

Management Alert



Employers Must Use New I-9 by September 18, 2017

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Seyfarth Synopsis: USCIS released a revised version of Form I-9 that employers must use to verify identity and employment authorization of new hires effective September 18, 2017. There are no substantive changes from the current Form I-9, which USCIS issued in November 2016 and considered a major overhaul. Employers are urged to utilize the roll out of the new Form I-9 as an opportunity to offer I-9, E-Verify and Antidiscrimination training, to assess their state of immigration compliance and to address necessary remediation.

As expected, the U.S. Citizenship and Immigration Services (USCIS) released a revised version of Form I-9, Employment Eligibility Verification, on July 17. Employers can use this [new Form I-9](#) or continue using the Form I-9 with a revision date of 11/14/16 N through September 17. As of September 18, employers may only use the new form with a revision date of **07/17/17 N; no other versions will be acceptable**. The issuance of the new form does not necessitate employers "redoing" previously completed Form I-9s, this is going forward only.

What's New?

In the [Form I-9 instructions](#):

- Updated the name of the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) to Immigrant and Employee Rights Section (IER). Given the lack of any true substantive updates, it appears this name change is the main reason for the form update.
- Removed "the end of" from the phrase "the first day of employment."

In the List of Acceptable Documents:

- Added the Consular Report of Birth Abroad (Form FS-240) to List C and made it easy to select Form FS-240 from the drop-down menus available in List C of Sections 2 and 3 (in the dynamic Form I-9) and to identify it in E-Verify.
- Combined the certifications of report of birth issued by the Department of State (Form FS-545, Form DS-1350, and Form FS-240) into selection C #2 in List C.
- Renumbered all List C documents except the Social Security card into an easier format.

In the new [M-274, Handbook for Employers](#):

- USCIS reflected these changes and endeavored to simplify the format.

What's the Same?

No changes to storage - which means that employers may still keep Form I-9s in a single format or a combination of formats, such as paper, microfilm or microfiche, or electronic. For paper I-9s, we continue to recommend a three "binder system" consisting of Active, Reverification and Terminated I-9s. Employer should keep all of the forms separate from personnel folders and safeguarded due to privacy concerns.

For electronic users, this version's updates should not be as difficult as the one released in November of 2016. However, it is important to note that keeping up with version changes, as well as USCIS directives on how to record certain status updates or other bits and pieces of information, is clearly an issue for some **Electronic I-9 vendors**. For those employers considering electronic systems, or already using an electronic I-9, it is critical to conduct due diligence to ensure that the product complies with the regulations and guidance. Not all systems meet the electronic I-9 regulations, and the mere fact a large vendor sells the product does not necessarily render the product compliant. We expect that Immigration and Customs Enforcement (ICE) will begin to develop and showcase an expertise in this area in the near future.

No changes to retention - which means that employers should retain all Form I-9's for active employees as well as all Form I-9's for terminated employees for three years from the date of hire or one year from the date of termination, whichever is later.

No relief for employers with remote workforces - which means that the person who completes Section 2 must see the new hire in person, the original documents presented for Section 2, and record the documents in Section 2. No Skype, no Facetime, no WhatsApp, no Instagramming, no scanning and no faxing.

What Should We Do Now?

The 60 day transition period for employers and electronic I-9 vendors provided by the government should be used for more than deprecating the old Form and introducing the 7/17/17 version before September 18, 2017. In fact, we recommend that companies immediately begin to use the new Form and notify their HR and other staff of the change. This is an excellent opportunity to also offer I-9, antidiscrimination and E-Verify related trainings as well as to review immigration related policies and handbooks (or to start thinking about developing them). Given the focus on compliance by the new administration, immigration related efforts should prove time and money well spent. There is speculation that increased worksite enforcement, greater scrutiny and less tolerance for companies with I-9 related issues is on the horizon. Now is the time to schedule experienced immigration compliance counsel for an on-site proactive I-9 review, including access to those that own the I-9 "process" on the ground. This review should include observations focusing on the implementation of well-intended standard operating procedures. Site visits and /or direct discussions are critical to assessing and identifying potential I-9 related liabilities. The chance to remediate on your own timeline, and not that of the government, is priceless; proactive remediation is key.

Interested in an immigration compliance assessment? Contact the authors or your relationship partner at Seyfarth.

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