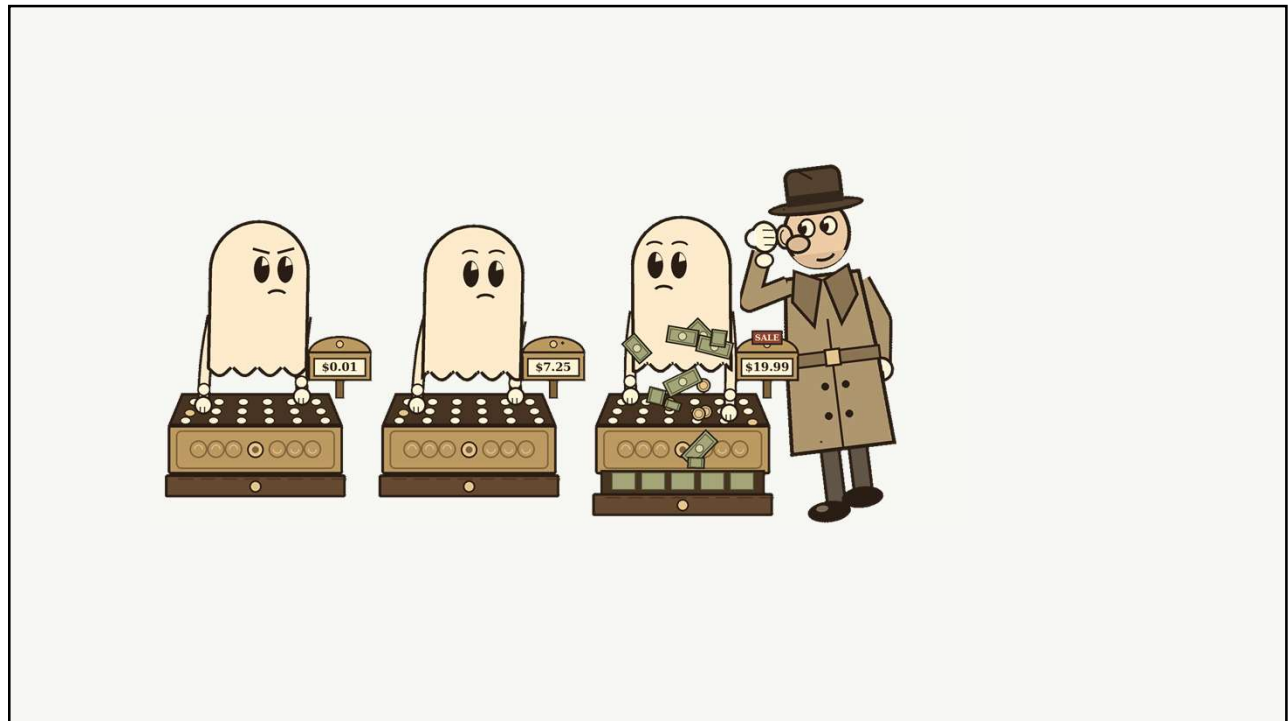
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POLICIES NO EXPECTATION OF PRIVACY

Tell Employees what you are
going to do and get their
agreement

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SCENARIO · RECORDING

A recorder in the break room

The situation

Several cashiers have been complaining about the new schedules. The store manager wants to hide a voice recorder in the break room to find out who's "stirring things up."

Can he do this?

WHAT TO DO

- No. He isn't part of those conversations, and no one in them consented
- Secretly recording other people's conversations is a felony in Oklahoma
- Complaining together about schedules is protected by federal labor law, union or not
- He may record a meeting he takes part in, but a written policy on recording is still wise

13 O.S. §§ 176.3, 176.4 · 29 U.S.C. §§ 157, 158(a)(1)

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Cameras all over the place

The situation

After a string of thefts from employee lockers, the warehouse manager wants cameras on the loading dock, in the hallway and inside the locker room, all with audio turned on.

Can she do this?

WHAT TO DO

- Dock and hallway: yes. No notice is required, but post signs and put it in your policy
- Inside the locker room or restrooms: no
- Turn the audio off; capturing conversations no one consented to risks a felony
- Use footage only for its stated purpose, and limit who can view it

21 O.S. § 1171 · 13 O.S. §§ 176.3, 176.4



SCENARIO · VEHICLES

GPS and cameras in company cars

The situation

Your service techs drive company trucks and your salespeople drive company cars, all with GPS. Now the owner wants cameras facing into the cab and out the front window.

Is this okay?

21 O.S. § 1173 · 13 O.S. §§ 176.3, 176.4

WHAT TO DO

- Truck GPS during work: generally fine, with a written policy
- Get each driver's signed consent; Oklahoma's stalking law counts GPS tracking without consent as "following"
- Personal phones: track only on the clock, only with consent, and let it switch off after hours
- Don't use location data to check on off-duty life; keep cameras to video, not audio

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SCENARIO · BIOMETRICS

Fingerprint time clocks

The situation

You're switching your Oklahoma plant to fingerprint time clocks to stop "buddy punching." Two supervisors who work remotely from Illinois will clock in through the same system.

What do you need in place?

24 O.S. § 161 et seq., as amended by SB 626 (2025) · 740 ILCS 14

WHAT



biometric consent law, but written
e still wise
biometric data is covered by
ice law, so secure it
500 Oklahomans also
torney General
biometric law requires written
policy first

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BEFORE YOU GO

Key takeaways

01

Wages

Get a signed agreement before the first deduction, and pay final wages by the next payday.

02

Garnishment

Always answer the summons, and calendar every pay period for 180 days.

03

I-9

Audit now. Many "technical" errors are substantive, with no time to fix them.

04

Surveillance

Video, not audio. Put every kind of monitoring in a signed policy.

Questions?

General information only, not legal advice. Current as of October 2026.

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