

Department of Homeland Security, U.S. Citizenship and Immigration Services Issues Amended Form I-9

In June 2007, USCIS issued a new Form I-9 (Employment Eligibility Verification Form) in response to a 1997 Act. In early November it issued a revised Handbook for employers for completing the Form I-9.

At this time all employers should be using the amended Form I-9 for all new hires. Form I-9s that were filled out prior to the introduction of the amended form are sufficient and there is no need to ask employees to refile on the amended form. Because the prior Form I-9 did not conform to the law, DHS has used its prosecutorial discretion in accepting all Form I-9s complying with earlier law. After ICE issues new regulations regarding how it will handle this prosecutorial discretion on the Form I-9s used prior to the amended one, this practice of no refiling may need to be reconsidered. For now, employers should only use the amended I-9 for future hires.

Full compliance with obtaining correct and complete Form I-9s is an essential and effective step to protect an employer from charges of hiring an Immigrant that is unauthorized to work in the U.S.

The most significant change to the Form I-9 is a reduction in the acceptable List A documents identified on the form. List A documents are those that provide both identification and eligibility to work in the United States. Five documents are no longer listed as documents acceptable for establishing both identity and employment eligibility under List A: (1) the Certificate of United States Citizenship (Form N-560 or N-561); (2) the Certificate of Naturalization (Form N-550 or N-570); (3) the Form I-151, a long out-of-date version of the Alien Registration Receipt Card (“green card”); (4) the Unexpired Reentry Permit (Form I-327); and (5) the Unexpired Refugee Travel Document (Form I-571).

The amended Form I-9 retains four types of acceptable List A documents: (1) the U.S. Passport (unexpired or expired); (2) an unexpired Permanent Resident Card or Alien Registration Receipt Card (Form I-551); (3) an unexpired foreign passport with a temporary I-551 stamp; and (4) an unexpired Employment Authorization Document that contains a photograph (Form I-766, I-688, I-688A, I-688B).

In addition, the amended Form I-9 modifies one acceptable List A document, replacing the “unexpired foreign passport with an attached Form I-94 indicating unexpired employment authorization” with “an 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.” All of these acceptable List A documents were carried over from the previous Form I-9, with the exception of the Form I-766, which is a new version of the Employment Authorization Document that has been added to List A.

This updating of List A on the Form I-9 provides employers a better means to conform their document acceptance practices to the requirements of the law. The 1997 regulatory List A on the prior Form I-9 was not enforced pursuant to the prosecutorial discretion policy. With a Form I-9 now available that includes the correct List A, the prosecutorial discretion policy is no longer necessary, and Immigration and Customs Enforcement (ICE) has confirmed that it will no longer be in effect 30 days following publication of the Federal Register Notice which should soon be forthcoming.

The amended Form I-9 also informs employees that providing their Social Security number is voluntary, pursuant to section 7 of the Privacy Act (8 U.S.C. 552a(note)). However, employees must provide their Social Security number if their employer participates in E-Verify (the employment eligibility verification program formerly known as Basic Pilot Program or Electronic Employment Verification (EEV)).

The Form I-9 also includes changes to its organization and formatting that are more consistent with standard DHS practices, such as including a clarification that there is no filing fee associated with the Form I-9.

Copy of the amended Form I-9 can be obtained at the USCIS website. <http://www.uscis.gov/files/form/i-9.pdf>.

Copy of the new Handbook which includes a reprintable copy of the Form I-9 is available at <http://www.uscis.gov/files/nativedocuments/m-274.pdf>.

For further information you may contact me at ben@yalelawoffice.com, 419-568-5751.