

ALERT

NEW FORM I-9 GOES INTO AFFECT ON APRIL 3, 2009

The new Form I-9 (revision date 2/02/2009) goes into effect today, April 3, 2009. The interim rule leading to the revised form alters both the I-9 form and the List of Acceptable Documents by changing some of the language on the form itself and adding to and deleting from the List of Acceptable Documents. All employers must ensure that they are using the correct form and that all sections of the form are properly completed and forms are properly acknowledged by a company representative.

Expired Documents Are No Longer Acceptable. A major change to the I-9 process is that expired documents are no longer acceptable. USCIS has determined that expired documents are sometimes used fraudulently by individuals seeking unauthorized employment. This occurs when expired documents are discarded or neglected by their rightful owners and then altered by counterfeiters. Because of this rule change, USCIS has removed the terms “unexpired” and “expired” from Form I-9’s list of acceptable documents and has imposed a general rule that all documents must be unexpired. A document without an expiration date, such as a Social Security Card, is considered to be unexpired.

Changes to the List of Acceptable Documents: The new form also contains a revised list of acceptable documents. Several documents on the list will be removed because they are no longer issued, and any that were already issued have expired. These documents include form I-688, Temporary Resident Card, and Forms I-688A and I-688B, Employment Authorization Cards. USCIS now issues Form I-766, Employment Authorization Document (EAD), which remains on the list. The list will also include references to Form I-94A, identical to Form I-94 except that it is computer generated, rather than handwritten.

Documents added to the list include the new U.S. Passport Card and documentation for citizens of Micronesia and the Marshall Islands. List A will now include valid passports for citizens of these nations who are admitted to the United States pursuant to the Compacts of Free Association between the United States and the Federated States of Micronesia (FSM) and Republic of Marshall Islands (RMI). Under these Compacts, citizens of FSM and RMI are authorized to live and work in the United States as nonimmigrants without the need to obtain an EAD.

Technical Updates to Form I-9: Technical updates include replacing several terms so that Form I-9 is consistent with the regulations governing the process and revising some incorrect names of documents. For example, “employment eligibility” will become “employment authorization” and the “Social Security Number card” will become “Social Security Account Number card.” Additionally, all references to the former Immigration and Naturalization Service (INS) will now refer to the Department of Homeland Security (DHS).

Usage of the New Form: Beginning today, April 3, 2009, all previous editions of the form will be outdated. Employers must start using the new form, which contains a revision date of February 2, 2009 in the lower right-hand corner of the form. Prior versions of the form will not be accepted after 45 days from the date of implementation of the new form.

The new I-9 form is available on the U.S. Citizenship and Immigration Services website at http://www.uscis.gov/files/form/I-9_IFR_02-02-09.pdf.

In addition to using the new form, we recommend that all employers undertake periodic internal audits of their Form I-9s and their I-9 procedures.

For additional information on conducting an internal audit or any other immigration or employment law compliance issue, please contact Stephanie Kinder at Skinder@epcounsel.com.