



the new i-9 employment verification form

MSK Client Alert

March 2013

After many months of announcements and discussion, the Department of Homeland Security ("DHS"), through the United States Citizenship and Immigration Service ("USCIS"), released a new edition of the Form I-9 on March 8, 2013. This newest version of the form goes into effect immediately. However, USCIS has authorized a sixty (60) day grace period during which either the new version of the form or the last version may be used. Following the end of the grace period, on May 7, 2013, all U.S. employers are required to use the new Form I-9 for all new hires. Employers should not complete the new I-9 for current employees unless it is being used for reverification purposes.

The Form I-9, intended to document verification of the identity and employment authorization of each new employee, has seen many minor modifications and revisions in the last several years, but none as significant as the current changes to the form. Furthermore, as it is the employer's responsibility to complete and retain each Form I-9 for each new employee, it is also the responsibility of all employers to familiarize themselves with the new features of the form and the mandatory time frames for its usage.

The Changes to the New Form I-9

The new Form I-9 has been expanded to two (2) full pages (not including the lists of acceptable documents) – a departure from the traditional one-page document. It is also accompanied by six (6) pages of instructions that are far more detailed and comprehensive than previous versions. Within the new two-page form are several new information fields that were not present in any prior version of the form. Most of these new information fields are contained in Section 1 of the form (the section completed by the employee), which now takes up all of page 1. There are also several more minor modifications to Section 2 (the section completed by the employer). The most notable changes to the form and instructions are the following:

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- **The Employee's Address** – The instructions now clarify that a P.O. box is not an acceptable address and that foreign addresses may be used only for border commuters living in Canada or Mexico.
- **The Employee's Email Address and Telephone Number (Optional)** – The new form provides spaces in Section 1 where the employee may enter his or her email address and telephone number. These fields are a new addition, and the instructions make it clear that this information is optional. The employee may write "N/A" in these fields if he or she chooses. DHS states that the purpose of these fields is for the government to contact the employee in the event of a mismatch between the information provided and DHS or Social Security Administration ("SSA") records.
- **The Employee's Social Security Number (Optional)** – The field for the social security number remains voluntary on the newest version of the form. However, the employee's social security number is required if the company participates in E-Verify.
- **Foreign Passport Number and Country of Issuance** – These fields in Section 1 are likely to cause the most confusion for employers. These fields apply only to foreign nationals, but not all foreign nationals. Only foreign national employees who entered the United States in a nonimmigrant visa status and received an admission number and Form I-94 arrival-departure record from a Customs and Border Protection ("CBP") officer at a port of entry are required to enter their passport number and the country of issuance for the passport they used to enter the United States. Foreign nationals who obtained an admission number from USCIS while inside the United States or who entered the United States without a valid foreign passport must write "N/A" in these fields.
- **Additions to the Instructions Pages for Special Circumstances** – The six (6) page long set of instructions now includes sections that are specifically applicable to minors and disabled employees, as well as employees using lost, stolen, and damaged documents. Employers encountering these situations should review these revised instructions carefully before completing the Form I-9.
- **Additional Spaces for List A Documents** – Recognizing that there are many scenarios where multiple documents are used to complete List A of Section 2, the form now has additional space for List A documents. For example, a J-1 nonimmigrant visa holder could provide the combination of his foreign passport, current I-94 card, and Form DS-2019 for use in List A.
- **Section 3 Limited to Reverifications and Rehires** – The form now clarifies that Section 3 is limited to reverification and rehire scenarios and is not required to be completed every time an employee changes his or her name.
- **The List of Acceptable Documents** – Unlike the Form I-9, the list of acceptable documents has not been significantly modified in the newest version. However, the list does include additional language that clarifies that a Social Security card cannot be used as a List C document if it is designated as being "Not valid for employment" or "Valid for work only with DHS authorization."



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The New Handbook for Employers

The new Form I-9 is accompanied by a newly revised version of the M-274: *Handbook for Employers*, available online at www.uscis.gov. This newest version of the Handbook was also revised on March 8, 2013, and is a seventy (70) page long manual that attempts to cover all possible scenarios an employer may encounter when completing the Form I-9. It is no surprise that it takes 70 pages to explain the proper use of the Form I-9 as it is a deceptively simple form that carries weighty consequences for those employers that neglect it or misuse it.

Implications and Recommendations

Mitchell Silberberg & Knupp's team of experienced Immigration Attorneys has spent the past few months monitoring the development of this newest version of the Form I-9 and is intimately familiar with the changes, and the purposes for the changes. We recommend that all U.S. employers make the necessary changes to company I-9 compliance manuals, policies, and procedures between now and May 7, 2013, to ensure that the new form is being used, and used correctly. In many ways, the new Form I-9 attempts to make the process of documenting employee identity and employment verification easier by using clearer language and more thorough instructions. However, USCIS has left several unanswered questions about the negative implications for improper completion of the form's newest fields. Certain clerical errors in the completion of a Form I-9, commonly referred to as technical errors (as opposed to substantive errors), carry much harsher penalties than others. Until the government releases additional guidance on this, employers should assume that improper completion of any section of the newest version of the form may carry strict penalties. Human resources professionals should also familiarize themselves with the newest version of the I-9 instructions and the revised version of the *Handbook for Employers*. We also recommend the implementation of I-9 compliance training programs to instruct all human resources personnel on the proper use and storage of the form. Our team of knowledgeable immigration attorneys will be happy to guide such training programs and answer any questions that you may have.

For a PDF copy of the revised I-9 Employment Verification Form please [click here](#).