

How to Maintain Immigration Compliance

December 6, 2022

Littler[®]

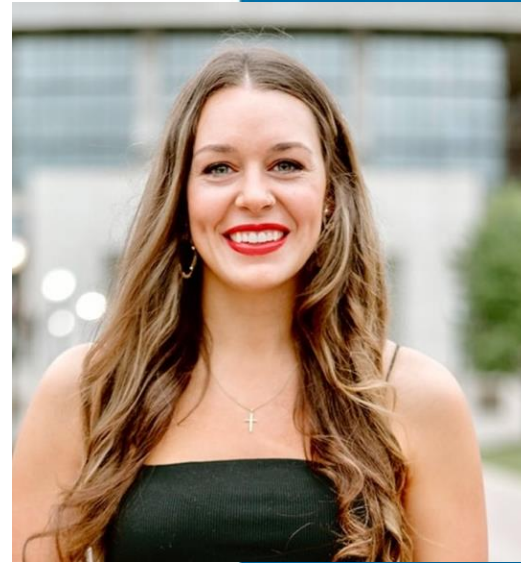
Compliance **HR**

Today's Webinar Host

Stephanie Zielinski

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Who We Are



- Artificial Intelligence
- Infrastructure enterprise

- Subject matter expertise
- Knowledge management team
- Case databases

What we do:
Deliver expert guidance in a
fraction of time and cost as
traditional methods

Simplify the complexity of employment law



PolicySmart™

Create and maintain an up-to-date and legally compliant employee handbook



Navigator Independent Contractor

Remove risk in determining Independent Contractor status



Navigator Overtime

Determine if an employee is exempt or non-exempt



The Reference Center

A Comprehensive Solution for Employment Law and Common HR Compliance Questions



Navigator Onboarding

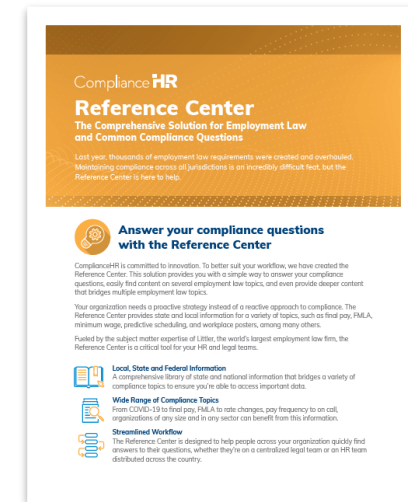
Assemble and produce legally compliant onboarding documents



Navigator Leave

Reduce the risk and administrative burden of leave management

Compliance Essentials



PolicySmart provides you with:

- Federal and state-compliant templates
- Innovative compliance timeline
- Handbook policy checklists
- Automated twice monthly legal update emails

The ComplianceHR Reference Center provides you with:

- Local, state and federal information
- Streamlined workflows
- Wide range of compliance topics
 - COVID-19, final pay, FMLA, rate changes, and more

When coupled, these two solutions provide you with comprehensive compliance program support

Immigration and PolicySmart

PolicySmart

About PolicySmart



This application provides you with the tools you need to create compliant and fully customized documents:

- A National Template
- State Supplements
- Policy Checklists
- State Guides

The **National Template** includes a number of traditional policies (e.g., EEO, Harassment, F along with optional sample policies you can customize and provide to employees if they a operations (e.g., Workplace Bullying, Holidays, Personal Appearance and Grooming).

There is a **State Supplement** to that National Template for every state and the District of Columbia. In the State Supplements you will find policies that distinguish from those general, national policies. In the state materials, you will find addenda that identify the protected categories under state EEO scheduling, lactation accommodation and leaves of absence policies. We also provide policies tracking sick leave, lactation accommodation and pre municipalities, which are localities with 100,000 or more residents.

The State Supplement policies are drafted to comprehensively track statutory requirements, while also identifying places for customization. Through intended for the policy drafter. These comments may explain why specific language appears, signal updates made within the last year or provide co you customize the policy.

