

## I-9 UPDATE: ANSWERS TO THE MOST COMMONLY ASKED QUESTIONS ABOUT THE NEW I-9 FORM

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On March 8<sup>th</sup>, 2013, after about a year working on a suitable form but without significant warning, USCIS released the 7<sup>th</sup> edition of the Form I-9. The hope is that this newly revised form and its instructions will reduce I-9 errors and violation that lead to employers' penalties. This update answers the most common questions relating to this new Form.

### Why a new Form I-9 now?

The simple answer is that the prior form had expired and needed to be revised. But also, all of the comprehensive immigration reform proposals include ongoing emphasis on employers' compliance with the employment verification process, and nationwide mandatory E-Verify.

The new form and instructions should help minimize errors in form completion. Many common I-9 violations are technical, meaning that they are simple "paperwork" mistakes such as an employer or employee placing information in the incorrect line or box, recording documents in the wrong List columns, etc. While these errors appear harmless and insignificant, if not corrected timely and properly, they can result in heavy fines to employers.

### What kinds of fines are involved?

Employers may receive monetary fines for all substantive and uncorrected technical violations. Penalties for these violations, which include failure to produce a Form I-9 or to sign the attestation, range from \$110 to \$1,100 per violation. The penalty can be aggravated or mitigated by five factors: the size of the business, good faith effort to comply, seriousness of violation, whether the violation

involved unauthorized workers, and history of previous violations. Proactive properly conducted internal audits and training and education are considered good faith mitigating factors.

Employers can also be found to have knowingly hired or continued to employ unauthorized workers. These employers may be fined; criminally prosecuted; and barred from government contracts. Monetary penalties for knowingly hire and continuing to employ violations range from \$375 to \$16,000 per violation. The failure to complete Form I-9 can be the basis for a finding of knowingly hiring or continuing to employ an unauthorized worker.

The new instructions emphasize that the employer is responsible for the proper completion of the form.

### When do I have to start using the new Form?

There is a 60 day grace period for the transition. We suggest that employers take this time to learn about the new form and instructions, update company policies and practices, and provide training to those responsible and engaged in the process. Employers should begin using the new form for all new hires and re-verification of current employees by **no later than May 7, 2013**.

### What are the main changes to the Form?

**-Revised layout** - The form has been reformatted and expanded to two pages. We recommend to print the two pages double-sided to avoid losing a page.

**-Changes to page One** – This page now contains section 1 and is dedicated to completion by the new hire and a Preparer or Translator. It includes a double "stop sign" reminder at the end of the page that the "employer completes the next page". It also includes new data fields such as telephone number and email address (which are optional fields); terminology to accommodate cultural norms relating to names; and fields to include passport information as applicable.

**-Changes to page Two** – This page is to be completed by the employer and contains sections 2 and 3. This page now contains a section to enter the name of the employee at the top of the page and has undergone some reformatting including: additional fields to the List A column; a separate line for the employee's first day of employment; and headings to clarify document entries (such as document title, issuing authority).

### When should the Form I-9 be completed?

This has been a confusing issue for many employers in the past. The new employee can complete the form *after acceptance of the job offer and no later than the first date of hire*.

As to the employer, the new instructions specifically provide that an employer has *3 business days* to complete the form. For example, if an employee begins work on a Monday, the employer has until Thursday of that week to complete Section 2 of Form I-9. Section 3 must be completed on the date of rehire, and in the case of re-verification, before the work authorization expires.

### Can certain entries be pre-populated on the Form for efficiency?

USCIS has indicated that section 1 cannot be pre-populated (as it can be done with some electronic I-9 systems that communicate with onboarding programs) even if the employee reviews the entries and signs the section in affirmation of the entries. However, an employer can pre-populate entries relating to the employer's representative's name and title and employer's name and business address (P.O. Boxes are not acceptable for employers or employees' addresses).

**I-9 UPDATE CONT'D:****Contributed by Giselle Carson, Esq. – SHRM Jacksonville Member****Can an employer with remote hires delegate the responsibility of examining the employee's original documents to one representative and have another representative complete the attestation based on photocopies of the documents received?**

Unfortunately, no. USCIS' position is that the representative that signs the attestation must be the same person that physically examines each original document to determine if it reasonably appears to be genuine and relate to the employee. An employer with remote hires can delegate the verification to a person that serves as an agent of the employer but that agent must examine the documents and complete section 2 or 3 of the Form I-9. The employer retains the liability for the actions of the agent.

**When is an employer required to complete an I-9 for a rehired employee?**

If an employee is re-hired and *more than 3 years have passed* since the employee initially completed the I-9, a new Form I-9 must be completed. Otherwise, the employer has the option to re-verify by completing Section 3 (of the currently valid form) or complete a new Form I-9.

If the employee's prior work authorization is still valid, the employer representative may rely on the previously completed I-9 and just update section 3, block B (date employee begins employment), and sign, date and print his or her name at the bottom of this section.

If the employee's work authorization has expired, the employer must verify the current work authorization and complete section 3, blocks B and C (information relating to the work authorization document), or complete a new I-9 to perform the re-verification. The employer must also sign, date and print his or her name in this section. We recommend that employers remind employees of the upcoming expiration of their work authorization at least 120 days prior to their expiration.

**Why is there a 3-D bar code on the new form?**

USCIS has indicated that it is to be used for future technology. We expect that it will be used to facilitate data collection and audits.

**Do I have to make changes to the hiring process as a result of this new I-9?**

The regulations relating to the I-9 process have not changed. The List of Acceptable documents format has changed slightly but its content has not. The rule regarding the form's retention of 3 years from the date of hire or 1 year from the date of termination, whichever is later has not changed. At this time, the employer sanctions have not changed.

**What are the expected future changes to employment verification?**

Proper completion of Form I-9 is now more important than ever as the form and the instructions have been revised to lessen errors. We are waiting to see whether the new format impacts the current classification of what are considered technical versus substantive violations and the severity of the fines imposed on employers for these violations. We are also monitoring the bills relating to mandatory E-Verify that have been introduced in Congress. We will continue to provide guidance as it becomes available, and can clarify questions you might have.

**SAVE THE DATE**

**April 11<sup>th</sup>**  
**Chapter Monthly Meeting**

**April 15<sup>th</sup> - 17<sup>th</sup>**  
**SHRM National Talent Management Conference & Expo**  
**(Las Vegas)**

**April 17<sup>th</sup> - 18<sup>th</sup>**  
**HR Florida Day on the Hill**  
**(Tallahassee, FL)**

**May 2<sup>nd</sup>**  
**Chapter Monthly Meeting**

**May 8<sup>th</sup>**  
**New Member Breakfast**

**June 16<sup>th</sup> - 19<sup>th</sup>:**  
**SHRM National Conference**  
**(Chicago, IL)**

**July 10<sup>th</sup>**  
**New Member Breakfast**

**August 19<sup>th</sup>—21<sup>st</sup>**  
**HR Florida Annual Conference & Expo**  
**(Orlando, FL)**