

May 2013

Employers Beware: New Form I-9 Must be Used Starting Today – May 7, 2013

By Kimberly B. Malerba, Esq.



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As you are likely already aware, the U.S. Citizenship and Immigration Services (USCIS) issued a revised Employment Eligibility Verification Form I-9 which must be used beginning May 7, 2013. Employers must use a Form I-9 to verify the identity and authority to work of all individuals hired for employment within 3 days of hire. The new form must be used for all new hires on or after May 7, and for re-verifying current employees whose work authorizations are expiring on or after May 7.

Notably, you do not need to replace current Form I-9 documents for existing employees who do not otherwise need reverification to continue their employment

As with the prior forms, the new forms still require that both employees and employers complete their respective sections of the form. The employee must attest to his or her employment authorization and present the employer with acceptable documentation of identity and employment authorization. The employer is charged with examining the employment eligibility and identity documents to determine whether they reasonably appear to be genuine and to relate to the employee. In addition, the employer is required to record the document information on the Form I-9. The new form includes additional data fields, more detailed directions, and a modified layout.

Employers who fail to use the new Form I-9 after May 7 will be subject to penalties. To ensure that you are using the correct Form I-9, check the date in the lower left hand corner of the form for a revision date of 03/08/13. You can obtain the revised "Handbook for Employers" (Form M-274) which provides additional guidance on completing the I-9 Form, along with the new I-9 Form and instructions on the USCIS web site. You can [click here](#) to link directly to this information.

Employers are required to retain a Form I-9 for each employee for either three years after the date of hire or for one year after employment is terminated, whichever is later. Additionally, the form must be available for inspection by the Department of Homeland Security, Department of Labor, or Department of Justice.

Discrimination Against Unemployed Job Applicants

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For additional information on this or any employment related issue, please contact **Kimberly Malerba**, or any other member of the Employment Law Practice Group.

She can be reached at 516-663-6679 or [click here](#) to email her.

Prohibited in NYC

By Laura Nazginov, Esq.

The New York City Council recently amended legislation to prohibit New York City employers from basing employment decisions on a job applicant's unemployment status. The new law will take effect on June 11, 2013 and will apply to employers with at least four employees.

Under this law, "unemployed" is defined as individuals "not having a job, being available for work and seeking employment." The law prohibits employers from discriminating against the unemployed by:



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- basing an employment decision related to hiring, compensation, or the terms, conditions or privileges of employment, on an applicant's unemployment status; and
- publishing an advertisement for any job vacancy that lists current employment as a requirement and/or qualification for the job, or that states that unemployed individuals will not be considered for employment.

A person who believes that he or she has been discriminated against because of unemployment status may bring an action in court for damages, or file a complaint with the New York City Commission on Human Rights (the "Commission"). If the Commission finds that an employer has unlawfully discriminated based on employment status, the Commission may order the employer to "cease and desist" from its discriminatory practices. The Commission also could require that the employer hire a prospective employee, award pay, and/or pay impose a penalty.

Prior to the June 2013 effective date, employers are strongly urged to examine their job postings/advertisements and recruitment procedures to ensure that they will not be in violation of the new law.

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