The application also provides **Policy Checklists** and substantive guidance for each state. At the beginning of each Policy Checklist, there is a descriptive materials can be used as references as you are compiling a new set of policies, or reviewing existing policies

In a panel on the right, there are options for filtering the list of documents. For example, you can filter down to the supplement for a specific jurisdiction

COMMITMENT TO DIVERSITY

Discrimination, Harassment and Retaliation Prevention Policy [5+Employees]

Equal Employment Opportunity

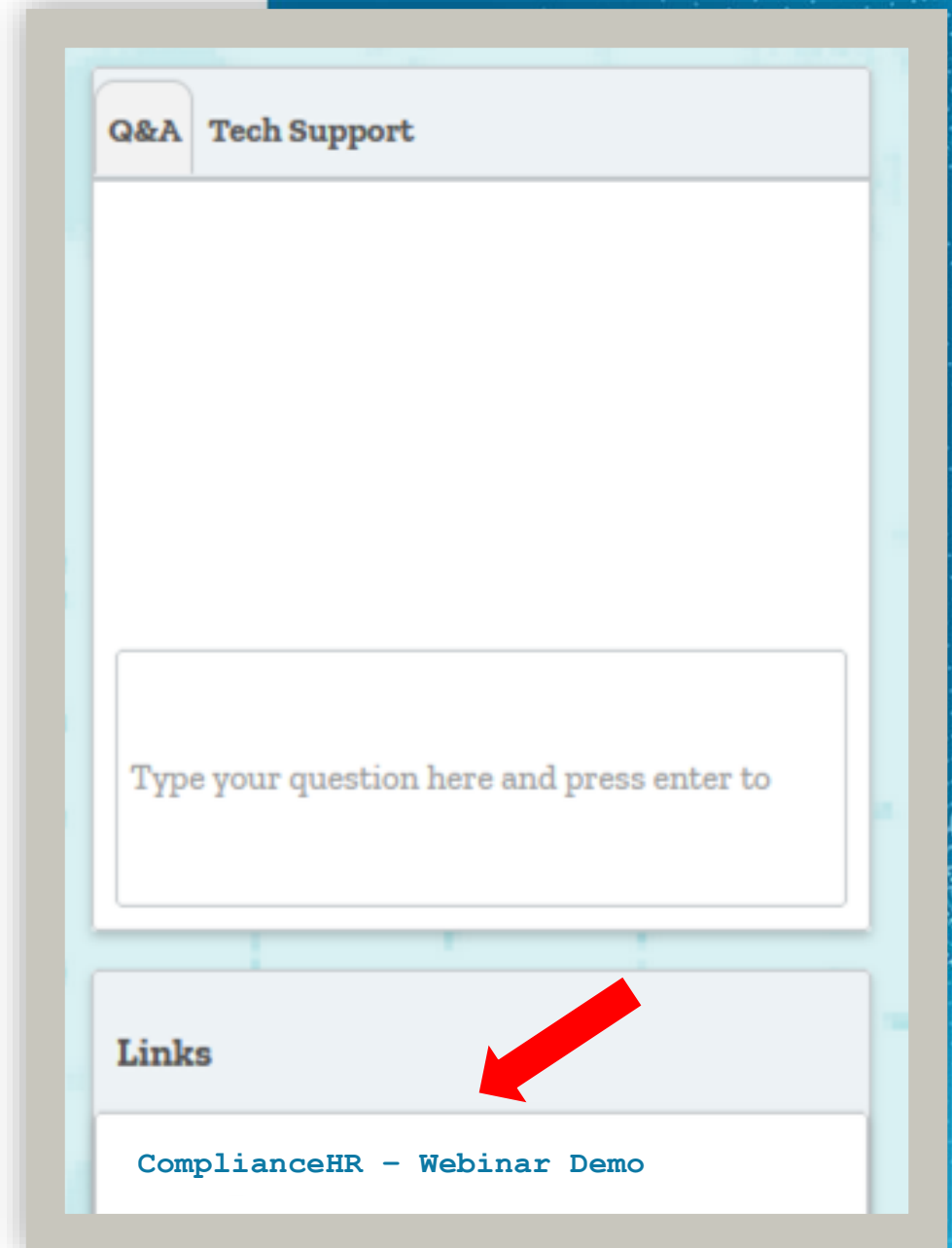
[Company Name] is an equal opportunity employer. In accordance with applicable law, we prohibit discrimination and harassment against employees, applicants for employment, individuals providing services in the workplace pursuant to a contract, unpaid interns and volunteers based on their actual or perceived: race (including traits historically associated with race, such as hair texture and protective hairstyles), religious creed, color, national origin, citizenship status, ancestry, physical or mental disability, medical condition, genetic information, marital status (including registered domestic partnership status), sex and gender (including pregnancy, childbirth, lactation and related medical conditions), gender identity and gender expression (including transgender individuals who are transitioning, have transitioned, or are perceived to be transitioning to the gender with which they identify), age (40 and over), sexual orientation, Civil Air Patrol status, military and veteran status, an individual's reproductive health decisions

