

SPECIAL REPORT



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Presented by the Labor & Employment Team of Whyte Hirschboeck Dudek S.C.

USCIS Releases New Form I-9 for Immediate Use

by Tiffany L. Hutchens

U.S. Citizenship and Immigration Services (USCIS) published revised Form I-9, Employment Eligibility Verification, on March 8, 2013. The new version of the form features a longer format, two new employee information fields, and more detailed instructions that may affect how penalties are assessed against employers for I-9 completion violations. The form is available at www.uscis.gov for immediate use and will become mandatory for all new hires after May 7, 2013.

Changes to Form I-9

The major revisions to Form I-9 include:

- Two new employee information fields;
- Instructions on how employees should enter immigration document information;
- Instructions for employers when a receipt is presented in lieu of an acceptable document;
- More detailed instructions on re-verification procedures; and
- More specific information on the identify and work authorization documents an employer may accept.

Completing the New Employee Information Fields

The revised Form I-9 contains two new employee information fields:

- **Email Address and Telephone Number:** Employees may provide their email address and telephone number. The U.S. Department of Homeland Security (DHS) may use this information to contact the employee if there is a potential mismatch between the information provided and

the information in DHS or Social Security Administration records.

- **Foreign Passport Number and Country of Issuance:** Foreign nationals, other than lawful permanent residents, who obtained their current I-94 arrival/departure number directly from U.S. Customs and Border Protection (CBP) are required to provide this information. No foreign passport information is required if the employee's current I-94 arrival/departure number was used by USCIS.

What the New Form Means for Employers

More detailed instructions should assist employers in complying with employment verification requirements, but it is not known whether misinformation in the new fields will be treated as technical or substantive errors—an important distinction that affects how penalties for I-9 violations are assessed. Employers who fail to use the revised Form I-9 after May 7, 2013 may be subject to applicable penalties under the Immigration and Nationality Act. To ensure a smooth and timely transition, employers should begin to incorporate the revised Form I-9 into their employment verification process before the new edition becomes mandatory on May 8, 2013.

In light of the increased enforcement and auditing of employers' I-9 records, employers should self-audit their I-9 records with the assistance of a skilled attorney. Multiple federal agencies have jurisdiction over Form I-9, and employers are required to make their employees' Form I-9 available for inspection upon request by officers of the U.S. Immigration and Customs Enforcement, the Department of Justice, the Office of Special Counsel for Immigration-Related Unfair Employment



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Practices, and the Department of Labor. Each specialized agency is tasked with enforcing different aspects of the employment eligibility verification processes, and a self-audit is the most efficient and cost-effective way to avoid violations that carry civil and criminal penalties.

Please contact Tiffany Hutchens at (608) 234-6078 or thutchens@whdlaw.com, or another member of the Labor & Employment Team if you have any questions about the new Form I-9, or if you would like assistance with a self-audit of your employees' Form I-9 records.



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