

IMPORTANT CHANGES TO USCIS FORM I-9

1. New Form I-9 Form Introduced by Department of Homeland Security

On November 7, 2007, the U.S. Citizenship and Immigration Services (USCIS), which is part of the Department of Homeland Security, announced that a new Form I-9 was now available for immediate use. The new Form I-9 can be accessed at <http://www.uscis.gov/files/form/i-9.pdf>. The new Form can be distinguished by referencing the revision date on the bottom right of 06/05/07.

The new Form I-9 is finally implementing legislation enacted by Congress in 1996 and an INS regulation promulgated in 1997. Ten years later, the Department of Homeland Security has finally brought the Form I-9 into compliance with existing law. USCIS provided no explanation for the long delay. Most likely, the delay is connected to the larger debate about immigration reform. In any event, the Department says it still intends to pursue other changes to the Form I-9 in 2008 and beyond.

All United States employers are responsible for completion and retention of a Form I-9 for each individual they hire for employment in the United States. On the Form, the employer must verify the employment eligibility and identity documents presented by the employee. In its new and arguably streamlined Form I-9, USCIS highlighted several changes, including:

- List A (documents that can be used to establish identity and employment eligibility) has been shortened, five categories of formerly acceptable documents have been removed, and one new document has been added. List A still includes familiar documents such as a U.S. Passport or Permanent Resident Card.
- Instructions for completing Section 1 (the section filled out by the employee) now explicitly state the employee is not obligated to provide his or her Social Security number in Section 1 of the Form I-9 unless he or she is employed by an employer who participates in the Department's Electronic "E-Verify" program. This is not a change in the law; the use of a Social Security number for Form I-9 purposes has always been voluntary. The new instruction simply clarifies the longstanding rule: Employers cannot require a Social Security number or Social Security card to complete the Form I-9 (absent employer participation in E-Verify).
- Employers are now permitted to sign and retain Forms I-9 electronically.

USCIS also published a revised "Handbook for Employers" with detailed instructions for completing the Form I-9 as well as many frequently asked questions. The Handbook was revised effective 11/01/07. It can be accessed at <http://www.uscis.gov/files/nativedocuments/m-274.pdf>. It should provide a useful guide for employers.

Employers should immediately begin preparing to use the new Form I-9 and Handbook, as civil and criminal penalties, including jail time, can be assessed against employers if the new form is not used in all cases after it is officially published in the Federal Register. Although we do not know for certain when such publication will occur, the most effective way to

ensure compliance is to adopt the new form and comply with the new procedures as soon as possible.

2. Leader of the Pack

Washington's minimum wage will increase 14 cents to \$8.07 per hour on January 1, 2008. As a result of a voter initiative in 1998, Washington's minimum wage is adjusted annually based on the Consumer Price Index for urban wage earners and clerical workers. Washington continues to have the nation's highest minimum wage. Oregon's minimum wage will increase to \$7.95 per hour on the 1st of January and California's minimum will reach \$8 per hour. The federal minimum wage has increased to \$5.85 per hour, and by mid-2009 it will increase to \$7.25.

3. FMLA Expansion in the Works

A bipartisan bill making its way through the Congress would provide additional Family and Medical Leave coverage to family members of injured military service men and women. The text of H.R. 3481 and a similar Senate bill would provide up to 26 weeks of job protected leave to eligible employees. Eligible employees would include the spouse, son, daughter, parent or nearest blood relative of a covered service member. The job protected leave would be 26 weeks in a 12 month period. A covered service member would include any member of the Armed Forces who is undergoing medical treatment, recuperation or therapy.

Please call on any one of us for additional guidance regarding these issues.

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