For purposes of this policy, discrimination on the basis of "national origin" also includes discrimination against an individual because that person holds or presents the California driver's license issued to those who cannot document their lawful presence in the United States, as well as discrimination based upon any of the following: an individual's or individual's ancestors' actual or perceived physical, cultural or linguistic characteristics associated with a national origin group; marriage to or association with individuals of a national origin group; tribal affiliation; membership in or association with an organization identified with or seeking to promote the interests of a national origin group; attendance or participation in schools, churches, temples, mosques or other religious institutions generally used by persons of a national origin group; or a name that is associated with a national origin group. An employee's or applicant for employment's **immigration** status will not be considered for any employment purpose except as necessary to comply with federal, state or local law.

Register for a Navigator Suite Demonstration

Benefits of a custom demonstration:

- Discuss your organization's requirements/challenges
- Review Navigator Suite Solutions
- Share compliance methodologies
- Provide free trial in Navigator Suite sandbox



Presented by:

Bruce Buchanan

bbuchanan@littler.com

Special Counsel | Littler



I-9 Form

- I-9 Form, “10/21/2019”, available at www.uscis.gov/i-9;
- Although the expiration date on I-9 form says expires 10/31/22, it is still in effect;
- Only use for new hires & re-hires (re-hires may also use Section 3 of old I-9 form);
- Must be completed by all individuals hired regardless of whether a citizen or not;

I-9 Form Continued

- USCIS will be issuing a new I-9 Form in the next few months;
- It is expected to return to a one-page form, which historically was until 2013;
- It will be different than the old one-page form or the current two-page form;
- It will have a supplemental page for the Translator/Preparer;
- It will hopefully include more Acceptable Documents.

Retention of Forms I-9

- **Always** retain I-9 forms of current employees; and
- Must retain I-9 forms of former employees for 3 years from date of hire
OR 1 year after termination, **whichever is longer.**



In Person or Remote Verifications of I-9 Forms

- Before COVID, all I-9 verifications must be done in-person. But COVID created an exception.
- Since March 19, 2020, DHS has allowed remote, virtual verifications of I-9 forms where all the employees of the employer are working remotely. Policy is set to expire July 31, 2023.
- DHS expanded the use of remote, virtual verifications of I-9 forms for employees hired on or after April 1, 2021, who work exclusively in remote settings due to COVID-19 related precautions. These employees are temporarily exempt from the physical inspection requirements of Form I-9 until they undertake non-remote employment on a regular, consistent, or predictable basis, or the extension of the flexibilities related to such requirements is terminated, whichever is earlier.

Virtual Verification Post-COVID?

