

LATELY (SPRING 2013): WHAT YOU NEED TO KNOW ABOUT THE I-9 FORM PROCESS BUT WERE AFRAID TO ASK.

On April 11, 2013, the AILA Verification and Documentation Liaison Committee met with the USCIS Verification Division and with ICE Homeland Security Investigations regarding the implementation of the new I-9 Form.

The following practice tips are based on the Agencies' responses to questions raised during the meeting:

- Advise employers that they must begin using the new Form I-9 on May 7th 2013. Despite the issuance of conflicting information by USCIS regarding the effective date is May 7th and that there is not a grace period until May 8th. ICE also confirmed that it would not grant employers a grace period.
- Where old I-9 Forms are used after May 7th, work with employers to correct those records. ICE confirmed that use of an outdated form is a technical violation that the employer can correct this by either executing a new I-9 Form using the current form or by attaching an acknowledgement and explanation of the reason for the error.
- Train employers to understand the NEW Section 1 terminology and fields relating to the I-94 number. USCIS confirmed that there would be no additional changes to the form or instructions related to CBP's new electronic I-94 process. Therefore, employers must be ready to guide nonimmigrant employees who were admitted by CBP with an electronic I-94 Form record and foreign passport. Practitioners should also familiarize employers with the new documentation that employees will present after printing their electronic I-94 Form records from the CBP website.
- Ensure that employers provide new hires with the full, expanded I-9 Form instructions at the time they complete Section 1 of the I-9 Form. USCIS confirmed that employees must receive the full set of instructions, for both the employee and employer portions, when completing the I-9 Form. USCIS confirmed that the employer may not restate or reformat the I-9 Form instructions, but may laminate the official I-9 Form instructions for distribution to new employees.
- Ensure that employers are familiar with rules about completing optional fields and fields with no responses. There are two new optional fields in Section 1 - the employee's telephone number and e-mail address. Although the I-9 Form does not state this, the instructions confirm that these fields are optional. USCIS confirmed that there are new rules in the Form I-9 instructions for fields where, if no information is to be completed, "N/A" should be used in all fields where there is no applicable information in both Sections 1 and 2. Note that if the employee has no other name or names, he or she must record N/A in the corresponding field.
- Use the new I-9 Form must be used for all re-verifications. Where the employee, at hire, presented documents that are expiring and need to be reverified, the employer may not use Section 3 of an outdated I-9 Form to record the reverification of the updated documents. Employers must use Section 3 of a valid I-9 Form to record all reverifications. However, for a returning employee who is eligible for rehire on the original documents, the employer may complete Section 3 of the existing I-9 Form, even if it is an outdated version, as long as the employee is returning within 3 years of the original hire and the I-9 documentation continues to be valid.

- Establish a policy on employees with new identities. The newly updated M-274 Handbook for employers states that employers whose employees come forward with new identities “should” complete a new I-9 Form and, if enrolled in E-Verify, submit a query through the E-verify system. USCIS clarified that this is a suggested best practice but is not a requirement. Therefore, for employees who present documentation of a new identity, the employer should establish a policy to either completing a new Form I-9 and, if applicable, complete an E-Verify query; or update the existing I-9 Form with the new identity information. Either way, employers should apply the policy consistently.
- Determine the timeframe for the 3-day rule for section 2. USCIS confirmed that the 3-day rule for completing Section 2 of the I-9 Form is based on the employer’s operating schedule. If the employer operates a business that is closed on the weekend, the 3 business days for the employer’s requirement to complete Section 2 does not include weekends. However, if the employer’s business runs through weekends or holidays, such as a hospital or production plant, the employer must complete Section 2 within 3 business days including the weekends and holidays. This interpretation applies even if the business does not have human resources and management staff available on such weekends or holidays.

For more information about Employment Verification Training and Compliance or I-9 Form investigations and audits by the U.S. Department of Homeland Security, Immigration and Customs Enforcement (ICE), please feel free to contact the business immigration law attorneys at the Nachman Phulwani Zimovcak (NPZ) Law Group, P.C. at 201-670-0006 (x100) or feel free to e-mail to us at info@visaserve.com