

PUBLICATION

New I-9 Form Published for Feb. 2

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USCIS has published the revised Form I-9 that is required for use by employers beginning February 2, 2009, but not before. We reported earlier that USCIS has amended the regulations concerning the documents acceptable for completion of Form I-9 in verifying the identity and work authorization of every employee hired since November 6, 1986. USCIS did not publish the revised form and instructions with the regulations, but now it has published the revised form to implement the regulation changes.

The new form contains numerous changes. Changes include:

In the two-page instructions preceding the form to be completed:

- Mention of the Office of Special Counsel and phone number to lodge discrimination complaints
- A new section titled "Noncitizen Nationals of the United States," stating who can be a national. USCIS appears to hope that employers will be skeptical of claims to "national" status, but an employer risks discrimination to ask any questions about birth and parentage that might reveal a fraud.
- An explanation in the instructions about expirations of work authorization and how to manage them. Interestingly, the new instructions seem to say that an asylee who chooses to present an I-766 work card must have authorization reverified even though the work authorizing status of asylee does not expire.
- A statement previously just in the Handbook for Employers: "If photocopies are made, they must be made for all new hires."
- An explicit reference to the Handbook for Employers for more detailed information, and where to find it on uscis.gov.
- Mention of the option to complete a new Form I-9, rather than completing Section 3 of an existing I-9, to reverify.
- Mention of E-Verify and how to access the program.
- Mention of the USCIS customer service center phone and the USCIS web site for general immigration information.
- A warning "Do not mail your completed form I-9 to this address," referring to the address to which to send comments about how burdensome I-9 completion is.

On the Form I-9 page that is to be completed and stored:

- Replacement of "eligible" with "authorized."
- Addition of "noncitizen national" box in Section 1 of I-9, including reference to "see instructions."

On the "List of Acceptable Documents" page:

- Removal of "expired" concerning U.S. passports
- Addition of U.S. Passport Card
- Additional reference to temporary I-551 stamp or notation on an immigrant visa.
- Removal of I-688, I-688A, and I-688B work cards.
- Clarification, as to passport and I-94 for List A, that it applies only to "a nonimmigrant alien authorized to work for a specific employer incident to status," which undercuts an argument that E or L spouses can work without an I-766.

- Addition of passport from FSM or RMI in List A.
- Clarification of Social Security Card annotations that prevent use for List C.
- Separation of Department of State forms for citizens born abroad.
- Removal of "(other than those listed under List A)" after the unspecified catch-all, "Employment authorization document issued by the Department of Homeland Security."

How We Can Help

Baker Donelson's Immigration Group regularly counsels employers on I-9 compliance. We perform private audits of I-9 documents, prepare compliance programs, and train managers and workers in implementing those programs. We evaluate particular questionable documents and situations. We help employers decide whether and how to create or store I-9 forms electronically, to use Social Security Administration's Number Verification System, or to participate in the Department of Homeland Security's E-Verify program. We help federal contractors design and implement E-Verify programs in compliance with Executive Order 13465 as implemented in Federal Acquisition Regulations.

We defend sanctions actions by ICE for "paperwork" and "knowingly hire" violations of I-9 rules. We work with our strong Litigation Department to bring and defend claims against competitors based on employment of unauthorized aliens. We advise and defend claims against competitors based on employment of unauthorized aliens. We advise and defend employers and managers in the increasingly common criminal investigations and proceedings relating to employment of aliens.

We coordinate our Team's services closely with our firm's well-respected Labor and Employment Law Group and with our firm's White Collar Crime Group. We provide advice and coordinate with U.S. and foreign preparers concerning U.S. taxation of international companies doing business in the U.S., and concerning the U.S. taxation of international workers placed in the U.S. and abroad.