



**Baurkot & Baurkot**  
**The Immigration Law Group**

**Client Advisory**

**November 21, 2016 - Urgent Notice to Employers: Immigration Releases New Form I-9, Employment Eligibility Verification, for Use Effective January 22, 2017.**

On November 14, 2016, the United States Citizenship and Immigration Services (“USCIS”) released a new version of Form I-9, Employment Eligibility Verification—a document employers must use to verify that each of their employees are authorized to work lawfully in the United States.

The new Form I-9 contains several improvements to previous versions, with a specific focus on the electronic verification process. Improvements include:

- Streamlining certification for certain foreign nationals;
- The use of additional prompts to help ensure that accurate information is entered in the online form;
- The ability to enter multiple translators and preparers into the online form, as well as the addition of a supplemental page for the preparer and translators, simplifying the overall process;
- Extra space in the form specifically designated to allow the addition of supplemental information or explanation, enabling the preparer to avoid using the page margins for this purpose and
- Completely revised instructions.

Most of these improvements are designed to ensure that electronic submission of the Form I-9 is faster, simpler, and as accurate as possible. As such, the new Form I-9, taken together with its electronic database, allows for several new features, including popup calendars for easy time and date entries, drop-down lists, and easy-access to complete instructions for all response fields, as well as quicker options for erasing all fields and starting the form anew, if need be.

Moreover, USCIS separated the instructions for the Form I-9, making the instructions uniform other USCIS forms. Further, the Form I-9 is now available in both English and Spanish. The Spanish version, however, are for those seeking verification from Puerto Rico. Nonetheless, the Spanish Form I-9 and accompanying instructions allow Spanish speaking employees to make use of the Spanish Form I-9 and its instructions for purposes of

translation and overall guidance to the employee when providing information in completing the English Form I-9. Also, USCIS, understanding that many employees may not speak English, now provide for employee assistance in completing the Form I-9, Verification of Employment Eligibility, with a newly released Translator Declaration, to be used when the employee requests the assistance of a translator in completing the necessary employment verification documents.

For years, employers across the United States have used the Form I-9, Verification of Employment Eligibility, with a March 8, 2013 revision date. The March 8, 2013 version will be accepted until January 21, 2017 and no later. After that, Employers are required to use the updated Form I-9, Verification of Employment Eligibility. Failure to do so may result in substantial penalties, upon an immigration audit.

Despite these improvements, navigating the Form I-9 verification process and completing all required forms is complicated, time-consuming, and the simplest of errors could lead to the largest of penalties. Employers cannot rely on the quick review of internal human resource departments.

Moreover, human resource departments are often not equipped with the technology, experience, and full electronic capabilities, to allow for the proper processing of the Form I-9, Employment Eligibility Verification.

USCIS fines for Form I-9, Employment Eligibility Verification, errors range from \$216 per erroneous form to \$2,156 per erroneous form. Moreover, knowingly employing a non-verified, undocumented individual range from \$539 to \$21,563 per non-verified, undocumented employed individual. Further, should USCIS deems that compliance failure amounts to a pattern or practice of hiring for unauthorized individuals, employers and management—at the most senior of levels—are open to individualized and personal financial and criminal liability, including thousands and thousands of additional penalties and possible incarceration.

Is it worth it? Is it worth hundreds of thousands of dollars in penalties? Is it worth possible criminal charges? Even the simplest of errors present the greatest of risks to employers in the Lehigh Valley, through Pennsylvania, and beyond. Do not verify alone. Do not rely on an electronic, third-party system to ensure your company is compliant with the employment regulations that govern immigration, proper employment documentation, and verifications.

What may seem simple could lead to horror: immigration raids, immigration I-9 audits, massive fines, and criminal charges. These burdens cannot be placed on an employer's human resource staff alone, particularly given the technical requirements that USCIS has implemented through the new Form I-9, Employment Eligibility Verification.

Baurkot & Baurkot's Form I-9 Team provides expertise in all matters related to verification, anti-immigrant employee discrimination, which govern an employer's hiring and retention of employees. Additionally, Baurkot & Baurkot's leading immigration attorneys provide



internal, individualized, announced or unannounced Form I-9 audits, together with representation and guidance to support employers in avoiding federal employer sanctions for Form I-9, Social Security, and other immigration based employment-related violations. Baurkot & Baurkot's [Immigration Attorneys](#) provide:

- Form I-9 Error Mitigation Advice and Review;
- Training and education of staff and corporate leadership regarding state and federal legal and regulatory requirements;
- Development and implementation of corporate strategies for verification and record-keeping;
- Counsel and solutions for avoiding employer sanctions for verification, anti-discrimination, and record-keeping violations;
- Supervision of means in which to lawfully correct any pre-existing Form I-9 errors;
- Digitization of Form I-9 records, which includes calendaring, re-verification dates, and retention dates;
- Guidance in the lawful purging of documents that the Department of Homeland Security does not require an employer to retain;
- Implementation of the E-Verify system, its processes, completion, and the impact on the employer on E-Verify's required Memorandums of Understanding;
- Guidance on potential employees in temporary protected status, differed action for childhood arrivals, and other USCIS authorized employment categories;
- Guidance in distinguishing employees from independent contractors;
- Counsel on the resolution of Tentative Non-Confirmations ("TNCs") and Final Non-Confirmations ("FNCs");
- Representation and Counsel before E-Verify Officials, United States Immigration and Customs Enforcement Investigators, and OCAHO;
- Subpoena, request for records, and notices of inspection representation and responses;
- Counsel throughout any immigration audits, negotiations with immigration authorities related to audits, resolving possible claims that immigration could assert, before they are asserted;
- Working with immigration and other authorities to resolve any potential claims before, during, or, after an immigration audit.

- In-house human resources training, internal audits, documents reviews, outside counsel conducting Form I-9 Verifications for all employees, uniformity, and consistency are crucial to protecting both the employer and the employee from Form I-9 Compliance issues, fines, audits, and, quite possibly, criminal penalties.

Baurkot & Baurkot is the Lehigh Valley's Leading Immigration Law Firm, with decades of experience working with corporations, small businesses, individuals, human resource departments, executive management, universities, hospitals, and more, to preemptively prevent the knock of the immigration agent on your door and if that knock does come, to step in and ensure all your rights are protected and any immigration related compliance issues are resolved without spending hundreds of thousands in penalties.

**Human Resource Departments and Employers:** *Call Baurkot & Baurkot today to discuss the New Form I-9 and what Baurkot & Baurkot can do for you. Call (484) 544-0022.*

*At Baurkot & Baurkot, Your Immigration Matters.*

