

LEGAL UPDATE

December 26, 2007

REVISED EMPLOYMENT ELIGIBILITY VERIFICATION (FORM I-9) MANDATORY FOR USE BY ALL EMPLOYERS AS OF DECEMBER 26, 2007

The United States Citizenship and Immigration Services (“USCIS”) of the Department of Homeland Security has updated Form I-9, the verification form used to verify the eligibility of all new employees. All employers must complete and retain this revised form for any new employee hired on or after December 26, 2007. Employers using outdated forms after December 26, 2007 may be subject to civil fines and penalties.

The Form I-9 was adopted for use pursuant to the Immigration Reform and Control Act of 1986 to document that every employee hired in the United States after November 6, 1986 is authorized to work in the United States. Employers do not need to complete new Forms I-9 for previously verified employees.

Individuals who are eligible to work in the United States are protected from discrimination throughout the I-9 verification process and all other steps of recruitment, hiring and termination. Employers may not specify which documents or combination of documents an employee may present from the list of acceptable documents contained on the Form I-9.

Please go to: <http://www.uscis.gov/files/form/i-9.pdf> for a copy of the updated Form I-9 and to: <http://www.uscis.gov/files/pressrelease/FormI9FS110707.pdf> for a copy of the USCIS Fact Sheet regarding the revisions to the Form I-9.

FAQ:

WHAT ARE THE CHANGES FROM THE PREVIOUS FORM I-9?

Material changes have been made to List A of Form I-9, which sets forth the documents an employee can offer to prove his or her eligibility for employment. The documents enumerated on List A establish both the employee’s identity and the employee’s eligibility to work. A separate list, List B, sets forth documents which prove identity and eligibility separately.

One document has been added to List A as an acceptable document:

1. Unexpired Employment Authorization Document (Form I-766).

Five (5) documents have been removed from List A as acceptable documents:

1. Certificate of US Citizenship (Form N-560 or N-561).
2. Certificate of Naturalization (Form N-550 or N-570).
3. Alien Registration Receipt Card (Form I-151).
4. Unexpired Reentry Permit (Form I-327).
5. Unexpired Refugee Travel Document (Form I-571).

Employers may only accept documents listed on the *current* List of Acceptable Documents on Form I-9. Employers may also now sign and retain the Form I-9 electronically.

Employers are encouraged to review the USCIS Handbook for Employers at <http://www.uscis.gov/files/nativedocuments/m-274.pdf> which thoroughly sets forth the instructions for compliance and the changes to the Form I-9.

WHICH EMPLOYERS MUST USE FORM I-9?

All employers are responsible for completing and retaining the Form I-9.

WHICH FORM I-9 IS ACCEPTABLE FOR USE AFTER DECEMBER 26, 2007?

Only Forms I-9 marked “Form I-9 (Rev. 06/05/07)” on the bottom right-hand corner are acceptable for employers to use after December 26, 2007. Employers who do not use the updated Form I-9 after December 26, 2007 will be subject to civil fines and penalties. Employers do not need to re-verify employees for whom prior forms are on file.

WHAT ARE AN EMPLOYER’S I-9 VERIFICATION OBLIGATIONS?

Employers must:

1. Ensure that each employee fully completes Section I of the Form I-9 at the time that employment begins.
2. Review the required documents for eligibility verification. The documents must on their face appear to be genuine and relate to the person presenting them.
3. Fully complete Section 2 of the Form I-9 and sign and date the employer certification.
4. Retain the Form I-9 for three (3) years after the date employment begins OR one (1) year after the termination of the employee, whichever is later. Certain agricultural employers must retain the Form I-9 for three (3) years after the date employment begins for persons recruited or referred for a fee.

IS THE FORM I-9 REQUIRED FOR ALL JOB APPLICANTS OR FOR INDEPENDENT CONTRACTORS?

Employers must complete Forms I-9 for all employees who are actually hired at the time when the individual begins working. Forms I-9 are not required for job applicants who are not hired or for independent contractors and their employees.

WHEN MUST FORMS I-9 BE COMPLETED FOR EMPLOYEES ACTUALLY HIRED?

Within three (3) business days of when the employee begins working, the employee must provide identity and eligibility information to the employer and the employer must begin examining the information.

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The foregoing is merely a discussion of the new Form I-9 and is not intended to provide legal advice. If you would like to learn more about this topic or about how Pryor Cashman can serve your legal needs, please contact Joshua Zuckerberg at jzuckerberg@pryorcashman.com or 212-326-0885 or Richard Bethel at rbetheil@pryorcashman.com or 212-326-0154.