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USCIS Issues New Form I-9 for Employer Use

On March 8, United States Citizenship and Immigration Services (USCIS) issued a revised Form I-9, Employment Eligibility Verification, for immediate use by employers.

By way of background, all U.S. employers are required to complete a Form I-9 for all employees hired on or after November 6, 1986. The purpose of Form I-9 is for employers to document their employees' identity and authorization to work in the United States. USCIS first introduced a revised Form I-9 almost one year ago and invited the public to comment on it. After reviewing the comments and going through several iterations, USCIS issued the revised Form I-9, bearing an edition date of March 8, 2013. Employers have a grace period of two months to continue to use the previous versions of Form I-9 bearing an edition date of either February 2, 2009, or August 7, 2009. On May 8, use of the new Form I-9 will become mandatory and employers that fail to comply may be subject to civil penalties. Accordingly, employers should incorporate the new Form I-9 edition into their compliance procedures as soon as possible, regardless of whether they complete and maintain their records manually or electronically.

Employers may find the revised form at <http://www.uscis.gov/files/form/i-9.pdf>.

What Is New About the Form I-9?

Form I-9 has historically been one page, with three different sections. The first section is to be completed by the new employee no earlier than his or her acceptance of an offer and no later than the first date of hire. The second section is to be completed by an authorized representative of the employer no later than three business days from the employee's date of hire, to ensure the employee has properly completed Section 1 and to verify the employee's documents evidence identity and employment eligibility. The third section is to be completed by the employer to reverify that an employee with expiring employment authorization continues to have valid employment authorization after the date of expiration, as indicated by the employee in the first section of the form.

The revisions to the Form I-9 are as follows:

1. The new form has a revised layout. It now consists of two pages (in addition to the list of acceptable documents to establish identity and employment authorization).
2. The new form contains new data fields relating to the employee, including foreign passport number and country of issuance and telephone number and e-mail address (the latter two being optional).
3. The new form provides clearer instructions regarding its completion, including:
 - Completion of Section 1 of the form by nonimmigrants.
 - How employers should complete the form when a new hire presents a receipt for a document rather than the actual acceptable document.
 - How and when employers need to reverify an employee's I-9 information.
 - Which documents an employer may accept to establish the identity and employment authorization initially and upon reverification.

- A reminder to employers that they must complete the requisite information on the form, even if they attach copies of the new hire's documents to establish identity and employment authorization.
- A reminder that employers may not specify which documents the employee must present to establish identity and employment authorization.

Proper completion of Form I-9 is even more critical now that the revised version contains more explicit instructions. It remains to be seen how U.S. Immigration and Customs Enforcement (ICE) will address violations relating to improper completion of the form and whether errors will constitute technical or substantive violations, a distinction that impacts the severity of fines imposed on employers.