

Round Two:

Newest I-9 Reforms Expected to Aid Employers, Reduce Fraud

For the second time in the past year, the Department of Homeland Security (“DHS”) has amended the Form I-9, Employment Eligibility Verification in its attempt to comply with the document reduction requirements of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Employers who do not complete the new Form I-9 for all new employees hired on or after February 2, 2009 will be subject to civil monetary penalties, up to \$1,100 per violation.

As you know, every employer – including agricultural employers – must complete the Form I-9 for each person they hire in the United States on or after November 6, 1986, regardless of the person’s citizenship. This process requires the employer to review certain documentation to verify that person’s identity and employment authorization. Unfortunately, as most employers will admit, the sheer number of acceptable documents severely hampers this verification process, which makes it significantly harder – and more stressful – for employers to comply with their statutory duty to only hire authorized workers.

In the first amended Form I-9, which was to be completed for all new employees hired on and after June 30, 2008, the DHS reduced the number of acceptable List A documents (i.e., those documents which establish both identity and employment authorization). In this second amended Form I-9, DHS eliminates three more List A documents, but also adds three:

<u>Eliminated List A Documents</u>	<u>Additional List A Documents</u>
Form I-688, Temporary Resident Card	A temporary I-551 printed notation on a machine-readable immigrant visa in addition to the foreign passport with a temporary I-551 stamp
Form I-688A, Employment Authorization Card	A passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with a valid Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI.
Form I-688B, Employment Authorization Card	U.S. passport card.

Additionally, DHS recognizes that expired documents may not portray valid status, and are more likely to be fraudulently used. For example: an expired U.S. passport is currently acceptable to prove identity and employment authorization. Due to these concerns, the second amended Form I-9 requires that all documents presented during the verification process be both valid and unexpired, regardless of whether it is a List A, B, or C document.

While these are not the only changes to the new Form I-9, they are the most substantial. All of the February 2, 2009 changes can be seen on the attached Form I-9 draft, which the DHS has created for informational purposes only. As always, if you have any questions about this Form I-9, or about other employment issues in general, please contact the labor and employment attorneys at Robison, Curphey & O'Connell.

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