



New I-9 'final rule' effective May 16

McAfee & Taft EmployerLINC Employment Law Alert - May 3, 2011

On April 14, 2011, the U.S. Citizenship and Immigration Service (USCIS) announced a new "final" rule regarding the process by which employers verify the identity and employment authorization of their newly hired employees. In the wake of that announcement and the ongoing federal I-9 audit initiatives, employers are properly questioning the status of their I-9 procedures. However, the new "final" rule merely adopted, without change, an interim rule that has been in place since April 3, 2009. Therefore, while the new "final" rule becomes effective on May 16, 2011, the changes that employers must implement in response will be somewhat minimal.

The most significant change brought about by both the interim and final rules is a prohibition against employers' acceptance of expired documents to complete Form I-9s. According to USCIS, "expired documents are prone to tampering and fraudulent use," and are therefore inappropriate for achieving the fundamental purpose of the Form I-9. Therefore, if they have not already done so, employers should immediately train relevant staff to identify and refuse to accept facially expired documents in the I-9 process. For the purpose of clarity, USCIS has made clear that "if a document does not contain an expiration date, as is often the case with a Social Security card, it is considered unexpired."

The new final rule also adopted some more minor changes ushered in by the interim rule, such as adding and removing some particular items from the I-9's List A category (documents which verify both identity and employment authorization simultaneously). By way of example, List A no longer includes Forms I-688, I-688A and I-688B, and now

Department of Homeland Security
U.S. Citizenship and Immigration Services

OMB No. 1125-0005 | Section 1071(c)(2)

Form I-9, Employment Eligibility Verification

Please read instructions before completing this form. The instructions must be available during the time of hire.

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against job applicants in all phases. Employers CANNOT discriminate based on race, color, national origin, sex, age, disability, or any other protected class. This form is to be used in initial hiring situations that determine if an individual is eligible for employment.

Section 1. Employee Information and Verification (To be completed and signed by employee at the time of employment)

Section 2. List _____ **Name** _____ **Social Security Number** _____ **Date hired** _____ **Home phone** _____

Address (Street name and number): _____ **Apt. #:** _____

City: _____ **State:** _____ **Zip Code:** _____ **Home County:** _____

I am aware that Federal law provides for representation and/or legal advice (free statement) at the time of this interview in connection with the completion of this form.

I attest under penalty of perjury, that I am (check one of the following):
 A citizen of the United States
 A permanent resident of the United States (non-citizen)
 A lawfully admitted resident (LAWRENCE V. AGNEW, 429 U.S. 558, 562)
 An alien with a valid visa (LAWRENCE V. AGNEW, 429 U.S. 558, 562)
 An alien with no visa (LAWRENCE V. AGNEW, 429 U.S. 558, 562)

Employee's Signature: _____ Date: _____

Employer's Acknowledgment: I have completed and signed this document to the best of my knowledge and belief under penalty of perjury, that I have secured in the completion of this form and that to the best of my knowledge the information is true and accurate.

Preparer's Acknowledgment:

Name: _____

Address (Street name and number), City, State, Zip Code: _____

Date signed/verified: _____

Section 2. Employee Review and Testimony (To be completed and signed by employer. EXCLUDES any documents from Line D (D) (examine one document from Line B and one from Line C), as listed on the reverse of this form, and record the date, location, and signature date, *if any*, of the documents.)

Line A: _____ **Line B:** _____ **Line C:** _____ **Line D:** _____

Personnel file: _____

Hiring authority: _____

Document #: _____

Department/Div./Unit: _____

Supervisor/Designee: _____

Line E: _____ **Line F:** _____ **Line G:** _____ **Line H:** _____ **Line I:** _____ **Line J:** _____ **Line K:** _____ **Line L:** _____ **Line M:** _____ **Line N:** _____ **Line O:** _____ **Line P:** _____ **Line Q:** _____ **Line R:** _____ **Line S:** _____ **Line T:** _____ **Line U:** _____ **Line V:** _____ **Line W:** _____ **Line X:** _____ **Line Y:** _____ **Line Z:** _____

Business or Organization Name and Address (Street name and number), City, State, Zip Code: _____ Date signed/verified: _____

Section 3. A. Political and Religious Beliefs (To be completed and signed by employer)

A. New Hire of employee: _____ **B. Return of existing employee (check if applicable):** _____

C. Discharge/Resignation: _____

D. Description of work authorized for employee, provide an alternative form for documentary evidence when employment authorization is denied: _____

E. Description of work authorized for employee, this is the last of my work hours. My employer is authorized to work in the United States, and all documentation is present: _____

F. Description of work authorized for employee to be added to and reflect on the individual: _____

G. Signature of Employer or Authorized Representative: _____ Date signed/verified: _____

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includes certain documents applicable to citizens of the Federated States of Micronesia or the Republic of the Marshall Islands.

The new final rule does not include any revisions to the Form I-9 itself. Employers may continue to use either the current version of Form I-9 (Rev. 08/07/2009) or the previous version (Rev. 02/02/2009).

If you have questions, please contact our **labor and employment attorneys**.

Additional Resources

- [Final Rule on Employment Eligibility Verification Q&A](#)
- [Download Form I-9 \(PDF\)](#)
- [Download Form M-274, Handbook for Employers \(PDF\)](#)

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