

New I-9 Form: Expired Documents No Longer Valid

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The U.S. Citizenship and Immigration Services (USCIS) has recently issued an interim rule, significantly changing the I-9 form. This new form must be used after April 2, 2009, as continued use of the "old" form could result in monetary penalties. The USCIS requires employers to verify a new hire's identify and authorization to work in the United States. Employers must complete and maintain employment verification forms known as the I-9 for any employee who was hired after November 6, 1986. The I-9 form requires the new hire to present original documents (of his or her choice from a list) that establish identify and work authorization and the employer must verify under penalty of perjury that the documents appear genuine and represent that individual. There are civil and criminal penalties if an employer fails to maintain such a form or it is completed inaccurately. The U.S. Immigration and Custom Enforcement Agency ("ICE") of the Department of Homeland Security conducts audits of employer I-9 forms, which may lead to penalties and other enforcement action such as the highly publicized raids. As a measure of protection, we recommend that employers conduct annual audits to ensure the existence of I-9 forms and to correct any errors on them.

The key change from the old I-9 form is that employers will no longer be allowed to accept expired documents in the employment verification process. Under the "old" I-9 form, employers could have accepted an expired US Passport and certain expired identification documents (which are known as "B" documents on the I-9 form). That will be no longer acceptable. ICE's stated reason for the change was to increase security in the employment authorization verification process. ICE found that expired documents were more likely to be tampered with or used in identify fraud cases and sought to eliminate their use in the employment verification process. Employers should note that social security cards have no expiration date so the new change should not impact their use. USCIS's interim rule also eliminates certain "A" documents, which are no longer being issued such as a temporary resident card (I-688) and employment authorization card (I-688A and I-688B.)

The interim rule adds new "A" documents: a US Passport Card, passports from Federated States of Micronesia and the Republic of the Marshall Islands, and foreign passports with specially marked visas that are machine readable (I-551). In addition, there are minor changes to the format of the employee attestation box in section 1 of the I-9 form. The new form can be found at www.uscis.gov/files/form/I-9_IFR_02-02-09.pdf or by calling USCIS at 1-800-870-3676.