

CLIENT ALERT

New Form I-9, Employment Eligibility Verification Form Required as of May 7, 2013

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Effective May 7, 2013, a revised [Employment Eligibility Verification Form \(Form I-9\)](#) becomes mandatory and all employers must begin using the new Form as of that date. Among the changes implemented on the new Form I-9 are new data fields for the employee to complete, such as e-mail address, telephone number and foreign passport number. Although the new Form I-9 has not changed significantly from its prior iteration, employers should review their practices to ensure compliance with the requirements.

Timing

The Form I-9 must be completed for every new hire, even if the employment is only for a short period of time. Newly hired employees must complete and sign Section 1 of the Form I-9 no later than the first day of employment. It is important to note that Section 1 should never be completed before the employee has accepted a job offer. Employers must make sure that the instructions for the Form I-9 are available to the employee while he or she completes the Form. The employer must complete Section 2 within three days of hire, unless the employee is hired for fewer than three business days. In that case, the employer must complete Section 2 on the first day of employment.

Employer Responsibilities

Employers are also obligated to examine the documentation offered by new hires to demonstrate their identity and eligibility for employment. Employers are not allowed to specify which document(s) they will accept from an employee. The employee can choose which of the approved documents to submit. The U.S. Citizenship and Immigration Services (USCIS) has issued a new [Handbook for Employers \(Form M-274\)](#), which provides a comprehensive guide for completing the Form I-9. This Handbook includes images of sample documents that will assist employers when reviewing an employee's documents. Because employers are required to examine the documents and verify that they appear genuine, the new Handbook is a valuable resource. Employers should, however, be careful not to scrutinize a new hire's documents unnecessarily, as overzealous rejection of documentation could expose the employer to an immigration-related unfair employment practice charge. Employers must accept documents that reasonably appear to be genuine on their face.

In addition to using the new Form I-9, federal contractors and subcontractors will be required to follow special rules for completing and updating the Form I-9 if their contract contains the Federal Acquisition Regulation (FAR) E-Verify clause. For most other employers, the E-Verify program is voluntary. The E-Verify program is an internet-based system that allows U.S. employers to verify the employment eligibility of all newly hired employees. [Click here for information on the E-Verify requirements for federal contractors.](#)

Reverification

When an employee's employment authorization has expired, the employer must reverify the authorization in Section 3 of the Form I-9 no later than the date that the employment authorization expires. Given that current employees will have completed the old Form I-9, the employer should examine the new document(s) presented by the employee, enter the information in Section 3 of the current Form-I-9, and retain it with the previously completed Form I-9.

Employers may decide it is a good practice to establish a calendar system to check in with employees whose employment authorization is due to expire in the near future. A note of caution, however, is that employers are not allowed to reverify the following expired documents: a U.S. passport or passport card, an Alien Registration Receipt Card/Permanent Resident Card (Form I-551), or any List B document. Further, employers may not refuse to accept a document because it has an expiration date in the near future.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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