

New Federal I-9 Form
(Employment Eligibility Verification Form)

By Susan Richards Salen

On March 8, 2013, the Department of Homeland Security published a new Federal I-9 Form (the form used to verify an employee's identity and authorization to work in the United States) for immediate use by all employers. There is a grace period for compliance until May 7, 2013. A computer fillable form and instructions are available at I-9 Central at www.uscis.gov/files/form/i-9.pdf. Spanish language forms may also be downloaded from that website.

The changes to the form are largely cosmetic, with the intent of making it easier to complete the form properly. Remember, both the employer and the employee participate in the completion of the I-9. The employee completes Section 1. The new form emphasizes that the employee is only responsible for completing Section 1 by the insertion of a  symbol after the end of Section 1. The new I-9 Form has not made any changes to the List of Acceptable Documents, e.g. the List A, List B and List C documents that the employee may choose to offer for the completion of the I-9.

Likewise, there are no substantive changes to Section 2 and the process for completing it. Within no more than three business days after the date employment begins, the employer asks and the employee must present an unexpired, original document or documents that show(s) the employee's identity and employment authorization. The employer representative must physically examine the document(s) the employee provides and determine if the document(s) reasonably appear to be

genuine and to relate to the person presenting it (meaning does the employee look like the person on the photo if a document from List B is provided or does the person appear to be the age indicated by the birth date). ***The employee must be present while the examination is being conducted.*** The employer representative then records the information on the Form I-9 identifying the document(s) provided and completes the remainder of the information required. The employer representative then signs the Form I-9 ***under penalty of perjury*** and returns the documents to the employee.

The issuance of this new form provides an employer with the opportunity to conduct a self-audit and correct any deficiencies. Penalties for hiring or knowingly continuing to employ an unauthorized worker or failing to comply with verification requirements (proper completion of Form I-9) include monetary penalties and, for a federal government contractor, debarment. With that in mind, please review the following on the Form I-9 requirements in a nutshell and some practice tips.

FORM I-9 IN A NUTSHELL:

Requirements:

- An employer must have a completed I-9 for every employee hired after November 6, 1986.
- An I-9 cannot be completed until a job offer has been made.
- The I-9 must be completed within 3 days of the hire of the employee.
- ***The employee chooses the documentation to provide*** and the employer inspects the documentation. In some circumstances, an employer may be required to accept a receipt from the appropriate governmental agency that indicates that the employee has applied to replace a lost, stolen or damaged document or certain Form I-94 or Temporary I-551 documentation, in the place of an original document from List A or List B.

- ***The employee must be present while the documents are being examined.***
- An employer may not require the employee to provide a Social Security Number or the specific document to satisfy Section 2.
- The employer representative must determine if the documentation reasonably appears to be genuine (original) and if it relates to the person presenting it. The same representative that examines the documents must sign the I-9 Form.
- The employer is responsible for reverifying employment eligibility if an employee has provided document(s) with an expiration date. The employee should be notified of the need for reverification prior to the date that the original documents expire. The employee must provide new documents or a receipt to show that the new documents are being processed in order to continue to work after the expiration date of the originally submitted document. This is referred to as “reverification.” During the reverification process, the employee may choose to present different documents. There is no requirement that the employee present the same types of documents provided before or present a receipt for such document(s).
- An employer may provide assistance to an employee in completing the first section of the I-9--for example, a translator or preparer, but the translator or preparer must complete the certification block.
- An employer is not required to photocopy the document(s) provided.
- The completed I-9 Form must be retained for so long as the individual works for the employer and for at least three years after the date of hire or one year after the date employment was terminated, whichever is later.

PRACTICE TIPS:

- Train the employee(s) responsible for completing I-9s. Don't leave this job to an untrained employee.
- Keep completed I-9 Forms in a centralized office location.
- Make sure that the I-9 is completed after the job offer is made and no later than 3 days after the date of the employee's hire.
- Keep a calendar and tickle system to obtain updated documentation for those employees that have provided documents with an expiration date.
- If you have decided to photocopy documents provided, photocopy documents for every employee hired. Selective photocopy may create a claim that an employee has been discriminated against on the basis of his/her national origin.

- Institute a self-audit of I-9 Forms on a regular basis – for example every other year.
- Use a retention calculator to determine when I-9 Forms may be discarded.
- Forms may be stored electronically but such electronic storage system must comply with DHS standards.
- All employees responsible for completing and signing I-9 Forms should review the detailed handbook available at I-9 Central at www.uscis.gov/files/form/i-9.pdf.
- Do not discriminate against a person that has provided a document with an expiration date.
- Do not require an employee to present documentation that has a Social Security Number on it or to require that an employee present any particular type of document.

Retention Calculator:

1. Enter date employee started work: _____.	
Add 3 years to Line 1.	A. _____
2. Termination date: _____	
Add 1 year to Line 2.	B. _____
Which date is later: A or B? Enter later date here.	C. _____
Store Form I-9 until date on Line C.	

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