

Daily Journal

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TOP WOMEN LAWYERS

The Daily Journal's Annual List of
Leading Women Lawyers in California

**Maria Z.
Stearns**

**Rutan &
Tucker LLP**
Costa Mesa

Practice Type:
Litigation

Specialty: Labor &
Employment



Stearns is serving as lead counsel in the defense of a complaint filed by the Department of Justice against a large California based skilled nursing provider.

The agency is seeking to recover hundreds of thousands of dollars in penalties for clerical errors that Stearns said were inadvertently made by the employer when filling out employee I-9 forms, which are required under federal law.

The I-9 forms are used to demonstrate that an employee is legally authorized to work in the United States.

"It's a unique case," Stearns said. "This is the first trial since the statute was amended in 1996."

Prior to that, the legal standard for failure to properly complete an I-9 form was strict liability, she said.

Following the amendment, liability depends on a showing that the employer intended to discriminate against foreign-born workers during the I-9 process.

"The DOJ did an audit of our client's I-9 forms and discovered that the majority of the foreign-born employees, all of whom were hired, had submitted documents

different from the U.S.-born people," Stearns said.

The DOJ observed that, while the U.S.-born group submitted Social Security cards and driver's licenses, the foreign-born workers submitted passports and green cards, she added, thereby concluding that the employer must have been trying to make it harder on foreign-born people to get hired.

"The DOJ had no evidence that our client treated workers differently," Stearns said. "There was no intent to discriminate here. They were all hired, but the DOJ was committed to taking it to trial."

In August 2013, more than a year after the employer filed its motion for summary judgement, the court issued a decision denying the motion and setting a trial date.

The parties are awaiting a decision, following a weeklong bench trial in December 2013.

"If the DOJ can rely solely on numbers and statistics as a basis for establishing an intent to discriminate, things could explode," Stearns said. "Employers should be proactive about this potentially costly area of exposure."

— Pat Broderick