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New I-9 Form in an Environment of Increased Audits and Increased Fines:

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USCIS has released a new version of the Form I-9, which all employers must use beginning January 22, 2017. Employers should read the new Form I-9 instructions in full and also review the content of the new I-9 version carefully. Employers should also note that for the time being, until a new version is available (anticipated release is early 2017), the M-274 Handbook for Employers is outdated in many respects relating to the new form. If you have specific questions, contact our office or review the Form I-9 instructions.

Here are a few things to understand about the new form:

- All employers must use the newest Form I-9 version to verify the employment eligibility of new hires beginning no later than 1/22/17. Prior to that, employers were able to use either the new version (edition date 11/14/16) or the last version that's been in effect since 2013 (the 03/08/13 edition).
- USCIS elected to "upgrade" its newest version of the Form I-9 to a fillable and interactive PDF—"Smart" form, in which users could fill in the fields of the forms on their computers before printing and signing a hard copy. When a user opens the "Smart" I-9 in Adobe Reader, the fillable PDF form limits options for further responses based on information previously provided, flags errors and fields where information is missing, provides a link to the form instructions, and includes additional instructions for specific fields that's available by hovering over a "?" icon that appears above a field within the PDF.
 - An issue with the "Smart" form is that to access the fillable PDF, the form needs to be opened using the latest version of Adobe Reader. This was a problem for many who use other versions of Adobe or an alternative (often default) PDF viewer to open the form. The new USCIS fillable PDF version still must be printed and then signed in hard copy by both the employee and the employer representative.
 - Printing the "Smart" form with no information filled-in on the computer will result in exactly the same paper I-9 form as printing the flat/paper form on the USCIS website.

- Both versions of the Form I-9 PDF on www.uscis.gov are “paper versions,” given that each must be completed by printing and signing the document. There’s no requirement that employees and/or employers fill in any information on the “Smart” PDF before printing a hard copy. It’s still just fine to fill in the Form I-9 by hand for any or all sections.
- The new forms added a new field to the top of page 2 where the employer must indicate the “Citizenship/immigration” status of the new hire by reviewing Section 1, noting the box the employee checked, and then writing the corresponding number of that box from page 1 in the related field at the top of page 2.
- Another new field where the employee needs to affirmatively check a box indicating that he or she did not use a preparer or translator (if that’s in fact the case). That certification is under the employee signature line and in a boxed off section in the Preparer/Translator section of the form, which, at first glance, looks like something that a preparer and/or translator should respond to. This is an important double check for all employers to ensure that this box is completed by the new hire.
- The core requirements of the form have not changed: Section 1 must be completed by the end of the first day of work for pay; Section 2 must be completed no later than close of business on the 3rd day after the date of hire; and the employer must review any acceptable original document (or combination of documents) that the employee chooses to provide. The retention requirements are also remain the same.

As you will note, the new instructions now indicate that the employee, in filling out Section 1, should indicate “N/A” in any/all fields which do not apply and/or to which the employee chooses not to give a response. For example, SSN information for employees who are hired by employers and who are not enrolled in E-Verify can opt not to include this information on their I-9. If they choose not to provide that, they must indicate it by answering “N/A.”

Please note, Section 1 can only be updated by the employee, so employers should carefully review the content of Section 1 in real time as the form is being completed to ensure all fields are properly completed before they complete Section 2. Otherwise, it will be at best inconvenient and, if the employee has left the company, it may be impossible, to correct issues down the road — like if the employee didn’t write “N/A” under apartment number or “Other names used” when those fields do not apply.

While it’s probably not worth going out of your way to have an employee use the “Smart” Adobe Reader version — especially if it may result in the form not being signed by close of the first day of work for pay — there’s enough benefit to the “Smart” form that employers shouldn’t write it off completely. Employers may want to consider structuring their orientation and on-boarding to provide an opportunity for employees to complete Section 1 in the fillable PDF on-site or provide information to their new hires that includes a link to the USCIS website for Form I-9 where new hires could access and use the fillable version if they are asked to complete Section 1 at home before starting employment. The fillable PDF option makes no change to employers’ ability to electronically complete, sign, and/or store their I-9s, provided they continue to comply with the specific requirements relating to electronic I-9s.

Please note that I-9 Civil Fines were significantly increased last year (August 1, 2016). Typical paper work violations were increased from a range of \$110 to \$1000 to \$216 to \$2126. In light of recent audit activity, employers should review their current I-9 policies and procedures and work with counsel to review and remediate any issues of concern with their current I-9 program.