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Business Update -- Revised Form I-9 For Employment Eligibility Verification

The U.S. Citizenship and Immigration Services ("USCIS") recently announced that Form I-9, the Employment Eligibility Verification form, had been revised and was available beginning November 7, 2007. Employers should use revised Form I-9 as of November 7 but have until December 26, 2007 to transition to the new form before the U.S. Immigration and Customs Enforcement (ICE) agency begins enforcing penalties.

Form I-9 is used to help verify employment eligibility and the identity of all employees hired to work in the United States. The form is not filed with the U.S. government but must be maintained in the employer's files for 3 years after the date of hire or 1 year after the employee's termination date, whichever is later.

The significant changes made to Form I-9 are detailed below.

- Five documents from List A of the List of Acceptable Documents were removed because they lacked sufficient features to help deter counterfeiting, tampering, and fraud. The removed documents include: (1) Certificate of U.S. Citizenship (Form N-560 or N-561), (2) Certificate of Naturalization (Form N-550 or N-570), (3) Alien Registration Receipt Card (I-151), (4) Unexpired Reentry Permit (Form I-327), and (5) Unexpired Refugee Travel Document (Form I-571).
- One document, Unexpired Employment Authorization Document (I-766), was added to List A.
- Employees are not required to provide a Social Security Number in Section 1 of Form I-9 unless their employer participates in E-Verify, a voluntary governmental program that enables employers to electronically verify the employment eligibility of new

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employees.¹

These revisions were made in order to help achieve full compliance with part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 that mandated a reduction in the number of documents that employers can accept for employment verification purposes.

Of course, the previous guidelines in place for using an I-9 still apply. For example, every U.S. employer must have a Form I-9 for each new employee unless: (1) the individual was hired before November 7, 1986 and has been continuously employed by the same employer, (2) the individual provides domestic services in a private household that are sporadic, irregular, or intermittent, (3) the individual is an independent contractor, or (4) the individual provides services for the employer under a contract, subcontract, or exchange entered into after November 6, 1986. Furthermore, Form I-9 should be completed within three (3) business days of the new employee's start date. If the employee will be with the company for less than three days, the I-9 must be completed at the time employment begins. Most importantly – the responsibility for completing the I-9 lies with the employer, not the employee.

Employers should begin using the revised Form I-9 immediately for new hires. As for existing employees, revised Form I-9 need only be used when employment eligibility re-verification is required. Also, personnel responsible for administering new hire paperwork and those that review employment eligibility and identity documents should be trained on the new revisions. In order to ensure compliance, businesses should periodically review their I-9 files for mistakes or errors. HR departments may not want to get too comfortable, however, as some anticipate USCIS will revisit the I-9 in the next couple of years to further reduce the list of acceptable documents. Failure to adhere to the guidelines could result in civil fines, and in situations where deficiencies rise to a pattern or practice, criminal penalties could be imposed.

The revisions to the I-9 form are just a small part of the employment verification changes taking place. For example, the new regulations on "no-match" letters, which were released in August, established safe-harbors for employees who take "reasonable steps" after receiving a no-match letter from the Social Security Administration. However, in response to a California federal district court's preliminary injunction blocking the new regulations, on November 25, 2007, it was announced that the Bush administration will suspend its legal defense of the controversial new rules and

look to revise them. For now, although the I-9 revisions have been completed, employers will have to take a "wait-and-see" approach to no-match revisions.

The revised Form I-9 is identified by the notation "Form I-9 (Rev. 06/05/07)N" located in the lower right hand corner of each page and can be found at <http://www.uscis.gov/files/form/I-9.pdf>.

A copy of the revised M-274, Handbook for Employers (with instructions on completing the revised I-9), can be accessed at <http://www.uscis.gov/files/nativedocuments/m-274.pdf>.

¹ More than 30,000 employers have already signed up to for E-Verify. As a word of caution, Illinois employers are currently prohibited from enrolling in the program because of a recently passed state law, but DHS has filed a lawsuit to invalidate that law.

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