- On August 18, 2022, DHS issued Proposed Rulemaking to revise I-9 regulations to provide authority to DHS Secretary to authorize optional alternative document examination procedures in certain circumstances.
- Under proposed rule, DHS could authorize optional alternative document examination procedures without being remote. Thus, much more applicable to contractors.
- DHS said would consider under these circumstances:
 - Part of a Pilot program;
 - Upon DHS's determination that such procedures offer equivalent level of security; or
 - Temporary measure to address future public health emergency (like now w/ COVID).

Employer's Responsibility



- Employers are responsible for ensuring Section One is completed properly by the employee;
- Before filling out Section 2, company representative must review Section One for completeness; and
- If incomplete, request employee to provide the necessary information in Section One.

I-9 Form Section One

- The **EMPLOYEE**, not the employer, must **complete** Section 1 on the **1st day of employment or beforehand**;
- The employee must fill out his name, address, DOB, and citizenship/U.S. National/Legal permanent residence/work authorization status and sign and date the form;
- Telephone number and email address are optional;
- Employee must sign and date their name.

 **USCIS**
Department of Homeland Security
U.S. Citizenship and Immigration Services

Form I-9
OMB No. 1615-0047
Expires 10/31/2022

▶ **START HERE:** Read instructions carefully before completing this form. The instructions must be available, either in paper or electronically, during completion of this form. Employers are liable for errors in the completion of this form.

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers **CANNOT** specify which document(s) an employee may present to establish employment authorization and identity. The refusal to hire or continue to employ an individual because the documentation presented has a future expiration date may also constitute illegal discrimination.

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	Other Last Names Used (if any)	
Address (Street Number and Name)			Apt. Number	City or Town		State ZIP Code
Date of Birth (mm/dd/yyyy)	U.S. Social Security Number [] [] [] - [] [] [] [] [] []		Employee's E-mail Address		Employee's Telephone Number	

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following boxes):

<input type="checkbox"/> 1. A citizen of the United States	 Do Not Write in This Space
<input type="checkbox"/> 2. A noncitizen national of the United States (See instructions)	
<input type="checkbox"/> 3. A lawful permanent resident (Alien Registration Number/USCIS Number): _____	
<input type="checkbox"/> 4. An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy): _____ Some aliens may write "N/A" in the expiration date field. (See instructions)	

Aliens authorized to work must provide only one of the following document numbers to complete Form I-9:
An Alien Registration Number/USCIS Number OR Form I-94 Admission Number OR Foreign Passport Number.

1. Alien Registration Number/USCIS Number: _____ OR
2. Form I-94 Admission Number: _____ OR
3. Foreign Passport Number: _____ Country of Issuance: _____

Signature of Employee	Today's Date (mm/dd/yyyy)
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Preparer and/or Translator Certification (check one):

<input type="checkbox"/> I did not use a preparer or translator.	<input type="checkbox"/> A preparer(s) and/or translator(s) assisted the employee in completing Section 1. <i>(Fields below must be completed and signed when preparers and/or translators assist an employee in completing Section 1.)</i>			
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		Today's Date (mm/dd/yyyy)		
Last Name (Family Name)		First Name (Given Name)		
Address (Street Number and Name)		City or Town	State	ZIP Code

STOP Employer Completes Next Page **STOP**

Form I-9 **10/21/2019**

Page 1 of 3

I-9 Form- Translator/Preparer

- Check yes or no concerning use of translator or preparer;
- If translator/preparer is used, he or she should fill out the information in the certification.
- Translator/preparer can be a company representative or company employee.



Documentation in Section 2

- Employer must examine document(s) that establish the employee's identity and employment eligibility;
- Document(s) must appear "genuine" and relate to person presenting; if so, then accept it;
- Employee may not present expired documents, unless USCIS has auto-extended document;
- Conditional 2-year green card that has expired on face of card, but employee has receipt showing properly filed I-751 and extends green card for 24 months;
- TPS recipients receive automatic 6 months or longer extensions on their EADs;
- Many categories of EADs receive 540-day extension w/ timely renewal though not for DACA renewals.



