

Government Revises Employment Eligibility Verification Form I-9

E. Jason Tremblay

ARNSTEIN & LEHR LLP
120 SOUTH RIVERSIDE PLAZA | SUITE 1200
CHICAGO, IL 60606
P 312.876.6676 | F 312.876.0288
ejtremblay@arnstein.com

The U.S. Citizenship and Immigration Services ("USCIS") (formerly the INS) recently announced the release of a new Form I-9 to be used by employers to verify an employee's authorization to work in the United States.

The revision to the Form I-9 is significant since other efforts towards comprehensive immigration reform have stalled in Congress or the courts. The new Form I-9 should be implemented immediately by all employers for their new hires.

On the revised Form I-9, the USCIS has eliminated five documents from the List of Acceptable Documents (List A), thereby reducing the number of documents that prospective employees can use to establish their authorization to work in the United States. The documents that were removed from List A lacked security features that deter counterfeiting, tampering and fraud. Specifically removed from List A are the following documents:

1. Certificate of U.S. Citizenship (N-560 or N-570);
2. Certificate of Naturalization (N-550 or N-570);
3. Alien Registration Receipt Card (I-151);
4. Unexpired Reentry Permit (I-327); and
5. Unexpired Refugee Travel Document (I-571).

Therefore, starting immediately, employers should not accept the foregoing documents when completing a Form I-9 for a new hire (or for an existing employee who requires re-verification).

The USCIS has, however, added to List A that an Unexpired Employment Authorization Document (I-766) is now an acceptable document to verify an employee's identity and authorization to work in the United States. As a result, employers should accept an unexpired I-766 from a new hire when completing the employee's Form I-9.

The new Form I-9 instructions also provide that an employee is not obligated to provide a social security number in Section 1 of Form I-9 unless the employee is employed by an employer who participates in the USCIS's Electronic Employment Eligibility Verification Program, also known as E-Verify. This revision is significant for Illinois employers because Illinois recently passed a law prohibiting Illinois employers from participating in the E-Verify program.

The revised and updated Form I-9 is available at no charge from the USCIS website at <http://www.uscis.gov/i-9>. Employers are strongly encouraged to begin using the revised Form I-9 immediately because, as of December 26, 2007, noncompliant employers may be fined or penalized for not using the new Form I-9.

Employers are finally advised that they only need to complete a new Form I-9 for new hires. They do not need to complete a new Form I-9 for existing employees unless these employees require reverification.

If you have any questions regarding the revised Form I-9 or its implementation, please contact your labor and employment law attorney at Arnstein & Lehr LLP.