

April 17, 2013

Practice Group:
*Labor, Employment
and Workplace Safety*

USCIS Issues New Form I-9

On March 8, 2013, United States Citizenship and Immigration Services (“USCIS”) issued a new Employment Eligibility Verification Form I-9. Employers may use the new form on or after March 8, 2013, and must use it for any new hires on or after May 7, 2013. New forms do not have to be completed for current employees with properly completed earlier versions.

Background

Since 1986, all employers in the United States have been required to verify the identity and the authorization to work in the United States for any new hire, including United States citizens. There have been six earlier versions of the Form I-9. Each version brought modified instructions and changing lists of documents that an employer can and must accept to prove identity and/or work authorization. The prior edition, which technically expired on August 31, 2012, was approved for continued use by USCIS pending the issuance of the new edition. The prior edition was a single page and had two pages of instructions. The new edition is two pages and has seven pages of instructions, including the list of acceptable documents. The old edition could supposedly be completed in twelve minutes. The new edition instructions state that it will take thirty-five minutes on average to complete. The projected cost to employers to comply with the requirements of the new edition under one estimate is \$1.2 billion per year. Employers can print needed copies from the [USCIS website](#).

What Is New? What is Not?

Aside from its expanded length and instructions, the new edition requires substantially the same information and process that the predecessor editions required, but with some differences. A summary of requirements, old and new, follow:

Required Completion Schedule

Section 1 of the I-9, which is filled out and signed by the employee, must be completed no later than the first day of employment but must not be completed before a job offer is made and accepted.

Documentation of the employee’s identity and work authorization, using only documents listed in the instructions, must be presented to the employer no later than the third business day after beginning work, and the employer must complete Section 2 within that period. However, if the total length of employment is for less than three days, the documentation must be presented and Section 2 must be completed on the first day.

Section 1, Employee Information & Attestation

In the employee’s address portion of Section 1, post office boxes may not be used.

Blocks for telephone numbers and email addresses are provided, but inclusion of that information is optional. Employers should instruct employees whether the employer requires the employee to provide this information.

If a particular data field is not applicable, it should be filled with an “N/A” rather than left blank.

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Space is provided in Section 1 to provide the employee's social security number. However, providing social security numbers is optional unless the employer participates in E Verify.

E Verify is a system by which an employer can access databases maintained by the Social Security Administration and the Department of Homeland Security to confirm a new employee's identity and authorization to work. Participation in E Verify is voluntary unless the employer is a U.S. government contractor, (and under a few state public contracting laws) in which case participation is required under certain conditions and work locations.

The employee must sign and verify the information in Section 1, but the employer has the obligation to see that Section 1 is properly completed.

A foreign national is required to provide in Section 1 passport information under some circumstances as prescribed in the instructions.

A 3D barcode box has been added to the form but it has no current purpose and may be a format for future "smart" I-9s.

Section 2, Documents

The list of acceptable documents has been updated and clarified, but the list has not substantively changed from the current list.

The employee and the employer representative who examines the documents must both be present during the examination of the documents, and the employer representative must complete and sign Section 2 at that time.

The employee may select for presentation to the employer any of the documents on the approved lists, and an employer is not permitted to ask for different or additional documents if the documents presented appear to be authentic and establish identity and/or work authorization. Accordingly, even if the employee in Section 1 claims to be a permanent resident, the employee need not select the permanent resident card for presentation.

The column for recording data from List A documents has three boxes for recording data because a single List A document such as a foreign passport with an I-94 or permanent resident stamp may require multiple recording of document issuing authority, document number, and expiration date. If the extra blocks are not needed, "N/A" should be inserted.

The employer has the option of making and retaining copies of the presented documents, but if the employer elects to make and retain copies, copies of documents from all, not some, new hires must be made and retained. Section 2 must be completed whether or not copies are retained.

Under certain circumstances set forth in the instructions, receipts showing that an employee has applied for one of the listed documents may be temporarily accepted in lieu of the document. However, receipts for an application for initial or renewed work authorization are not acceptable in lieu of the actual work authorization document. If a receipt is presented, the actual required document must be presented within 90 calendar days of hire.

Section 3, Reverification & Rehires

Section 3 of the form is used to provide data for an employee who is rehired within 3 years of termination of employment. Section 3 is also used for re-verification of a current employee who initially presents a work authorization document with an expiration date, or if the employee indicated

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an expiration date in Section 1 even if the employee did not present the document referenced in Section 1.

Errors & Corrections

Errors on the form found either at the time of completion or at a later date may be corrected by lining out the incorrect information, inserting the correct information, initialing and dating. An attached explanatory memo correcting an error may also be used.

Correction of errors when found will result in a reduction of penalties during a government audit.

What is an Employer to do?

A wise employer knows that it has no option but to make every effort to properly complete an I-9 for each new hire. Fines of \$110 to \$1,100 may be imposed for each improperly completed or unavailable I-9 which is discovered in an audit by Immigration & Customs Enforcement (“ICE”) or Department of Labor (“DOL”).

Accordingly, the employer should:

- Confirm that each employee responsible for processing I-9s thoroughly understands the process and responsibility.
- Download from the [USCIS website](#) a copy of Handbook for Employers: Instructions for Completing Form I-9 (M-247).
- Periodically conduct self audits of the completed I-9s, and correct any errors that are found, and as appropriate revise procedures to avoid future errors.

ICE and DOL continue to audit employer compliance and impose huge fines for non-compliance. Constant vigilance is the only guarantee of compliance.

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