Section 2. Employer or Authorized Representative Review and Verification

(Employers or their authorized representative must complete and sign Section 2 within 3 business days of the employee's first day of employment. You must physically examine one document from List A OR a combination of one document from List B and one document from List C as listed on the "Lists of Acceptable Documents.")

Employee Info from Section 1		Last Name (Family Name)	First Name (Given Name)	M.I.	Citizenship/Immigration Status
List A Identity and Employment Authorization		OR		List B Identity	AND List C Employment Authorization
Document Title		Document Title		Document Title	
Issuing Authority		Issuing Authority		Issuing Authority	
Document Number		Document Number		Document Number	
Expiration Date (if any) (mm/dd/yyyy)		Expiration Date (if any) (mm/dd/yyyy)		Expiration Date (if any) (mm/dd/yyyy)	
Document Title		Additional Information		QR Code - Sections 2 & 3 Do Not Write in This Space	
Issuing Authority					
Document Number					
Expiration Date (if any) (mm/dd/yyyy)					
Document Title					
Issuing Authority					
Document Number					
Expiration Date (if any) (mm/dd/yyyy)					

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

Section 3. Reverification and Rehires (To be completed and signed by employer or authorized representative.)

A. New Name (if applicable)			B. Date of Rehire (if applicable)	
Last Name (Family Name)			First Name (Given Name)	Middle Initial Date (mm/dd/yyyy)

C. If the employee's previous grant of employment authorization has expired, provide the information for the document or receipt that establishes continuing employment authorization in the space provided below.			
Document Title		Document Number	Expiration Date (if any) (mm/dd/yyyy)

I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative	Today's Date (mm/dd/yyyy)	Name of Employer or Authorized Representative
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I-9 Form Section 2

- Employer must complete Section 2, which involves employee presenting documentation, within 3 business days (any day that employer works) of hire (Mon.-Thur. rule);
- Employee may present receipt that:
 - seeking replacement Social Security card; or
 - for I-90 or I-765 seeking a green card or EAD, respectively, to replace lost one.



I-9 Form Section 2 Continued

- When employees present receipt showing they applied to replace List A, B, or C document that was lost, stolen or damaged, they should show replacement document given within 90 days;
- If employee does not present original document for which previously provided receipt, but presents another acceptable document to demonstrate identity and/or employment authorization, employers must accept such document;
- In cases where employee presents documentation other than actual replacement document, employer should complete new Section 2 and attach it to original Form I-9. In addition, employer should provide explanation in “Additional Information” box included on page 2.

I-9 Form Section 2 Continued

- Employer fills in document title & number, issuing authority & expiration date in List A or Lists B and C;
- Employer fills in 1st date of employment (where employee is on clock & working);
- Employer certifies examination of document(s) with signature, name of company rep, company information, etc. within 3 business days of employment;
- Receipt of documentation from List A or Lists B & C without writing information onto List(s) is insufficient and violation of the law

I-9 Form Section 3

- If employee has employment authorization document (EAD), it will expire after 24 months or less.
- Company needs to re-verify employee after employee receives new EAD.
- In order for employees to be able to get a new EAD in timely manner, company may provide such employee with 180-day reminder.
- You should complete all of Section 3 – document title, document # and sign and date the re-verification. If more than once, one needs to complete re-verification on separate I-9 form and attach it to old form.

IDs Not to Re-Verify Upon Expiration

- DO NOT re-verify these IDs even if they expire after the worker was hired:
 - Permanent Resident cards (green cards)
 - US Passports
 - Driver's licenses



Internal I-9 Audits

- Employers should conduct internal I-9 audits yearly or less frequently, depending on size of company and number of employees hired each year;
- Employers should conduct internal I-9 audit, through or under supervision of immigration compliance counsel;
- If do it on your own, these issues may arise:
 - Person who initially filled out Section 2 may be one performing audit;
 - Person may not be trained on how to correct errors;
 - May not be correct person and/or following correct procedure to correct errors.

