



NEWSLETTER
May 2013

Only the Revised I-9 Employment Eligibility Verification Form May Be Used for New Hires Effective May 7, 2013

The Immigration Reform and Control Act of 1986 (IRCA) makes it unlawful for an employer to knowingly hire or continue to employ an alien not authorized to be employed in the United States. Under IRCA, employers must comply with the requirements of verifying employment eligibility of all employees they hire by completing a Form I-9.

The U.S. Citizenship and Immigration Service (USCIS) recently issued a revised Employment Eligibility Verification Form I-9, which is available for immediate use and replaces all prior versions of the form effective May 7, 2013. After this date, only the new form with a revision date of 03/08/13 may be used. The new form is for use with new hires only; the USCIS is not requiring employers to complete the new form for existing employees.

Susan Karlovich
Partner, New Jersey
973.735.6012
susan.karlovich@wilsonelser.com

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REVISED FORM I-9

The new *Form I-9* is prefaced by six pages of detailed instructions followed by one section to be completed by the employee and two sections to be completed by the employer. For a more comprehensive treatment of completion and retention requirements for I-9 forms, the reverification process, and unlawful discrimination and penalties, among other things, you can download a copy of the revised *Handbook for Employers* (M-274) on the USCIS website. *Continued*



Employers must retain a completed Form I-9 for each employee for as long as the individual works for the employer. It is preferable to keep the I-9 forms ready for inspection in a separate file apart from personnel files in the event of an I-9 audit. Once employment has been

terminated, the employer must retain the Form I-9 for three years after the date of hire or one year after the date employment ended, whichever is later. The I-9 forms may be retained as paper documents, on microfilm or microfiche, or electronically.

Section 1

Newly hired employees are required to complete Section 1 of Form I-9 after hire, but no later than the first day of employment. The employer must make the six pages of instructions available to the employee as they complete Section 1 of the form. Note that:

- Only if the employer registered to participate in the E-Verify program must the employee include his/her social security number in Section 1.
- Providing an e-mail address or telephone number is now optional.
- All employees must attest to their citizenship or immigration status by signing the form.

The employee must also present documentation that establishes his/her identity as well as employment authorization no later than the third working day of employment.

The preparer and/or translator certification block in Section 1 is completed only when the employee requires assistance in filling out the form. In such cases, the preparer or translator must read the form to the employee, assist in completing Section 1 and have the employee sign the form. The preparer/translator must then complete the Certification block.

Section 2

This section is to be completed by the employer after examining unexpired, original documentary evidence of identity and employment authorization. Page 9 of the I-9 form contains a list of acceptable documents that may be presented by the employee. An employee must present:

- One document from List A that establishes both identity and employment authorization **OR**
- A combination of one document from List B (identity only) **AND** one document from List C (work authorization only).

The employer may not specify which documents are to be presented.

Provided the documents presented reasonably appear to be genuine on their face, and relate to the person presenting them, the employer's obligation is fulfilled. Determining that the documents relate to the person can be achieved by ensuring that photo(s) resemble the person, the name on the document is consistent or can be explained by marriage, and the identifying, non-changing information (height, eye color, date of birth) are accurate.

To facilitate the determination of whether a document appears genuine, the USCIS *Handbook for Employers* contains pictures of sample documents often used for I-9 compliance. The handbook also points out common identification documents that are not acceptable.

Once the employer makes the determination that the documents appear to be genuine and relate to the person, the employer must record each document title, document

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number and expiration date (if any) on the I-9 form before returning the documents to the employee. The employer may or may not choose to keep a copy of these supporting documents. If it opts to keep a copy, it must do so for all new hires or reverifications. A new field in Section 2

requires the employer to input the first day of employment. In the event of an audit, U.S. Immigration and Customs Enforcement (ICE) may compare the start date with the date on which the employee signed Section 1 of the form.

Section 3

Section 3 must be completed when reverifying that employees have continuing work authorization in the event their employment authorization document has an expiration date. U.S. citizens and lawful permanent residents need not be reverified. In addition, when rehiring an employee within three years of completion of the original Form I-9, employers have the option to complete Section 3 rather than complete a new Form I-9.

right to a hearing before an administrative law judge in the Executive Office for Immigration Review. It is important to note that the increase in penalties has been accompanied by an increase in Form I-9 audits.

Having an I-9 Compliance Policy in place to guide HR personnel in how to properly complete and retain the I-9 forms, review acceptable documentation and conduct reverification when necessary will go a long way toward avoiding needless penalties and help employers stay within the letter of the law.

PENALTIES FOR I-9 VIOLATIONS

The minimum penalty for knowing employment of an unauthorized alien has been increased to \$375, with a maximum penalty for first violations increased to \$3,200. The maximum civil penalty for multiple violations is currently \$16,000. Penalties are assessed on a per-alien basis. For each alleged violation, the employer has the

Susan Karlovich is an Immigration Attorney in Wilson Elser's New Jersey office. She has significant business immigration experience consulting with corporations to help ensure I-9 compliance and drafting Corporate I-9 Compliance Policies.

Members of Wilson Elser's Employment & Labor practice, located throughout the country, provide one convenient point of contact for our clients. Please contact any of the following partners to access the experience and capabilities of this formidable team.

Contacts:

National Practice Chair

Ricki Roer
ricki.roer@wilsonelser.com

212.915.5375
Northeast

By Region:

Midatlantic
Robert Wallace
robert.wallace@wilsonelser.com

Southeast
Sherril Colombo
sherril.colombo@wilsonelser.com

Midwest
David Holmes
david.holmes@wilsonelser.com

Southwest
Linda Wills
linda.wills@wilsonelser.com

West
Marty Deniston
martin.deniston@wilsonelser.com

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