



# PEREZ GONZALEZ ATTORNEYS

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# LEGAL ALERT!

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**Perez Gonzalez, A Professional Law Corporation** was established to meet the need for effective professional counsel in areas of Corporate/Business and Civil Law as well as Immigration and Nationality Law.

Perez Gonzalez continues to work with a base of long-standing clients engaged in varied industries such as entertainment, internet/technology, manufacturing, private equity capital, health care, real estate, finance and advertising and major professional sports.

Perez Gonzalez bases its commitment to client service on developing an intimate knowledge of each client's needs and objectives. The Firm seeks long-term, partnering relationships with clients, to the end of providing the best total solution to the client's multi-disciplined and industry-specific legal service needs. The Firm's goal is to be an instrumental part of each client's success.

**FOR ADDITIONAL INFORMATION ABOUT OUR FIRM AND OUR SERVICES:**

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For the Immigration and Nationality Law Group contact **Cristina Perez Gonzalez** at: cristina@california-lawfirm.com

## ARE YOUR RECORDS IN ORDER? IF NOT, YOU MAY LOSE YOUR LIMITED LIABILITY

Now that the year is behind us, why not take some time to make sure that your corporate records are in order. Your best line of defense against the loss of your corporate status is to keep written minutes and resolutions that record every important corporate decision and the votes taken to approve them.

*You may ask why bother to prepare minutes of meetings or written consents for key corporate decisions? Here are a few excellent reasons:*

Annual corporate meetings normally are required under state law. If you fail to pay at least minimal attention to these ongoing legal formalities, you may lose the limited liability protection of your corporate status.

Your legal paperwork provides a record of important corporate transactions. This "paper trail" can be important if disputes arise. You can use this paper trail to show your directors, shareholders, creditors, suppliers, the IRS, and the courts that you acted appropriately and in

compliance with applicable laws, regulations, or other legal requirements.

Keeping your corporate records up to date goes a long way toward avoiding problems down the road and may also protect you in the event of an audit.

Formally documenting key corporate actions is a fail-safe way of keeping shareholders informed of major corporate decisions.

Directors of small corporations commonly approve business transactions in which they have a material financial interest. Your minutes or consent forms can help prevent legal problems by proving that these self-interested decisions were arrived at fairly, after full disclosure to the board and shareholders.

Banks, trusts, escrow and title companies, property management companies, and other institutions often ask corporations to submit a copy of a board or shareholder resolution approving the transaction that is being undertaken, such as a loan, purchase, or rental of property. ■

## IMMIGRATION: WHAT EMPLOYERS NEED TO KNOW

### Employment Eligibility Verification

The Immigration Reform and Control Act required all U.S. employers to verify the employment eligibility and identity of all employees hired to work in the United States. Pursuant to the Act, employers are required to complete Employment Eligibility Verification forms (Form I-9) for all employees. Below we highlight some common questions. For additional information, contact Cristina Perez Gonzalez.

**Do citizens and nationals of the U. S. need to prove, to their employers, they are eligible to work?**

Yes. While citizens and nationals of the U.S. are automatically eligible for employment, they too must present proof of employment eligibility and identity and complete an Employment Eligibility Verification form (Form I-9). Citizens of the U.S. include persons born in Puerto Rico, Guam, the U.S. Virgin Islands, and the Northern Mariana Islands. Nationals of the U.S. include persons born in American Samoa, including Swains Island.

**Do I need to complete a Form I-9 for everyone who applies for a job with my company?**

No. You need to complete Form I-9 only for people you actually hire. For purposes of the I-9 rules, a person is "hired" when he or she begins to work for you for wages or other compensation. Form I-9 need not be completed for those individuals providing services for the employer as an independent contractor.

**I understand that I must complete a Form I-9 for anyone I hire to perform labor or services in return for wages or other remuneration. What is "remuneration"?**

Remuneration is anything of value given in exchange for labor or services rendered by an employee, including food and lodging.

**Can I fire an employee who fails to produce the required document(s)?**

Yes. You can terminate an employee who fails to produce the required document(s), or a receipt for a

# Types of Ownership Structures

Before you can decide on an ownership structure for your business, you must learn at least a little bit about how each structure works. Here's a brief rundown of the most common forms of doing business:

**Sole Proprietorships and Partnerships.** For many new businesses, the best initial ownership structure is either a sole proprietorship or -- if more than one owner is involved -- a partnership. A sole proprietorship is a one-person business that is not registered with the state. You don't have to do anything special or file any papers to set up a sole proprietorship -- you create one just by going into business for yourself.

Legally, a sole proprietorship is inseparable from its owner -- the business and the owner are one and the same. This means the owner of the business reports business income and losses on her personal tax return and is personally liable for any business-related obligations, such as debts or court judgments.

Similarly, a partnership is simply a business owned by two or more people that hasn't filed papers. No paperwork needs to be filed to form a partnership -- the arrangement begins as soon as you start a business with another person. As in a sole proprietorship, the partnership's owners pay taxes on their shares of the business income on their personal tax returns and they are each personally liable for the entire amount of any business debts and claims.