Who Corrects I-9 Form Errors

- If errors are found on I-9 forms, they should be corrected by:
 - **Section 1 errors by employee;**
 - **Sections 2 and 3 errors by employer;**
- For changes in Section 2 by employer, it should be the individual who originally reviewed documents and signed certification;
 - If that person is no longer employed, it would be best for employee and employer to fill out new I-9 form unless it is a minor error, such as expiration date or issuing authority is missing.

Correcting I-9 Errors

- If employer discovers I-9 form was never completed or missing, complete current I-9 form ASAP;
- To correct **major and/or multiple errors** on I-9 form, you may complete new I-9 form and attach it to the old form;
- If an I-9 form is missing minor data, such as title of document or expiration date of document, add information to existing I-9 form, initial and date addition in different color pen;
- Note should be included concerning reason changes were made to I-9 form/ completed new I-9 form.
- **Employer should never backdate the I-9 form.**

Employees with False ID

- In cases where an employee has worked without employment authorization or with a false identity or fraudulent employment document(s), and the employee has subsequently presented acceptable documentation(s), the law does not require termination of employment.
- Employer may continue to employ employee upon completion of new I-9 form noting authorizing document(s) and should attach new I-9 form to the previously completed I-9 form together with a signed and dated explanation.
- Employer may enforce any honesty policy, if it has been consistently applied in similar situations, by terminating that employee for violating the policy.

Access to I-9 Forms

- Access to the retained I-9 forms should be restricted to only those necessary to have such access;
- I-9 forms should be kept in locked cabinet;
- I-9 forms should not be kept in employee's personnel file.



Immigration Compliance Policy

- When internal audit of I-9 forms is performed, it should include drafting of Immigration compliance policy which covers:
 - Who is in charge of immigration compliance?
 - Does company retain supporting documentation?
 - Does company use E-Verify?
 - Is the company required to use E-Verify by state law or FAR E-Verify?
 - Retention policy for ex-employees' I-9 forms – 1 year from termination date or 3 years from original hire, whichever is longer;
 - Who to contact if ICE or other federal agency show up at worksite?

Immigration Compliance Policy Continued

- Rules for working with outside contractors;
- Required training for employer reps completing I-9 forms;
- Zero tolerance policy for employment of individuals who cannot comply with work authorization rules;
- Timing & procedures for regular internal I-9 audits;
- Rules on who has access to I-9 records; and
- Re-verification procedures for employees with Employment Authorization documents.

What is E-Verify?



- Internet-based system run by Dept. of Homeland Security (DHS) with databases from DHS, SSA and State Department, which allows employers to verify employment eligibility of new hires;
- E-Verify is voluntary, except if required by state law or one is applicable federal contractor;
- 8 states require E-Verify for all employers and many states require when contracting with state;
- Employers must post E-Verify notices.

Should Your Company Use E-Verify?

- Monitoring & Compliance (M&C) of USCIS is now “mining” data from E-Verify, & if it determines large number of green cards for LPRs, it sends noncompliance letters to employers;
- If M&C determines employer is “out of line,” it will make a referral to IER of DOJ;
- Creates additional work for HR department;
- Government has more oversight of company.



About Mr. Buchanan

Bruce E. Buchanan is Special Counsel for Littler and is located in their Nashville, TN office. He represents employers in various aspects of immigration law, with a special emphasis on immigration compliance, and labor law issues, such as NLRB matters.

