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IMMIGRATION ALERT

New I-9 Employment Eligibility Verification Form and Procedure

April 2009

Under federal law, since November 1986, all employers must verify the employment eligibility of their employees. This verification process is conducted using Form I-9. As of April 3, 2009, all employers must:

- Use the version of Form I-9 that is dated 02/02/09 in the lower right-hand corner, for all new employees.
- Accept only the documents authorized by the regulations as listed in the new form and those documents must be unexpired.
- Update and reverify employment eligibility when required with the new Form I-9 instead of using Section 3 of an existing Form I-9.

Changes to Form

The primary changes to the form itself are in Section 1 (Employee Information and Verification) and in the List of Acceptable Documents. Section 1 now has four separate checkboxes for an employee to identify himself or herself as one of the following: “A citizen of the United States”, “A noncitizen national of the United States”, “A lawful permanent resident” or “An alien authorized to work until”. The previous form had citizen and noncitizen national together. The Form I-9 instructions define a “noncitizen national”, essentially persons born in American Samoa, certain former citizens of the former Trust Territory of the Pacific Islands, and certain children of noncitizen nationals born abroad.

The fourth category reversed the order for an Alien or Admission number and the expiration date of work authorization.

The instructions to the new form emphasize by additions that Section 1 must be completed no later than the time of hire, which is the actual beginning of employment, not just at the time of hire, and if photocopies of documents are made, they must be made for all new hires.

Changes to Acceptable Documents

The major change to acceptable documents is that all documents must be UNEXPIRED. In other words, if the document contains an expiration date, it cannot be accepted for employment eligibility verification if the employee’s hire date is after the expiration date. Previously, expired List A documents (Documents that Establish Both Identity and Employment Authorization) and List B documents (Documents that Establish Identity) could be accepted.

List A has been updated: (a) to include (1) the machine-printed I-551 notation in a foreign passport, (2) the computer-generated Form I-94A in a foreign passport, and (3) passports from the Federated States of Micronesia or the Republic of the Marshall Islands with Forms I-94 or I-94A; and (b) to exclude certain Employment Authorization Documents, Forms I-688, I-688A and I-688B, that are no longer issued.

List C (Documents that Establish Employment Authorization) has been updated: (a) to refer (1) to the Social Security card as the “Social Security Account Number card” and (2) to the imprint on the card that prohibits it from being used for work authorization as “the issuance of this card does not authorize employment in the United States” (it previously said, “not valid for employment”); and (b) to separately identify the Certification of Birth Abroad, Form FS-545, and Certification of Report of Birth, Form DS-1350.

Changes to Updating and Re-verification

Because of the Changes to Acceptable Documents, employers must update and re-verify employment eligibility when required with the new Form I-9 instead of using Section 3 of an existing Form I-9. We are seeking clarification whether an employer must complete Sections 1 and 2 of the new Form I-9 or just attach a new Form I-9 to the existing Form I-9 and complete Section 3. To date, it has been stated that “When an employee must be re-verified because his or her employment authorization has expired, employers should ensure that they are use the revised Form I-9 with its new List of Acceptable Documents. An employer may not re-verify the employee by completing Section 3 – Updating and Re-verification on a previous version of the Form I-9.” However, it has also been stated, “Employers only need to complete the revised version of the Form I-9 for new employees. Employers should not be completing Forms I-9 for existing employees. However, employers must use Form I-9 when their employees require re-verification.” Look for a future Client Update or Alert on this procedural issue.

Obtaining the New Form I-9

The new Form I-9 is available by calling the U.S. Citizenship and Immigration Services (USCIS) toll-free number at 1-800-870-3676, or by download from the USCIS website, www.uscis.gov. Click on “Form I-9” on the left side of the USCIS home page. The form can also be found using www.uscis.gov/forms and scrolling down to near the bottom for Form I-9. Also available on the USCIS website is an updated “USCIS Handbook for Employers (M-274)”, a 65 pages document that is a related link on the Form I-9 page.

This Immigration Alert was prepared by David J. Harris of the Immigration Law Practice Group of Gallop, Johnson & Neuman. If you wish to obtain further information regarding these matters, please contact either Mr. Harris or the Gallop, Johnson & Neuman attorney who normally provides or manages your legal services.

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