

## **NEW I-9 FORM NOW REQUIRED**

On November 7, 2007, the U.S. Citizenship and Immigration Service (USCIS) announced that employers, including those in the construction industry, must begin to use a new Form I-9. The Form I-9 assists employers in verifying that individuals are authorized to work in the United States. Employers are required to complete a Form I-9 for every employee hired after November 6, 1986 to perform labor or services in return for wages. The requirement applies to all employers, including agricultural associations, agricultural employers or farm labor contractors who employ, recruit, or refer people for a fee, and those who employ anyone for domestic work in their private home on a regular basis (such as every week). The Form I-9 is not required for individuals: 1) hired before November 7, 1986 who are continuing in their employment and have a reasonable expectation of employment at all times; 2) employed for casual domestic work in a private home on a sporadic, irregular, or intermittent basis; 3) independent contractors; or 4) individuals who provide labor and who are employed by a contractor providing contract services (employee leasing or temporary agencies).

### ***Significant Changes to Form I-9***

Key to the revision is the removal of five documents from List A which include documents that establish both identity and employment eligibility. They include:

- Certificate of United States Citizenship (Form N-560 or N-561);
- Certificate of Naturalization (Form N-550 or N-570);
- Alien Registration Receipt Card (Form I-151);
- Reentry Permit (Form I-327); and
- Refugee Travel Document (Form I-571).

Additionally, the most recent version of the Employment Authorization Document (Form I-766) has been added to List A. The revised list now includes:

- U.S. Passport (unexpired or expired);
- Unexpired Permanent Resident Card or Alien Registration Receipt Card (Form I-551);
- Unexpired foreign passport with a temporary I-551 stamp;
- Unexpired Employment Authorization Document that contains a photograph (Forms I-766, I-688, I-688A, I-688B); and
- Unexpired foreign passport with an unexpired Arrival-Departure Record (Form I-94) for nonimmigrant aliens authorized to work for a specific employer.

### ***Penalties for Non-Compliance***

It is critical for employers to take note of the Form I-9 changes because they face penalties for noncompliance. The Department of Homeland Security may impose penalties against employers who knowingly hire or knowingly continue to employ an unauthorized alien, or fail to comply with the employment eligibility verification requirements. The DHS may issue a cease and desist order to the employer and impose the following civil money penalties:

1. First Offense: Not less than \$275.00 and not more than \$2,200.00 for each unauthorized alien;
2. Second Offense: Not less than \$2,200.00 and not more than \$5,500.00 for each unauthorized alien; or
3. Subsequent Offenses: Not less than \$3,300.00 and not more than \$11,000.00 for each unauthorized alien.

In addition, employers who are convicted of having engaged in a pattern or practice of knowingly hiring unauthorized aliens (or continuing to employ aliens knowing that they are or have become unauthorized to work in the U.S.) may face fines up to \$3,000.00 per employee and/or six months imprisonment.

Employers who fail to fully complete, retain and/or make available for inspection Form I-9, as required may face civil money penalties in an amount of not less than \$110.00 and not more than \$1,100.00 for each individual with respect to whom such violation occurred.

### ***Practical Tips for Employers to Ensure Compliance***

Employers should do the following to make sure they comply with the Form I-9 requirements:

- Have employees complete Section 1 and 2 of the Form I-9 when they start to work, including signing and dating the form;
- If an employee accepts a job but will not start work for a month, the employer can have the employee complete the Form I-9 when they begin working;
- Upon receipt of the required documentation, an employer must examine the documents and if they reasonably appear on their face to be genuine and to relate to the person presenting them, the employer must accept the documentation. To do otherwise could subject an employer to a discrimination claim. If the documents on their face do not appear to be genuine or relate to the person presenting them, the employer cannot accept them;
- If the employee is unable to provide the requirement documentation at the time employment begins, the employer must provide the employee three business days from the date employment begins to produce the acceptable documentation;

- Generally, if the employee fails to provide the required document within three business days, the employer can terminate the employment.
- Employees must present original documents. The only exception is an employee may present a certified copy of a birth certificate; and
- Retain the Form I-9 for 3 years after the date the person begins work or 1 year after the person's employment is terminated, whichever is later.

The new Form I-9 can be accessed at: <http://www.uscis.gov/i-9>. The revised Handbook for Employers can be found at [www.uscis.gov/files/nativedocuments/m-274.pdf](http://www.uscis.gov/files/nativedocuments/m-274.pdf).

### **About the Author**

Heather Wilson concentrates her practice in employment litigation and general business counseling. She represents employers in both federal and state court involving claims under Title VII, the Age Discrimination in Employment Act (ADEA), The Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA), The Fair Labor Standards Act (FLSA), covenants not to compete and wage claims.

Heather represents employers in proceedings before the Equal Employment Opportunity Commission and the Indiana Civil Rights Commission. She also counsels employers on litigation avoidance.

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