

## Another Revised Form I-9: Mostly Non-Substantive Changes, with One Puzzling Guidance Modification, and Employers Must Switch to a New Form for the Second Time This Year

Two weeks ago, U.S. Citizenship and Immigration Services (“USCIS”) published a new revised Form I-9—the second to go into effect this year—which becomes mandatory as of September 18, 2017.<sup>i</sup> Between now and September 18, employers may either use the new Form I-9 or continue using the prior version (revision date November 14, 2016). The Instructions have also been updated correspondingly.<sup>ii</sup>

This past December, we [issued a client alert outlining](#) revisions then being made to the Form I-9, mandatory use of which coincidentally coincided with President Donald Trump’s inauguration in January 2017. Less than a year later, another round of revisions reflects the continuous flux and growing focus on immigration-related laws and requirements, including in the employment context. The prior Form was set to expire on August 31, 2019, but did not even last a full year without alterations. Interestingly, the new Form has retained the same expiration date, meaning that it will likely not survive in its revised form for more than two years (or even less, given the frequency of recent revisions).

Unlike the late 2016 revisions to the Form I-9, the new changes are few and, with one possible exception, relatively non-substantive. Nonetheless, employers must switch to the new Form I-9 and new Instructions no later than September 18, 2017, or risk a technical violation.

Most notably, the Form I-9 Instructions have been revised—inexplicably and without commentary—to require that Section 1 be completed by the employee “no later than the employee’s first day of employment,” modifying prior guidance that it must be completed no later than “*the end of*” the first day of employment. It is unclear if USCIS considers this to be a substantive change, as prior USCIS guidance provides that a new employee “must complete and sign Section 1 of Form I-9 no later than his or her first day of employment,” without reference to the “end of” the employee’s first day.<sup>iii</sup> Regardless, moving forward, employers should prioritize completion of Section 1, ensuring that it is completed no later than the very beginning of employees’ first day of employment. The Instructions have not changed in allowing employees to complete Section 1 prior to the first day of employment, but no earlier than acceptance of the job offer, and the three-day window for employers to complete Section 2 and the certification remains unchanged as well.

In the Instructions, USCIS also changed the reference to “the Office of Special Counsel for Immigration-Related Unfair Employment Practices” to its new name, “Immigrant and Employee Rights Section.” Likewise, the USCIS “Handbook for Employers” has been amended, and includes updated descriptions and images of acceptable documents. This Handbook is a helpful resource for employers to consult when reviewing less common forms of acceptable documents.

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The only change to the Form I-9 itself is a re-numbering of, and addition to, the “List C” acceptable documents. Particularly, forms of birth certificates previously listed as separate types of “List C” documents (Form FS-545 and Form DS-1350) have been combined into one category (“Certification of report of birth issued by the Department of State”), along with Form FS-240, which was previously not identified as an acceptable “List C” document. The electronic Form I-9 and the E-Verify system have been updated to accommodate this change.

This newest revision is likely only one of many immigration-related changes that will occur during President Trump’s term in office. For instance, the president has indicated his desire to make E-Verify mandatory for all employers, and his intent to focus on legal immigration as well as illegal immigration, such as increasing the prevailing wage for skilled guest workers on H1-B visas<sup>iv</sup> (the same type his wife utilized to work in the U.S. as a model), which could have a significant impact on tech companies, hotels and resorts, and agricultural and seasonal industries, among other sectors. What exactly that will mean for employers remains to be seen, but it appears that the only certainty is change.

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*This document is intended to provide you with general information regarding the newly revised Form I-9, which becomes mandatory as of September 18, 2017. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.*

<sup>i</sup> The revised Form I-9 (revision date 7/17/17) can be found here: <https://www.uscis.gov/i-9>.

<sup>ii</sup> The revised Instructions (revision date 7/17/17) can be found here: <https://www.uscis.gov/i-9>.

<sup>iii</sup> See <https://www.uscis.gov/i-9-central/questions-and-answers> (“How far in advance can the Form I-9 be completed?”).

<sup>iv</sup> See <https://assets.donaldjtrump.com/Immigration-Reform-Trump.pdf>.