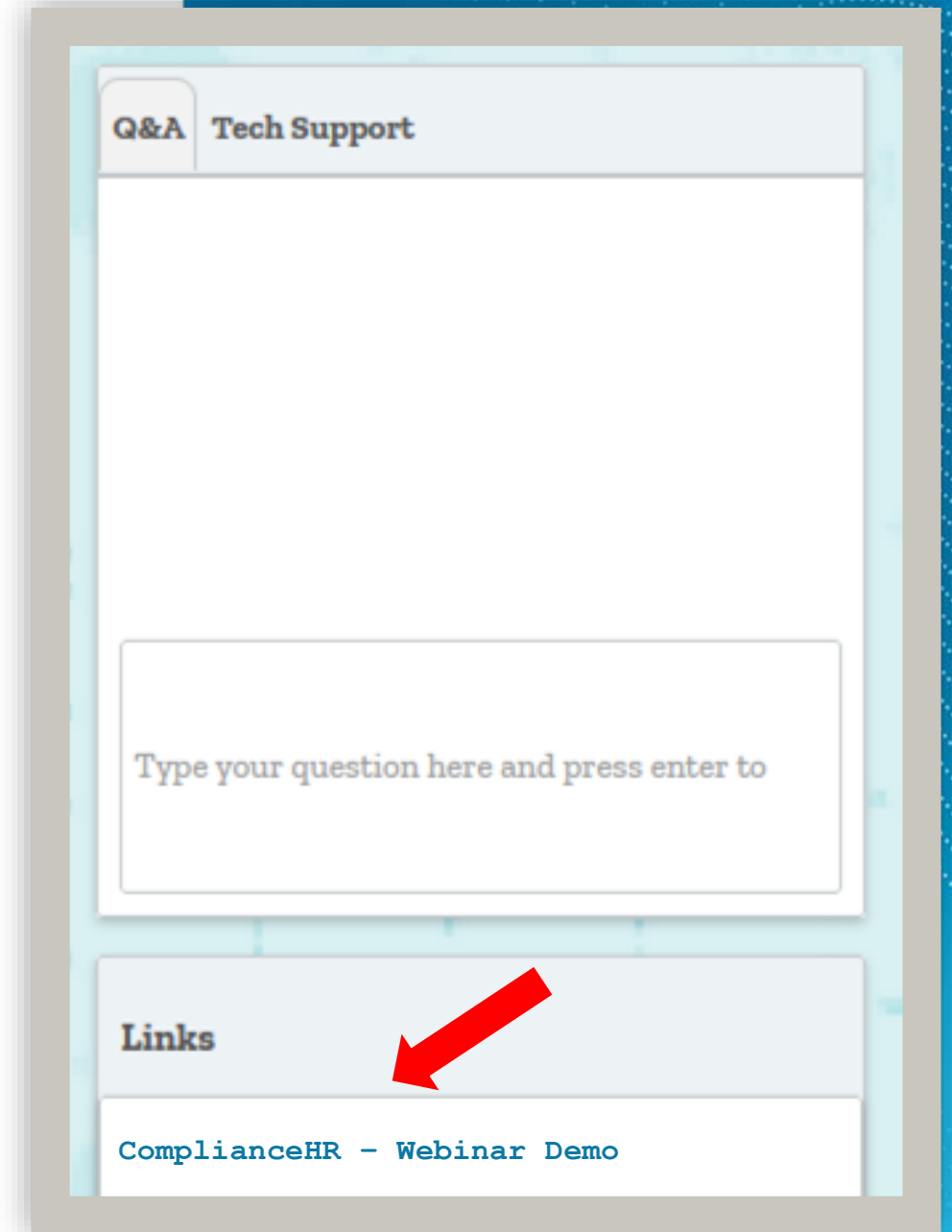
He received his J.D. from the Vanderbilt University in 1982. Before going into private practice, Mr. Buchanan served as senior trial specialist for the NLRB for 20 years. He also served from 1991 to 2003 as Adjunct Law Professor at William H. Bowen UALR School of Law.

Mr. Buchanan is co-author of *The I-9 and E-Verify Handbook*, 2d. ed. He has written extensively on employer immigration compliance issues in various blogs. Mr. Buchanan is admitted to practice in Tennessee, Georgia, Florida, and Arkansas. He may be reached at bbuchanan@littler.com or (615) 514-4122.

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- Discuss your organization's requirements/challenges
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Questions?

Please add any additional questions to the Q&A box

Thank you!

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website: [Compliancehr.com/webinar-demo](https://compliancehr.com/webinar-demo)