Sole proprietorships and partnerships make sense in a business where personal liability isn't

a big worry -- for example, a small service business in which you are unlikely to be sued and for which you won't be borrowing much money for inventory or other costs.

**Limited Partnerships.** Limited partnerships are a bit more costly and complicated to set up and run, and are not recommended for the average small business owner. Limited partnerships are usually created by one person or company, the "general partner," who will solicit investments from others -- who will be the limited partners. The general partner controls the limited partnership's day-to-day operations and is personally liable for business debts (unless the general partner is a corporation or an LLC). Limited partners have minimal control over daily business decisions or operations and, in return, they are not personally liable for business debts or claims.

**Corporations and Limited Liability Companies (LLCs).** Forming and operating an LLC or a corporation is also bit more complicated and costly, but well worth the trouble for some small businesses. The main benefit of an LLC or a corporation is that these structures limit the owners' personal liability for business debts and court judgments against the business. What sets the corporation apart from all other types of businesses is that a corporation is an independent legal and tax entity, separate from the people who own, control and manage it. Because of this separate status, the owners of a corporation

don't use their personal tax returns to pay tax on corporate profits -- the corporation itself pays these taxes. Owners pay personal income tax only on money they draw from the corporation in the form of salaries, bonuses and the like. LLCs are similar to corporations because they also provide limited personal liability for business debts and claims. But when it comes to taxes, LLCs are more like partnerships: the owners of an LLC pay taxes on their shares of the business income on their personal tax returns. Corporations and LLCs make sense for business owners who either 1) run a risk of being sued by customers or clients or run the risk of piling up a lot of business debts, or 2) have a good deal of personal assets they want to protect from business creditors.

**Nonprofit Corporations.** A nonprofit corporation is a corporation formed to carry out a charitable, educational, religious, literary or scientific purpose. A nonprofit can raise much-needed funds by receiving public and private grant money and donations from individuals and companies. The federal and state governments do not generally tax nonprofit corporations on money they make that is related to their nonprofit purpose, because of the benefits they contribute to society.

**Cooperatives.** Some people dream of forming a business of true equals -- an organization owned and operated democratically by its members. These grassroots business organizers often refer to their businesses as a "group," "collective" or "co-op" -- but these are usually informal rather than legal labels. ■

## IMMIGRATION (CONT.)

replacement document(s) (in the case of lost, stolen or destroyed documents), within three (3) business days of the date employment begins. However, you must apply these practices uniformly to all employees. If an employee has presented a receipt for a replacement document(s), he or she must produce the actual document(s) within 90 days of the date employment begins

**What happens if I properly complete a Form I-9 and the government discovers that my employee is not actually authorized to work?**

You cannot be charged with a verification violation; however, you cannot knowingly continue to employ this individual. You will have a good faith defense against the imposition of employer sanctions penalties for knowingly hiring an unauthorized alien unless the government can prove you had actual knowledge of the unauthorized status of the employee.

**May I accept a photocopy of a document presented by an employee?**

No. Employees must present original documents. The only exception is an employee may present a certified copy of a birth certificate.

**What is my responsibility concerning the authenticity of document(s) presented to me?**

You must examine the document(s) and, if they reasonably appear on their face to be genuine and to relate to the person presenting them, you must accept them. To do otherwise could be an unfair immigration-related employment practice. If a document does not reasonably appear on its face to be genuine and to relate to the person presenting it, you must not accept it.

**What should I do with the completed I-9s?**

I-9 forms are not filed with the U.S. government. I-9's should be retained throughout the period of employment. The requirement is for employers to maintain I-9 records in its own files for 3 years after the date of hire or 1 year after the date the employee's employment is terminated, whichever is later. This means that Form I-9 needs to be retained for all current employees, as well as terminated employees whose records remain within the retention period. As a practical matter, however, Form I-9 records should be stored at the worksite to which they relate or at a company headquarters for easy access.

**I discovered false documentation -- what should I do?**

It occasionally happens that an employee who initially presented false documentation to gain employment subsequently obtains proper work authorization and presents documentation of

this work authorization. In such a case, the law does not require the employer to terminate the employee's services. However, an employer's personnel policies regarding provision of false information to the employer may apply. The employer should correct the relevant information on the Form I-9.

**I acquired a business -- do I need new I-9s?**

In a case where a new owner of a business is a *successor in interest*, having acquired an existing business, the new employer may keep the acquired employer's I-9 records rather than complete new Forms I-9 on employees who were also employees of the acquired employer. However, since the new employer would be responsible for any errors, omissions or deficiencies in the acquired records, it may choose to protect itself by having a new Form I-9 completed for each acquired non-exempt employee and attached to that employee's original Form I-9. ■

*When dealing with a legal matter - always remember that you are your own best advocate.*

*No one will care as much about the case as you do. Use lawyers but remember - you must take primary responsibility for a successful outcome. (Grant Fairley)*