

CLIENT ALERT: New Employment Eligibility Verification Form (I-9) Released

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On November 7, 2007, the United States Citizenship and Immigration Services (USCIS) released a revised Employment Eligibility Verification Form (I-9), which is now available for use by employers. The new Form I-9 will become effective once the notice is published in the Federal Register; however, employers are encouraged to begin to use the new form immediately. After the effective date, employers may incur fines and penalties for failing to use the new Form I-9. The release of the revised Form I-9 presents a good occasion for companies to review their Form I-9 process, and to conduct an audit of completed Form I-9s.

Form I-9

The Immigration and Control Act of 1986 requires all employers to have all employees hired after 1986 complete Form I-9 verification paperwork. The Form I-9 is a form employees complete verifying their identity as well as proving they are permitted to work in the United States. The form has three parts: (1) the employee provides basic biographical information and asks the employee to certify that he or she is a citizen, permanent resident, or authorized to work; (2) the employer verifies what documents that the employee presented to prove his/her identity and right to work; and (3) the employer must update the Form I-9 if the worker is not authorized to work permanently in the U.S. The employee must complete the first section of the Form I-9 and provide supporting documentation within the first three days of hire.

Revisions to the New I-9 Form

The most significant change to the revised Form I-9 is the updating of the list of documents an employee may use to prove work eligibility and identity. The revised List A of Acceptable Documents no longer includes the Certificate of U.S. Citizenship, Certificate of Naturalization, Alien Registration Receipt Card, Unexpired Reentry Permit, and Unexpired Refugee Travel Document. The most recent version of Form I-766 (Employment Authorization Document) was added to the list of acceptable documents under List A.

The Form I-9 is available in both English and Spanish. However, only employers in Puerto Rico may have employees complete the Spanish version of the form. Employers not in Puerto Rico may use the Spanish version as a translation guide only, but employees must complete (and employers must retain) the English version. Employees may also use or ask for a translator / preparer to assist them in completing the form.

The new Form I-9 also explains that providing an employee's Social Security number on the I-9 Form only is voluntary, except for employees hired by employers participating in the USCIS Electronic Employment Eligibility Verification Program (E-Verify). (Of course, the employer may need to obtain the social security number through other means, including the IRS Form W-4.)

Employers who use the new Form I-9 only need to use it for new hires. Employers do not need to complete new forms for existing employees. Employers will need to use the new Form I-9 when their employees require re-verification. Employers are subject to the same record-keeping requirements for the new Form I-9 as they are for the old Form I-9.

The new Form I-9 is available at <http://www.uscis.gov/files/form/I-9.pdf> (English) and <http://www.uscis.gov/files/form/I-9Spanish.pdf> (Spanish). In addition, the USCIS published a "Handbook for Employers, Instructions for Completing the Form I-9", which is available at <http://www.uscis.gov/files/nativedocuments/m-274.pdf>.

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