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Immigration Law

Alert

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Revised I-9 Form Now Required for Employment Eligibility Verification

By Isabel Machado, Esq.

On November 7, 2007, United States Citizenship and Immigration Services ("USCIS," formerly "INS") released a revised Employment Eligibility Verification Form (I-9) and Employer Handbook (M-274). As before, employers are required to complete and maintain an I-9 form for each employee.

In accordance with the Immigration Reform and Control Act of 1986 (IRCA), employers must verify the identity and employment eligibility of all persons they hire. It is unlawful for employers to knowingly hire or continue to employ a person who is not authorized to work in the U.S.

Employers are not required to file Form I-9 with USCIS. A Form I-9 must be retained for each employee for three (3) years after the date of hire or one (1) year after the date employment ends, whichever is later. Forms I-9 must be made available for inspection by U.S. Government officials upon three (3) days notice.

To complete the I-9, employees must submit one document from List A of the form, which establishes both identity and employment eligibility, or one document from List B (to establish identity) **and** one document from List C (to establish employment eligibility).

The revised I-9 form reduces the number of documents employers are permitted to accept from new hires. The primary revision is the elimination of five (5) documents from List A, which were previously permitted to be submitted by employees to prove both identity and employment eligibility. These documents may no longer be accepted by employers:

- ◆ Certificate of U.S. Citizenship (Forms N-560 / N-570)
- ◆ Certificate of Naturalization (Forms N-550/N-570);
- ◆ Alien Registration Receipt Card (Form I-151);
- ◆ Unexpired Reentry Permit (Form I-327);
- ◆ Unexpired Refugee Travel Documents (Form I-571)

USCIS advises that these documents are no longer acceptable because they are susceptible to counterfeiting, tampering, and fraud. The following documents continue to be valid proof of both identity and employment eligibility: (*cont'd* ➔)

- ◆ U.S. Passport (unexpired or expired);
- ◆ Permanent Resident Card or Alien Registration Receipt Card (Form I-551);
- ◆ Unexpired foreign passport with a temporary I-551 stamp;
- ◆ Unexpired Employment Authorization Document that contains a photograph (Forms, I-766, I-688);
- ◆ Unexpired foreign passport with an unexpired Arrival-Departure Record (Form I-94), bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, if that status authorizes the alien to work for the employer.

The documents set forth in List B, which establish identity, and List C, which establish employment eligibility, have essentially remained the same.

Employees are required to present original documents. Employers are strictly precluded from specifying which documents they will accept from an employee. Employers are not required to keep photocopies of these documents, but are permitted to do so provided they are used for the verification process and maintained with the employee's Form I-9.

Employers must complete I-9 forms for all "employees" within three days of employment. Independent Contractors could be considered "employees" under IRCA. In such cases, it is recommended that employers consult with their attorney to determine I-9 form requirements.

Providing the employee's Social Security Number in Section 1 of the form is voluntary, except for employees hired by employers participating in the USCIS E-Verify program. However, employees are required to provide the employer with either a social security number or tax identification number in order for the employer to properly report the individual's wages and income. However, employers must recognize that an Individual

Taxpayer Identification Number ("ITIN") is not an acceptable document for verification of employment eligibility with respect to Form I-9. The ITIN is used for federal income tax purposes and does not give the individual the right to work in the U.S., nor does it indicate the individual's immigration status.

It is illegal for employers to discriminate against any individual (except those who are not authorized to legally work in the U.S.) in hiring, discharging, or recruiting because of that individual's national origin or citizenship status. The refusal to hire an individual solely because the documents presented in compliance with Form I-9 have a future expiration date may also constitute illegal discrimination. However, an expiration date with respect to work authorization will require the employer to re-verify and complete a new I-9 form at such time.

The revised Form I-9 is available on the USCIS website at <http://www.uscis.gov/i-9>. Please note that a blank I-9 form can be legally reproduced and maintained by employers in compliance with these regulations, provided both sides are copied. The Employer Handbook is also available at <http://www.uscis.gov/files/nativedocuments/m-274.pdf>. The Employer Handbook contains useful illustrations of the documents discussed herein.

Employers are encouraged to use the revised I-9 immediately. Its effective date is December 26, 2007. Employers may be fined or penalized if they are found to be noncompliant.



The information provided here is necessarily general and is not intended as legal advice or a substitute for legal advice. If you have any questions regarding this Alert, please contact Isabel Machado of the Immigration Law Group at imachado@lindabury.com.

