

## The New I-9 Employment Eligibility Verification Form Has Finally Been Published

April 26, 2013

Every employer is required to verify the identity and employment eligibility of a new employee within three days of the date of hire. To comply with this obligation, an employer must review acceptable documents that establish both the identity and work authorization of the employee, and complete a Form I-9 Employment Eligibility Verification for the employee.

The United States Citizenship and Immigration Service (USCIS) has published a revised I-9 Employment Eligibility Verification form. Employers are encouraged to use the new form now, but officially they must begin using the new Form I-9 as of May 7, 2013. Failure to use the new Form I-9 after May 7 will subject an employer to penalties.

The new Form I-9, has a different layout and is expanded from one to two pages. The form also adds several new data fields, including:

- Employee foreign passport information
- Employee telephone number
- Employee email address

The new Form I-9 also is accompanied by improved instructions and a new handbook on how to complete the form. Employers continue to be required to maintain either a hard copy or electronic Form I-9 throughout the employee's period of employment and for a prescribed post-employment period.

Moreover, employers are required to make the I-9 forms available for inspection by the Immigration and Customs Enforcement (ICE) upon request. During the Obama administration, the number of I-9 inspections and audits have increased dramatically. The Boston ICE office, for example, has already hired a number of new I-9 auditors to conduct this type of I-9 investigation. As a result, we expect that I-9 employer audit activities will continue to expand in the coming months.

If an employer is selected for an I-9 audit, it will be required to promptly produce I-9 forms for all employees employed during the period covered by the audit, and will likely be asked also to produce relevant accompanying payroll records. ICE will then carefully review the I-9 forms to determine (1) that the employer has a Form I-9 for each employee and (2) that each Form I-9 has been properly completed by both the employer and the employee.

If the ICE audit identifies I-9 violations, ICE has a wide range of potential penalties that it can assess, including criminal penalties. During the Obama administration, the Department of Homeland Security has increased the civil penalties that can be assessed against an employer for various types of I-9 violations by approximately 25%.

We strongly recommend that all employers have a Form I-9 compliance strategy in place, as well as an internal audit program, to identify and correct any I-9 problems before ICE shows up at your door.

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