

PUBLICATION

New I-9 Handbook for Employers Has Extra Changes

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USCIS has unveiled a new I-9 Form and Instructions, but it has made extra changes in the 65-page "Handbook for Employers," tagged as Form M-274, that is meant to guide employers further in completing, updating, and storing I-9 forms. We discuss the major changes below. We discussed I-9 changes in a recent alert, and Handbook changes consistent with the form changes are not discussed here.

The Handbook, downloadable from www.uscis.gov/i-9, increasingly has become a truly useful repository of dependable, definitive guidance for employers in handling tricky situations that come up in the I-9 process. It is encouraging that USCIS, on behalf of the Department of Homeland Security, has continued to update it carefully. The major changes include the following:

- Name Change and Rehires: The Handbook removed the topics of name changes and rehires from the table of contents but enhanced its discussion about those topics at pages 23 and 24.
- Name change: The Handbook at pages 23-24 now squarely and sensibly addresses two situations:
 - when the worker has undergone some kind of legal change of name, such as through marriage, divorce, adoption, or other court order. If the name change comes to light in the context of a rehire or reverification, then the new name should be reflected in sections 1, 2 and/or 3 of the I-9 being completed. If it comes to light otherwise, then USCIS "recommends" (but really cannot require, since there is not a mandatory verification event involved) that the employer place the new name in Section 3, ostensibly with some notation about the name change, but with no further verification of employment authorization and no new E-Verify query. Regardless of the situation, USCIS recommends that the employer ask the worker for explanation and documentation of the basis for the name change to be "reasonably assured" of the worker's actual identity. Unfortunately, USCIS does not tell employers what to do if they are not satisfied with the worker's explanation or documentation about the name change.
 - when the worker presents an altogether new identity. The Handbook addresses the common situation of a worker presenting a new identity along with evidence of that identity's work authorization. USCIS clearly acknowledges that, even though the worker essentially is admitting to having presented a false identity in the past, the employer may choose to continue to employ the worker (or not, such as in enforcing a company policy against dishonesty). USCIS essentially extends generally the instruction it gave recently in relation to workers obtaining "Deferred Action for Child Arrivals," which we described in a prior alert: complete a new I-9 Form AND a new E-Verify query (if E-Verify is in use). Ostensibly if the worker cannot show that the new identity is also authorized to work, then the employment would need to be terminated.
- Rehires: The Handbook at page 24 states that the truncated "rehire" process can be used if the rehire is within three years of when an I-9 was last completed. It clarifies that if the version of the I-9 has changed and the employer is not choosing the "update" option but instead chooses to reverify, then merely using Section 3 of the prior form is not sufficient, and a new I-9 must be completed.
- Name and address variations: The Handbook at page 4 describes how to handle when the worker has two last names (hyphenated or not), two first names, or no middle or no "other names." On page

5 it prohibits use of a P.O. box for the worker in Section 1 and requires a physical address, even if a description such as "9 miles south of I-81, to the left of the water tower."

- Employer representative: The Handbook at page 5 makes crystal clear for the first time a very important point that many employers have failed to understand: "The person who examines the documents must be the same person who signs Section 2. The employee must be physically present with the examiner of the documents during the examination of the employee's documents." The Handbook unfortunately does not clarify in this context a possible solution to remote hiring processes: contracting with an agent to complete section 2 for the employer in the presence of the worker.
- Special categories: The Handbook beefs up its discussions about the mechanics of I-9 completion in unique situations, including minors (pages 8-9), disabled workers (pages 9-10), F and J nonimmigrants (page 6), TPS beneficiaries (pages 13-14), F-1 students using forms of "practical training" (pages 18-20), and employer associations (involving unions) (page 26). It notes that the automatic 240 day extension of authorization applicable to many nonimmigrant classifications is only 120 days for H-2A workers (page 23).
- Copying documents: The Handbook at page 29 states, without clear basis, that if an employer chooses to retain copies of documents presented by workers in the verification process, whether on paper or electronically, they must be "retained with Form I-9 or stored with the employee's records."
- CNMI: Discussion about workers employed in the Commonwealth of the Northern Mariana Islands is consolidated in one Q&A on page 41 with no reference in the table of contents.
- SS cards: The Handbook at pages 43-44 changes prior guidance, clearly allowing employers to accept a laminated or un-signed original social security card (but not a metal or plastic reproduction of the card), and it mentions the availability of the Social Security Number Verification System (SSNVS).
- The Handbook explicitly refers to "I-9 Central" ([click here](#)) as another source of I-9 guidance without opining which source prevails in the event of a conflict in guidance (which does occur from time to time).

USCIS deserves appreciation for its effort to provide clear, practical guidance in the Handbook.